

(1979) 02 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 387 of 1977

Dawar Brothers

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 13-02-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) J LJ 276 : (1979) 24 MPLJ 524 : (1979) MPLJ 524 : (1979) 44 STC 286

Hon'ble Judges : G.P. Singh, C.J; S.K. Seth, J

Bench : Division Bench

Advocate : A.K. Chitale, for the Appellant; S.L. Garg, General and M.V. Tamaskar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Seth, J.

By this petition under Article 226 of the Constitution, the petitioner challenges Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957, to be ultra vires the rule-making power conferred on the State Government by the Central Sales Tax Act, 1956 (hereinafter referred to as the "Central Act").

We may first briefly set out the facts giving rise to the present petition. The petitioner, M/s. Dawar Brothers, was a registered partnership firm. It carried on business in Madhya Pradesh as a motor dealer at Bhopal and Jabalpur. It also carried on business as dealers in spare parts, tractors, motor cycles and accessories and as suppliers of Indane gas for domestic consumption. In the course of its business as dealers, the petitioner made sales to the Government and other parties within the State of Madhya Pradesh. The sales tax was assessed on such sales in accordance with the provisions of the M.P. General Sales Tax Act, 1958 (hereinafter referred to as the "State Act"). Orders for assessment for the assessment years 1969-76 were made by the assessing

authorities under the State Act during the period from 18th December, 1975, to 13th July, 1977, and a total sales tax liability of Rs. 16,70,425 together with penalty of Rs. 49,87,020 was determined against the petitioner under the said orders. According to the petitioner, as it found it difficult to prefer appeals against the abovesaid orders due to its incapacity to deposit the prescribed proportion of the tax assessed, it had to remain content with making applications to the Commissioner u/s 39 of the State Act for revision of the assessments in question and grant of necessary reliefs. The petitioner also, in the meantime, approached the State Government for grant of facility for payment of the amount in question in instalments on the basis of the estimated aggregated liability. The State Government made an order on 29th October, 1976 (annexure A), granting the facility of payment of the amount in question in instalments subject to certain conditions stated in the said order. However, as, according to the State Government, there were defaults committed by the petitioner of the abovesaid conditions, the State Government, vide its order dated 2nd August, 1977, addressed to the Commissioner, revoked the abovesaid order dated 29th October, 1976. The copy of the said revocation order was sent to the petitioner also.

According to the petitioner, the petitioner was greatly aggrieved not only by the abovesaid orders of assessment of sales tax and levy of penalty but also by the abovesaid order of revocation of the facility of payment in instalments. However, at the time of final hearing of the present petition, it was stated on behalf of the petitioner that, on account of the pendency of various proceedings before the various departmental authorities, the petitioner did not want to press its challenge in respect of the abovesaid matters and wanted to confine its challenge only to the matters covered by Sub-clauses (1), (2) and (6) of the prayer clause. It is accordingly that we are not required to decide anything in the present petition as regards the abovesaid orders of assessment of sales tax and levy of penalty or anything as regards the validity of the order of revocation of facility of payment in instalments.

The subject-matter that survives for consideration in the present petition is only indirectly connected with the abovesaid facts. According to the petitioner, the abovesaid defaults in complying with the conditions of the order granting instalments had occurred mainly due to the failure of the sales tax authorities to issue declaration forms in form C, as provided for and prescribed u/s 8 of the Central Act read with Rule 8 of the Madhya Pradesh Sales Tax (Central) Rules, 1957, for being furnished to the selling dealers and thus earning concessional rate of tax. According to the petitioner, on account of the non-issuance of the said C forms by the sales tax authorities to it, its business suffered badly and its financial position got crippled. In the said connection, it was explained on behalf of the petitioner that, for carrying on its business, it had to indent goods from outside the State of Madhya Pradesh for which it was entitled to the issuance of declaration in C form under the provisions referred to above. It was pointed out that the petitioner was an Indane gas distributor appointed by the Indian Oil

