

**(1997) 12 MAD CK 0051**

**In the Madras High Court**

**Case No :** Tax Case No"s. 1458 to 1461 of 1992 (Revision No"s. 611 to 614 of 1992)

Agfa-Gavert India Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

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**Date of Decision :** 23-12-1997

**Acts Referred:**

**Citation :** (2001) 123 STC 108

**Hon'ble Judges :** K.P. Sivasubramanian, J;Janarthanam, J

**Bench :** Division Bench

**Advocate :** C. Natarajan and N. Inbarajan, for the Appellant; K. Elango, Government Advocate (Taxes), for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Janarthanam, J.—Desirable it is to pen down a common order, in all these actions, inasmuch as the point involved for consideration is one

and the same relatable to the assessee--Agfa-Gavert India Ltd., having their place of business at door No. 611, Anna Salai, Madras-6, relatable

to four assessment years, viz., 1981-82, 1982-83, 1983-84 and 1985-86 under the provisions of the Central Sales Tax Act, 1956 (Act No. 74 of

1956) (for short "the CSTA").

2. The assessee-dealers in photographic goods, it is said, effected inter-State sales to dealers in Andhra Pradesh against the issue of "C" forms.

Originally, assessment orders, it is said, were passed by the assessing officer, on the basis of "C" forms furnished by the assessee-dealers, giving

the benefit of concessional rate of tax to them. Cause of action arose for the revision of assessments for the aforesaid assessment years.

3. On verification, it was found that the purchasing dealers at Andhra Pradesh

furnished "C" forms for the purchases effected by them issued to other dealers, in rather a bid to avoid the tax being paid on local sales effected by them. In other words, the purchasing dealers were stated to have misused "C" forms issued to the other dealers in effecting inter-State purchases from the assessee-dealers.

4. The assessing officer therefore revised the assessment orders u/s 16 of the Tamil Nadu General Sales Tax Act, 1959, (Tamil Nadu Act No. 1 of 1959) (for short "the TNGSTA") and subjected the inter-State sales turnover exigible to tax at the appropriate rate and thereby deprived the assessee-dealers of the concessional rate of tax.

5. The turnovers refixed by the assessing officer for the various assessment years are as below ;

Assessment year Turnover determined

Rs.

1981-82 62,29,518

1982-83 59,13,138

1983-84 61,58,725

1985-86 88,70,251

6. The aggrieved assessee-dealers filed appeals before the Appellate Assistant Commissioner (CT) III, Madras-108 and the appeals so filed ended in dismal failure.

7. The matter did not stop there. The assessee-dealers further filed appeals before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madras-104 (for short, "the Tribunal") and the Tribunal, in turn, also dismissed all the appeals, giving rise to the present actions--Tax Case (Revision) Nos. 1458 to 1461 of 1992.

8. From the pith and substance of the submissions of Mr. C. Natarajan, learned Senior Counsel representing Mr. N. Inbarajan, learned counsel appearing for the assessee-dealers and Mr. K. Elango, learned Government Advocate (Taxes) representing the Revenue, the point that emerges for consideration is as to :

Whether the assessee-dealers--selling dealers, on the facts and in the circumstances of these cases, would be deprived of the benefit of the

concessional rate of levy of tax in respect of inter-State sales effected to certain registered dealers outside the State, for the simple reason that

those purchasing dealers furnished to the assessee-dealers "C" forms issued to the other dealers by the tax authorities ?

9. The point : It is not as if the question now posed for consideration in these actions does arise for the first time before us. The plain fact is that

such a question did arise for consideration anterior in point of time, on many occasions, before the superior courts of jurisdiction--High Courts and

Supreme Court--and the decisions emerging from such courts, if related here, we rather feel that the question posed for consideration in the instant

cases is capable of being solved, with ease and grace and without any difficulty whatever.

