

(1970) 04 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3307 of 1969

Khemji Visram and Sons

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 07-04-1970

Acts Referred:

Punjab General Sales Tax Rules, 1949 — Rule 27A(ii)

Citation : (1970) 26 STC 555

Hon'ble Judges : D.K. Mahajan, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : Harbhagwan Singh and C.D. Garg, for the Appellant; G.C. Mittal, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

D.K. Mahajan, J.—In this petition the validity of Rule 27-A(ii) of the Punjab General Sales Tax Rules, 1949, as amended by the Haryana Government vide Notification No. G.S.R. 83/P.A. 46/48 S.27/Amd. (1)/68, has been challenged. The petitioner is a partnership firm with its head office at Bombay and carries on the business of purchasing and selling of cotton in the State of Haryana. The main place of business of the petitioner firm is at Sirsa, District Hissar, in the State of Haryana. The petitioner firm is registered under the Punjab General Sales Tax Act and the Central Sales Tax Act at Sirsa.

2. The provision of Sub-rule (ii) of Rule 27-A, as amended up-to-date, applicable to the State of Haryana which is being challenged in this writ petition, is as follows :

27-A. A dealer who wishes to deduct from his gross turnover the amount in respect of-

(i)....

(ii) a purchase or sale of declared goods on the ground that he is entitled to

make such deduction under Sub-section (3) of Section 5 of the Act shall append to his return in form S.T. VIII or S.T. VIII-A or both, as the case may be, a certificate in form S.T. XXX which shall be issued by every selling dealer to a purchasing dealer.

3. This Rule provides that before deduction is claimed under Sub-section (3) of Section 5 of the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1967 (hereinafter called the Act), a certificate in form S.T. XXX has to be issued by every selling dealer to the purchasing dealer which has to be appended to the return in form S.T. VIII or S.T. VIII-A or both as the case may be.

4. The provisions of Sub-section (3) of Section 5 of the Act which were added by Act No. 14 of 1967 on 30th December, 1967, are as follows :-

Notwithstanding anything contained in this Act, the taxable turn over of any dealer for any period shall not include his turnover during that period in respect of any sale or purchase of declared goods at any stage other than the stage referred to in the second proviso to Sub-section (1).

5. Schedule "D" as referred in Sub-section (iii) of the proviso reads as under:- (As in force in Haryana State) (See Clause (iii) of the second proviso to Sub-section (1) of Section 5).

-----				SI. Name of declared			
Circumstances				Stage of levy. No. goods. under which tax to be levied.			
-----				1	2	3	4
-----				1. Cotton, that is (i) If			
imported by (i) First sale with-				to say, all kinds of a dealer from in the State of			
cotton (indigenous out-side the Haryana by a or imported) in its State of				Haryana, dealer liable to manufactured state, or otherwise pay tax under			
whether ginned or received by him this Act. unginned, baled, in the State of or				otherwise but not Haryana, for sale. pressed including (ii) If purchased in (ii) First			
purchase waste. the State of within the Haryana. State of Haryana by a dealer				liable to pay tax under this Act.			
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6. Thus it would be seen that the effect of this provision is that during the year 1968-69 and also for a part of the year 1967-68, cotton was taxable in the hands of first seller if the same was imported from outside the State of Haryana or otherwise received for sale and in the hands of first purchaser, if purchased inside the State of Haryana.

7. The learned counsel for the petitioner, Mr. Harbhagwan Singh, contended that the provisions of Sub-section (3) of Section 5 of the Act clearly provide that notwithstanding anything contained in this Act, the taxable turnover of any dealer for any period shall not include his turn over of purchase of declared goods at any stage other than the stage referred to in the second proviso to Sub-section (1) which provides that the same has to be levied on the first purchase

within the State of Haryana by a dealer liable to pay tax under this Act. But Rule 27-A(ii) makes it mandatory to furnish a certificate in form S.T. XXX before this deduction can be claimed. His contention is that this is not a deduction which is being given by way of an exception in the provisions of the Act. The provisions of Sub-section (3) of Section 5 provide that the tax has to be paid by the first purchaser within the State of Haryana. His contention, therefore, is that the provisions of Rule 27-A(ii) are ultra vires of the provisions of the Act as restriction is placed on the dealer to furnish a certificate in form S.T. XXX before an exemption can be claimed. This contention of the learned counsel is without any force.

8. The provisions of Sub-section (3) of Section 5 are clear that it is the first purchaser within the State of Haryana who is to be taxed under the Act, but at the same time, Rule 27-A(ii) provides a machinery to check the evasion of the tax which is necessary for the proper administration of the provisions of the Act. The procedure is necessary to have a check about the transactions for which tax is not being paid in view of the provisions of Sub-section (3) of Section 5 of the Act. The Rules are always made to carry out the purpose of the Act and this Rule in no manner comes in conflict with the provisions of Sub-section (3) of Section 5 of the Act. Rather, it is necessarily to be made for properly administering the provisions of the Act. The best type of evidence in the form of a certificate in form S.T. XXX from the selling dealer has been provided to evidence the exemption claimed.

9. The learned counsel then contended that if in a particular case the selling dealer refuses to issue a certificate in form S.T. XXX to the purchasing dealer, then the purchasing dealer has to suffer and the Rule is so interpreted by the authorities working under the Act so that the purchasing dealer is precluded from producing other evidence to show that the transactions in question are not taxable because of the provisions of Sub-section (3) of Section 5 of the Act.

10. The learned counsel for the State, Mr. Mittal, on the other hand, contended that the interpretation as put forth by the counsel for the petitioner to the Rule in question is not correct. He further contended that if in a given case the selling dealer refuses to issue a certificate in form S.T. XXX to the purchasing dealer, it is open to the assessing authority to satisfy itself from the other evidence available to the correctness of the exemption being claimed by the dealer concerned.

11. In a case reported as *State of Orissa Vs. M.A. Tulloch and Co.*, a similar question arose before the Supreme Court for interpreting Rule 27(2) read with Section 5(2)(a)(ii) of the Orissa Sales Tax Act, 1947. The Supreme Court after considering the provisions of the Act and the Rules referred to above, came to the conclusion that the provisions of Sub-rule (2) of Rule 27 are directory and not mandatory. Their Lordships held that the provisions of Sub-rule (2) of Rule 27 must be reconciled with the Section and the Rule can be reconciled by treating it as directory. But the Rule must be substantially complied with in every

case. It is for the Sales Tax Officer to be satisfied that, in fact, the certificate of registration of the buying dealer contains the requisite statement and if he has any doubts about it, the selling dealer must satisfy his doubts.

12. After reading the provisions of Sub-section (3) of Section 5 read with Rule 27-A(ii), we have no doubt in our mind that the provisions of Rule 27-A(ii) are directory and in case the assessing authority is satisfied that the selling dealer has refused to furnish a certificate to the purchasing dealer in form S.T. XXX, it is open to the assessing authority to satisfy itself about the genuineness of the claim being made from the best evidence which may be available or even from the source of the selling dealer or in any other manner which the assessing authority may think proper in the circumstances of the case. This Rule must be substantially complied with in order to enable the assessing authority to come to a correct finding of fact as to whether the dealer concerned is entitled to the deduction because of the provisions of Sub-section (3) of Section 5 of the Act.

13. With these observations, this writ petition fails and the same is dismissed. However, keeping in view the circumstances of the case, there will be no order as to costs.