

(2003) 12 AHC CK 0021

In the Allahabad High Court

Case No : Civil Mics. Writ Petition No. 2529 of 2002

K.B. Hides

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-12-2003

Acts Referred:

Central Sales Tax Act, 1956 — Section 13(3), 13(4), 8(1), 8(2), 8(4)
Constitution of India, 1950 — Article 14, 19(1)
Uttar Pradesh Trade Tax (Amendment) Rules, 2001 — Rule 3A, 3B
Uttar Pradesh Trade Tax Act, 1948 — Section 12B, 24, 3AA(2), 3AAA, 4B
Uttar Pradesh Trade Tax Rules, 1948 — Rule 12A(1), 12A(3), 12A(5), 12B, 12C

Citation : (2005) 140 STC 205

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated August 14, 2002, annexure 4 to the writ petition and for a declaration that the U.P. Trade Tax (Amendment) Rules, 2001 (hereinafter referred to as "the amended Rules") in so far as they provide that forms III-A and III-B shall be valid only for a limited time are ultra vires the U.P. Trade Tax Act, 1948 and Articles 14 and 19(1)(g) of the Constitution.

2. Heard learned counsels for the parties.

3. The petitioner is engaged in the business of manufacture and sale of leather and it is registered under the U.P. Trade Tax Act, 1948.

4. u/s 4-B of the Act the Legislature has given certain benefit to certain manufacturers for payment of concessional rate of tax or exemption of tax on purchases of certain goods. Clause (b) of Section 4-B(1) of the Act reads as follows :

"Where any goods liable to tax under any other provision of this Act are sold by a

dealer to another dealer and such other dealer furnishes to the selling dealer in the prescribed form and manner a certificate to the effect that he holds a recognition certificate issued under Sub-section (2) in respect thereof, the selling dealer shall be liable in respect of those goods to tax at such concessional rate or be wholly or partly exempt from tax, whether unconditionally or subject to the conditions and restrictions specified in that behalf, as may be notified in the Gazette by the State Government in that behalf."

5. The procedure to implement the scheme contained in Sections 3-AAA and 4-B is that the purchasing dealer has to issue to the selling dealer a declaration stating the fact that he is entitled to make purchases either exempt from tax or at a concessional rate of tax. The assessing authority of the selling dealer has then to be satisfied that the exemption or concession from tax has been rightly granted. Such satisfaction has to be reached upon examination and verification of such declaration forms as may be obtained by the selling dealer from the purchasing dealer and submitted to the authority.

6. The Act has delegated to the State Government the power to prescribe the form and manner in which the declaration can be obtained. In exercise of the power vested in it by Section 24 read with Sections 3-AAA and 4-B of the Act the Government framed the Uttar Pradesh Trade Tax Rules, 1948. Under Rule 12-A(1) the declaration prescribed in respect of Section 3-AAA is in form III-A. This is a declaration issued by the purchasing dealer stating that it has purchased for sale in the same condition the goods mentioned in that declaration. Under Rule 25-B(1) the declaration is prescribed in respect of Section 4-B and it is in form III-B. It is a declaration that the purchasing dealer is a recognition certificate holder entitled to purchase the goods without payment of or at a concessional rate of tax. Under Clause (3) of Rule 12-A the purchasing dealer is required to apply to its assessing authority for issue to him such numbers of blank forms III-A as are required by him. Under Rule 12-A(5) the assessing authority of the purchasing dealer is required to reach satisfaction that the requisition of the dealer is genuine and reasonable, and once that authority is thus satisfied, it issues to the purchasing dealer such number of forms as he deems fit.

7. Rule 12-A(3) states :

"(3) A registered dealer, who wishes to obtain blank forms of certificate referred to in Sub-rule (1), shall apply to the Trade Tax Officer within whose jurisdiction his principal place of business is situated. The application shall be signed by one of the persons mentioned in Sub-rule (1) of Rule 54 or by a person authorised under Rule 77-A, as the case may be."

8. Rule 12-A(5) states :

"(5) If the Trade Tax Officer is satisfied that the requisition of the dealer for blank forms is genuine and reasonable, he may issue the same in such number as he deems fit. If the fee paid is more than the fee payable for the number of forms issued, the balance shall be credited to the account of the dealer to be adjusted

against any future issue of the forms."

9. Thus it is only after the forms are thus issued to him that the purchasing dealer is in a position to issue the same to the selling dealer. These forms are issued to the purchasing dealers by their own assessing authority/concerned Trade Tax Officer, after the prescribed fee is paid.

10. It is alleged in paragraph 20 of the writ petition that at any given point of time the demand for forms III-A and III-B is always more than the supply available with any issuing Trade Tax Officer. On account of short supply of forms available with the issuing Trade Tax Officer the said authority issues lesser number of forms than actually prayed for. This leads to accumulation of backlog of applications for issuance of blank declaration forms III-A and III-B. It is alleged in paragraph 21 of the petition that it takes months for any issuing Trade Tax Officer to issue the requisite forms. The result is that whenever a purchasing dealer is issued blank form III-A or III-B by his assessing authority, such purchasing dealer ends up utilising those forms against sale transactions performed in the past.

