
(1969) 07 AHC CK 0008

In the Allahabad High Court

Case No : Sales Tax Reference No's. 281 and 285 of 1967

Commissioner, Sales Tax

APPELLANT

Vs

Shankar Lal Chandra Prakash

RESPONDENT

Date of Decision : 11-07-1969

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1970) 26 STC 386

Hon'ble Judges : Jagdish Sahai, Acting C.J.; R.L. Gulati, J; M.H. Beg, J

Bench : Full Bench

Advocate : R.R. Agarwal and R.R. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, AG. C.J.

1. These two references have been made by the Judge (Revisions) Sales Tax, Lucknow, on 30th of November, 1966.

2. The dealer-assessee in both the cases is M/s. Shankar Lal Chandra Prakash. Reference No. 281 of 1967 relates to the assessment proceedings for the year 1959-60 while reference No. 285 of 1967 relates to the assessment proceedings held in the year 1960-61. The question referred in both these references is in identical terms which reads :-

Whether under the circumstances enumerated above the turnover of oil-seeds was taxable or not in view of Section 3-AA, read with Rule 12-A, of the U.P. Sales Tax Act ?

3. The dealer-assessee effected sale of oil-seeds to a mill. The mill issued Form III-A to the dealer-assessee to the effect that the purchases are for resale in the same condition. The dealer-assessee did not realise any sales tax from the mills.

4. Taking the view that inasmuch as the sale was made to the mills, it must be held that it was made for consumption, the Sales Tax Officer assessed the dealer-

assessee on the turnover of this sale also.

5. The dealer-assessee filed appeals (there were two appeals because there were two assessment orders, there being two assessment years). The assessee's appeals succeeded and the appellate authority excluded the turnover of the sale of oil-seeds from the assessable turnover of the dealer-assessee.

6. The Commissioner, Sales Tax, filed revision applications, which were dismissed by the Judge (Revisions), but, as already stated earlier, the instant references were made.

7. The view taken by the Judge (Revisions) is "that the passing of Form III-A was sufficient to warrant that the purchases were for resale".

8. Mr. Raja Ram Agarwal, who has appeared for the dealer-assessee, contends that the effect of Rule 12-A is that once Form III-A is filed, no other material can be looked into and it must be held by the Sales Tax Officer that the sale was not made for consumption.

9. Section 3-AA of the U.P. Sales Tax Act (hereinafter referred to as the Act) so far as relevant for our purposes reads :

3-AA. Rate and point of tax in respect of certain goods.-(1) Notwithstanding anything contained in Section 3 or 3-A, the turnover in respect of the following goods shall not be liable to tax except at the point of sale by a dealer to the consumer and the rate of tax shall be such, not exceeding the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956, as may be declared by the State Government by notification in the Official Gazette.

(2) Unless the dealer proves otherwise, every sale by a dealer shall, for the purposes of Sub-section (1), be presumed to be to a consumer.

10. Rule 12-A of the rules framed under the Act reads :

12-A. Exemption of sales u/s 3-AA.-A sale of any of the goods specified in Section 3-AA shall be deemed to be a sale to the consumer, unless it is to a dealer who furnishes a certificate in Form III-A to the effect that the goods purchased are for resale in the same condition. Details of all such certificates shall be furnished by the selling dealer with his return in Form IV.

11. Mr. Ram Manohar Sahai, the learned Standing Counsel, has contended that all that Rule 12-A provides for is that the furnishing of a certificate in Form III-A would be prima facie evidence that the goods are for resale in the same condition, but it does not lay down a rule that evidence cannot be led or material cannot be considered which may show firstly, that Form III-A filed is not a genuine document and secondly, that its contents are not correct.

12. Sub-section (1) of Section 3-AA of the Act lays down a rule that the goods specified therein shall not be liable to tax except at the point of sale by a dealer to the consumer. Sub-section (2) of that provision provides that a presumption

shall be drawn that every sale by a dealer is one made to a consumer unless the dealer proves otherwise.

13. Clearly the language of Sub-section (2) of Section 3-AA of the Act is categorical. It lays down in absolute terms that every sale by a dealer shall be presumed to be to a consumer and the burden of proving that it is not so is on the dealer. Mr. Raja Ram could not derive any assistance from the language of Sub-section (2) of Section 3-AA in support of his contention. He, however, submits that the effect of Rule 12-A is that once a certificate in Form III-A is furnished, it must be taken to be established that the goods purchased are for resale in the same condition.