10. (i) In *The State of Madras Vs. Radio and Electricals Ltd. etc.*, , what their Lordships of the Supreme Court said as relatable to the obligations

of the selling dealer getting reflected at page 233 reads as under :

Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representations made to him. He must

satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate ; but his duty extends no further. If

he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in

the certificate in form "C" the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was

represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty u/s 10. That penalty is

incurred by the purchasing dealer and cannot be visited upon the selling dealer.

(ii) In *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, , what their Lordships of the Supreme Court said, as relatable to the

exercise of power by certain authorities in a certain way in paragraph 18 (at page 794) is relevant for our present purpose and it reads as under :

18. It is well-settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or

not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic

nature and its exercise in a mode other than the one provided, will be violative of

the fundamental principles of natural justice.....

(iii) In Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, what their Lordships of the Supreme Court said in the

paragraph at pages 419-420 is relevant and the same reads as under :

But what would be the position if the purchasing dealer does not act according to the intention expressed by him in the declaration given to the

selling dealer and, in the one case, does not resell the goods and, in the other, does not use them as raw materials in the manufacture of goods for

sale ? The selling dealer is granted deduction in respect of the sales made by him because the goods are purchased for resale or for use as raw

materials in the manufacture of goods for sale and this intended end-use of the goods purchased is sought to be ensured by taking a declaration in

the prescribed form from the purchasing dealer. But if the goods are utilised by the purchasing dealer for some other purpose contrary to the

intention expressed by him in the declaration, the object and purpose of giving deduction to the selling dealer would be defeated. Even so, it would

not be right to withdraw the deduction granted to the selling dealer because that would be penalising the selling dealer for a breach of faith

committed by the purchasing dealer. The legislative wrath should in all fairness fall on the purchasing dealer and that is why the second proviso has

been introduced in the Act by Delhi Amendment Act 20 of 1959. The object of the second proviso is to ensure that the intention expressed by the

purchasing dealer in the declaration given by him is carried out and he acts in conformity with that intention. Where the purchasing dealer gives a

declaration of intention to resell the goods purchased or to use them as raw materials in the manufacture of goods for sale, he must act in

accordance with that intention, because it is on the basis of that intention that deduction is allowed to the selling dealer and if he does not carry out

that intention and utilises the goods for any other purpose, it stands to reason that the tax which is lost to the revenue by reason of deduction

granted to the selling dealer should be recoverable from him, that is, the purchasing dealer. If no deduction were granted to the selling dealer, he

would be liable to pay tax on the sale made by him and ultimately the incidence of that tax would be passed on to the purchasing dealer, but by

reason of deduction allowed to the selling dealer, the purchasing dealer escapes

this incidence of tax and, therefore, the second proviso enacts that where the purchasing dealer acts contrary to the intention declared by him, the selling dealer shall not be penalised for the sin of the purchasing dealer and he shall continue to have his deduction, but the price of the goods purchased shall be included in the taxable turnover of the purchasing dealer. The second proviso is thus intended to provide the consequence of the purchasing dealer not complying with the statement of intention expressed in the declaration given by him to the selling dealer under the first proviso. This is broadly the scheme and intendment of Section 5(2)(a)

(ii) and its two provisos read in the context of the other provisions of the Act.

(iv). In *United Steel and Allied Industries Vs. The State of Andhra Pradesh*, during the years 1971-72, 1972-73 and 1973-74, the revision-

petitioner made certain sales in the course of inter-State trade to dealers in Bombay, who issued "C" forms in respect of the sales. At the time of

assessment, the petitioner filed the "C" forms and claimed the concessional rate of tax under the Central Sales Tax Act.

(a) The Commercial Tax Officer, however, subjected some of the sales to tax at ten per cent, on the ground that the certificate of registration of the

purchasing dealers in those cases had been cancelled much before the sales were effected, and consequently, the "C" forms issued by the

purchasing dealers were not valid, and therefore the concessional rate of tax could not be granted on the basis of such forms.

(b) The Tribunal affirmed the assessments.

