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(1967) 05 CAL CK 0029

In the Calcutta High Court

Case No : Sales Tax Reference No. 407 of 1962

Shri Anil Kumar Dutta and Others — APPELLANT

Vs

Additional Member, Board of Revenue — RESPONDENT

Date of Decision : 29-05-1967

Acts Referred:
Bengal Finance (Sales Tax) Act, 1941 — Section 5(2)(a)(ii)

Citation : (1967) 20 STC 528

Hon'ble Judges : K.L. Roy, J;Banerjee, J

Bench : Division Bench

Advocate : S.R. Sen and A.K. Ray Chaudhury, for the Appellant;K.C. Mukherjee, for the Respondent

Judgement

Banerjee, J.—This is a reference u/s 21 (3) of the Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as the Act).

2. The assessee is a registered dealer under the Act. The period with which we are concerned is four quarters ending with Chaitra, 1360 B.S. (corresponding to April 13, 1954). In the return filed by the assessee-dealer, a sum of Rs. 15,99,800-1-9 was claimed as deduction from the gross turnover, being sales to registered dealers, u/s 5(2)(a)(ii) of the Act. The claim for deduction was supported by usual declarations, in the prescribed forms furnished by the purchasing dealers. The Commercial Tax Officer was not satisfied with the declarations covering sales amounting to Rs. 6,94,285-10-0, either because they were not duly filled up or because they were misused or because the purchasing dealers did not appear to him to be genuine dealers, and disallowed the claim to that extent.

3. The assessee-dealer preferred an appeal, against the order of the Commercial Tax Officer, before the Assistant Commissioner of Commercial Taxes. It was contended, before the appellate authority, that the disallowance of the sum of Rs. 6,94,285-10-0 by the Commercial Tax Officer was based on trivial grounds and that the assessee-dealer should not be penalised because some of the

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purchasing dealers, who were holders of registration certificates, became later on untraceable. The appeal partly succeeded before the Assistant Commissioner of Commercial Taxes and he reduced the amount of disallowance from Rs. 6,94,285-10-0 to Rs. 6,25,497-14-0.

4. Thereupon, the assessee-dealer filed a revision petition before the Commissioner of Commercial Taxes, West Bengal. The case was dealt with by an Additional Commissioner of Commercial Taxes, who dismissed the appeal and further enhanced the figure of disallowance from Rs. 6,25,497-14-0 to Rs. 6,63,642-2-0.

5. At last, the assessee-dealer filed a revision petition before the Board of Revenue, West Bengal, u/s 20(3) of the Act. The Board of Revenue partly allowed the application for revision and reduced the amount of disallowance from Rs. 6,63,642-2-0 to Rs. 2,61,336-6-0. We shall refer to the reasons given by the Board of Revenue later on. Dissatisfied with the order of the Board of Revenue, the assessee-dealer tried to induce the Board to refer certain questions of law, arising out of the order, to this Court, for opinion. Therein failing, the assessee-dealer moved this Court u/s 21(3) of the Act and obtained an order calling upon the Board to make a statement of case on the following questions of law :

(i) Whether the defects in the declaration in Form XXIV furnished are vital to justify the disallowance of the deduction claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs. 19,132-12-0 made to Messrs Horie Stores ;

(ii) Whether the defects in the declaration in Form XXIV furnished are vital to justify disallowance of the deductions claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs. 19,924-4-0 and Rs. 21,729-7-0 made to Messrs Asoka Stores;

(iii) Whether the defects in the declaration in Form XXIV furnished are vital to justify the disallowance of the deduction claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs. 8,910-4-0 to Messrs Bolai Chand Bhuia ;

(iv) Whether the defects in the declaration in Form XXIV furnished are vital to justify disallowance of the deduction claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941 in respect of sales of Rs. 17,780-9-0 made to Messrs Debi Prosad Basudeo ;

(v) Whether the defects in the declaration in Form XXIV furnished are vital to justify disallowance of the deductions claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs. 9,448-6-0 and Rs. 13,915-8-0 made to Messrs Sen Dutta & Co.;

(vi) Whether there are admissible evidence and vital defects in the declaration in Form XXIV furnished to justify disallowance of the deduction claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs.