14. In the first place Rule 12-A cannot be read in a manner inconsistent with Sub-section (2) of Section 3-AA. Rule 12-A is subject to Sub-section (2) of Section 3-AA. Therefore, when Sub-section (2) of Section 3-AA categorically provides for a presumption that every sale by a dealer is to a consumer and the burden of proving to the contrary is on the dealer, Rule 12-A cannot be so read as to either destroy that presumption or to alter the burden of proof which Sub-section (2) of Section 3-AA of the Act places on the dealer. It cannot also take away the power or the jurisdiction of the Sales Tax Officer to require proof to his satisfaction so expressly and categorically conferred by Section 3-AA(2) of the Act.

15. It would be noticed that Rule 12-A does not read as given below in which form it should have read if Mr. Raja Ram's submissions were correct.

A sale of any of the goods specified in Section 3-AA shall be deemed to be a sale to the consumer, but if it is to a dealer, who furnishes a certificate in Form III-A to the effect that the goods purchased are for resale in the same condition, it shall not" be so deemed.

16. The Legislature clearly has not used this language. If the idea was to make the certificate in Form III-A conclusive, Rule 12-A would have read as follows :

A sale of any of the goods specified in Section 3-AA shall be deemed to be a sale to the consumer, unless it is to a dealer who furnishes a certificate in Form III-A to the effect that the goods purchased are for resale in the same condition, in which case it shall not be so deemed.

17. But the Legislature does not use the words "in which case" and it would be against the well established principles of interpretation of statutes to add any words to those already existing.

18. It would be noticed that the word used is "unless". In my opinion, all that Rule 12-A provides for is that unless and until a dealer furnishes a certificate in Form III-A, the plea that the goods are for resale in the same condition cannot be set up and pressed. In my opinion, the certificate in Form III-A would be prima facie evidence that the goods purchased are for resale in the same condition, but nothing beyond it and it is open to the Sales Tax Officer to consider other materials which may show not only that the certificate in Form III-

A is not genuine, but also that its contents are not correct.

19. The view that I am taking finds some support from certain observations made in *The State of Orissa Vs. M.A. Tulloch and Co.*, . and *Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others*, .

20. In Sales Tax Reference No. 502 of 1955 decided on 30th April, 1968, Oak, C.J. and Pathak, J., observed that "it will be seen that according to Rule 12-A a sale of goods specified in Section 3-AA is ordinarily to be deemed to be a sale to the consumer. The rule mentions one mode of rebutting the presumption. The prescribed mode is to furnish a certificate in Form III-A. The rule merely prescribes a method of proof.

21. I agree with the learned Judges that the furnishing of a certificate in Form III-A is a mode to prove that the goods purchased are for resale in the same condition, but I would like to add that if the certificate is in fact produced, it would be prima facie evidence, which must be accepted if there is no other evidence or material either showing it not genuine or not correct.

22. For the reasons mentioned above I am of the opinion that furnishing of a certificate in Form III-A is not conclusive evidence that the sale was not for purposes of consumption, but for resale in the same condition.

23. I have already said earlier that in my opinion the furnishing of Form III-A provides prima facie evidence to that effect and it was open to the Sales Tax Officer to look into other materials if he was of the opinion that the genuineness of the document or truth of its contents are open to doubt.

24. It is true that the observations of the Judge (Revisions) seem to suggest that once Form III-A is filed, no other evidence can be gone into. I have already pointed out that this view is not correct. Inasmuch as a certificate in Form III-A was furnished, there was prima facie evidence that the goods were sold for to be resold in the same condition. In my opinion, the circumstance that they were sold to the mills is colourless and neutral and on its basis it cannot be said that the effect of the furnishing of certificate in Form III-A was in any way destroyed or reduced.

25. I would answer the question referred to us in the negative, in favour of the dealer-assessee and against the Commissioner, Sales Tax. The Commissioner, Sales Tax, shall pay costs of these proceedings to the dealer-assessee at the rate of Rs. 50 in each reference.

M.H. Beg, J.

26. The question we have to answer is the very question referred to this court u/s 11 of the U.P. Sales Tax Act (hereinafter referred to as the Act). Our answer is, therefore, necessarily confined to the circumstances mentioned and findings contained in the statement of the case to this court. These are :

27. The assessee, a firm dealing in oil-seeds, had sold oil-seeds to oil mills and

obtained certificates in the prescribed Form III-A, showing that the oil-seeds were for resale in the same condition. The assessee did not realise the tax on these sales. The Sales Tax Officer accepted the contention of the department, that the sales in question having been made to oil mills, which consume seeds in the process of manufacture, the certificates must be fictitious and that these sales must be deemed to be sales to the consumer. The appellate authority, however, exempted the sales covered by the prescribed certificate from tax. The revising authority had held, agreeing with the appellate authority, that the selling dealer was protected from tax by the certificates in the prescribed form issued by a registered dealer. It held that the selling dealer, relying on the prescribed certificates, had not charged sales tax. It observed that the seller could not be expected to keep a watch on what the purchasing dealer did with the oil-seeds. Its view was that the prescribed certificates, supported by the assessee's conduct in not charging sales tax, were sufficient to obtain exemption and that it was immaterial, for the purpose of determining the assessee's liability to pay tax, what the purchaser did with the goods purchased.