(c) On revision petitions, a division Bench of the Andhra Pradesh High Court held allowing the petitions :

(i) that it was one thing to say that the purchasing dealer's certificate of registration was cancelled and quite another to say that such certificate had

been surrendered and the petitioner had entered into sale transactions with dealers who did not physically possess the certificate of registration.

There was no indication in the notices issued to the petitioner that the parties whose certificates of registration had allegedly been cancelled had

surrendered the certificates. The petitioner could therefore, prima facie conclude that the registrations were effective ;

(ii) that there was also no mention in the notice that the purchasing dealers having failed to surrender the unused "C" forms consequent upon

cancellation of their certificates of registration, as required under Rule 4-A(4) of the Central Sales Tax (Bombay) Rules, 1957, the authorities

concerned had taken action in terms of the proviso to Rule 4-A(4) to have such forms declared invalid by a notification in the Official Gazette, nor

was there any reference to the copy of such notification having been forwarded to the State Government. The purchasing dealers continued to be

in possession of "C" forms without compliance with the provisions of the proviso to Rule 4-A(4) and in such circumstances, the petitioner, effecting

sales to such purchasing dealers, was entitled to proceed on the basis that their certificates of registration were effective and valid, and there was

no reason for the petitioner to doubt the veracity of those forms or enter into any detailed investigation into the matter ; and

(iii) that, therefore, the petitioner having bona fide collected the "C" forms and claiming concessional rate of tax on their basis, had discharged the

initial onus that lay on it to show that the inter-State sales were covered by "C" forms. The assessing authority was bound to admit the claim. The

assessments were therefore quashed as illegal and unjustified.

(d) While so holding the said Bench also said that Rule 9(3) of the Central Sales Tax (Registration and Turnover) Rules, 1957 [for short "the CST

(R&T) Rules"] provides that if the certificate of registration of a dealer is cancelled, he shall forthwith surrender to the notified authority the

certificate of registration and copies thereof, if any, granted to him. If the purchasing dealer is in possession of the registration certificate, it is prima

facie evidence of the certificate not having been cancelled. A selling dealer cannot be expected, in addition to pursuing his trade, to investigate,

every time a sale is effected, the antecedents and the genuineness of the purchasing dealer's credentials. The selling dealer is entitled to act on

prima facie material at the time of effecting the sales.

(v) In Deputy Commissioner of Sales Tax (Law) v. Debi Prasad Shyam Sunder & Sons [1991] 82 STC 305 (Ker), the respondent-firm was a

registered dealer under the Kerala General Sales Tax Act, 1963 (for short "the KGSTA"). The assessment year in question was 1983-84.

Amongst others, the assessing authority disallowed the exemption to the turnover of Rs. 14,25,172.78 relating to the sale of pepper and betel-nuts

to four other registered dealers in Mattancherry. The said goods are taxable at

the last purchase point.

(a) The assessee claimed exemption on the ground that the said goods were sold to registered dealers within the State and so the assessee is not

the last purchaser of the said goods in the State liable to tax. The assessee also produced declarations in form No. 25 obtained from the local

purchasers of pepper--Oscar Spices, Jyothi Spices, Amrit Spices, Vanitha Spices.

(b) The assessing authority declined to grant the exemption holding that the said local purchasers were only namelenders with bogus registration

and that their registrations were cancelled with retrospective effect in 1989. The exemption claimed towards sale of pepper in the sum of Rs.

10,19,460.55 and sale of betel-nuts amounting to Rs. 4,05,712.23 were disallowed. The plea of the assessee, that the Revenue has no authority to

cancel the registration certificate of the purchasing dealers with retrospective effect, that the cancellation of the certificates of registration cannot in

any way deprive the assessee from getting the exemption pleaded, that the assessee acted bona fide on the basis of declarations and other

documents issued by the purchasing dealers at the time when the certificates of registration issued were valid and had not been cancelled and so

the exemption cannot be denied on the ground of the cancellation of the registration of the purchasing dealers with retrospective effect, were

negatived. In the opinion of the assessing authority, when the certificates of registration issued to the purchasing dealers were found to be bogus or

fictitious and the certificates were cancelled, that will ipso facto deny the plea of exemption pleaded by the selling dealers like the assessee.

