

(2006) 08 KL CK 0046
In the High Court Of Kerala
Case No : W.A. No. 1035 of 2006

Malayala Manorama Co. Ltd.

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 2, 7, 7(1), 7(2)
Constitution of India, 1950 — Article 226, 227, 265, 277
Kerala General Sales Tax Act, 1963 — Section 2, 45A, 5, 5(3)
Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 21

Citation : (2006) 3 ILR (Ker) 592 : (2006) 4 KLT 235 : (2007) 8 VST 604

Hon'ble Judges : V. Ramkumar, J; K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : M. Pathrose Mathai and Rony J. Pallath and Ramesh Cherian John, for the Appellant; Raju Joseph, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Malayala Manorama Company Limited a Company engaged in the business of printing and publishing of daily newspaper and other publications is a registered dealer under the Kerala General Sales Tax Act, 1963 (for short "KGST Act") and Central Sales Tax Act, 1956 (for short "CST Act"). The Company has established printing units at different places in and outside the State of Kerala. Printing of newspaper is carried on by sophisticated and expensive machinery and facilities employing large number of employees in the several industrial units at nine places in the State of Kerala.

2. Petitioner for the purpose of printing newspaper and other publications used to purchase printing ink, which is an essential industrial raw material. Section 5(3) of the KGST Act provides for a reduced rate of tax at 3% payable by the dealer in respect of sale of raw materials when sold to any industrial unit for use in the production of finished products in the State for sale. According to Sub-section (3) of Section 5, reduced rate of tax given to the selling dealer is subject to the condition of furnishing a declaration duly filled in and signed by the purchasing

dealer in the prescribed Form 18 under the KGST Act. In accordance with the said Sub-section (3) petitioner furnished Form 18 to the selling dealer for the purchase of printing ink used in the production of newspapers and other publications. Petitioner Company, purchased printing ink for Rs. 91,64,100/- from M/s. Quality Ink Manufacturing Company, Poovanthuruthu issuing Form 18 u/s 5(3) of the KGST Act for the year 2000-01. Petitioner Company has also purchased printing ink for Rs 1,00,03,050/- from the very same Company by issuing Form 18 for the year 2001-02. During the year 2002-03 petitioner Company purchased printing ink for Rs. 84,69,603/- from the same company by issuing Form 18. During the year 2003-04 also petitioner Company purchased printing ink for Rs. 87,79,103/- from the same company by issuing Form 18.

3. Petitioner was however served with Exts.P1 and P2 notices dated 16.01.2006 and Ext. P3 notice dated 17.01.2006 by the first respondent stating that the petitioner had misused Form 18 by using the goods purchased for printing of newspaper and weeklies which involves no manufacturing process and if at all the same can be treated as manufacturing process. The proceeds sold are not taxable either under the KGST Act or CST Act. Further it was also stated that the newspaper does not satisfy the definition of "goods" u/s 2(xii) of the KGST Act. Petitioner was therefore informed, that it has misused Form 18 and hence committed an offence punishable u/s 45(A) of the KGST Act and therefore it was proposed to impose a penalty in all to the tune of Rs. 46,40,592/- at double the amount of tax due on the purchase turnover. Petitioner was called upon to file objection to the notices within seven days of receipt of the notices.

4. Petitioner submitted detailed objections to the notices stating that the notices have been issued on a misapprehension. Petitioner pointed out that Section 5(3) has been amended with effect from 1.4.2000 which was lost sight of when the notices were issued. Further it was also pointed out that Section 5(3) does not contemplate any manufacturing process, but only production. Further it was pointed out that the first respondent had relied on the repeated provisions of the KGST Act for initiating penalty proceedings u/s 45A of the KGST Act. Petitioner submitted that Exts. P1, P2, P3 and P4 notices are issued without the authority of law and are vitiated by extraneous reasons and prayed for dropping of all the proceedings; Petitioner Company was later served with three orders dated 19.01.2006, Exts. P9 to P11, inflicting penalty u/s 45A of the Act which are under challenge in this Writ Petition. It is stated in the orders that petitioner is engaged in the printing of newspaper which involves no manufacturing process. Further it was stated that Form 18 is prescribed under the KGST Act u/s 5(3) for the purchase of raw materials for use in the manufacture of finished products. The department has taken the view that since no manufacturing process is involved in printing of newspaper the petitioner has misused Form 18 which is an offence attracting penalty u/s 45A of the KGST Act.