Corporation. In respect of supplies received from the corporation from Bombay, the petitioner, registered as "purchasing dealer" in form B under the Central Act, was entitled to the issuance of C forms under the provisions in question so that it could reduce its sales tax liability to 4 per cent as against 12 per cent under the schedule. As since May, 1976, the C forms were withheld by the sales tax authorities, the Indian Oil Corporation made a debit against the petitioner at 12 per cent in lieu of the sales tax. The petitioner also carried on business as dealers of tractors, motor cycles and motor parts supplied by Escorts Ltd., Faridabad. In respect of the said goods also, the petitioner was entitled to the issuance of C forms so as to reduce its sales tax liability to 4 per cent as against 15 per cent under the schedule. On account of the C forms having been withheld by the sales tax authorities and consequential failure of the petitioner to furnish the same to Escorts Ltd., the said selling dealer issued debit note to the petitioner charging sales tax at 15 per cent. Similarly, the petitioner was doing business as a dealer of Hindustan Motors, Calcutta. Till November, 1976, Hindustan Motors had no local warehouse in Madhya Pradesh and the motor cars and parts received from them were chargeable to 4 per cent sales tax on the submission of the C forms. But the C forms, having been withheld by the sales tax authorities, Hindustan Motors debited the petitioner with 15 per cent as sales tax. The same position prevailed in respect of motor parts supplied to the petitioner by Hindustan Motors. According to the petitioner, it made repeated requests to the sales tax authorities to issue the C forms, but the said requests were in vain. One of such letters of request written by the petitioner to the Deputy Commissioner, Sales Tax, Bhopal, was dated 5th August, 1977 (annexure C-12), to which the Deputy Commissioner, Sales Tax, gave the reply dated 9th August, 1977 (annexure D-1). It is relevant to reproduce the contents of the said reply dated 9th August, 1977, which are as follows:

As mentioned in your letter under reference, it is not correct to say that you have deposited tax on the sales effected by you from 1st April, 1976, to date. This is borne out by the fact that you are still in arrears of the current dues for this period as under:

1. Sales tax Rs. 2,70,335.40 2. Turnover tax Rs. 1,36,142.25 Up to June, 1977
Rs. 4,06,477.65

The returns for the month of June, 1977, have not been filed by you so far. Besides, you have not been paying instalments granted by the Commissioner of Sales Tax.

In view of these facts the question of issue of C forms does not arise.

According to the petitioner, the contents of the abovesaid reply clearly disclose that the sales tax authorities refused to issue the C forms to the petitioner in the purported exercise of their power under Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957, made by the State Government under the rule-making power conferred on it by the Central Act. As has been stated above, it is the said

Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957, which is challenged by the petitioner to be ultra vires the rule-making power conferred on the State Government by the Central Act. The reliefs contained in Sub-clauses (1), (2) and (6) of the prayer clause of the petition are related to the said challenge.

Before considering the rival contentions advanced on behalf of the parties in the above regard, it is useful in the first instance to set out the relevant provisions of the Central Act and the M.P. Sales Tax (Central) Rules, 1957.

The Central Sales Tax Act (74 of 1956) was enacted by the Parliament to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject. By Chapter II (Sections 3 to 5), the principles of determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import or export are enacted. Chapter III (sections 6 to 13) deals with inter-State sales tax. By Section 6, liability is imposed upon every dealer to pay tax under the Act on all sales effected by him in the course of inter-State trade or commerce during any year. Section 7 provides for registration of dealers. Section 8, as amended and as relevant for our purpose, provides as under:

8. (1) Every dealer, who in the course of inter-State trade or commerce--

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3);

shall be liable to pay tax under this Act, which shall be four per cent of his turnover.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within Sub-section (1)--

(a) in the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under

that law.

(2A) Notwithstanding anything contained in Sub-section (1A) of Section 6 or Sub-section (1) or Clause (b) of Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.--For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

(3)...

(4) The provisions of Sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner--

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government:

Provided that the declaration referred to in Clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

(5)...

Section 9(1) states that the tax payable by any dealer under the Central Act on sales of goods effected by him in the course of inter-State trade or commerce shall be levied by the Government of India and the tax so levied shall be collected by the Government, in accordance with the provisions of Sub-section (2), in the State from which the movement of goods commenced. Section 9(2) of the Central Act is as follows:

9. (2) Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act

as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references (refunds, rebates, penalties) charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this Sub-section.