(c) The said decision was affirmed in appeal by the Deputy Commissioner (Appeals).

(d) In further appeal, the Sales Tax Appellate Tribunal, by a majority, held that the only requirement under the Kerala General Sales Tax Act and

the Rules for a seller to obtain exemption from tax for goods for which tax is leviable at the last purchase point is the production of form No. 25

declarations issued by the purchasing dealers and that in the instant case, the assessee has produced such declaration forms issued by the

purchasing dealers. It was also found that the Revenue had not established any collusion between the assessee and the purchasing dealers and the

denial of exemption for the sole reason that the certificates of registration of the

purchasing dealers were cancelled with retrospective effect cannot in any manner act to the prejudice of the assessee, who bona fide obtained form No. 25 declarations as soon as the various transactions took place. It was found that all the purchasing dealers were having registration under the Kerala General Sales Tax Act, 1963, when the disputed sales were effected. The registration of the purchasing dealers were subsequently cancelled. There is no material that at the time when the assessee sold the goods to the said purchasers, as against form No. 25 declarations, there was any proceeding against the said purchasers.

(e) In the light of the above facts, the Sales Tax Appellate Tribunal held that exemption cannot be disallowed and the assessee is entitled to the exemption claimed by them, being not the last purchaser of the goods taxable at the last purchase point.

(f) It is thereafter, the Revenue has filed tax revision case before the Kerala High Court assailing the order passed by the Sales Tax Appellate

Tribunal dated February 13, 1990.

(g) What their Lordships of the division Bench of the Kerala High Court, in such context, said in paragraph 5 (at pages 311-312) is relevant and the same reads as under :

5. It should be remembered that a certificate is granted by the prescribed authority only after making such enquiries as he may consider necessary

and only if he is satisfied that the application is in order and that the particulars furnished therein are correct, etc. It is not as if the certificate is

granted mechanically. An enquiry is contemplated, on the basis of which the concerned officer should be satisfied that the person who has applied

for registration is a real person, that the particulars furnished in the application are correct, and that in the circumstances, the officer is of opinion

that the certificate of registration is to be granted for the applicant. When once such a certificate is granted, it clothes the person with certain

privileges. u/s 22 of the Kerala General Sales Tax Act, a registered dealer alone can collect tax payable by him on the sale of any goods from the

person to whom he sells the goods. It is only a registered dealer who can give form No. 25 declaration, as envisaged by Rule 32(14) of the Kerala

General Sales Tax Rules, for the goods purchased by him, which are taxable at the last purchase point. In effect, by the grant of the certificate of

registration, the Revenue holds out to the world at large that the person to whom the certificate is granted is a registered dealer under the Act,

entitled to take advantage of all rights and privileges provided by the Act and the Rules. It is true, that it is open to the prescribed authority to

cancel the registration certificate for good and sufficient reasons, after providing an opportunity to the concerned dealer of being heard. But, such

cancellation of registration can take effect only from the date when the order was so passed. It cannot have any retrospective effect. It cannot in

any manner affect the past transactions bona fide entered into by persons, who relying on the certificate of registration, entered into business deals

and arranged their affairs. This is all the more so, in a case where no collusion between the selling dealer and the purchasers is neither alleged nor

established. We are fortified in taking this view in the light of the following decisions : (1) Santumal Vs. Assistant Commissioner of Sales Tax

(Appeals), Eastern Division, Ranges I and II, Nagpur and Another, (2) Chhabra Electric Store Vs. The Chief Commissioner, , (3) Devinder

Kumar Kewal Kumar v. State [1972] 30 STC 352 (P&H) , (4) Commercial Tax Officer and Others Vs. Jasodalal Ghosal Private Ltd, and (5)

Suresh Trading Company Vs. State of Maharashtra, .