5. Learned single Judge did not entertain the Writ Petition and dismissed the same holding that the petitioner has got an effective alternate remedy by way of

revision under the KGST Act. Judgment is reported in Malayala Manorama Co. Ltd. Vs. Asst. Commissioner, .

6. Senior Counsel appearing for the appellant Sri Pathrose Mathai submitted that learned single Judge has committed an error in dismissing the Writ Petition on the sole ground that the petitioner has got an alternative remedy by way of revision. Counsel submitted that the first respondent has initiated proceedings based on provisions which are repealed, non existent and inapplicable and acted without jurisdiction. Counsel placed strong reliance on the decision of the Apex Court in Printers (Mysore) Ltd. and Another Vs. Asstt. Commercial Tax Officer and Others, , Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , State of H.P. and Ors. v. Gujarat Ambuja Cements Limited 142 STC 1, Agricultural Income Tax and Sales tax Officer v. Tata Tea Limited 127 STC 210 and unreported judgment of this Court in O.P. No 143 of 1989 in the petitioner's own case and submitted that the levy and collection of tax as well as the imposition of penalty have to be tested in the light of the above mentioned decisions. Counsel submitted that the levy and collection of tax was without authority of law, unconstitutional and is violative of Article 265 of the Constitution of India. Counsel therefore submitted that the Writ Petition filed under Article 226 of the Constitution is maintainable and the petitioner shall not be non suited on the ground of availability of a revisional remedy. Counsel also made reference to the decision of the Apex Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , Whirlpool Corporation v. Registrar of Trade Marks (1996) 8 SCC and State of H.P. v. Gujarat Ambuja Cements Ltd. 142 STC 1 and Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, and submitted that the alternate remedy by way of revision will not take away the jurisdiction of this Court in entertaining this petition under Article 226 of the Constitution of India.

7. Sri. Raju Joseph learned Special Government Pleader for Taxes on the other hand contended that Exts.P9, P10 and P11 orders were issued since the petitioner had misused Form 18 which is an offence entailing penalty proceeding u/s 45A of the K.G.S.T. Act. Counsel submitted that the printing ink purchased by the petitioner was not used for the manufacture of newspaper which will not satisfy the definition of Section 2(e) of the KGST Act. Counsel submitted that the purchase of printing ink availing concession u/s 5(3) is a clear misuse of Form 18. Counsel also submitted that the orders issued are revisable and hence the Writ Petition shall not be entertained in view of the fact that alternate remedy is available to the petitioner.

8. We are of the view in a case where facts are undisputed and the questions raised are purely legal and are to be tested in the light of the Division Bench decision of this Court in O.P.No 143 of 1989 as well as the decision of the Apex Court in Printers (Mysore) Ltd.'s case, supra and host of the other decisions of the Apex Court there is no reason to reject the petition on the sole ground that petitioner has got a remedy by way of a revision under the KGST Act. The Apex

Court in *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*, has held that it is settled that existence of remedy by way of revision does not bar the jurisdiction of the High Court under Article 226 of the Constitution of India. The Apex Court in *Whirlpool Corporation's case* and *Gujarat Ambuja Cements'* case has declared the law that even in cases where any statutory remedy is available if the impugned order is without jurisdiction and without the authority of law or in violation of Article 265 or in violation of the principles of natural justice, petition under Article 226 of the Constitution is maintainable. The apex court in *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, held that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion and the Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the Writ Petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. Reference may also be made to the decision of the Apex Court in *Seth Chand Ratan v. Pandit Durga Prasad and Ors.* (2003) 5 SCC 799 and *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, . Petitioner has since raised a contention that penalty has been imposed on the basis of repealed and non existing provisions of the KGST Act, without the authority of law and without jurisdiction, in our view, remedy under Article 226 of the Constitution of India cannot be shut out due to the availability of the revisional remedy. We therefore hold that the Writ Petition filed by the petitioner is maintainable under Article 226 of the Constitution of India.