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6,391-12-0 made to Messrs Biswanath Choudhury;

(vii) Whether there are admissible evidence and vital defects in the declaration in Form XXIV furnished to justify disallowance of the deduction claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs. 11,195-3-0 made to Messrs Lakhi Stores;

(viii) Whether there are admissible evidence and vital defects in the declaration in Form XXIV furnished to justify disallowance of the deduction claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs. 11,937-2-0 made to Messrs Rabindra & Company ;

(ix) Whether there are admissible evidence and vital defects in the declarations in Form XXIV furnished to justify disallowance of the deductions claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs. 17,371-12-0, Rs. 16,863-8-0 and Rs. 22,759-8-0 respectively made to Messrs G. S. Syndicate;

(x) Whether there are admissible evidence and vital defects in the declarations in Form XXIV furnished to justify disallowance of the deductions claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs. 18,517-12-0 and Rs. 15,378-10-0 made to Messrs Diana Distributors ;

(xi) Whether there are admissible evidence and vital defects in the declaration in Form XXIV furnished to justify disallowance of the deduction claimed u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, in respect of sales of Rs. 30,031 made to Messrs Basudev Bhandar.

6. Now, the questions may be classified into two groups. In questions Nos. 1 to 5, the point for consideration is whether on account of defects in the declaration forms, the claim for deduction made by the assessee-dealer, was rightly disallowed. In questions Nos. 6 to 11 the point for consideration is whether there was "admissible evidence" in support of the grounds for disallowance and further whether on account of "vital defects" in the declaration forms the disallowance was justified.

7. It is necessary for us to refer to certain provisions of the Act, at this stage, which are material for answering the questions. Section 4(1) of the Act provides :

With effect from such date as the State Government may, by notification in the Official Gazette appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the date so notified.

8. Section 5 of the Act deals with rates of tax. Sub-section (2) of Section 5 reads as follows :

In this Act the expression ''taxable turnover'' means, in the case of a dealer who is liable to pay tax u/s 4, that part of his gross turnover during any period which

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remains after deducting there from?

(a) his turnover during that period on-

(i) the sale of goods declared tax-free u/s 6 ;

(ii) sales to a registered dealer of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for resale by him, or for use by him in the manufacture of goods for sale or for use by him in the execution of any contract, and of containers or other materials for the packing of goods of the class or classes so specified :

Provided that in the case of such sales a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form obtainable from the prescribed authority is furnished in the prescribed manner by the dealer who sells the goods.

9. Section 26 confers upon the State Government the power to make Rules. In exercise of that power, the State Government framed a set of Rules known as the Bengal Sales Tax Rules, 1941. The material portion of Rule 27A is couched in the following language:

(1) A dealer who wishes to deduct from his gross turnover the amount in respect of a sale on the ground that he is entitled to make such deduction under the provisions of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 shall, on demand, produce in respect of such a sale,-

(a) * * * (b) in any other case, the copy of the relevant cash memo, or bill, according as the sale is a cash sale or a sale on credit, and a declaration in writing signed by the purchasing dealer or by such other person as may be authorised in this behalf by such dealer that the goods in question are-

(1) specified in the certificate of registration of such dealer and are intended for resale or are required by such dealer for use by him either in the manufacture of goods for sale or in the execution of any contract, or

(ii) required by such dealer for the packing of any goods.

(2) A dealer wishing to make a deduction under Clause (b) of Sub-rule (1) shall not accept, nor shall the purchasing dealer give, a declaration mentioned in the said clause except in a form obtainable on application by the purchasing dealer from the appropriate Commercial Tax Officer and not declared obsolete and invalid by the Commissioner under the provisions of Sub-rule (9):

Provided that no single form shall cover more than one transaction of sale, except in cases where the total amount covered by one form is equal to or less than Rs. 5,000 or such other amount as may be notified in the Calcutta Gazette in this behalf by the Commissioner.

10. Keeping in view the aforesaid provisions of law, we take up for consideration the first group of questions, namely questions Nos. 1 to 5.

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Question No. 1.-Defects in the declarations, which are all in Form XXIV, furnished by Messrs Horie Stores, in respect of sales made to them, as noticed by the Board of Revenue, were : "One of the declaration forms does not show the date of registration certificate of the purchasing dealer. This is a vital omission and this particular declaration form No. D/l57634 has been rightly rejected."