(vi) In Commissioner of Sales Tax, New Delhi v. Hari Ram Oil Co. [1992] 87 STC 493 (Delhi), the dealer had obtained declarations from two

purchasers and sought the benefit of exemption from sales tax in his return. The assessing authority, however, found that the registration certificate

of Narender Kumar Krishan Kumar had been cancelled with effect from April 1, 1973, while the registration certificate of Sunrise Lubricants had

been cancelled with effect from October 15, 1973.

(a) The assessing authority came to the conclusion that the dealer was not entitled to the benefit of the sales made to the said purchasers because

their registration certificates had been cancelled and the sales made by the dealer could not be regarded as sales having been made to the

registered dealers. It may here be stated that the sales made by the dealer in favour of Narender Kumar Krishan Kumar were after 1st April,

1973, while the sale transaction in favour of Sunrise Lubricants was on 9th December, 1973. The deductions claimed by the dealer were not

allowed.

(b) An appeal was filed to the Assistant Commissioner of Sales Tax who observed that as on the date the purchases were made the purchasers

were no longer the registered dealers and, therefore, the declarations issued by them were invalid and the deductions claimed by the dealer could

not be allowed.

(c) During the course of the second appeal it was contended that the publication of the cancellation of the registration certificates of the two

purchasers was effected only on 30th July, 1974 and, therefore, the dealer was entitled to take advantage of the declarations which had been

issued.

(d) The Appellate Tribunal referred to the second proviso to Rule 12(d) of the Delhi Sales Tax Rules, 1951, and also to two decisions reported in

Arjan Radio House Vs. Assessing Authority (Excise and Taxation Officer) and Another, and The Yemmiganur Spinning Mills Limited and Another

Vs. State of Andhra Pradesh and Others, and observed that when the department was negligent in not publishing the cancellation, it could not

invalidate the declarations obtained in good faith by the dealer.

(e) On an application for reference having been filed, the Tribunal referred the following question to the Delhi High Court :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing the acceptance of the declarations issued by

Narender Kumar Krishan Kumar and Sunrise Lubricants ?

(f) In answering the question so referred, what their Lordships of the Division Bench of the Delhi High Court said is relevant, which is getting

reflected as under :

From the facts enumerated above it is clear that the factum of the cancellation of registration certificates of the two purchasers was notified only

after the assessment year was over and the sales had been made. As on the date when sales were effected by the dealer, in the present case, the

cancellation of registration certificates had not been notified. The dealer, therefore, could not possibly have any knowledge about the cancellation.

The dealer acted in good faith and obtained the declarations before making the sales.

According to Rule 12 of the Delhi Sales Tax Rules, 1951, when the registration certificate is cancelled the order of cancellation shall as soon as

possible after the same has been made be published in the official gazette. It has been held by a division Bench of the Andhra Pradesh High Court

in the case of Yemmiganur Spinning Mills [1976] 37 STC 314, that the notification of cancellation of registration would be effective and

enforceable only with effect from the date of its publication in the gazette. Similarly, a single Bench of the Punjab and Haryana High Court in Arjan

Radio House's case [1973] 31 STC 49 came to the conclusion that if the selling dealer is not aware of the cancellation of the registration

certificate because of the non-publication about the same in the official gazette then he cannot be deprived of the benefit of the declarations

received by him.

It appears to us that the intention of the Legislature in promulgating Rule 12 clearly was that the factum of cancellation of registration must be made

known to the whole world. It is only for this reason that the rule requires publication about the cancellation in the official gazette. Such publication is

always regarded as information to the world at large. Once the factum about the cancellation of the registration is published thereafter no dealer

can plead that it was ignorant about the cancellation having been effected. It is no doubt true that the purchasing dealers may have been aware that

their registration certificates had been cancelled and they may have wrongly issued the declarations but as far as the selling dealer is concerned if he

obtains a declaration certificate and it is not known to him that the registration certificate of the purchaser had been cancelled and that cancellation

is not notified in the official gazette then the selling dealer is entitled to the benefit under the Act. He cannot be penalised for the inaction of the

department in non-publication or late publication in the official gazette. The selling dealer, in the present case, has acted in good faith and as far as

he is concerned he had obtained valid declaration certificates at the time of making the sales. The Tribunal was, therefore, right in coming to the

conclusion that the benefit claimed by the dealer could not be denied to him.