11. It is alleged in paragraph 23 of the writ petition that the trade of sale and purchase of goods is such that the demand for goods is dependent on numerous market variables which all are beyond the control of the dealers. The dealers only react to a situation, which arises in the market creating the demand for a commodity. They have to respond as quickly as possible and cater to that demand, and time is of utmost importance. At times delay of even an hour in finalising the transaction of sale may cost the dealer the difference between profit and loss. The market is highly volatile and it requires spur of the moment decisions to be taken both by the selling and purchasing dealers. Once a purchasing dealer has got a confirmed order it is not possible for him to wait for issuance of form III-A or III-B before transacting a purchase of the goods.

12. On account of the above facts it is alleged that a practice has developed in the State of U.P. that whenever a registered dealer or dealer holding a recognition certificate u/s 4-B is in need of buying some goods either for sale in the same form and condition (in the case of registered dealer), or against the recognition certificate u/s 4-B of the Act, he goes to a selling dealer and represents that he will purchase the goods without payment of tax or against payment of a concessional rate of tax. For this purpose he produces his registration certificate or recognition certificate in original, as the case may be, and he further represents that the necessary form III-A or form III-B shall be supplied in due course. The selling dealer acts on this representation and the sale is performed on the strength of the recognition or registration certificate without charging tax or by charging tax at such concessional rate as may be prescribed by the State Government at the relevant time. If the necessary form III-A or III-B are available with the selling dealer then they are promptly supplied, otherwise such forms are issued after delay. The submission of form III-A or III-B by the purchasing dealer to the seller depends only on such forms being made available

by the trade tax authorities, and the selling dealer has no role to play in this, and even the purchasing dealer is at the mercy of the assessing authority/ issuing trade officer. The time consumed in issuing the form is on account of that authority.

13. It is alleged in paragraph 28 of the petition that the Act does not provide anywhere that form III-A or III-B must be issued by the purchasing dealer to the selling dealer at the time of the sale, and that the purchasing dealer will not be entitled to exemption or concession unless he submits to the selling dealer the prescribed form III-A or III-B at the time of the sale. The Act prohibits any dealer from demanding or charging on the sale or purchase of any goods, any tax not due under the Act. Section 12-B empowers the appellate authorities to admit additional evidence in certain circumstances mentioned in that provision.

14. In paragraph 32 it is alleged that prior to May 1, 2001, there was no condition in Rule 12-A or Rule 25-B of the Rules prohibiting the use of form III-A or III-B issued during an assessment year in respect of transactions performed in earlier assessment years. Thus, for example, prior to May 1, 2001 a purchasing dealer could freely issue form III-A or III-B issued to it by the authority in assessment year 2000-2001 in respect of transactions performed several years earlier. However, on May 1, 2001 the impugned U.P. Trade Tax (Amendment) Rules, 2001 were published. By that amendment Rules 12-A and 25-B along with Rules 12-B and 12-C have been amended. True copy of the 2001 Amendment Rules is annexure 2 to the writ petition. In this amendment it is stated that form III-A or III-B issued in a particular financial year shall be valid for transactions of purchase or sale made during that financial year and also during the two financial years immediately preceding that financial year. It has also been provided therein that forms issued within six months from the coming in to force of the amended rules shall be valid for transactions made during any financial year before such commencement if on such form the issuing Trade Tax Officer certifies the validity of the transaction.

15. It is alleged in paragraph 39 of the writ petition that during the assessment year in question certain buyers had represented to the petitioner on the strength of their recognition certificates that they were entitled to purchase leather from the petitioner at a concessional rate or at a rate exempt from tax. These purchasers had also represented at the relevant time that form III-B were not available with them and would be furnished to the petitioner as soon as they were made available to them by the authority concerned. It is alleged in paragraph 40 of the petition that in such cases the petitioner has asked the purchasing dealers to produce before it only the recognition certificate, and the purchasing dealers produced the recognition certificate in original. The petitioner was hence satisfied that the purchasing dealers were entitled to make purchases at concessional rate or rate exempt from tax. The petitioner was informed by the purchasing dealer that form III-B was not available with him and his application for issuance of the form was pending before the concerned authority and would

be supplied to the petitioner when it was available in due course. Being satisfied with this assurance the petitioner sold the goods to the purchasing dealers without realising tax or at the concessional rates. The petitioner acted similarly in the case of registered dealers who assured him that form III-A was not available but would be supplied to the petitioner when it was made available in due course. The petitioner furnished to the assessing authority a list of all these transactions giving details. However, it is alleged in paragraph 44 of the petition that the assessing authority did not verify these facts and completed the assessment on December 27, 2001 vide annexure 3 to the writ petition. The assessing authority granted benefit to the petitioner in respect of the forms III-A and III-B which were furnished during the assessment proceedings, but for the remaining transactions he did not grant any benefit and demanded tax at the normal rate. However, the assessing authority granted the petitioner six months time to submit such forms, vide annexure 3 to the writ petition. However, by order dated August 14, 2002 the assessing authority refused to grant the benefit to the petitioner in respect of these forms submitted by the petitioner in view of the impugned amendment of Rules 12-A and 25-A. True copy of the order dated August 14, 2002 is annexure 4 to the writ petition.