28. It was in the context of the above-mentioned facts and findings that the question arose : what is the evidentiary value of the certificates in the prescribed form ?

29. In the referring order, Jagdish Sahai, J., has mentioned that Oak, C.J. and R.S. Pathak, J., had held in *Commissioner of Sales Tax v. Ganeshi Lal* S.T.R. No. 502 of 1968 decided on 30th April, 1968 that the certificates were not "conclusive evidence". My learned brother said, in the referring order, that he was refraining then from expressing any opinion whether the Division Bench decision was correct. The Division Bench had held that the good faith of the seller was irrelevant. Its view was that the seller would be liable to pay the tax if, on a consideration of the entire evidence, it transpired that the prescribed certificates, however honestly obtained, were incorrect because the purchaser had consumed the goods. Thus, the Division Bench view of this court was diametrically opposed to the revising authority's opinion that the bona fides of the seller, evidenced by the prescribed certificate and non-realization of sales tax, was sufficient to entitle the seller to an exemption and that it did not matter what the seller actually did with the goods. Apparently, the Division Bench view and arguments advanced for and against the correctness occasioned a reference of this case to a Full Bench.

30. The contention of the department seemed to be that the assessee's duty to satisfy the Sales Tax Officer, u/s 3-AA(2), that certain sales were exempted from tax, extended to removing doubts so that the person claiming exemption had to prove a case beyond reasonable doubt for it. The stand taken on behalf of the department could be stated to be either that, even after the initial presumption against the assessee had been removed, as provided in Rule 12-A, no exemption could be granted if the assessee had not performed the additional duty of removing the assessing authority's doubts, which Section 3-AA(2) imposed upon

the assessee, or, in the alternative that doubt and suspicion about the correctness of a prescribed certificate being enough to justify its rejection, there remained nothing to repel the presumption once the certificate was rejected on such a ground.

31. Mr. Raja Ram Agarwal, appearing for the assessee, on the other hand, contended that the scheme of the Act and the Rules framed thereunder was such that each right or liability dealt with was determined almost automatically by a specified type of evidence. He pointed out that the issue of a registration certificate to a dealer, u/s 8-A of the Act, had certain legal consequence. Its absence had other results. The explanation to Section 3-AA provided that sales to unregistered dealers must be deemed to be sales to consumers. No such deeming provision or presumption was provided for sales to a registered dealer who carried on a manufacturing process in the course of which goods purchased could be consumed. The oil-seeds involved in the instant case were neither proved nor held to have been consumed. According to the learned counsel, the prescribed certificates operated as conclusive evidence for determining an assessee's right to an exemption from tax for sales covered by certificates obtained from a registered dealer under the scheme of the Act and the Rules framed thereunder. This scheme may now be examined.

32. Assessing authorities under the Act act quasi-judicially. These proceedings are governed by the special powers and rules of procedure, including those regulating evidence which are to be found within the Act and the Rules framed thereunder. Section 24(2)(d) of the Act no doubt provides for framing rules, inter alia, for examining persons giving statements on oath or affirmation. No such rule actually framed has been brought to our notice. Only if such a rule had been framed could it have been contended that the assessing authorities function under the Act as courts which have to apply the provisions of the Evidence Act. Nevertheless, basic concepts of our law of evidence and reasonable standards have to be applied even in quasi-judicial adjudication subject, of course, to any special rules which may be provided.

33. Section 12 of the Act makes it obligatory upon the dealers to keep accounts, Section 13 can be used to compel dealers to produce account books and other documents relating to their businesses. Section 13 also empowers the sales tax authorities to make inquiries from dealers, to inspect, examine and make copies of documents produced. It goes on to provide for grant of powers to the Sales Tax Officers to enter and search premises and seize relevant documents if there are reasons to believe that they are being concealed with a view to evade tax. Section 14 of the Act provides for offences and penalties which can be imposed upon persons who act in contravention of the provisions of the Act and the Rules made thereunder or who refuse to give or neglect to furnish any information which may be in their knowledge or possession and which they have been required to furnish for the purpose of the Act or who give any false certificate or declaration. The sales tax authorities are, therefore, armed with ample powers to

obtain relevant information and material from dealers as well as other persons who may be concerned with transactions about which the assessing authorities have to give decisions.

