

## SALES TAX OFFICER

v.

K. I. ABRAHAM

April, 7, 1967

[J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

*Central Sales Tax Act, 1956 (74 of 1956) Ss. 8(4), 13(3) and (4)—Declaration Forms filed after prescribed time under Rules—If s. 8(4) complied with.*

*Central Sales Tax (Kerala) Rules, 1957—Rule 6(1) third proviso, validity.*

Sales-tax under s. 8 of the Central Sales-tax Act at the rate of 7% was imposed on assessee's sales, for which declaration forms 'C' was filed after the prescribed date but before the order of assessment was made. The assessee filed a writ petition against the assessment, which the High Court allowed. In appeal, this Court,

HELD: The third proviso to Rule 6(1) of the Central Sales Tax (Kerala) Rules, is *ultra vires* of s. 9(4) read with s. 13(3) and (4) of the Central Sales Tax Act. The phrase "in the prescribed manner" occurring in s. 8(4) of the Act only confers power on the rule making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. But the phrase "in the prescribed manner" in s. 8(4) does not take in the time-element. In other words, the section does not authorise the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dealer. This view is supported by the language of s. 13(4)(g) of the Act which states that the State Government may make rules for "the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished." This makes it clear that the Legislature was conscious of the fact that the expression "in the manner" would denote only the mode in which an act was to be done, and if any time-limit was to be prescribed for the doing of the act, specific words such as "the time within which" were also necessary to be put in the statute. Therefore the assessee was not bound to furnish declarations in Form 'C' before the prescribed time in the present case. In the absence of any such time-limit it was the duty of the assessee to furnish the declarations in Form 'C' within a reasonable time and in the present case it is the admitted position that the assessee did furnish the declarations before the order of assessment was made. [522 F-523 A; 524 D-E]

*Acraman v. Herniman* 117 E.R. 1164, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 404 of 1966.

Appeal by special leave from the judgment and order dated November 29, 1963 of the Kerala High Court in O.P. No. 2165 of 1962.

*B. R. L. Iyengar and M. R. Krishna Pillai*, for the appellants.

A The respondent did not appear.

The Judgment of the Court was delivered by

**Ramaswami, J.** This appeal is brought, by special leave, from the judgment of the High Court of Kerala dated November 29, 1963 in Writ Petition, O.P. No. 2165 of 1962.

B The respondent (hereinafter called the 'assessee') was a dealer in Cocoanut oil business having inter-State sales. For the year 1959-60 the assessee was assessed to sales-tax under s. 8 of the Central Sales Tax Act (Act 74 of 1956), hereinafter called the 'Act'. Out of a total turnover of Rs. 2,30,990 and odd determined by the Sales Tax Officer, only a sum of Rs. 1,89,734 and odd was supported by proper declaration Form 'C'. Tax was there-  
 C fore imposed by the Sales Tax Officer at the rate of 1% on the turnover of Rs. 1,93,346 and at 7% on the balance, namely Rs. 37,645. The assessee did not file the declaration forms on or before the prescribed date, *i.e.*, February 16, 1961 but he actually  
 D filed the declaration forms on March 8, 1961 before the order of assessment was made, the delay being explained as due to late receipt of the declaration forms from the purchaser in Madras. The assessee preferred an appeal to the Appellate Assistant Commissioner but the appeal was dismissed. The assessee took the matter in revision before the Deputy Commissioner of Sales-tax but the revision petition was dismissed. Thereafter, the assessee  
 E moved the Kerala High Court for grant of a writ under Art. 226 of the Constitution for quashing the orders of the Sales Tax Officer dated June 13, 1961 and the order of the Appellate Assistant Commissioner dated December 13, 1961. By its order dated November 29, 1963, the High Court allowed the writ petition of the assessee and quashed the orders of assessment of sales-tax and directed the Sales Tax Officer to make a fresh order of assessment  
 F after taking into consideration the declaration forms furnished by the assessee on March 8, 1961.