9. We will now examine the questions of law raised before us by the petitioner. The question that is posed for consideration in this case is whether publishers of newspapers are entitled to the concessional rate of tax under Sub-section (3) of Section 5 of the KGST Act when they purchase printing ink by issuing Form 18 prescribed as per Rule 28 of the KGST Rules, 1963. For the purpose of its business petitioner used to purchase printing ink and other photographic materials for the production and publication of newspapers. Section 5(3) provides for reduced rate of tax at 3% so far as selling dealer is concerned on the purchase point by issuing a declaration in Form 18 by the purchasing dealer. The main contention of the Revenue is that printing ink purchased by the company is not an industrial raw material and the finished product obtained is newspaper which will not fall within the expression "goods" coming under Sub-section (3) of Section 5 of the KGST Act and hence the purchase of printing ink issuing Form 18 is unauthorised. Hence purchase of printing ink was effected misusing statutory form entailing penalty u/s 45A of the KGST Act.

10. We have to examine whether the item "newspaper" would fall within the expression "goods" under Sub-section (3) of Section 5 of the KGST Act and whether the petitioner is justified in issuing Form 18 for the selling dealer to avail of the concessional rate of tax and whether the State Legislature has got the power to impose taxes on the sales or purchase of newspaper. Before we deal

with that question, it is necessary to find out as to how the item "newspaper" was dealt with by the Sales Tax Laws prior to and after the coming into force of the Constitution of India. In the pre Constitution period under the Government of India Act, 1935 there was a provision in Entry 48 of List II of the Seventh Schedule which enabled the levy of sales tax on newspapers and advertisements. The United State of Travancore and Cochin General Sales Tax Act 1125 (Act 11 of 1125) was enacted to provide for the levy of a general tax on the sale of goods in the United State of Travancore and Cochin. The word "goods" defined in Section 2(e) of the KGST Act means all kinds of movable property and includes all materials, commodities and articles including those to be used in the construction, fitting out, improvement or repair of immovable property or in the fitting out, improvement or repair of movable property and also includes all growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under a contract of sale, but does not include actionable claims, stocks and shares and securities. Thus "newspaper" was never excluded and dealt with as goods and taxed as such under Act 11 of 1125, because entry 43 of List II of the VIIth Schedule provided under the Government of India Act, 1935 enabled the State Government to levy tax on the sales and purchase of newspaper.

11. The Constitution of India however has made certain specific provision regarding newspapers. Under Item 92, List I of Seventh Schedule to the Constitution of India the Centre retained power to tax on the sale or purchase of newspapers and on advertisements published therein. Under Item 54, List II of Seventh Schedule to the Constitution of India the State has the power to tax a sale or purchase of goods other than newspapers. Article 277 of the Constitution is a saving article which reads as follows:

Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

Thus the State has got power to levy tax on the sale of newspaper until a provision to the contrary is made by the Parliament by law. Therefore even after the coming into force of the Constitution. State wielded the power to levy and collect sales tax on the sale of newspaper and till the Tax on Newspapers (Sales and Advertisements) Repeal Act, 1951, Act 28 of 1951 was enacted by the Parliament. The Act provided for the repeal of certain State laws in so far as they sanction the law of taxes on the sale or purchase of newspapers and on advertisements published therein. Consequently from the date of passing of Act 28 of 1951 the State's power to levy sales tax on the sale of newspapers etc. ceased.

12. The Constitution (Sixth Amendment) Act, 1956 came into force on 11.09.1956. By the above Act both Entry 54 in the State List and Entry 92 in the Union List were amended, which reads as follows:

Entry 54 of the State List "Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92A of List I."

Entry 92A of the Union List: "Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

It is to be noted that though the 6th amendment to the Constitution came into force on 1.11.1956 the Central Sales Tax Act was enacted on 21.12.1956, yet in the definition of goods in Section 2(d) of the CST Act 1956 "newspaper" was not included. This position continued till the CST Amendment Act 1958 was passed which came into force on 1.10.1958. The word "newspaper" was excluded from the definition of goods u/s 2(d) only in the second amendment to the CST Act. We may in this connection refer to the definition of "goods" in the CST Act which reads as follows:

"goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include (newspaper) actionable claims, stocks, shares and securities.