The Board, however, disregarded the grounds for rejection of the other declaration form furnished by Horie Stores and allowed deduction of the sum covered by the said declaration.

Question No. 2-Defects in two of the declarations, all in Form XXIV, supplied by Asoka Stores, in respect of sales made to them, as noticed by the Board, were : "The name of the purchasing dealer is Asoka Stores and not Asaka Stores as shown in the declaration forms. One of the declaration forms gives the wrong date of the registration certificate of the purchasing dealer, while the other one gives one the impression that whoever issued this form was leaving enough scope to the selling dealer to make additional entries in the form. Both the declaration forms have been rightly rejected."

Question No. 3.-Defects in the declaration, in Form XXIV supplied by Messrs Balai Chand Bhuia, in respect of sales made to them, as noticed by the Board were : "The date of the registration certificate of the purchasing dealer has not been recorded in this form. This is a vital defect and the declaration form has been rightly rejected."

Question No. 4.-Defects in the declaration, in Form XXIV supplied by Messrs Debi Prosad Basudeo, in respect of sales made to them, as noticed by the Board, were : "The cumulative effect of the various suspicious circumstances attached to this form, namely, non-dating of the issue of the form, coupled with the omission to cast the total of the sales evidenced by this form, and the fact that the last of the transactions evidenced by it bears a date within a month of the purchasing dealer''s surrender of the registration certificate, should lead to its rejection. It has been rightly rejected."

Question No. 5.-Defects in the two declarations, all in Form XXIV, supplied by Messrs Sen Dutta & Co., in respect of sales made to them, as noticed by the Board, were : "One of them shows several transactions said to have taken place in April, and the other several transactions being dated 27th May, 1953. The registration certificate of this dealer was cancelled on 25th June, 1953. Another peculiar feature about both these declaration forms is that the totals of the sales were not cast, although taken over to the reverse page. In the circumstances, the grounds for rejection of these two forms do not appear to me to be inadequate."

11. Mr. S. R. Sen, learned counsel for the assessee-dealer, placed strong reliance on a decision of this Court in Durga Sree Stores v. Board of Revenue, West Bengal [1964] 15 S.T.C. 186, in which P. N. Mookerjee, J. (Amaresh Roy, J., agreeing with him) overlooked certain defects in filling up declaration forms with

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the following observations :

Mr. Mukherjee has argued by reference to the above forms that, in the declaration forms in question the purpose of the purchase had to be specified by striking out whichever was not applicable and he has produced before us the declaration forms, which were used in the transactions involved in the present case to show that, in none of those, any of the four alternatives has been struck out. Mr. Mukherjee accordingly contends that the said declaration forms did not comply with the requirement of Rule 27-A. The other defect, which weighed with the Assistant Commissioner of Commercial Taxes and which was relied on by Mr. Mukherjee before us, was that, in the relevant forms, (No. XXIV) used in the instant cases, at the right hand bottom, below ''signature and status of the person signing the declaration'', the date had not been mentioned. This second point of alleged defect, urged by Mr. Mukherjee, can at once be disposed of by pointing out that, while, in the forms, which were actually used in these transactions, there is an entry for date printed, yet we find that the form actually prescribed in the Bengal Sales Tax Rules, 1941, and printed in the Government publication, corrected up to 1st September, 1956, at page 50, does not contain any entry for date below or under ''signature''. Inclusion of entry for date in the forms supplied is, therefore, unauthorised. Accordingly, omission of the date under the signature cannot be considered a defect or non-compliance with any provision of the Act or the Rules. It is curious how, in the printed forms, which were issued by the department for use by the dealers, this additional entry about date could come to be included, thereby deviating from the form, prescribed under the Act. Mr. Mukherjee could not explain this discrepancy or divergence.

Regarding the first defect said to have been brought about by the non-striking out of any of the four alternatives mentioned in the printed form (No. XXIV) as purpose of the purchase, it appears that the connected Forms Nos. IIA and IIB (the registration certificates) themselves contemplate that the purpose of the purchase may well be either the purpose of manufacture or resale or any of several alternatives mentioned in the foot-note of these forms either ''wholly'' or ''mainly'' or ''partly''. If the certificate of registration of any particular registered dealer would include those multiple purposes then, in the declaration form, all the alternatives taken together may very well be the purpose of purchase and none of the entries in Form No. XXIV would require to be scored out. In the present case, there is nothing to show that the certificates of registration of the dealers to whom the goods in question were sold, did not include those multiple purposes. Besides, in view of the contents and structures of the several forms (Nos. IIA, IIB and XXIV), it seems to us that the mere non-striking out of the alternatives would not, in any sense, be a fatal defect.