34. Section 24 of the Act empowers the State Government to make rules for carrying out the purposes of the Act. Section 24(2)(c) mentions particularly rules to provide for " the determination of, the turnover for the purposes of assessment of tax under this Act." Section 24(2)(f) mentions rules for "generally regulating the procedure to be followed and forms to be adopted in proceedings under this Act." It, therefore, appears to me that the State Government had ample power to provide any special rules of evidence which may be reasonably necessary for assessment proceedings under the Act and, indeed it seems to have been intended by the Legislature that the State Government should do so. Rules framed u/s 24 of the Act are expressly given, by Section 24(4) of the Act, the same effect as provisions of the Act. These rules can certainly prescribe a special mode of proving a particular relevant fact or assign a special evidentiary value to a particular type of evidence so long as the rule does not conflict with a statutory provision.

35. An examination of the provisions of Section 13 and rules made u/s 24 of the Act for filing forms and procuring certificates indicates that the material on which the " assessing authorities are expected to act consists primarily of documents. Form IV is prescribed for the quarterly returns to be made by the assesseees. This form also contains an entry for details of goods specified in Section 3-AA for which exemption is claimed. It has to be borne in mind that the specified goods belong to a special class which could only be taxed at the single point at which there was a sale by a dealer to the consumer. Form III-A is prescribed for the certificates of resale in the same condition in which the purchases were made. The dealer claiming exemption is directed by the last sentence of Rule 12-A to give particulars, in his returns in Form IV, of the certificate given to him in Form III-A by purchasing dealers. The duties of the assessee-dealer who claims an exemption have thus been clearly specified by the rules.

36. The object of Rule 12-A, gathered from the context of the rule as well as its language, could well be that an assessee who performs his duty honestly and properly should obtain the exemption claimed by him. Requirements of justice and equity may be better served by treating the prescribed certificates as complete protections for a selling dealer who, acting reasonably and honestly on the assumption that a registered dealer issuing prescribed certificates will not violate the guarantee to resell in the same condition implied by the certificates, does not charge sales tax. It would certainly be unreasonable to require the selling dealer to keep a watch on what the purchasing dealer does with the goods purchased. It would be practically impossible for the selling dealer to do so. No provision of the Act or rule framed under it places such a duty upon the selling dealer.

37. The first difficulty in the way of holding that the prescribed certificates

completely protect the selling dealer is that it would make the prescribed certificates as conclusive pieces of evidence so far as the purchasing dealer's right to claim exemption is concerned, whereas Rule 12-A does not specifically say so. If such was the intention of the rule-making authority, it could have been clearly provided in Rule 12-A. The second and even more serious obstacle in the way of taking such a view is that Section 3-AA(I) of the Act expressly excludes a sale from the exemption given when it is to a consumer. If a fictional element were inferred from the language of Rule 12-A as suggested by my learned brother Gulati, J., so that sales to registered dealers under prescribed certificates could be deemed to be sales to non-consumers, just as the explanation to Section 3-A A, by a converse legal fiction, reduces all sales to unregistered dealers and even those to registered dealers which are not shown to be for purposes of resale in the same condition to the level of sales to consumers irrespective of the real position, the inference will conflict with the ordinary and plain and grammatical meaning of the words used in Section 3-AA(I). Such departure from plain and ordinary meaning of words used in the Act may be justified by resort to a provision of the enactment itself, as the explanation to Section 3-AA is, but not by reference to a rule made under the Act. The rule-making authority has to act within the limits set by statutory provisions. We cannot by a process of interpretation in accordance with our own notions of equity and justice, rewrite a statutory provision or alter its plain and ordinary meaning without anything in the statute itself to justify it. There may be a good case for an amendment of the Act, on grounds of justice and equity, so that an assessee who bona fide sells to a registered dealer under a prescribed certificate could obtain an exemption from tax on the strength of such a certificate only, but, so long as the terms of Section 3-AA(1) are what they are today, the prescribed certificate cannot so operate as to confer rights to exemption irrespective of what the purchasers do with the goods purchased. Therefore, the view expressed by the revising authority is not sustainable. The view taken by Oak, C.J. and R. S. Pathak, J., in Messrs Ganeshi Lal's case S.T.R. No. 502 of 1968 decided on 30th April, 1968 has to be accepted as correct on the law as it stands today.