The above facts would indicate that in the definition of goods though originally "newspaper" was included the same was not included by the CST Amendment Act 31 of 1958. Therefore with effect from 1.10.1958 newspaper was excluded from the definition of goods in Section 2(d) of the CST Act. We may in this connection point out that the petitioner had filed application dated 19.7.1957 for registration under Sections 7(1) and 7(2) of the CST Act so as to avail of the concessional rate of tax in respect of purchase of various items of goods specified therein. Later petitioner had also submitted another application on 8.1.1958 to include registration u/s 7(2) also for the purchase of all goods from outside the State of Kerala other than newsprint. On 9.5.1968 the Sales Tax Officer II Circle, Kottayam had proposed to amend the registration certificate issued to the petitioner on 27.7.1957 to bring it in conformity with the CST (Amendment) Act permitting the petitioner to purchase goods for use in the manufacture and sale of (i) printing paper, art cord, ink (to be used for the purpose other than printing newspaper) and (ii) type metal, stitching wire (to be used for purpose other than printing newspaper). Proceedings dated 9.5.1968 was the proposal for amending the registration certificate. In answer to the proceedings petitioner had informed the Sales Tax Officer by communication dated 10.05.1968 that even though C form could be used for purpose of purchase of raw material for the manufacture of newspaper, since the petitioner was publishing weeklies and other periodicals which did not come under the definition of newspaper, petitioner had requested for incorporating certain additional items in the certificate. Noticing that the petitioner had purchased goods for use in printing newspaper issuing C form,

show cause notice was issued for contravening the provisions of Sections 10(b) and (d) of the CST Act. Contention was raised by the petitioner that newspaper was also considered as goods irrespective of the definition excluding the same u/s 2(d). It was not acceptable to the authorities who initiated penalty proceedings for the wrong use of the C form which led to the petitioner filing O.P. No 143 of 1989 before this Court. The question posed was whether petitioner-assessee is entitled to obtain certificate u/s 7 read with Section 8 so as to gain concessional rate of tax in respect of printing papers and allied articles including spare parts, type metal, machine tools, stitching wire, coal and coke for casting purposes etc. A Division Bench of this Court held as follows:

The object of Section 8(1) read with Section 8(3)(b) of the Act is for providing a dealer a lower rate of tax u/s 8(1)(b) for sales of goods described in Section 8(3)(b) for being used by him in the manufacture or processing of goods which are intended for sale so that the goods which are ultimately sold should not become unduly expensive to the consumer by addition of a high rate of sales tax on the purchase of goods which are used in the manufacture or processing of the goods ultimately sold. Therefore in order to achieve the purpose of reaching the newspapers to the common man at a reasonable rate it is not only sufficient not to levy sales tax on newspaper but it is also essential that the dealer should be allowed concession provided u/s 8(1) read with Section 8(3)(b) for purchase of goods for use in the manufacture or processing of newsprint.

Giving a strict meaning to the word "goods" occurring in Section 8 the court took the view that petitioner is entitled to obtain certificate u/s 7 read with Section 8 of the Act so as to avail the concessional rate of tax in respect of printing papers including printing ink. The court held that the object of Section 8(1) read with Section 8(3)(b) of the KGST Act is for providing a dealer a lower rate of tax u/s 8(1)(b) for sales of goods described in Section 8 (3). The above mentioned decision was taken up in appeal before the Apex Court. Similar is the view taken by the Madras High Court in *Indian Express (Madurai) Ltd. v. Deputy Commercial Tax Officer* (1972) 29 STC 88. Contrary view was taken by the Karnataka High Court in *Printers (Mysore) Ltd v. Assistant Commercial Tax Officer* (1985) 59 STC 306(sc). In the appeal filed against the judgment in *Printers-(Mysore) Ltd's case*, supra, apex court reversed the judgment of the Karnataka High Court and upheld that of this Court. The court held that publishers of newspapers registered as dealers under the CST Act, 1956 are entitled to the benefit of Section 8(3)(b) read with Section 8(1)(b) of the Act and are entitled to purchase in the course of inter State trade at the concessional rate of 4 per cent raw materials (other than declared goods) which are specified in the certificate of registration as goods for use in manufacture or processing of goods. The court held that wherever the word "goods" occurs in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in Clause (d) of Section 2. But where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied. The court took the view that it is evident that the expression

"goods" occurring in the second half of Section 8(3)(b) cannot be taken to exclude newspapers from its purview. The court took the view that the mere fact that "newspaper" is taken out from the definition of "goods" in the CST Act would not disentitle the petitioner from its entitlement to seek inclusion of "newspaper" as such in the certificate of registration sought for u/s 7 read with Section 8 of the CST Act.

