

---

**(1985) 12 KL CK 0012**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 132 of 1980**

Rehmath Trading Co.

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

---

**Date of Decision :** 04-12-1985

**Acts Referred:**

Kerala General Sales Tax Act, 1963 — Section 5  
Kerala General Sales Tax Rules, 1963 — Rule 32(14)

**Citation :** (1990) 78 STC 324

**Hon'ble Judges :** V.S. Malimath, C.J;K. Sukumaran, J

**Bench :** Division Bench

**Advocate :** P.A. Mohammed T, for the Appellant; The Government Pleader, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

V.S. Malimath, C.J.—The appellant is a dealer registered under the Kerala General Sales Tax Act, 1963, dealing with tapioca. He challenged the provisional assessment for July and August, 1977, in O.P. No. 4421 of 1977-I. The case of the appellant is that he is not the last purchaser and therefore not liable to tax. The authorities have taken the view that the appellant not having furnished the requisite information in the prescribed form No. 25 as required by Sub-rule (14) of Rule 32 of the Rules framed under the Act, he cannot claim that he is not the last purchaser and therefore not liable to sales tax in respect of the transactions in question. The stand taken by the appellant before the learned single Judge was that it is open to the appellant to prove that he is not the last purchaser by adducing other satisfactory evidence before the authorities even though he is required by Sub-rule (14) of Rule 32 to furnish the relevant information in regard to the transaction in question in the prescribed form No. 25. The learned single Judge has dismissed the writ petition holding that the provisions of Sub-rule (14) of Rule 32 are mandatory and, therefore, the appellant cannot be permitted to prove that he is not the last purchaser by adducing other satisfactory evidence before the assessing authorities, he not having furnished the relevant

information in prescribed form No. 25 as required by Sub-rule (14) of Rule 32. The learned single Judge having dismissed the writ petition on the aforesaid ground the said decision is challenged in this appeal. The learned Government Pleader has, however, taken the stand that even assuming that there is substance in the contention of the appellant that the provisions of Sub-rule (14) of Rule 32 are not mandatory and that therefore the assessee can prove that he is not the last purchaser by adducing other satisfactory evidence, the appellant not having produced any satisfactory evidence in this case, his writ petition is liable to fail. On facts that appears to be the position. However as the main question is likely to arise again and again, we have heard the learned counsel for the appellant on this question and we propose to deal with the contention as follows :

2. The question for consideration is as to whether Sub-rule (14) of Rule 32 extracted below is mandatory or directory. Sub-rule (14) of Rule 32 reads thus :

"(14) Every dealer in goods taxable at the point of last purchase in the State, shall if he is not liable to tax on such goods by reason of his not being the last purchaser in the State obtain a declaration in form 25 from the person to whom he has sold the goods. Every purchaser shall issue such a declaration to the seller. The declaration so obtained shall be submitted to the assessing authority on or before the twenty-fifth of the month succeeding that to which the sales relate along with a statement of such declarations showing the name and address of the dealers to whom the goods were sold with the particulars of sale bill, quantity, and value, and the total turnover covered by such declarations".

The charging section as then in force is Section 5 which provides that every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than twenty-five thousand rupees and every casual trader or agent of a non-resident dealer, whatever be his total turnover for the year, shall pay tax on his taxable turnover for that year:

(i) in the case of goods specified in the First or Second Schedule, at the rates and only at the points specified against such goods in the said Schedules ; and

(ii) in the case of other goods, at (he rate of four per cent at all points of sale.