38. Of course, even conclusive evidence or proof could be discarded where it is shown to have been obtained by fraud or collusion of a party relying upon it or where it is no such evidence or proof at all in the eye of law. But, barring such exceptions, a piece of evidence which is conclusive so determines a particular right that no evidence can be led to negative it. As no provision of the Act or rule framed thereunder expressly assigns a particular evidentiary value to the prescribed certificates, this has to be deduced from the manner in which they are prepared and to be used and the apparent object of these certificates.

39. In J.K. Manufacturers Limited, Kanpur v. Sales Tax Officer and Ors. (Civil Misc. Writ No. 265 of 1966 connected with Writ Petitions Nos. 373 and 374 of 1966 decided on 8th May, 1969), Since reported at page 310 supra. where the meaning of Rule 12-A came up for consideration before a Full Bench, I concurred

with a view taken by Brijlal Gupta, J., in *Mansey Lakhansay & Co. v. State of U.P.* [1962] 13 S.T.C. 898 that Rule 12-A prescribes the only mode in which the presumption, laid down by Section 3-AA(2) and repeated by the first part of Rule 12-A, can be rebutted by an assessee-dealer by proving the required certification. I, however, observed there that if the view taken by Brijlal Gupta, J., implied that the prescribed certificates had to be produced before the assessing authority in every case, I respectfully differed from such a conclusion because all that Rule 12-A requires for rebutting the presumption is proof of certification and not production of actual certificates before the assessing authorities in every case. Ordinarily, a dealer claiming exemption is expected to produce the certificates obtained by him of which he is required to give particulars with returns in Form IV. But, there may be unusual cases in which certificates may have been lost or destroyed owing to causes beyond the control of the assessee who obtained them. In such exceptional cases, other evidence may be given to prove certification. Nevertheless, I held that proof of certification was indispensable for repelling the presumption laid down by Section 3-AA(2) and repeated in Rule 12-A. Such a view has, I find, also been expressed clearly by my learned brother Gulati, J., in the instant case.

40. I must, however, deal here with a possible difficulty in accepting the view that proof of certification is the only mode of repelling the presumption. It is that, in *J.K. Manufacturers'* case Since reported at page 310 supra my view that proof of certification was the only mode open to an assessee for obtaining the exemption claimed by him, was not shared by my learned brother R.S. Pathak J. and my learned brother H.C.P. Tripathi, J., concurred with the view expressed by R.S. Pathak, J. It could, therefore, be urged that the majority view of the Full Bench was that other modes of proving the exemption claimed by an assessee were left open and that we are bound by that view. Of course, no such argument could be put forward before us as the decision of the Full Bench in *J.K. Manufacturers'* case Since reported at page 310 supra came after the arguments in the case before us now had been heard. Nevertheless, I consider myself bound to mention and deal with this difficulty as I happen to have sat on that Bench too.

41. In *J.K. Manufacturers'* case [1970] 26 S.T.C. 310 the real question which arose before the Full Bench about the assessments under consideration there was whether the Sales Tax Officer had rightly excluded the prescribed certificates from consideration altogether on the ground that they had not been submitted within the time given by him for that purpose although they had been submitted before the assessment order was made. The assessees, however, had filed their writ petitions during the pendency of their appeals before the appellate authority raising this very question. The contention on behalf of the department, therefore, was that writ petitions in this court were barred by the principle of alternative relief. In that connection, it was pointed out, on behalf of the assessees, that the validity of Rule 12-A was also questioned so that the writ petitions may not be thrown out in limine. The only reason why the validity of Rule 12-A could be properly said to have been challenged in that case was that the Sales Tax Officer

had purported to apply Rule 12-A in order to exclude the prescribed certificates. But the rule, as it stood, could not be used by any stretch of imagination, to exclude the very evidence it prescribed. Again, in that case, it was the last sentence of Rule 12-A, requiring the supply of particulars of certificates with returns in Form IV, which was really under consideration. It was this part of Rule 12-A which had been misunderstood by the Sales Tax Officer and used as though it was a mandatory provision excluding certificates filed during assessment. There was really no need in that case to consider the validity of the rule at all on the interpretation adopted by all the Judges on that Full Bench, that Rule 12-A did not operate as a bar to filing the prescribed certificates before the date on which the assessment was made. It is true that the question of the validity of the rules read as a whole was decided by us, as it had been raised and argued before us, but that did not mean that it was really necessary for us to decide it in that case. Our differing observations on a question arising incidentally in that case did not, it seems to me, stand on a higher footing than obiter dicta. They were not necessary for deciding that case. I, therefore, hold that the majority view expressed by my learned brother R.S. Pathak, J., in J.K. Manufacturers' case [1970] 26 S.T.C. 310 on this particular question does not stand in the way of our taking a different view on the same question in this case where it seems to me to arise directly for consideration. If, as we have held here, Rule 12-A prescribed an indispensable or imperative mode of rebutting the presumption laid down by Section 3-AA(2) and then in Rule 12-A, so that other modes of proof are by a necessary implication prohibited as substitutes for fulfilling the same purpose, the evidentiary value of the prescribed certificates is considerably enhanced.