Section 13 of the Central Act states:

13. (1) The Central Government may, by notification in the official Gazette, make rules providing for--

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

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

(c) the cases and circumstances in which, and the conditions subject to which, any registration granted under this Act may be cancelled;

(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;

(e) the enumeration of goods or class of goods used in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

(f) the matters in respect of which provision may be made under the proviso to Sub-section (2) of Section 9;

(g) the fees payable in respect of applications under this Act.

(2) Every rule made by the Central Government under Sub-section (1) shall be

laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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

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

(a) the publication of lists of registered dealers, of the amendments made in such lists, from time to time, and the particulars to be contained in such lists;

(aa) the manner in which security may be furnished under Sub-section (2A) or Sub-section (3A) or Sub-section (3C) of Section 7 and the manner in which and the time within which any deficiency may be made up under subsection (3E) of that section;

(b) the form and manner in which accounts relating to sales in the course of inter-State trade or commerce shall be kept by registered dealers;

(c) the furnishing of any information relating to the stocks of goods of, purchases, sales and deliveries of goods by, any dealer or any other information relating to his business as may be necessary for the purposes of this Act;

(d) the inspection of any books, accounts or documents required to be kept under this Act, the entry into any premises at all reasonable times for the purposes of searching for any such books, accounts or documents kept or suspected to be kept in such premises and the seizure of such books, accounts or documents;

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

(ee) the form and manner in which, and the authority to whom, an appeal may be preferred under Sub-section (3H) of Section 7, the procedure to be followed in hearing such appeals and the fees payable in respect of such appeals;

(f) in the case of an undivided Hindu family, association, club, society, firm or company or in the case of a person who carries on business as a guardian or trustee or otherwise on behalf of another person, the furnishing of a declaration stating the name of the person who shall be deemed to be the manager in relation to the business of the dealer in the State and the form in which such declaration may be given;

(g) the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished.

(5)...

Coming now to the relevant provisions of the M.P. Sales Tax (Central) Rules, 1957, the said Rules have been made by the State Government in exercise of the powers conferred on it by Sub-sections (3) and (4) of Section 13 of the Central Act, already referred to above. As per Clause (a) of Rule 2 of the said Rules, "the Act" means the Central Sales Tax Act, 1956. Part IV of the said Rules deals with "authority from which declaration forms may be obtained, use, custody and maintenance of records of such forms and matters incidental thereto". We may set out the relevant portion of Rule 8 of the said part:

8. (1)(a) A registered dealer, who wishes to purchase goods from another such dealer on payment of tax at the rate applicable under the Act to sales of goods by one registered dealer to another, for the purpose specified in the purchasing dealer's certificate of registration, shall obtain from the appropriate Sales Tax Officer or any other officer as may be authorised by the Commissioner in this behalf, a blank declaration form in form C as prescribed under Sub-rule (1) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, for furnishing it to the selling dealer. Before furnishing the declaration to the selling dealer the purchasing dealer, or any responsible person authorised by him in this behalf, shall fill in all the required particulars in the form, and shall also affix his usual signature in the space provided in the form for this purpose. Thereafter, the counterfoil of the form shall be retained by the purchasing dealer and the other two portions marked "original" and "duplicate" shall be made over by him to the selling dealer.

(aa)...

(b)...

The relevant portion of Rule 8(1-A) of the abovesaid Rules, of which the impugned Clause (f) forms part, is as under:

(1-A)(a) The blank declaration forms referred to in Clause (a) and Clause (aa) of Sub-rule (1) shall be available in book form, each form containing 25 such forms and may be obtained from the authority mentioned in Sub-rule (1) on payment of a fee of rupees five per book, or twenty paise per form.

(b) For obtaining the declaration forms referred to in Clause (a) of Sub-rule (1) every registered dealer shall apply in writing in form IV-A to the appropriate Sales Tax Officer stating his requirement of such forms and shall furnish other particulars, statements and information and produce such other documents as the Sales Tax Officer may require for the purpose of satisfying himself about his bona fide use of such forms issued to the applicant on previous occasions and the bona fide nature of his requirement of such forms on the present occasion.