Tapioca is at entry 72 of the First Schedule to the Act. The tax is leviable at the point of last purchase in the State by a dealer who is liable to tax u/s 5 of the Act. The first proviso to entry 72 provides that a dealer shall not be liable to pay tax in respect of tapioca if his turnover of the purchase of tapioca within the State is less than thirty-five thousand rupees and such tapioca is sold for domestic consumption and for use as food material. The second proviso provides that an authorised retail distributor appointed under the Kerala Rationing Order, 1966, shall not be liable to pay tax in respect of tapioca sold to ration card holders, whatever be his turnover. It is clear from entry 72 that it is only the last purchase in the State in respect of a dealer which is liable to tax u/s 5 of the Act. The contention of the learned counsel for the appellant that we should construe

Sub-rule (14) of Rule 32 as directory is principally on the ground of great hardship and inconvenience that would be caused to the dealers. He submitted that as long as the authorities can be furnished with good and satisfactory material in proof of the contention of the assessee that he is not the last purchaser, there is no good reason why the assessee should be saddled with tax liability only because declaration as contemplated by Sub-rule (14) of Rule 32 has not been furnished. If we analyse Sub-rule (14) of Rule 32 it becomes clear that every dealer who intends to take the stand that he is not the last purchaser and therefore not liable to tax is required to obtain a declaration in form No. 25 from the person to whom he has sold the goods. The person to whom the goods are sold has also been fastened with the liability of issuing such a declaration to the seller. There is a further obligation on the part of the dealer to obtain such a declaration and of submitting the same to the assessing authority on or before the twenty-fifth of the month succeeding that to which the sales relate along with a statement of such declarations showing the name and address of the dealers to whom the goods were sold with the particulars of sale bill, quantity, and value, and the total turnover covered by such declarations. It is difficult to accept the contention of Sri P. A. Mohammed, the learned counsel for the appellant, that the requirements of Sub-rule (14) of Rule 32 impose an onerous obligation on the dealer in the matter of obtaining declarations in form No. 25 from persons to whom the goods are sold and of submitting the same to the assessing authority within the prescribed time. It is necessary to point out that an obligation has been cast on the persons who purchase tapioca from the dealer, of furnishing the necessary declaration in form No. 25 at the time of transaction. We find it difficult to believe that the person to whom goods are sold will not be in a position to discharge the obligation imposed on him by Sub-rule (14) of Rule 32. All that the dealer is required at that time is to secure from the persons to whom the goods are sold the necessary declaration in form No. 25. The further obligation of the dealer is to forward the same to the assessing authority within the prescribed time along with the necessary information. A person who is a dealer in the goods therefore will not find it a serious obligation. We find it therefore difficult to accept the contention of the learned counsel for the appellant that great hardship will be caused to the dealers is a factor to be taken into consideration for the purpose of considering this provision as directory. The principles for deciding as to whether a particular provision is mandatory or directory are well-settled. The object of the statutory provision must be taken into account, the mischief sought to be averted must be borne in mind and the inconvenience and hardship that will be caused by taking one or the other view should be taken into consideration. It is clear from the object of Sub-rule (14) of Rule 32 that the possible evasion of tax is what is sought to be averted. It is not easy and possible for any purchaser at that point of time to be certain that he would be the last purchaser. It is therefore very much in the interest of the dealer himself to be armed with the necessary declaration in form No. 25 from the person to whom the goods are sold by him. The further obligation that is imposed by Sub-rule (14) of Rule 32 that the declarations obtained should be

forwarded to the assessing authority within the prescribed time makes it clear that the intention of the rule-making authority is to ensure that there is no scope for fabricating the evidence at a later stage. We have therefore no hesitation in taking the view that the object of Sub-rule (14) of Rule 32 is to ensure that there is no evasion of tax liability and that the necessary information becomes available to the assessing authority without any difficulty whatsoever. Having regard to the object of the rule and the mischiefs sought to be averted, we have no hesitation in taking the view that Sub-rule (14) of Rule 32 must be construed as mandatory and not directory. We, therefore, agree with the view taken by the learned single Judge in this behalf.

3. On merits we have already observed that the appellant has not produced any material in support of his case that he is not the last purchaser in respect of the transaction in question. Thus there is no substance in the merits of the case whatsoever.

For the reasons stated above, the appeal fails and it is dismissed. No costs.