13. We have to examine the scope of Section 5(3) and the allied provisions of the KGST Act in the light of the principle laid down by the apex court in Printers (Mysore) Ltd's case and decide whether the principle laid down therein would apply in understanding the scope of the above mentioned provision in the settings under the State Sales Tax has been placed. We have already indicated in the pre Constitution period and under the Government of India Act, 1935 there was a provision in Entry 48 of List II which enabled the States to levy sales tax on newspapers and advertisements. Act 11 of 1125 which was the general law applicable on the sale of goods in the United States of Travancore and Cochin which enabled the State Government to levy tax on sale of goods in the State of Travancore as well as Cochin and provided for levy of general tax on sale of goods coming under the definition of goods in Section 2(c) therein as meaning all kinds of movable property other than actionable claims, stocks and shares and securities and including all materials, commodities and articles. Thus "newspaper" was dealt with as goods and taxed as such under Act 11 of 1125. The Constitution of India made certain specific provision regarding newspapers. Under item 54, List II of the Seventh Schedule to the Constitution of India the State has the power to tax a sale or purchase of goods other than newspapers. Under Item 92, List I of the Seventh Schedule to the Constitution of India the Centre retained such a power to tax a sale or purchase of newspapers and on advertisements published therein. Under Article 227 of the Constitution of India State could however levy tax notwithstanding the fact that the power to levy or impose such a tax was included in the Union list till a provision to the contrary is made by Parliament by law. State had the power to levy tax on the sale of newspapers, even after the Constitution was enacted, until Act 28 of 1951 was made by the Parliament. From the date of passing of the Act 28 of 1951, State's power to levy sales tax on the sale of newspapers etc. ceased. The Constitution (Sixth Amendment) Act, 1956 came into force on 11.9.1956. By virtue of that Act both Entry 54 in the State list and Entry 82 in the Union List were amended and Entry 92-A was introduced in List I. After the amendment. Entry 54 and 92 read as follows:

Entry 54, List II - Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I.

Entry 92, List I - Taxes on, the sale or purchase of newspapers and on advertisements published therein.

Entry 92-A List I - Taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade or

commerce.

It is therefore clear that by virtue of the constitutional provision State has no power to levy sales tax on the sale of newspaper. Later General Sales Tax Act 1125 (Act 11 of 1125) was repealed and the Kerala General Sales Tax Act, 1963 was enacted.

14. We may in this connection refer to an identical situation which arose with regard to the imposition of excise duty in medicine and other toilet preparations. Under item No. 40 of List II of Schedule VII of the Government of India Act, 1935 power was vested in the formerly States to levy duty on medicinal and toilet preparations. On coming into force of the Constitution of India under Entry 84 of List I of the VII Schedule power was vested in the Central Government. Article 227 however provided that the power of the State to levy excise duty continues till the provision to the contrary is made by the Parliament by law. Parliament enacted the Medicinal and Toilet Preparation (Excise Duties) Act, 1955 which came into force on April 1st, 1957. Therefore once the provision to the contrary is made, effect of the saving clause under Article 227 ceases to exist and the State Government cannot continue to levy any duty. Section 21 of the Act, repealed the State law, consequently the Excise Acts of the States under which duty was being levied on medicinal and toilet preparations containing alcohol deemed to have been repealed. On coming into force of the Central Act, the power vested in the State Government ceased to exist. Reference in this connection may be made to the decision of the Apex Court in *Adhyaksha Mathur Babu Sakthi Oushadhasala (Dacca) Pvt Ltd.*'s case AIR 1963 SC 622. Identical is the situation with regard to the Sales Tax Law, with which we are concerned in this case.