16. It is alleged in paragraph 47 of the petition that the impugned amendment is also ultra vires the Act because the State Government has not been empowered to prescribe the time-limit within which the selling dealer has to submit the forms before its assessing authority. It is alleged that rules cannot be made contrary to the provisions of the Act.

17. Counter and supplementary counter-affidavits have been filed by the respondents and we have perused the same. In paragraph 14 of the counter-affidavit it is stated that there is no short supply of statutory forms and there is no delay in supplying the same. No evidence has been placed by the petitioner in support of his averment that there was short supply of the forms. In paragraph 15 it is stated that the statutory forms are issued by the assessing authority in accordance with law within a reasonable time and without any delay. Normally they are supplied either on the same day of the demand or on the next working day. A circular has also been issued by the Commissioner, Trade Tax, U.P., in this connection, copy of which is annexure C.A. 1 to the counter-affidavit. In this circular dated December 14, 2001 it is stated that the Commissioner's office has been informed that sometimes there is delay of 5 to 7 days in issuing the forms and this creates difficulties for traders. This is not a satisfactory state of affairs and it adversely affects the image of the department. Hence the Commissioner directed that the forms should be supplied on the same day by 3 p.m. As demanded, or where the application is made after 12 noon, it must be supplied on the next working day. The circular directs that this order be complied strictly and those responsible for its breach will be punished. In paragraph 29 of the counter-affidavit it is again reiterated that there is no delay on the part of the assessing authority in issuing the forms demanded by the assessee and it is issued either on the same day or the next working day after the demand. No

evidence has been produced by the petitioner to show that the forms were not issued within a very short period, i.e., within a day or two. Hence the allegations of the petitioner are false. It is alleged that the impugned amendment to the Rules is valid.

18. A supplementary counter-affidavit has also been filed. In paragraph 3 of the same it is mentioned that the Commissioner, Trade Tax, U.P., had sent a proposal for amendment in the U.P. Trade Tax Rules, 1948 relating to forms III-A, III-B, III-C(1), III-C(2) and III-G which was examined at the Government level and notes were put up before the honourable Finance Minister. In this note it is mentioned :

^^fofHkUu QkeZ tSls fd QkeZ 3d] 3[k] 3x ?1?] 3x ?2?] 3?k dk iz;ksx O;kikfj;ksa ds }kjk vlhfer /kujkf"k dk vadu djrs gq;s dj fy;k tkrk gS vkSj ,sls QkeksZ dks dk;kZy; ls fdlh Hkh o"kZ ds fy, izkIr djus dh dksbZ jksd ugha gS] ftlls fd O;kikfj;ksa ds }kjk QkeksZ dk nwLi;ksx fd;k tkrk gS vkSj dkQh le; iwoZ esa iz;ksx ds fy, QkeZ izkIr dj fy;s tkus ds dkj.k ,sl QkeksZ dk IR;kiu Hkh ugh gks ikrk gS A**

19. It is alleged that the Cabinet accepted the proposal in its meeting dated January 15, 2001 in which the following resolution was passed :

^^dk;Z iz.kkyh esa lq/kkj ,oa djkiopu dh jksdFkke gsrq O;kikj dj fu;ekoyh esa fuEu la"kks/ku fd;k tkuk izLrkfor gS %&

?1? O;kikj dj foHkkx }kjk dzbZ djeqfDr laca/kh QkeZ tkjh fd;s tkrs gSaa vkSj bu QkeksZa ij eky dk ewY;kadu vafdr u gksus ds dkj.k viuh LosPNk ls ftruh /kujkf"k vafdr djuk pkgs dj ysrs gSaa vkSj djkiopu dh vf/kd laHkkouk jgrh gS A bl rF; dks /;ku esa j[krs gq;s fofHkUu izdkj ds Qkeks? ij :i;k ikp yk[k ds vf/kd ewY; dk vkf"kd o dqy IO;ogkj dks gh vkPNkfnr djus ij foHkkx dks ;g Kkr jgsxk fd vf/kdre fdrus ewY; ds IO;ogkj gsrq O;kijh ds ikl QkeZ miyC/k gSa rFkk djkiopu ij Hkh jksd yxsxh A