12. Mr. Sen contended on the authority of the above-quoted decision, that the provisions for filling up of the forms, as in Section 5(2)(a)(ii) and in Rule 27A, were merely directory in nature and not mandatory. He, therefore, contended that non-compliance with the provisions of law in filling up a declaration form will

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not invalidate but will merely make it irregular. If the irregularity was substantial, then the revenue might emphasise upon the irregularity and reject the declaration form. But where the irregularity was not substantial, the declaration form should not be rejected on trivial grounds. He indicated the line of distinction between substantial and unsubstantial non-compliance and submitted that if an omission or an error did make the statement, to be made in the declaration, unidentifiable then the omission or error should be treated as substantial.

13. Mr. K. C. Mukherjee, learned counsel for the revenue, however submitted that the provisions of Section 5(2)(a)(ii) and Rule 27A were mandatory. In this context he emphasised upon the proviso to Section 5(2)(a)(ii), which prescribed that declarations were to be duly filled up and singed by the registered dealer, to whom the goods were sold, and were to contain the prescribed particulars on the prescribed form. He also emphasised upon the language of Rule 27A, which prescribed that a dealer shall, on demand, produce a declaration in writing containing certain prescribed particulars. He submitted that on the very language of the statute and the rules thereunder framed, it amply appeared that the provisions were mandatory and no deviation therefrom should be permitted or ignored.

14. Now, when a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, doubt often arises as to the intention of the Legislature. Where indeed the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, no doubt can be entertained as to the intention. The position is the same where compliance is made, in terms, a condition precedent to the validity or legality of what is done. The neglect of the statutory requisite in such cases would obviously be fatal.

15. In other cases, such prescriptions are considered as merely directory, the neglect of which did not affect its validity or involve any other consequence than a liability to a penalty, if any were imposed, for breach of the enactment. The propriety indeed of ever treating the provisions of any statute in the latter manner has sometimes been questioned, but it is justifiable in principle as well as abundantly established by numerous authorities.

16. In Maxwell on Interpretation of Statutes (9th edition) the following passage appears at pages 373-374 :

It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may, perhaps, be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the, question is in the main governed by considerations of convenience and

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justice and when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the Legislature. The whole scope and purpose of the statute under consideration must be regarded. The general rule is that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

A strong line of distinction may be drawn between cases where the prescriptions of the Act affect the performance of a duty and where they relate to a privilege or power. Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is therefore probable that such was the intention of the Legislature. But when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

17. Now, declaration forms are to be furnished by the registered dealer who purchases the goods. The purchasing dealer is (i) duly to fill up the prescribed form, (ii) and to sign the same. The duty is thus cast upon the purchasing dealer to fill up the prescribed form in the prescribed manner and therein include the prescribed particulars. If the purchasing dealer fails or neglects to fill up the prescribed form in the prescribed manner or fails or neglects to include the prescribed particulars therein, the selling dealer may not compel him to correct the errors or omissions. The question is, should the selling dealer be made to suffer for acts of the purchasing dealer, which he can neither control nor regulate. The answer to the question depends upon the aim and object behind the provisions contained in the proviso to Section 5(2)(a)(ii) of the Act. u/s 5(2) of the Act, the taxable turnover is determined after deducting from the gross turnover the amounts of sales made to registered dealers. In order to assure the revenue that such sales have really been made to registered dealers, the Act requires that registered purchasing dealers shall certify the sales as made to them, by supplying to the selling dealer the prescribed declaration forms duly filled up and signed by them. There is an object behind the requirement. If sales to registered dealers were not required to be covered by the declaration forms, it might have been possible for dishonest selling dealers to claim enormous deductions by way of sales allegedly made to registered dealers, even if no such sales had in fact been made. In order to identify to which particular registered dealers such sales have been made, it is necessary that the registration certificate number of the purchasing dealer shall be included in the declaration form. By way of further particularisation, the date of the certificate is also to be included in the declaration form. Rule 27A read with the prescribed form further

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requires that the purchasing dealer shall include a certificate, in the declaration form in the following language,

Certified that the goods ordered for in our purchase order No. dated ---------- purchased from you as per bill/cash memo, stated below ---------- supplied under your challan No. dated are for resale -------- use in manufacture of goods for sale ---------- use in the execution of contracts ---------- packing of goods for resale.