Section 8 of the Act, as it stood on the material date, was to the following effect :

- G "8. (1) Every dealer, who in the course of inter-State trade or commerce—
- (a) sells to the Government any goods; or
- (b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);
- H shall be liable to pay tax under this Act, which shall be one per cent. of his turnover.
- (2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates

to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1)—

- (a) in the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State; and
- (b) in the case of goods other than declared goods, shall be calculated at the rate of seven per cent. or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—

- (a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or
- (b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government."

Section 13 states :

"(1) The Central Government may, by notification in the Official Gazette, make rules providing for—

- (a) the manner in which applications for registration may be made under this Act, the particulars to be contained therein, the procedure for the grant of such registration, the circumstances in which registration may be refused and the form in which the certificate of registration may be given;
- (b) the period of turnover, the manner in which the turnover in relation to the sale of any goods under this Act shall be determined, and the deductions which may be made in the process of such determination;

- A (c) the cases and circumstances in which, and the conditions subject to which, any registration granted under this Act may be cancelled;
- (d) the form in which and the particulars to be contained in any declaration or certificate to be given under this Act;

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(3) The State Government may make rules, not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purposes of this Act.

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(4) In particular and without prejudice to the powers conferred by sub-section (3), the State Government may make rules for all or any of the following purposes, namely :—

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(e) the authority from whom, the conditions subject to which and the fees subject to payment of which any form of declaration prescribed under sub-section (4) of section 8 may be obtained, the manner in which the form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished;

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(f) in the case of an undivided Hindu family, association, club, society, firm or company or in the case of a person who carries on business as a guardian or trustee or otherwise on behalf of another person, the furnishing of a declaration stating the name of the person who shall be deemed to be the manager in relation to the business of the dealer in the State and the form in which such declaration may be given;

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(g) the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished.”

Rule 6 of the Central Sales Tax (Kerala) Rules, 1967 read as follows :

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“6. (1) Every dealer registered under section 7 of the Act and every dealer liable to pay under the Act shall submit a return of all his transaction including those in the course of export of the goods out of the territory of India in Form II together with connected decla-

ration forms so as to reach the assessing authority on or before the 20th of each month showing the turnover for the preceding month and the amount or amounts collected by way of tax together with proof for the payment of tax due thereon under the Act.

A.

Provided that in cases of delayed receipt of declaration forms, the dealer may submit the declaration forms at any time before the assessment is made :

B.

Provided further that the delay in submitting the declaration forms shall not exceed three months from the date of sale in question :

Provided also that all declaration forms pending submission by dealers on 2-5-1960 shall be submitted not later than 16-2-1961."

C.

The first proviso to Rule 6 was inserted by notification dated January 3, 1958, the second by notification dated April 26, 1960 and the third by notification dated January 16, 1961.

D.

It was contended on behalf of the appellants that the assessee had not filed the declarations in form 'C' before February 16, 1961 according to the third proviso to Rule 6(1) and in view of the breach of this Rule the assessee was not entitled to take advantage of the lower rate of assessment under s. 8(1) of the Act. The opposite view-point was put forward on behalf of the assessee and it was argued that the third proviso to Rule 6(1) was *ultra vires* of s. 8(4) read with s. 13(4)(e) of the Act. The decision of the question at issue therefore depends on the construction of the phrase "in the prescribed manner" in s. 8(4) read with s. 13 of the Act. In our opinion, the phrase "in the prescribed manner" occurring in s. 8(4) of the Act only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. But the phrase "in the prescribed manner" in s. 8(4) does not take in the time-element. In other words, the section does not authorise the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dealer. The view that we have taken is supported by the language of s. 13(4)(g) of the Act which states that the State Government may make rules for "the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished." This makes it clear that the Legislature was conscious of the fact that the expression "in the manner" would denote only the mode in which an act was to be done, and if any