vr% ;g izLrkfor gS fd fofHkUu izdkj ds QkeZ tSls fd QkeZ 3d] 3[k] 3x ?1?] 3x ?2?] 3?k ij ,d foRrh; o"kZ esa vf/kdre :i;k ikp yk[k dk vkaf"kd o dqy IO;ogkj vkPNkfnr fd;s tk ldus vkSj dk;kZy; }kjk QkeZ tkjh fd;s tkus laca/kh foRrh; o"kZ ds iwoZ ds nks foRrh; o"kZ ds fy, ekU; gksaxs dk izkfo/kku fu;eksa esa cuk fn;k tk; A

mnkgj.k ds fy, o"kZ 2000&2001 eas fo?kh; o"kZ 1998&99 ds okn dkyckf/kr gksaxs] vkSj bl izdkj o"kZ 2000&2001 esa dk;kZy; ls tkjh gksus okys Qkeks? dk iz;ksx dkyckf/kr gksus okys o"kZ ds fy, gh fd;k tk ldsxk vkSj iwoZ o"kks? ds fy, mldk mi;ksx djds vihy vkfn esa ykHk ugha fy;k tk ldsxk A

fu;eksa esa ;g O;oLFkk fd;k tkuk izLrkfor gS fd ftu O;kikfj;ksaa ds }kjk bls iwoZ ds fo?kh; o"kZ ds mi;ksx ds fy, QkeZ ysus gaSa og fu;eksa esa bl izdkj ds ifjorZu gksus ds 6 ekg ds vUnj dk;kZy; ls iwjk C;ksjk nsrs gq, izkIr dj ldsaxs A**

20. It is in pursuance of this resolution of the U.P. Cabinet that Rules 12-A, 12-B,

12-C and 25-B of the U.P. Trade Tax Rules, 1948 were amended after following the due process. These amendments were made for checking evasion of trade tax and misuse of forms. The amendments were made in the rules in exercise of powers conferred by Section 24 of the U.P. Trade Tax Act, 1948 and it is alleged that these amendments are valid.

21. Thus it is evident from this background that the impugned amendments were made to prevent tax evasion by misuse of the statutory forms. It is evident that these amendments were made after the matter was considered by the concerned authorities including the Commissioner, Trade Tax, Finance Secretary, Finance Minister and the Cabinet, and it is not that they were made without due application of mind.

22. A supplementary rejoinder affidavit has also been filed and we have perused the same. An objection has been made in paragraph 3 of the Supplementary rejoinder affidavit that the supplementary counter-affidavit was filed after the judgment was reserved in this case on October 30, 2003. It is true that the supplementary counter-affidavit was filed after the judgment was reserved. However by order dated November 11, 2003 we permitted the learned counsel for the petitioner to file a supplementary rejoinder affidavit in reply to the supplementary counter-affidavit and we directed the case to be listed for further argument on November 18, 2003 along with the connected cases. A supplementary rejoinder affidavit has been filed by the petitioner and the case was heard again on November 18, 2003. Hence the aforesaid objection of the petitioner has no merit. In fact the supplementary counter-affidavit only discloses the reasons and the background for making the impugned amendments, and we are certainly entitled to look into the same.

23. In *Sanghvi Jeevraj Ghewar Chand and Others Vs. Secretary, Madras Chillies, Grains and Kirana Merchants Workers Union and Another*, the Supreme Court observed :

".....it is necessary to refer briefly to the history of the question of bonus, the background and the circumstances in which the Act was passed. This is permissible for the limited purpose of appreciating the mischief Parliament had in mind and the remedy which it wanted to provide for preventing that mischief....."

24. In the aforesaid decision the Supreme Court referred to Heydon's case (1584) 76 ER 637 where it was laid down that in interpreting statutes Courts should consider four matters :

1. What was the common law before making of the Act ?
2. What was the mischief and defect for which the common law did not provide ?
3. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth ? and
4. The true reason of the remedy.

25. Heydon's (1584) 76 ER 637, rule has been approved by the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , *The Corporation of the City of Nagpur Vs. Its Employees*, , *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, , *The Central Bank of India Vs. Their Workmen*, , *S. Azeez Basha v. Union of India* AIR 1968 SC 622, etc.

26. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , *The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi*, , *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, , *The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore*, , etc., it was held that the circumstances existing at the time the law was enacted can be seen to ascertain the object of making the provision. As Maxwell says "In the interpretation of statutes, the interpreter may call to his aid all those external or historical facts which are necessary for comprehension of the subject-matter....." (vide Maxwell 12th Edition, page 47).

27. The unamended and the amended trade tax rules are given in annexures 1 and 2 to the writ petition. A perusal of the amended Rule 12-A shows that it has prescribed a time-limit for which the blank form issued by the Trade Tax Officer in the financial year shall be valid in respect of the transactions of purchase or sale. According to the amended rules, these will be valid in respect of sales and purchases made during that financial year as also made during the two preceding years. The proviso to the amended Rule 12-A also fixed a certain limitation period for the validity of the form. Similarly the impugned Rule 25-B also makes similar amendments.