15. The KGST Act was enacted to consolidate and amend the law relating to the levy of a general tax on the sale or purchase of goods in the State of Kerala. Section 2 deals with definition clauses. The word "goods" is defined in Section 2 (xii) which reads as follows:

"goods" means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes live stock, all materials, commodities and articles (including those to be used in the (construction, fitting out, improvement or repair of immovable property or used in the fitting out, improvement or repair of movable property) and every kind of property (whether as goods or in some other form) involved in the execution of a works contract, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale.

The definition clause specifically excluded "newspapers" from the expression "goods", the reason being that after the Constitution Amendment Entry 48 of List II of the Government of India Act, 1935 has ceased to have effect and Entry 54 of List it specifically excluded "newspapers" meaning thereby State has no power

to tax on sale or purchase of newspapers. It is in tune with this entry, in the KGST Act the expression "newspaper" has been specifically excluded from the definition of goods in Section 2 (xii) of the KGST Act. The context does not warrant any other interpretation unlike sub Clause (d) of Section 2 of the CST Act. The apex court while interpreting the definition clause 2 (d) in Printers (Mysore) Ltd's case, supra took the view that so far as Central Sales Tax Act is concerned, the context warranted a different approach and held that the expression "goods" occurring in Section 8(3)(b) of the CST Act does take in, that is, does not exclude newspapers. Court noticed that the Constitution (Sixth Amendment) was made to exempt the sale of newspapers from the levy of central sales tax and never intended to create a burden. The court felt that this concern must have to be borne in mind while understanding and interpreting the expression "goods" occurring in the second half of Section 8(3)(b).

16. We are of the view, no such concern be shown while we interpret Sub-section (3) of Section 5 of the KGST Act. The situation which existed prior to and after the coming into force of the Constitution so far as Sales Tax laws are concerned is entirely different which we have already explained in the earlier parts of this judgment. Under Entry 52 of List II the State has no power to impose sales tax on newspaper which has been specifically excluded The Kerala General Sales Tax Act therefore cannot take in newspaper, that is the reason why newspaper has been specifically excluded in the definition clause of Section 2 (xii). As rightly pointed out by the Madras High Court in Indian Express (Madurai) Ltd's case, supra, it was unnecessary even to exclude the newspapers from the definition of "goods" from the Madras General Sales Tax Act, 1959, so also evidently under the KGST Act as well. The exclusion of newspaper in the definition clause was unnecessary. Even otherwise the State could not have legislated through the KGST Act to tax ""newspapers" since under Entry 52 List II of VII Schedule State has no power to impose levy on newspaper. Since the definition clause specifically excludes newspaper from the expression "goods" Sub-section (3) of Section 5, would not take in newspaper, consequently no Form 18 declaration could be issued for concessional rate of tax to the selling dealer. Resultantly the question as to whether the printing ink is an industrial raw material or not therefore calls for no examination. The further question as to whether in printing of newspaper, any manufacturing process is involved or not or only production is not relevant to the issue raised. Once it is found that the definition clause 2(xii) does not take in "newspaper" the concessional rate of 3% is not attracted, and hence issue of Form 13 for the purchase of printing ink is a clear misuse of the statutory form under Sub-section (3) of Section 5 attracting penalty proceeding u/s 45A of the KGST Act.

17. We therefore find no infirmity in the proceedings initiated u/s 45A of the Act as against the petitioner. Petitioner has raised a contention that imposition of penalty at double the amount of tax due on the purchase turnover is cumbersome, arbitrary and exorbitant. Further counsel also submitted that Form 18 was issued on the bona fide belief that the selling dealer is entitled to

concessional rate of tax. Counsel submitted that if at all there is breach of Sub-section (3) of Section 5, the breach flows from a bona fide belief and hence the authority, may be directed to reconsider the question of penalty imposed. Considering the facts and circumstances of the case, we are inclined to give a direction to the assessing authority to examine whether imposition of penalty at double the rate is justified in the facts and circumstances of the case, within a period of two months from the date of receipt of a copy of this judgment. With the above direction, this Writ Appeal is dismissed.