42. My learned brother Jagdish Sahai, J., has held that the meaning of Rule 12-A is that "unless and until a dealer furnishes a certificate in Form III-A, the plea that the goods are for resale in the same condition cannot be set up and pressed." According to this view also proof of the prescribed certification is an indispensable condition precedent to the success of a claim for an exemption. Jagdish Sahai, J., has also held that while the prescribed certificate provides "prima facie" evidence it is not "conclusive evidence". I respectfully concur with this conclusion which necessarily implies that the prescribed certificates more than just offset the initial presumption against the dealer. They go even beyond providing a condition precedent to setting up a claim for exemption and, as my learned brother Gulati, J., has pointed out, they shift the burden of proving that the certificates are incorrect upon the department. If they are good enough evidence to demolish the initial presumption against the assessee, they continue to be good prima facie evidence unless and until they are shown to be incorrect.

43. It appears to me that the place given by Rule 12-A to the certificates duly prepared in the prescribed form is that they are "the best proof that the nature of the thing will afford" as Holt, C.J., said in *Ford v. Hopkins*, round about 1700, when what is known as the "best evidence" principle began to be formulated in the English Law of Evidence (see Wigmore on Evidence, 3rd edition, Volume IV, page 301, paragraph 1173). Sometime later, Lord Chancellor Hardwicke, in the

famous case of *Omychuni v. Barker* (1744) said : "The judges and sages of the law have laid it down that there is but one general rule of evidence, the best that the nature of the case will allow."

44. The general principle of the law of evidence that the best evidence should be procured and produced can certainly be adopted for facilitating assessment proceedings under the Act. I consider Rule 12-A to have such an object in view so that the best evidence of a sale to a registered dealer, who intends resale of goods in the same condition, may be procured at a time and in a manner which ensure that it is not lost and is above suspicion. The powers given to the assessing authorities by Section 14 of the Act also make it possible to check the correctness of the certificates prepared in the prescribed form with necessary particulars. A presumption of correctness of the matters stated in the certificates so prepared should and does, in my opinion, attach to them. This presumption should be attached only to such certificates as are in proper form and the particulars of which are given in quarterly returns in Form IV as required by the last part of Rule 12-A. They cannot, however, be treated as conclusive evidence and do not shut out inquiry about the correctness of matters stated in them. Even where certification by officials takes place under statutory provisions or under rules framed thereunder such certificates are not treated as conclusive evidence of the facts stated there unless the statute says so (see *Wigmore on Evidence*, 3rd edition, Volume IV, pages 702 to 711).

45. I respectfully agree with the view taken by my learned brother Gulati, J., that one of the objects of the framers of Rule 12-A appears to be to lighten the otherwise heavy burden of the assessee and to facilitate the assessment proceedings. Our view on this question seems to find support from the following observations made in *Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others*, by their Lordships of the Supreme Court with regard to provisions under the Bengal Finance (Sales Tax) Act, (6 of 1941), which had a similar object :

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

said clause seek to avoid.

46. I may also refer to three other cases cited before us. In *State of Orissa Vs. M.A. Tulloch and Co.*, the Supreme Court of India held that Rule 27(2) of the Orissa Sales Tax Rules, prescribing certain "true declarations" to be made by purchasing dealers as necessary conditions for obtaining deductions of certain sales from taxable turnover, had to be substantially complied with although it was not mandatory. As the rule was held to be only directory, in view of the provisions of the Act and its language, it was held that it was not always obligatory for the selling dealer to produce the prescribed declarations when claiming exemption. This decision was based upon the somewhat different language of the Orissa Sales Tax Act and the rule under consideration there. In *Nowrang-lal Agarwala v. State of Orissa* [1965] 16 S.T.C. 271 a Division Bench of the Orissa High Court held that statements contained in a declaration under the above-mentioned Rule 27(2) of the Orissa Sales Tax Rules would provide strong prima facie evidence which was not, however, conclusive. The declaration was held to be presumptive evidence in support of a claim for exemption, but, as it was not conclusive, it was open to the department to rebut the presumption. This is precisely the view we are taking of the evidentiary value of the prescribed certificates in the case before us. In *The State of Madras Vs. Radio and Electricals Ltd. etc.*, which was also cited before us, the question decided has no material bearing upon the case before us. It was held there that the correctness or propriety of the satisfaction of an authority issuing a certificate of registration under the Central Sales Tax Act could not be challenged in another proceeding before the assessing Sales Tax Officer.