28. Learned counsel for the petitioner has relied on the decision of the Supreme Court in *Sales Tax Officer, v. K.I. Abraham* [1967] 20 STC 367. In that decision the Supreme Court observed :

"In our opinion, 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. But the phrase "in the prescribed manner" in Section 8(4) does not take in the time-element. 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."

29. The Supreme Court was of the view that the third proviso to Rule 6(i) of the Central Sales Tax (Kerala) Rules, 1957 which provides that all declaration forms pending submission by dealers on May 2, 1960 shall be submitted not later than February 16, 1961 is ultra vires Section 8(2) read with Section 13(3) and (4) of the Central Sales Tax Act, 1956.

30. Section 8(4) of the Central Sales Tax Act, 1956 provides that the provisions of Sub-section (1) of Section 8 shall not apply to any inter-State sale unless the dealer selling the goods furnishes to the prescribed authority in the prescribed

manner a declaration duly filled in and signed by the registered dealer to whom the goods are resold containing the prescribed particulars in the prescribed form, or if the goods are sold to the Government, a certificate in the prescribed form duly filled in and signed by the authorised officer of the Government. The Supreme Court was of the view that Section 8(4) does not prescribe a time-limit within which the declaration forms have to be submitted. Similarly Section 13(3) and (4) also do not prescribe any time-limit. Hence it was held by the Supreme Court in the aforesaid case that the form should be submitted within a reasonable period, though no specific period was prescribed.

31. In our opinion the aforesaid decision is clearly distinguishable. It may be noted that in the decision in, *Sales Tax Officer Vs. K.I. Abraham*, , the impugned rules provided that the declaration had to be submitted by a certain date. The rule was held ultra vires because the Act did not mention that the forms had to be submitted by a certain date. On the other hand, in the instant case the amended Rule 12-A(5) does not state that the form has to be submitted by a certain date. Rule 12-A(5) as substituted by the amendment of 2001 states that the blank forms issued by the Trade Tax Officer in a financial year shall be valid for purchases or sales made during that financial year and the two preceding financial years. Thus there is no limitation fixed for submitting the forms in the impugned Rules 12-A, 25-B. Hence the decision in *Sales Tax Officer Vs. K.I. Abraham*, is clearly distinguishable.

32. Learned counsel for the petitioner submitted that the amended rules cannot take away what was conferred by the Act or whittle down its effect. For this proposition he has relied on the decision of the Supreme Court in *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, wherein it was held that the Income Tax Rules cannot take away what is conferred by the Income Tax Act or whittle down its effect. He has also relied on the decision of the Supreme Court in *Kunj Behari Lal Butail and Others Vs. State of H.P. and Others*, . In our opinion these decisions are clearly distinguishable. The amended rules do not take away or whittle down the effect of Section 4-B or Section 3-AAA. In our opinion these amendments only safeguard the interest of the revenue which is naturally interested in seeing that the benefits conferred by Section 3-AAA and Section 4-B are not misused for tax evasion. Hence no exception can be taken to the impugned amendments to the rules. We also fail to see how the decision of this Court in *J.K. Manufacturers Ltd. v. Sales Tax Officer* [1970] 26 STC 310 (FB) and of the Supreme Court in *Chunni Lal Parshadi Lal v. Commissioner of Sales Tax, U.P.* [1986] 62 STC 112 ; 1986 UPTC 747 can be of any help to the petitioner. The former decision has been distinguished in the division Bench decision of this Court in *Govind Ram Tansukh Rai & Co. v. Commissioner of Sales Tax* [1988] 71 STC 4 (All.) [App] ; 1985 UPTC 1060 which has been approved by the Supreme Court in *Commissioner of Sales Tax v. Prabhudayal Prem Narain* [1988] 71 STC 1; 1988 UPTC 1204. In our opinion the amended rules do not in any way limit or defeat the statutory provisions contained in Section 3-AAA and Section 4-B of the U.P. Trade Tax Act, 1948,

rather they have only been made to ensure that these provisions are not misused for tax evasion.

33. Learned counsel for the petitioner then submitted that the amended rules should be held to be directory and not mandatory. For this submission learned counsel relied on the decision of the Supreme Court in *State of Orissa v. M.A. Tulloch and Co. Ltd.* [1964] 15 STC 641 wherein it was held that Rule 27(2) of the Orissa Sales Tax Rules, 1947 was only directory. Learned counsel has further submitted that no penal consequence has been provided in the rules for non-submission of the forms within time, and hence the amended rules are only directory and not mandatory. For this proposition he has relied on the decision of the Supreme Court in *Topline Shows Ltd. v. Corporation, Bank* (2000) 6 SCC 33 . He has also relied on the decision of the Supreme Court in *DLF Universal Ltd. Vs. Appropriate Authority and Another*, . He has also submitted that if the amended rules are held to be mandatory, they will be in conflict with the powers of the appellate authority.