(c) The application in form IV-A shall be accompanied by a copy of the treasury receipted challan in form X in respect of the fee payable therefore under Clause (a):

Provided that where the fee payable does not exceed rupees ten at any one time, the payment may be made in cash in the office of the appropriate Sales Tax Officer.

(d) On receipt of the application under Clause (b), the Sales Tax Officer shall with due regard to the requirements of the dealer supply the declaration forms to the dealer on furnishing an acknowledgment thereof.

(e) If for reasons to be recorded in writing the Sales Tax Officer is not satisfied that the applicant has made bona fide use of the declaration forms previously issued to him or that the requirements of the declaration forms applied for are not bona fide, he shall reject the application.

(f) If the Sales Tax Officer is satisfied that the applicant at the time of making the application has defaulted in furnishing the return under the Act or under the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959), for any quarter of the year during which such application is made or is in arrears of tax under the Act or under the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959), in respect of any period for which he has been assessed to tax he may withhold the issue of the declaration forms to the applicant till such time as the applicant pays the tax and furnishes the return for the relevant quarter or pays the arrears for the relevant period:

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

The contention of the Learned Counsel for the petitioner is that the rule-making power conferred by the Central Act on the State Government is restricted to making of only such rules as are meant for carrying out the purposes of the Central Act and that, inasmuch as the impugned rule, viz., Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957, empowered the Sales Tax Officer to withhold issuance of the blank declaration forms in form C to the purchasing dealer (viz., in the present case, the petitioner) 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 and inasmuch as the said grounds have nothing to do with the carrying out the purposes of the Central Act and, on the other hand, have the effect of making the enforcement of the substantive provision in the Central Act, as regards the grant of benefit of concessional rate of tax, contained in Section 8(1) of the said Act, unduly difficult, not warranted by the provisions of the said Act, the said impugned order, to the said extent, is ultra vires the said rule-making power and liable to be struck down. It is needless to say that the rival contention on behalf of the respondents is that the impugned rule is well within the limits of the rule-making power conferred by the Central Act on the State Government.

A perusal of the relevant provisions of the Central Act reproduced above would show that the rule-making power has been conferred on the State Government by the Central Act under Sub-sections (3) and (4) of Section 13 of the said Act. Under Sub-section (3), the said power has been granted in general terms subject to two qualifications, one that rules so made have not to be inconsistent with the provisions of the Central Act and the rules made by the Central Government under Sub-section (1) of the said Act and second that the said rules have to be made for carrying out the purposes of the Central Act. Under Sub-section (4), "in particular and without prejudice to the powers conferred by Sub-section (3)", particular topics have been enumerated in respect of which the State Government may make rules. It is obvious that the particularisation of topics under Sub-section (4) is merely illustrative of the general power conferred on the State Government by Sub-section (3) and, as such, the rules made by the State Government under Sub-section (4) are also subject to the two qualifications stated above. We are specifically concerned in the present case with the particular topic mentioned in Clause (e) of subsection (4), which relates to making of rules by the State Government for the following purpose:

the authority from whom, the conditions subject to which and the fees subject to payment of which any form of declaration prescribed under Sub-section (4) of Section 8 may be obtained, the manner in which the form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished.

It is next necessary to examine with what purpose under the Central Act the impugned rule, i.e., Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957, is apparently concerned and whether, being so concerned with the said purpose, the said rule transgresses the limits of what is necessary for carrying out the said purpose. It is also necessary to examine in the above connection whether the impugned rule is inconsistent with the relevant provisions of the Central Act or the rules made by the Central Government under Sub-section (1) of the said Act. A perusal of Rule 8 of Part IV of the M.P. Sales Tax (Central) Rules, 1957, shows that the said rule, including the impugned Rule 8(1-A)(f), is apparently concerned with the procedure relating to the grant of declaration forms for the