18. The purchasing dealer is required to strike out portions of the certificate which are not applicable to the sale in question and to fill up particulars of bills or cash memos and also the other particulars indicated in the certificate, in the places left blank, in the form, for the purpose. The name of the purchasing dealer is also to be written in full. The declaration form is to be signed by the purchasing dealer or his authorised agent and the status of the persons signing the declaration forms is also to be indicated on the form.

19. Mr. K. C. Mukherjee, learned counsel for the revenue, submitted that there was an object behind the multiple particulars to be included in the declaration forms. According to him, the declaration forms are often misused by dishonest dealers in several manner. False particulars are included in the declaration forms in order to avoid payment of taxes ; the declaration forms are also traded with for value and made over to other registered dealers for similar misuse. Since cover of declaration forms grants a sort of immunity to registered dealers from taxation, he submitted, the requirements of Section 5(2)(a)(ii) proviso and of Rule 27 A read with Form XXIV should be treated as obligatory or mandatory, and non-compliance therewith should invalidate the declaration.

20. In our opinion, Mr. Mukherjee is not wholly right in his contention. If the selling dealer had himself been clothed with the control over the filling up of declaration forms, it might have been possible to hold that he must produce declaration forms "duly filled in in order to be able to claim exclusion of sales to registered dealers in the matter of computation of taxable turnover. But the law is such that he is to depend upon the ability and willingness of the purchasing dealer to fill up forms and can produce declaration forms filled up in such manner as the purchasing dealer may care to give him. If strict compliance with the formalities and legal provisions be insisted upon, then the innocent may suffer for no fault of his. On the other hand, if even substantial compliance of the legal provisions be not insisted upon, then the purpose of the Act may be defeated, forms may be misused and revenue may suffer. Since considerations of convenience and justice determine whether a particular legal provision shall be treated as imperative or directory and since to penalise the innocent for fault of another is not in consonance with the principles of justice and since such insistence may lead to very grave inconvenience to innocent selling dealer, we are of the opinion that the provisions of Section 5(2)(a)(ii) proviso read with Rule

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27A and the prescribed form should be treated as directory, which need be substantially complied with. This is, in our reading, also the implication of the judgment of this Court in Durga Sree Stores [1964] 15 S.T.C. 186 in which the non-striking off of inapplicable portions in the declaration was condoned, in the view that it was not fatal.

21. In the instant case, the defect in the declaration forms supplied by Messrs Horie Stores, covered, by question No. 1, was that the date of the registration certificate of the purchasing dealer was not given. The number of the registration certificate was there ; the omission to fill in the date of the registration certificate did not make the purchasing dealer unidentifiable. The omission was, therefore, not vital or substantial. As such the declaration should not have been rejected and the amount of sale covered thereby should not have been added back to the taxable turnover.

22. The defects in the two declaration forms supplied by Asoka Stores, covered by question No. 2, were that in one of them the name of the purchasing dealer was mis-spelt, that is to say, instead of writing Asoka Stores the name was written as Asaka Stores. This mis-spelling did not make the purchasing dealer unidentifiable, because the registration certificate number was duly given. Then again, in one of the declaration forms, although the number of the registration certificate was correctly given a wrong date thereof was included. An error or omission in giving the date of the registration certificate in the declaration form, in our opinion, is not so substantial as to make the dealer unidentifiable. We do not regard this error as of substantial nature. The last defect that was noticed was that in one of the declarations enough space was left to enable the selling dealer to make additional entries in the form. This, in our opinion, is an improper criticism. The rules do not require that if any space be left in the form, after filling up necessary particulars, the same should be crossed out. We, therefore, do not find any substantial defect in the forms, which merit their total rejection.