34. In our opinion this point is no longer *res integra* after the decision of this Court in *Govind Ram Tansukh Rai & Co. v. Commissioner of Sales Tax* [1988] 71 STC 4 [App] ; 1985 UPTC 1060 which has been approved by the Supreme Court in *Commissioner of Sales Tax Vs. Prabhudayal Prem Narain*, .

35. In *Govind Ram Tansukh Rai's* case [1988] 71 STC 4 (App) ; 1985 UPTC 1060 this Court distinguished the decision in *J.K. Manufacturers Ltd. v. Sales Tax Officer* [1970] 26 STC 310 [FB]. The latter decision considered Sub-section (2) of Section 3-AA which provided that unless the dealer proved otherwise, every sale by a dealer for purposes of Sub-section (1) would be presumed to be to a consumer, and held that this provision only enacts a rule of evidence for giving effect to Sub-section (1). The Bench noted that Sub-section (2) did not indicate what should be the nature and mode of proof by which the dealer may establish that the sale made by him is not to the consumer. The Bench also observed :

"It may have been a different matter if Sub-section (2) had read "unless the dealer proves otherwise in the manner prescribed.....", when it could have been legitimately contended that the only mode of proof available to the dealer was the mode prescribed, in Rule 12-A."

36. In *Govind Ram Tansukh Rai's* case [1988] 71 STC 4 (All) ; 1985 UPTC 1060 the Bench observed (vide para 12 ; page 8 in STC) :

"Sub-section (2) of Section 3-AA merely enacted a rule of evidence and did not provide for the nature and mode of proof, but in Clause (a) of Sub-section (7) of Section 3-D such a provision has been clearly made and the presumption is to be rebutted in the manner provided under the Rule 12-B. We, therefore, are of the opinion that this case is distinguishable."

Paragraph 5 of the said decision (page 5 in STC) states :

"No universal rule can be laid down to distinguish between a statute that is

imperative and that which is merely directory. But several tests have been propounded in decided cases for determining the question whether a provision in a statute or rule is mandatory or directory. One of the tests is where rights, privileges, immunities, are granted with a direction that certain regulations, formalities or conditions shall be complied with and it seems neither unjust nor incorrect to exact a rigorous observance of them as essential to the acquisition of right, such provision of statute or rule has been held to be imperative. (See Maxwell on Interpretation of the Statutes, VI edition, page 649). In Sharif-ud-din Vs. Abdul Gani Lone, , it was held that where a provision of law prescribed that a certain act has to be done in a particular manner by a person in order to acquire a right, benefit or a privilege, it is to be regarded as mandatory."

37. It would be useful to once again see the background in which the impugned amendment was made to the rules. This background has been mentioned in paragraphs 3 and 4 of the supplementary counter-affidavit filed by the department. In paragraph 3 it is clearly stated that the statutory forms were being misused by the dealers as there was no time period for which they could be obtained. There was difficulty in verifying the genuineness of the forms obtained a long time back.

38. It was further mentioned that the Cabinet considered the note of the Finance Department and in its meeting dated January 15, 2001 it was resolved that there was great misuse of the statutory forms by the dealers and hence it became necessary to amend the rules to stop this misuse.

39. Learned counsel for the department submitted that often the forms submitted by the dealers were subsequently found to be forged or not to have been issued to the purchasing dealer by the assessing authority. Sometimes there was theft of these forms from the department, and sometimes after obtaining the form the dealer closed his business and remained non-existent and sold the forms to some other person who misused the same. In this way the revenue was losing a large amount of tax. The selling dealer claimed exemption on the basis of such forms and such claim cannot be denied in view of the decisions of the Supreme Court in Chunni Lal Parshadi Lal v. Commissioner of Sales Tax [1986] 62 STC 112 ; 1986 UPTC 747, Bharat Iron Stores v. CST 1994 UPTC 130, Indra Steels Private Ltd. v. Commissioner of Sales Tax 1995 UPTC 4. Sometimes when the purchasing dealer was caught he conveniently denied the purchase or issue of form III-A on the ground that the same had not been issued to him at all. Sometimes the purchasing dealer was not traceable or non-existent. There was also often collusion between the seller and purchaser; The result was that after the lapse of a lot of time it became difficult for the department to verify the genuineness of the forms with reference to the party who had issued it and the entries of transaction in the books of accounts of such party. Learned departmental counsel has therefore submitted that, it is for this reason that the impugned amendments to the rules were made.