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A time-limit was to be prescribed for the doing of the act, specific words such as "the time within which" were also necessary to be put in the statute. In Stroud's Judicial Dictionary it is said that the words "manner and form" refer only "to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it". In *Acraman v. Herniman*<sup>(1)</sup> the plaintiffs had become the assignees in bankruptcy proceedings against Garret who had executed on March 4, 1850 a warrant of attorney to the defendant Herniman on the strength of which the latter had obtained judgment against him and sold his goods. A copy of the warrant of attorney was filed with the officer acting as clerk of the dockets and judgments in the court of Queen's Bench on March 11, 1850, but no affidavit of the time of execution of such warrant of attorney was filed at any time: Stat. 12 and 13 Vict. c. 106. s. 136 provided that any warrant of attorney given by a trader to confess judgment in a personal action, not filed within twenty-one days after execution in the manner and form provided by Stat. 3. G.4. c.39 should be deemed fraudulent, null and void. Section 1 of Stat. 3 G.4. c.39 required that such warrant of attorney should be filed together with an affidavit of the time of execution thereof, within twenty-one days of the execution of the warrant of attorney. Section 2 provided that if, after twenty-one days, the party giving such warrant of attorney shall be declared a bankrupt, then, unless the warrant or a copy thereof shall have been filed as aforesaid within 21 days from the execution or unless judgment shall have been signed or execution issued thereon within the same period, such warrant of attorney and the judgment and execution thereon, shall be deemed fraudulent and void against the assignees. As already stated, judgment had been signed on March 11, 1850, *i.e.*, within twenty-one days of the execution of the warrant of attorney, and it was contended on behalf of the defendant that the judgment was valid notwithstanding the failure to file the affidavit as required by section 1 of Stat. 3 G.4. c.39. The argument was rejected and it was held by the Queen's Bench that the warrant of attorney and the judgment thereon were void as against the assignees in bankruptcy. In the course of his judgment, Lord Campbell C. J. observed as follows :

"The enactment of stat. 12 & 13 Vict. c. 106, s. 136, is very plain; and I cannot agree to put a forced construction upon it. The Legislature has said there that any warrant of attorney given by a trader to confess judgment in a personal action, not filed within twenty-one days after execution in manner and form provided by stat. 3 G. 4. c. 39, shall be deemed fraudulent, null and void. The manner directed by that Act is, filing

(1) 117 E. R. 1164.

the warrant or copy, with an affidavit of the time of execution. Here are a judgment and execution on a warrant of attorney given by a trader, and the warrant filed, but without an affidavit. The plain meaning of the late Act is that such a warrant shall be null and void against the assignees. The words 'in manner and form,' refer only to the mode in which the thing is to be done, and do not introduce anything from the Act referred to, as to the thing which is to be done or the time for doing it."

The view that we have expressed as to the interpretation of s. 8(4) of the Act is also supported by the 'Note' to the form of declaration—Form C—prescribed by Rule 12 of the Central Sales Tax (Registration & Turnover) Rules, 1957. The Note states that the form is 'to be furnished to the prescribed authority in accordance with the rules framed under section 13(4)(e) by the appropriate State Government'.

For the reasons expressed, we hold that the third proviso to Rule 6(1) is *ultra vires* of s. 8(4) read with s. 13(3) and (4) of the Act. It follows therefore that the assessee was not bound to furnish declarations in Form 'C' before February 16, 1961 in the present case. In the absence of any such time-limit it was the duty of the assessee to furnish the declarations in form C within a reasonable time, and in the present case it is the admitted position that the assessee did furnish the declarations on March 8, 1961 before the order of assessment was made by the Sales Tax Officer. We are accordingly of the opinion that the assessee has furnished the declarations in Form C in the present case within a reasonable time and there has been a compliance with the requirements of s. 8(4)(a) of the Act. It follows that the High Court was right in quashing the order of assessment made by the Sales Tax Officer and directing him to make a fresh order of assessment after taking into consideration the declaration forms furnished by the assessee on March 8, 1961.

We accordingly dismiss this appeal, but as the respondent has not appeared there will be no order as to costs.

Y.P.

*Appeal dismissed.*