purpose of giving the benefit of concessional rate of tax u/s 8(1) of the Central Act. The Central Act seeks to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce. Though the tax under the Act is levied primarily from the seller, the burden is ultimately passed on to the consumers of goods because it enters into the price paid by them. Parliament, with a view to reduce the burden on the consumer arising out of multiple taxation as provided in respect of sales of declared goods, which have special importance in inter-State trade or commerce, and other classes of goods, which are purchased at an intermediate stage in the stream of trade or commerce, prescribed concessional rate of taxation, when transactions take place in the course of inter-State trade or commerce: see *The State of Madras Vs. Radio and Electricals Ltd. etc.*, Section 8(1) of the Central Act relates to the grant of the said benefit of the concessional rate of taxation. Section 8(4) provides that the said benefit of the concessional rate would be available only if the dealer selling the goods furnishes to the prescribed authority in the prescribed manner (a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or (b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government. In the above connection, the rules made by the Central Government, in exercise of its power u/s 13(1) of the Central Act, are relevant. The said rules are called "The Central Sales Tax (Registration and Turnover) Rules, 1957". Rules 3 to 8 provide for registration and issue of certificate of registration. Rule 5(1) provides for registration of a purchasing dealer and grant of certificate of registration in form B to him. By Rule 12, the declarations referred to in Sub-section (4) of Section 8 of the Act have to be in forms C and D respectively. The scheme of the Act in the above connection, read with the rules, is that the purchasing dealer as well as the selling dealer must register themselves under the Central Act. If declared goods are specified in the certificate of registration of the purchasing dealer and if it be certified that the goods are intended for resale by him, the sale is subject to the concessional rate of tax u/s 8(1). In respect of sales of other class of goods specified in the certificate of registration of the purchasing dealer, if the goods are purchased either for resales by him or for use in the manufacture of goods for sale or for use in the execution of contracts, the concessional rate of tax is available, provided the selling dealer obtains from the purchasing dealer the declaration in the prescribed form duly filled in and signed by the latter containing the particulars that the goods are ordered, purchased or supplied under a certain specific order, bill or memo or challan, for all or for any of the purposes mentioned and that the goods are covered by the registration certificate of the purchaser described therein and issued under the Act: see *The State of Madras Vs. Radio and Electricals Ltd. etc.*, The selling dealer is under the Act authorised to collect from the purchasing dealer the amount payable to him as tax on the transaction and he can collect the said amount from the purchasing dealer in the light of the declaration mentioned in the certificate in form C. It is

how that a purchasing dealer is also interested in the grant of the benefit of concessional rate of tax u/s 8(1) of the Central Act. It is clear from the purpose embodied in Section 8 of the Central Act that, if the requirements of the said section are fulfilled and if the declaration forms in the prescribed manner, as provided for under Sub-section (4) of Section 8 of the said Act, read with the abovesaid rules framed for the purpose by the Central Government u/s 13(1), are furnished to the prescribed authority, the persons concerned are not to be deprived of the said benefit of the concessional rate of tax u/s 8(1). The phrase "in the prescribed manner", in the said context, was interpreted by their Lordships of the Supreme Court in *Sales Tax Officer, Ponkunnam v. K.I. Abraham* AIR 1967 S.C. 1823. It was a case in which the concerned rule in the Central Sales Tax (Kerala) Rules, 1957, had prescribed time-limit within which the registered dealer was required to file the declaration u/s 8(4) of the Central Act. Their Lordships held that the said rule was ultra vires the provisions of Section 8(4) read with Section 13(3) and (4) of the Central Act. Their Lordships, in the said connection, pointed out that the phrase "in the prescribed manner" occurring in Section 8(4) of the Act only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold and to which authority the form is to be furnished. Their Lordships pointed out that the phrase in question does not take in the time-element and that, in other words, the section does not authorise the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dealer. The phrase "in the prescribed manner" occurring in Section 8(4) of the Central Act has, therefore, to be understood in the abovesaid restricted sense while deciding the question of vires of Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957, in the present case.