23. The defect noticed in the declaration forms supplied by Messrs Balai Chand Bhuia covered by question No. 3, was that the date of the registration certificate of the purchasing dealer was not recorded. This is not a vital defect, as we have already observed hereinbefore.

24. The defects in the declaration forms supplied by Messrs Debi Prosad Basdeo, covered by question No. 4, were three-fold, that is to say the form was not dated, the total of the several sales was not cast and one of the transactions covered by the declarations took place shortly before the purchasing dealer surrendered his registration certificate. In our opinion, the defects have been overemphasised. The form of the declaration has a blank space for being dated. This place was left blank. Nevertheless, the transactions were all dated. The omission to date the form, when the transactions were all dated, did not make the non-dating of the form a matter of great importance, because the transactions concerned indicated the approximate time when the declaration form was supplied. Then again, the form does not require that the total of the

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sales should be cast. Lastly, the fact that the sales were made shortly before the surrender of the registration certificate by the purchasing dealer is a matter of little consequence. The purchasing dealer was a registered dealer, who was entitled to make purchases without payment of sales tax, so long as he continued to be a registered dealer. A selling dealer is not likely to know when a purchasing dealer may surrender, his registration certificate. To find fault with such sales is to suspect a transaction on conjectural grounds and no more than that. We are, therefore, of the opinion that the requirements of law were substantially complied with in this case also.

25. The defects noticed in the declaration form supplied by Messrs Sen Dutta & Co., covered by question No. 5, were two-fold, that is to say, the sale transactions took place shortly before the cancellation of the registration certificate of the purchasing dealer and failure on the part of the purchasing dealer to total up the transactions covered by the form. We have already observed that it is not necessary to total up the several sales covered by the form, under the provisions of the Act read with the rules and the prescribed forms. Then again, the fact that the transactions with the purchasing dealer took place shortly before the cancellation of the certificate of the purchasing dealer does not have this effect that it invalidates the declaration furnished by the purchasing dealer. So long as a purchasing dealer remains a registered dealer, he is entitled to purchase without payment of sales tax against the declaration forms supplied by him. The cancellation of registration of such a purchasing dealer on a later date does not invalidate the declaration form, given in respect of purchases effected prior to such cancellation.

26. In the view that we take, we answer questions Nos. 1 to 5 in the negative.

27. We now turn to consider the second group of questions, namely, questions Nos. 6 to 11.

28. The declaration forms covered by questions Nos. 6 to 11 were all rejected on a two-fold ground, namely, existence of "admissible evidence" and vital defects "to justify disallowance".

Question No. 6.-Defects in the declaration forms, all in Form XXIV, supplied by Messrs Biswanath Choudhury, in respect of sales made to them, as noticed by the Board, were : "Local inspections made not later than 22nd January, 1953, showed that this dealer had already closed down his business. The dealer furnished two forms to the petitioner. One of these is not dated, but the material transactions are shown to have taken place in April, 1953. The other one is dated 30th May, 1953, and the last date of the many transactions shown in this declaration form is shown to have taken place on 30th May, 1953. For reasons given by the learned Additional Commissioner the declaration form has been rightly rejected." This necessitates a reference back to the order of the Additional Commissioner in respect of the declaration form which reads as follows: "The Inspector by his report dated 25th March, 1953, informed that the dealer has

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closed down his business as such registration certificate was cancelled on the 2nd June, 1953."

Question No. 7.-The defects in the declaration, in Form XXIV, supplied by Messrs Lakhi Stores, in respect of sales made to them, as noticed by the Board, were: "This declaration form evidences a number of sale transactions beginning from 2nd November, 1953 to 19th November, 1953. The purchasing dealer must have been known to the petitioners, otherwise the latter would not have allowed so many transactions to take place before receiving the declaration forms. On local inspection round about 11th November, 1953, it was found that the purchasing dealer had long suspended his business. Genuineness of the sales and of the form cannot, therefore, be accepted."

Question No. 8.-Defects in the declaration, in Form XXIV, supplied by Rabindra & Co., in respect of sales made to them, as noticed by the Board, were : "It evidences a series of transactions which are said to have taken place in January, 1954. The registration certificate of this firm was cancelled on 3rd February, 1954, as upon local visit it was found that it had already closed its business. Besides, the declaration form contains two signatures which differ from one another."