40. In our opinion there is nothing unreasonable or arbitrary if the validity of a

form is fixed for a certain period because if a form is made valid for an indefinite period it may become liable to be misused since after a lapse of a long time the related transaction cannot be verified. In our opinion the impugned amendment to the rules only imposes reasonable restrictions to avoid misuse of the form and tax evasion.

41. Filing of the form for claiming exemption has been held to be mandatory by the Supreme Court in *Commissioner of Sales Tax v. Prabhu Dayal Prem Narain* [1981 71 STC 1 ; 1981 UPTC 1204 and by this Court in *Govind Ram Tansukh Raji & Co. v. Commissioner of Sales Tax* [1988] 71 STC 4 [App] ; 1985 UPTC 1060.

42. We see no illegality in the impugned rules as in our opinion they have been made with the object of preventing tax evasion. The right to do business in Article 19(1)(g) is subject to reasonable restrictions vide *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, and in our opinion the restrictions imposed by the impugned rules are clearly reasonable as they aim at preventing tax evasion. No Government can run without taxes. As held by the Supreme Court in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, ; *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, the Government cannot run on bank guarantees.

43. It may be further noted that there is no specific allegation in the writ petition that the petitioner applied to the issuing authority for the forms and the same were not issued to the petitioner. In the absence of any such allegation the petitioner cannot be said to have any grievance at all. Cases are not decided on hypothetical basis but on concrete grievances.

44. We cannot accept the submission of the learned counsel for the petitioner that the amended rules are in any way violative of Article 14 or 19(1)(g) of the Constitution. As observed by the celebrated Justice Holmes of the U.S. Supreme Court in *Missouri, Kansas, and Tennessee Railroad v. May* (1904) 194 U.S. 267 :

"We feel unable to say that the law before us may not have been justified by local conditions. Great constitutional provisions must be administered with caution. Some play must be allowed to the joints of the machine."

45. In *Morey v. Doud* (1957) 354 US 457 Mr. Justice Frankfurter, the renowned Judge of the U.S. Supreme Court observed :

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The Legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct..... The uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events all these show that self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

46. In the same decision Justice Frankfurter also observed :

"The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; that exact wisdom and nice adaptation of remedy are not always possible and that "judgment is largely a prophecy based on meager and uninterpreted experience". Every legislation, particularly in economic matters, is essentially empiric and it is based on experimentation, or what one may call trial and error method and, therefore, it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid."

47. In *The Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Girish Kumar Navalakha and Others*, the Supreme Court observed :

"It would seem that in fiscal and regulatory matters the court not only entertains a greater presumption of constitutionality but also places the burden on the party challenging its validity to show that it has no reasonable basis for making the classification."

48. It may be noted that Section 24 of the U.P. Trade Tax Act confers power on the State Government to make rules to carry out the purposes of the Act. Hence there is certainly legislative sanction for making the impugned amendment to the rules.

49. In our opinion the court should exercise judicial restraint and should not hamper the State in measures which aim at preventing tax evasion. In the present case it is obvious that the State Government felt that tax evasion on a large scale was going on by certain unscrupulous dealers by misuse of the statutory forms. If the Government decided to stop this malpractice it is not for this Court to obstruct the Government in this connection. No doubt if the impugned amendment to the rules was clearly violative of the U.P. Trade Tax Act or the Constitution the court can interfere, but otherwise it is not for this Court to sit as a court of appeal over the decisions or the rules made by the Government. In fiscal measures the court must be wary in invalidating the measures taken by the Government, for such measures are often taken after consulting experts. The judiciary must therefore ordinarily exercise self-restraint in such matters and eschew the temptation to sit as a court of appeal over the decisions made by the Government.

50. It must be remembered that all legislation or delegated legislation (such as the kind we are examining), particularly in fiscal matters, is essentially ad hoc and experimental. Since fiscal matters now a days are extremely complicated the court should ordinarily defer to the opinion of the experts and give the State wide latitude in devising ways and means in imposing and collecting taxes.

51. As Justice Frankfurter of the U.S. Supreme Court observed in *American Federation of Labour v. American Sash and Door Co.* (1949) 335 US 538 :

"Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates popular democratic Government. Most laws dealing with social and economic problems are matters of trial and error. That which before trial appears to be demonstrably bad may belie prophecy in actual operation. But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed by the Legislature than that the law should be aborted by judicial fiat. Such an assertion of judicial power defeats responsibility from those on whom in a democratic society it ultimately rests. Hence rather than exercise judicial review courts should ordinarily allow Legislatures to correct their own mistakes wherever possible."

52. Similarly in his dissenting judgment in *New State Ice Co. v. Liebmann* (1932) 285 US 262 Mr. Justice Brandies, the renowned Judge of the U.S. Supreme Court, observed that the Government must be left free to engage in social experiments. Progress in the social sciences, even as in the physical sciences, depends on "a process of trial and error" and courts must not interfere with necessary experiments.