The next question that arises for consideration is where does the State Government figure in under the Central Act in question ? In the said regard, the provisions of Section 9 of the Central Act are relevant. Section 9(1) of the Central Act states that the tax payable by any dealer under the Central Act on sales of goods effected by him in the course of inter-State trade or commerce shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of Sub-section (2) in the State from which the movement of the goods commenced. Section 9(2) of the Central Act is the crucial provision. It first provides that the authorities empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess and enforce payment of any tax, including any penalty, payable by a dealer under the Central Act. It is clear that the State sales tax authorities are thus created as mere agents of the Government of India for the purposes of the Central Act. The second part of Section 9(2) of the Central Act is that the State authorities shall assess, reassess, collect and enforce payment of tax including any penalty payable by

the dealer under the Central Act as if the tax or penalty payable by such a dealer under the Central Act is a tax or penalty payable under the general sales tax law of the State. This part of the section sets out the scope of work of the State agencies: see *Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra*, . In the *Khemka and Company's* case¹, their Lordships of the Supreme Court were dealing with a case in which a provision had been made in the State Act imposing penalty for non-payment of sales tax within the prescribed time and the said provision was being invoked for imposing penalty on dealers under the Central Act in respect of tax and penalty payable under the Central Act. Their Lordships held that this could not be done. Their Lordships pointed out that the deeming provision in the Central Act that the tax as well as penalty levied under the Central Act will be deemed as if payable under the general sales tax law of the State cannot possibly mean that the tax or penalty imposed under any State Act will be deemed to be tax or penalty payable under the Central Act. The entire authority of the State machinery is that "for this purpose", meaning thereby the purpose of assessing, reassessing, collecting and enforcing payment of tax including penalty payable under the Central Act, they, meaning the State agencies, may exercise the powers under the general sales tax law of the State. Their Lordships pointed out that the words "for this purpose" cannot have the effect of enlarging the content of tax and the content of penalty payable under the Central Act. Their Lordships pointed out that "the Central Act contains specific provisions for penalty". Those are the only provisions for penalty available against the dealer under the Central Act. Each State Sales Tax Act contains provisions for penalties. These provisions in some cases are also for failure to submit return or failure to register. It is rightly said that those provisions cannot apply to dealers under the Central Act because the Central Act makes similar provisions. The Central Act is a self-contained code which by the charging section creates liability for tax and which by other sections creates a liability for penalty and imposes penalty. Section 9(2) of the Central Act creates the State authorities as agencies to carry out the assessment, reassessment, collection and enforcement of tax and penalty payable by a dealer under the Act.

From the above discussion as regards the scheme and purpose of Section 8(1) of the Central Act, read with the relevant rules framed thereunder, and as regards the role of the State Government as merely an agency of the Central Government to carry out the assessment, reassessment, collection and enforcement of tax and penalty payable by a dealer under the Central Act, and as regards the phrase "in the prescribed manner" occurring in Section 8(4), being confined only to prescribing rules as regards "what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold and to which authority the form is to be furnished", it follows very clearly that the provisions in question in the impugned rule, i.e., Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957, empowering the Sales Tax Officer to withhold the issuance of the blank declaration forms in form C to the purchasing dealer on the grounds either that the purchasing dealer

has defaulted in furnishing the return under the State Act or that he is in arrears of tax under the State Act are ultra vires the rule-making authority of the State Government u/s 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.

For the reasons expressed, we allow the petition with costs and declare that Rule 8(1-A)(f) of the M.P. Sales Tax (Central) Rules, 1957, in so far as it empowers 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, to be ultra vires the provisions of Section 8(4), read with Section 13(3) and (4) of the Central Sales Tax Act, 1956, and, therefore, to be invalid to the said extent. We further make a direction that, while considering any application or applications made by the petitioner for obtaining from the appropriate Sales Tax Officer (or any other officer as may be authorised by the Commissioner in this behalf) blank declaration forms in form C, as prescribed under Sub-rule (1) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, for furnishing them to the selling dealers, the Sales Tax Officer (or any other authorised officer) shall not withhold the issuance of the said declaration forms on the grounds either 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. Counsel's fee Rs. 200, if certified. The security amount deposited by the petitioner shall be refunded to it.