Question No. 9.-Defects in the declaration, in Form XXIV, supplied by Messrs G. S. Syndicate, in respect of sales made to them, as noticed by the Board were : "One of the declaration forms does not contain the date of the registration certificate by the purchasing dealer. This is a vital omission. Another one contains hardly any signature. What passes as signature in this declaration form is materially different from the signature contained in the other two forms. Not one of the signatures in this form is dated. Although this omission taken by itself, is not material, in conjunction with the circumstances attached to the other two, I am not satisfied that the form evidences a genuine transaction."

Question No. 10.-Defects in the declarations, in Form XXIV, supplied by Messrs Diana Distributors, in respect of sales made to them, as noticed by the Board, were : "One of the forms is dated 13th January, 1954, although the last transaction recorded in it is dated 30th January, 1954. On this ground alone, this form is liable to be rejected. The other form contains two signatures, one in the front and the other at the back. Both are said to be the signatures of the proprietor. The fact that neither of them is dated is not so important, but I cannot bring myself to believe that the two signatures are of the same person. One of them is more an initial than a signature, but the handwritings appear to me to be so different that it is impossible not to hold that they are not by the same person. The two forms have been rightly rejected."

Question No. 11.-Defects in the declaration, in Form XXIV, supplied by Basudev Bhandar in respect of sales made to them, as noticed by the Board, were : "The reasons that led the Assistant Commissioner to reject this declaration form is given in his orders. It is cogent and acceptable." This necessitates a reference

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back to the order of the Assistant Commissioner in respect of this declaration which reads as follows : "Sales worth Rs. 30,031, to Messrs Basudev Bhandar, whose registration certificate was cancelled on 1st November, 1955. The declaration form produced is G. 9326. In the declaration form produced the purpose of purchase has not been stated and there is no date below the signature of the declarant. The C.T.O. seized the counterfoil declaration No. G. 9326 which was issued by M/s. Basudev Bhandar to Messrs Radha Kanta Das & Sons Ltd. for purchase of goods worth Rs. 178 only. Thus the declaration has been clearly misused and it is not also duly filled up.

29. Declaration forms supplied by Biswanath Choudhury, covered by question No. 6, were not found acceptable by the Additional Commissioner with whom the Board of Revenue agreed, on the ground that these were issued by the purchasing dealer after he had closed his business. The closure of the business by the purchasing dealer is evidenced by a report dated 25th March, 1953, by an Inspector, who made a local inspection. Closure of business of this purchasing dealer must have, therefore, taken place earlier to that'' date. One of the declarations shows that the transactions took place in April, 1953 ; the other declaration covers several transactions, the last of which took place on 30th May, 1953. After the purchasing dealer had closed his business, earlier to 25th March, 1953, there could not be any transactions with him in April or May, 1953. The . Inspector''s report is certainly evidence against the assessee-dealer. If on the grounds stated above the declarations supplied by Biswanath Choudhury were not found to be genuine, it cannot be said that the Revenue Authorities proceeded without the basis of any evidence.

30. We should notice here that in the order by the Board of Revenue there is an error as to the date of the local inspection report. Cancellation of the registration certificate of Biswanath Choudhury was made on 2nd January, 1953. The Board of Revenue erroneously thought that the local inspection was made not later than 2nd January, 1953, apparently out of confusion.

31. The defects in one of the declaration forms, namely, non-dating of the declaration forms, we do not consider fatal, for reasons herein before indicated. In the view that we take, we answer question No. 6 in the affirmative.

32. In the case of Messrs Lakhi Stores, covered by question No. 7, it appears from the Inspector''s report dated 11th November, 1953, that the purchasing dealer suspended business long time ago. The declaration covers transactions between 2nd November and 19th November, 1953. Sales after closure of the business of the purchasing dealer could not be genuine sales. If, on the basis of the Inspector''s report, which is evidence, the genuineness of the sales covered by the declaration was disbelieved, it cannot be said that the Board of Revenue proceeded without evidence. In the view taken, we think that the question should be answered in the affirmative.

33. We note, however, that no other defect, save as hereinbefore noticed, was

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indicated in respect of the declarations by the order of the Board.