47. Applying the conclusions reached above, about the evidentiary value of the prescribed certificates, to the facts and findings in the case before us, I find that the only fact found in the statement of the case which could militate with the correctness of the prescribed certificates was that the purchasing dealer was also a consumer as a manufacturer. This could, at the most, raise some suspicion. But, as the certificates issued in prescribed form by a registered dealer, particulars of which have been duly submitted with the quarterly returns of the assessee in Form IV, carry a presumption of correctness with them. For the reasons given above, this presumption cannot be negated by a single suspicious circumstance which does not prove that the goods sold were actually consumed.

48. Before parting with the case, I would like to make some observations about the statement of the case to us. I find from the judgment of the appellate authority that it remanded the case for reassessment by the Sales Tax Officer in the light of observations made by it. The appellate authority had directed further inquiry into the genuineness of the certificates after indicating that, if they were in order, the exemption could be given. The revising authority has not mentioned these facts in the statement of the case to us. It has so stated the case to us that it appears as though all the sales to the oil mills were covered by the

prescribed certificates prepared in accordance with law and also that the appellate authority had actually exempted these sales and not directed further inquiry. As the statement of the case, in so far as it suggests no further inquiry was ordered, is incorrect and, as we have disagreed with the revising authority's view that the prescribed certificates completely protect the assessee, I think it needs to be clarified and emphasized that our answer is confined to the facts and findings as given in the statement of the case.

49. If, in the course of the further inquiries, which the Sales Tax Officer can make to satisfy himself even after filing of the prescribed certificates and which he has been actually ordered by the appellate authority to undertake in this case, it transpires that the goods purchased were actually consumed by the purchaser, the assessee will not be entitled to the exemption claimed. I find from the assessment order that the Sales Tax Officer had held that the oil-seeds had been actually consumed by the purchaser but no material was mentioned to justify such a finding. If there is material on record which could reasonably constitute sufficient evidence to justify this finding the assessee will be liable to pay the tax. This is not because the assessee has to prove a claim for exemption beyond reasonable doubt but because the department would, in that case, have succeeded in displacing the presumption of correctness of the prescribed certificates.

50. A misled assessee may sue a purchasing dealer for damages for breach of the guarantee to resell in the same condition contained in the certificates. The sales tax authorities may cancel the registration certificate of the purchasing dealer u/s 8-A(1-B) of the Act or prosecute him for issuing a false certificate expressly made a punishable offence by Section 14(2)(c) of the Act. But, a selling dealer has to pay tax, on the law as it stands today, if the certificate obtained by him turns out to be incorrect with regard to the representation that the goods covered by it are for resale in the same condition.

51. Upon the facts and findings contained in the statement of the case, my answer to the question referred to this court u/s 11 of the Act is also in the negative and in favour of the assessee. I concur with the order passed by my learned brother Jagdish Sahai, J.

R.L. Gulati, J.

52. I agree with my brother Jagdish Sahai, J., that the answer to the question referred to us should be in the negative in favour of the assessee and against the Commissioner of Sales Tax. But I would like to add a few words by way of elucidation.

53. Section 3-AA has been added to the U.P. Sales Tax Act (hereinafter referred to as the "Act") to provide for the levy of sales tax on the turnover of goods specified therein. The goods specified in Section 3-AA are the goods which have been declared to be of special importance in the inter-State trade by Section 14 of the Central Sales Tax Act, 1956, Section 15 where of lays down the conditions

and restrictions in regard to the tax on sale or purchase of declared goods within a State. One of the conditions is that the tax under the State law shall not be levied at more than one stage. The stage of taxation u/s 3-AA of the Act has been fixed as the sale to the consumer.

54. In the ordinary parlance a consumer is a person who consumes an article himself or utilises it in the manufacture of other articles and a sale to the consumer would in that sense be the last sale in the series of sales. But as a result of a legal presumption and two legal fictions introduced in Sub-section (2) of Section 3-AA and Rule 12-A, the expression "sale to the consumer" has been given an artificial meaning. There is a legal presumption in Sub-section (2) of Section 3-AA which provides that unless a dealer proves otherwise, every sale shall be presumed to be a sale to the consumer. The explanation appended to Section 3-AA contains a legal fiction under which every sale to an unregistered dealer shall be deemed to be a sale to the consumer. Then there is Rule 12-A which embodies the second legal fiction that a sale of any of the goods specified in Section 3-AA shall be deemed to be a sale to the consumer, unless it is to a dealer, who furnishes a certificate in Form III-A.