(vii) In *M/s. Pankaj Jain Agencies Vs. Union of India and others*, , their Lordships of the Supreme Court said that mode of publication being

prescribed, notification will come into effect from the date of its publication in official gazette and it is further not necessary that the notification be

made known or broadcast in some recognizable way to make it enforceable.

a) Their Lordships of the Supreme Court quoted in paragraph 7 the dictum of Bailhache, J., in *Johnson v, Sargant and Sons* (1918) 1 KB 101 ;

87 LJ KB 122 ; 118 LT 95, referred to with approval by Bose, J., in *Harla Vs. The State of Rajasthan*, , who said :

Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognizable

way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through

which such knowledge can be acquired with the exercise of due and reasonable diligence.

(b) Their Lordships of the Supreme Court also quoted the dictum laid down in an earlier decision of the Supreme Court in the case of *B.K.*

*Srinivasan and Others Vs. State of Karnataka and Others*, , as to the effect of the publication in the Official Gazette, and it reads as under :

Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be

sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly

unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the

Official Gazette or some other reasonable mode of publication.

11. Coming to the facts of the instant case, there is no pale of controversy that the Andhra Pradesh dealers, who effected purchases from the

assessee-dealers are registered dealers, who had been actually dealing in business at the time of the impugned transactions. It is also not in dispute

that ""C"" forms furnished by the said registered dealers of Andhra Pradesh were ""C"" forms of certain other registered dealers, who were stated to

have surrendered those ""C"" forms to the concerned authority after the closure of their business.

12. Both the Central Sales Tax (Tamil Nadu) Rules, 1957 [for short, ""the CST (T) Rules"" ] and the Central Sales Tax (Andhra Pradesh) Rules,

1957 [for short, ""the CST (AP) Rules"" ] contain more or less in pan materia provisions relatable to :

(i) procuring of ""C"" forms at a specified rate from the concerned authority for purpose of inter-State transactions ;

- (ii) maintenance of register by the concerned tax authority containing particulars of issuance of "C" forms to a specified trader ;
- (iii) maintenance of register at the end of the dealer containing particulars of usage of "C" forms.
- (iv) report of loss or destruction or theft of "C" forms to the concerned authority immediately and making proper entries in the remarks column of the register maintained ;
- (v) unused declaration forms remaining in stock with the dealer being surrendered within a specified day from the date of cancellation of the registration certificate to the concerned authority ;
- (vi) declaration of invalidity of the forms of receipt of report from the notified authority ;
- (vii) declaration by the Board of Revenue that forms of a particular series, design, colour shall be deemed as obsolete and invalid with effect from the date as may be specified in the notification ?
- (viii) furnishing of notification to other State Governments for publication in their State Gazettes.

13. Rule 10 of the CST (T) Rules and Rules 9 and 10 of the CST (AP) Rules are in part materia provisions relatable to the particulars, as stated above.

14. In the instant cases, from a perusal of the files, we are unable to trace any material pointing out that a notification in fact had been published in the Gazette of Andhra Pradesh making it known to the public that the certificate of registration of the registered dealers, whose "C" forms had been utilised by the purchasing dealers, had been cancelled and also the said registered dealers surrendered the unused "C" forms to the concerned authority. There is also no material pointing out that such cancellation of registration certificates of those dealers had been duly intimated to the State Government of Tamil Nadu for due publication in its official Gazette. In such state of affairs, there was no plausibility or possibility for the assessee-dealer to seize knowledge of the cancellation of the registration certificate of those dealers, whose "C" forms had been misused by their purchasing dealers at Andhra Pradesh. Such being the case, the assessee-dealers cannot at all be deprived of the benefit of concessional rate of tax, as had been done by all the authorities, inclusive of the Tribunal.