34. The declaration form supplied by Rabindra & Co., covered by question No. 8, was rejected on a two-fold ground, namely, sales after the closure of the business by the purchasing dealer and difference between two signatures on the declaration forms. The Board of Revenue did not indicate when exactly the business of the purchasing dealer was closed. - It, however, appears from the orders of the Additional Commissioner that the Commercial Tax Officer himself visited the locality on 3rd February, 1954, but could not trace the purchasing dealer on that date. The transactions that are covered by the declaration took place in January, 1954. In the absence of evidence that the purchasing dealer had closed his business in January, 1954, the conclusion that no sales to the purchasing dealer took place was much too offhand. Further, the declaration form did not require to be signed in accordance with any specimen signature. We are, therefore, of the opinion that there was no such evidence or defect in the declaration form which justified its rejection. We, therefore, answer question No. 8 in the negative.

35. The declaration forms supplied by G. S. Syndicate, covered by question No. 9, were rejected on the grounds (i) omission to give the date of the registration certificate, (ii) difference of signature on one of the declaration forms with those on the other two, and (iii) non-dating of the signatures. We have already expressed the view that the omission to give the date of the registration certificate is not a vital defect and does not amount to substantial non-compliance with the provisions of the Act and the Rules. Further, unless the signature be held to be forged, difference in styles of signatures will not invalidate declaration forms, because these are not required to be signed according to specimen signature. On the authority of the decision of this Court in Durga Sree Stores [1964] 15 S.T.C. 186, we hold that the omission to put the date below the signature is not fatal. Apart from what has been observed there is no evidence against the genuineness of the transactions. In our opinion, the materials relied upon by the Board, in condemning the transactions covered by the declaration forms as not genuine transactions, are all irrelevant. We, therefore, answer question No. 9 in the negative.

36. Two declaration forms were supplied by Diana Distributors covered by question No. 10. One of them was rejected on the ground that the declaration form was dated 13th January, 1954, but covered transaction up to 30th January, 1954. This ground, in our opinion, is a valid ground for disbelieving the genuineness of the declaration. The other form was rejected on the ground that there were two signatures, one in front and other on the back of the declaration form, which did not tally, and neither of them was dated. We have already expressed the view, on the authority of the decision of this Court in Durga Sree Stores [1964] 15 S.T.C. 186 that the non-dating of signature is of little consequence. We, however,'' find fault with the Board that it acted like a handwriting expert and on mere suspicion came to the conclusion that the two

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signatures were not by one and the same person. This is all the more so because the Board compared an initial with a signature and came to the conclusion that they differed. In our opinion, there was little evidence to come to the conclusion that both the signatures were not made by the same person. In the view that we take, we answer question No. 10 in the affirmative in so far as the declaration form dated 13th January, 1954, is concerned and in the negative in so far as the other declaration form is concerned.

37. The declaration by Messrs Basudev Bhandar covered by question No. 11 was rejected on a threefold ground, namely, (i) purpose of the purchase was not stated, (ii) there was no date below the signature, and (iii) the counterfoil of the declaration form showed that the declaration was not furnished to the assessee-selling dealer but to another dealer of the name of Radha Kanta Sons Ltd., covering purchase of goods worth Rs. 178 only. On the authority of the decision of this Court in Durga Sree Stores [1964] 15 S.T.C. 186, we hold that the defects noticed in the declaration form, as in the first two grounds, were not defects at all, at least not vital defects. The other ground, however, indicates misuse of the form and that was good enough evidence to reject the declaration. In the view that we take, we answer question No. 11 in the affirmative.

38. Before we close this judgment we need refer to an argument advanced by the learned counsel for the assessee-dealer, more or less as an argument of desperation. He submitted that the local inspection reports were not shown to the assessee-dealer, the contents thereof were not divulged to him and, as such, the use of such reports against the assessee-dealer violated the principles of natural justice. We do not feel called upon to express any opinion on this argument, because the questions referred to this Court do not invite us so to do. We do not also have sufficient materials enabling us to uphold the grievance, if any, of the assessee-dealer in this respect.

39. In the result, we answer questions Nos. 1 to 5, 8 and 9 in the negative and questions Nos. 6, 7 and 11 in the affirmative. Question No. 10 is answered partly in the affirmative and partly in the negative, to the extent indicated in the body of this judgment.

40. In view of the divided success, we make no orders as to costs, in this reference.

K.L. Roy, J.

41. I agree.

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