55. On a combined reading of these provisions, it appears that the right of a dealer to prove that a particular sale is not a sale to the consumer has been whittled down to a very narrow field. In the case of an unregistered dealer it is not open to a dealer to prove by any means whatsoever that the sale was not a sale to the consumer. Such a sale would always be regarded as a sale to the consumer even if it is not so in fact. In the case of a sale to a registered dealer it shall again be deemed to be a sale to the consumer, unless the selling dealer furnishes a declaration in Form III-A from the purchasing dealer. Although Sub-section (2) of Section 3-AA gives the right to a dealer to prove that a particular sale is not a sale to the consumer, yet that right can be exercised only by the production from the purchasing dealer of a declaration in Form III-A. It follows, therefore, that the production of a certification in Form III-A is imperative for the purpose of discharging the burden placed upon a dealer under Sub-section (2) of Section 3-AA. In other words, if the selling dealer does not file such a declaration in respect of a particular sale, the sale shall be deemed to be a sale to a consumer, even if it is a sale to a registered dealer and even though such a sale may not in fact be a sale to the consumer. That appears to be the scheme of the Act and the reason behind such a rigid scheme appears to be to simplify matters both for the taxpayer and the State. By resorting to the simple device of production of a declaration in a prescribed form from the purchaser, the selling dealer has been saved the enormous trouble of proving that a particular sale was not a consumer sale and the State has been spared of the almost impossible task of finding out the consumer in the mass of successive sales. For the sake of easy collection of tax, the Legislature was anxious to fix a point which would be certain and easily ascertainable. All that the dealer is required to do is to obtain from the purchaser a declaration in Form III-A and to file it before the sales tax authorities. The production of such a declaration is a prima facie evidence of the

sale not being a sale to the consumer and in its absence the sale is regarded as a sale to a consumer and the selling dealer becomes liable to tax.

56. Now, this is one aspect of the matter. The other aspect is as to whether the filing of Form III-A is conclusive. In my opinion the filing of Form III-A is imperative because in its absence a dealer is not entitled to prove by any other evidence that a particular sale made by him was not a sale to the consumer. But it is not conclusive in the sense that after its production the sales tax authorities are precluded from going behind it. It would always be open to the sales tax authorities to show from the materials on the record that the certificate in Form III-A furnished by a dealer is incorrect in the sense that the goods mentioned therein have, contrary to the declaration contained in Form III-A, been consumed and not resold by the purchasing dealer. To hold that production of Form III-A is conclusive of the sale not being a sale to the consumer would lead to large scale evasion of tax. In a case where a wrong declaration is furnished either by accident or by design and the goods instead of being resold are consumed by the purchaser, the selling dealer and the purchasing dealer would both escape tax, the selling dealer on the basis of Form. III-A and the purchasing dealer because of the absence of a further sale by him. It is argued that the Act provides penalties and punishments in ample measures for a purchasing dealer who furnishes incorrect certificate and, therefore, the incorrectness of the certificate in Form III-A should not entail the levy of tax upon the selling dealer. This reasoning is clearly fallacious. Penalty and prosecution is no substitute for the sales tax itself. The main object of the Act is to levy and collect sales tax and that object cannot be allowed to be defeated. The law has to be interpreted so as to ensure that the tax does not escape even if someone in the process has to pay penalty or face prosecution.

57. I am of the view, therefore, that if the sales tax authorities can establish on the material in their possession that a particular certificate in Form III-A is incorrect they can ignore the certificate and proceed to tax the selling dealer by virtue of the presumption contained in Sub-section (2) of Section 3-AA. But the burden in such cases would shift to the sales tax authorities. The dealer after furnishing the declaration in Form III-A from the purchasing dealer cannot be asked to lead any further evidence as to the correctness of the declaration contained in Form III-A.

58. In the instant case, the declaration furnished in Form III-A by the assessee has been ignored merely because the purchasing dealer happens to be an oil mill which normally consumes oil-seeds. That circumstance by itself was not enough to entitle the sales tax authorities to reject the III-A Form or to place any further burden on the assessee to prove that the sale of oil-seeds was not a sale to the consumer. This in my opinion is the correct legal position.

By the Court

59. We answer the question referred to us in the negative, in favour of the

dealer-assessee and against the Commissioner, Sales Tax. The Commissioner, Sales Tax, shall pay costs of these proceedings to the dealer-assessee at the rate of Rs. 50 in each reference.