15. At the same time, the fact that no material is traceable to the file as to the publication made in that regard in the Gazette of the Andhra Pradesh

Government, nor is there any material traceable to the file as to any intimation in that regard having been sent by the State of Andhra Pradesh to the

State Government of Tamil Nadu is not by itself sufficient to come to the conclusion that in fact a publication in the Gazette of Andhra Pradesh

Government or due intimation of that fact to the State Government of Tamil Nadu had not been published or made. If a publication in that regard is

made and an intimation had also been sent in that regard to the State Government of Tamil Nadu, so as to enable it to make a publication in its

Gazette, it goes without saying that in such an eventuality, it is an information to the world at large, inclusive of the assessee-dealers. Therefore,

publication of such factors in the Gazette of the Andhra Pradesh or due intimation to the State Government of Tamil Nadu is a crucial factor as to

the entitlement or otherwise of the concessional rate of tax of the assessee-dealers. In such state of affairs, the better course to be adopted is to

remit the matter back to the assessing officer to determine the question as to whether due notification had been made by the Government of

Andhra Pradesh in its Gazette as to the cancellation of the registration certificate of those dealers, whose ""C"" forms had been misused by the

purchasing dealers of the assessee-dealers at Andhra Pradesh, before ever the sale transactions effected by the assessee-dealers in favour of the

purchasing dealers who furnished ""C"" forms in all those occasions. In that view of the matter, the orders of all the tax authorities, inclusive of the

Tribunal, deserve to be set aside.

16. Before parting with these cases, we are desirous of indicating certain measures, which, if followed, scrupulously, will result in preventing misuse

or abuse of ""C"" forms.

(a). The ""C"" form prescribed under Rule 12(1) of the C.S.T. (R and T) Rules consists of two parts.

(i) The first part consists of the following columns :

(1) Name of issuing State.

(2) Office of issue.

(3) Date of issue.

(4) Name of the purchasing dealer to whom issued along with his Registration Certificate No.

(5) Date from which registration is valid.

(6) Serial No.

(After all these columns, the seal of the issuing authority has to be affixed).

(ii) The second part consists of the certificate to be issued to the selling dealer by the purchasing dealer.

17. Invariably, the columns under the first part, we are told, are not filled up by the issuing authority, at the time of issue of "C" forms. If those

columns are filled up at the time of issue itself, the possibility or plausibility of the misuse of "C" forms would, in all probability, get reduced, if not

altogether eliminated. If at all, such a filled up "C" forms is to be misused, then it requires the obliteration of the filled up entries in the first part of

"C" forms. The processes of alteration will normally be difficult, if not impossible. If an obliteration is effected by manual process, there is every

likelihood of detection by making it appear that such "C" forms had been subjected to alteration and thereby indicate the perpetrator of such

obliteration. Of course, if chemical process is employed in the process of obliteration, possibility of detection of such obliteration may be rather

remote. Such process, if at all, resorted would be only in minimal cases. Therefore, we are of the view that in order to avoid large scale misuse of

"C" forms, it would be desirable to fill up various columns as stated above of the first part of "C" forms to be filled up by the issuing authority in

indelible ink, so that the obliteration process, if resorted to, would be difficult, if not impossible. For the particulars to be furnished by the

purchasing dealer in the certificate the purchasing dealer alone would be liable either by way of prosecution u/s 10 of CSTA or by way of mulcting

of penalty, in lieu of prosecution u/s 10-A of CSTA.

18. A fraud had been perpetrated in the instant cases, in the sense of misuse of "C" forms belonging to other dealers as those "C" forms had been

issued to the purchasing dealers by the issuing authorities, without filing various columns in the first part of "C" forms.

19. In fine, all the tax case (revisions) are allowed, the orders of the tax authorities, inclusive of the Tribunal below are set aside and all the matters

are remitted back to the assessing officer for a fresh look in the matter, in the

manner, as indicated above. No costs.