53. Justice Brandeis also observed :

"To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. (see also "The Legacy of Holmes and Brandeis" by Samuel Konefsky)."

54. In *P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others*, , the Supreme Court observed :

"The power to lay policy by executive decisions or by legislation includes power to withdraw the same unless in the former case, it is by mala fide exercise of power or the decision or action taken is in abuse of power. The court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the court gives a large leeway to the executive and the Legislature..... Government would take diverse factors for formulating the policy..... in the overall larger interest of the economy of the country..... When the Government is satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy."

55. In *Secretary of Agriculture v. Central Roig. Refining Co.* (1949) 338 US 604 : 94 Law Ed. 381, Mr. Justice Frankfurter of the U.S. Supreme Court observed :

"Congress was confronted with the formulation of policy peculiarly within its wide swath of discretion. It would be a singular intrusion of the judiciary into the legislative process to extrapolate restrictions upon the formulation of such an economic policy from those deeply rooted notions of justice which the due

process clause expresses....."

56. It may be possible that the court may feel that the object sought to be achieved by the impugned Rules (i.e., prevention of tax evasion) may have been better achieved by some other rule, but on this account it cannot strike down the impugned rules. The legislature or its delegate are free to choose different methods of remedying an evil or preventing a mischief, and it is not for the court to say that this or that method should have been adopted. As Mr. Justice Cardozo, the celebrated Judge of the U.S. Supreme Court observed in *Anderson v. Wilson* 289 U.S. 20 :

"We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take this statute as we find it."

57. As observed by the Supreme Court in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, , the court must presume that the Legislature (or its delegate) understands and correctly appreciates the needs of its own people. The court should therefore exercise self-restraint in such matters.

58. No doubt some dealers may suffer some hardship by the impugned rules, but it is well-settled that equity has no place in taxing laws, vide, *Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar*, , *CITv. Madho Pd. Jatia* , *Col. D.D. Joshi and Others Vs. Union of India (UOI) and Others*, , *Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator*, , *Banarasi Devi Vs. Income Tax Officer, Calcutta*, , *Agra City Real Estate Development Organisation v. State of U.P.* 2003 (3) UPLBEC 2201, etc. As is said "Dura lex sed led" which means "the law is hard, but it is the law."

59. It is well-settled that a statutory rule cannot be said to be unreasonable merely because in a given case it operates harshly vide *State of Gujarat Vs. Shantilal Mangaldas and Others*, .

60. In *Srinivasa Enterprises v. Union of India* (1980) 4 SCC 507 the Supreme Court observed (vide paragraph 13) :

"When a general evil is sought to be suppressed some martyrs may have to suffer for the Legislature cannot easily make meticulous exceptions and has to proceed on broad categorisations not singular individualisations."

61. Hence even if some dealers suffer by the impugned rules that would not make the rules invalid. We see no illegality in the impugned amendment to the Rules or in the impugned order dated August 14, 2002 (annexure 4 to the writ petition).

62. For the reasons given above the petition is dismissed.

63. Before parting with this case we would like to mention that the Courts should exercise great self-restraint in interfering in economic policy matters as these are matters ordinarily to be dealt with by experts in Government departments and in

the statutory bodies.

64. In *R.K. Garg and Others Vs. Union of India (UOI) and Others*, a Constitution Bench of the Supreme Court observed :

"Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the Legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the Legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud* (1957) 354 US 457, where Frankfurter, J., said in his inimitable style :

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The Legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events--all these show that self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.""

65. In *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, , the Supreme Court observed :

"We do not think that it is the function of the court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the Government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtless differ. Courts can certainly not be expected to decide them without even the aid of experts."

66. In *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, , the Supreme Court observed :

"Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the Legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of the experts" by its own views."

67. In *Delhi Cloth and General Mills Co. Ltd. and Others Vs. Union of India (UOI) and Others*, , the Supreme Court observed :

"Even at the cost of repetition, it can be stated with confidence that the rules which prescribed conditions subject to which deposits can be invited and accepted to operate to extend a measure of protection against the notorious abuses of economic power by the corporate sector, to the detriment of depositors/investors, a segment of the society which can be appropriately described as weaker in relation to the mighty corporation..... In a welfare State, it is the constitutional obligation of the State to protect socially and economically weaker segments of the society against the exploitation by Corporations."

68. It must be remembered that certain matters are by their nature such as best be left to experts in the field. This Court does not have the technical and administrative expertise in this respect.

69. In the words of Chief Justice Neely :

"I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

70. In our opinion there should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated, this inevitably entails special treatment for distinct social phenomena. The State must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the court should not, unless compelled by the statute or by the Constitution, encroach into this field.

December 5, 2003 :

Civil Misc. Writ Petition No. 1329 of 2003 :

For the reason given in W.P. No.2529 of 2002, K.B. Hides v. State of U.P. and Ors. decided on 1-12-2003, this writ petition is dismissed.