

Coventry Spring and Engineering Vs. Assistant Commissioner,

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Court : Sales Tax Tribunal STT West Bengal

Decided On : Apr-17-1997

Reported in : (2000)118STC170Tribunal

Judge : L R Gupta, M K Gupta

Appellant : Coventry Spring and Engineering

Respondent : Assistant Commissioner,

Judgement :

1. The issues for decision in this application filed Under Section 8 of the West Bengal Taxation Tribunal Act, 1987 being in the nature of writ application under Article 226 of the Constitution of India are : (a) whether Sub-Sections (2) and (3) of section HE of the Bengal Finance (Sales Tax) Act, 1941 (henceforth mentioned as "the Act of 1941") and Rule 54A of the Bengal Sales Tax Rules, 1941 (henceforth referred to as "the Rules of 1941") are ultra vires the Constitution of India and/or provisions of the same statute, and (b) whether the taxing authorities can invoke the aforesaid provisions for refusing to issue sales tax permits and declaration forms.

2. For proper appreciation of the issues involved, Section 11E and Rule 54A are reproduced below : "Section 11E : Assessment deemed to be made in certain cases.--(I) Notwithstanding anything contained in Sub-section (1) of Section 11, returns furnished in accordance with the provisions of Sub-section (3) of Section 10 by a registered dealer in respect of the year or years comprising period or

periods commencing on and from the day immediately following the latest year or part of a year comprising period or periods for which assessment under Sub-section (1) of Section 11 has been made or deemed to have been made under section HE and ending on or before the 31st day of December, 1992 (hereinafter referred to as "the eligible period") shall be accepted as correct and complete and all assessments in respect of such eligible period shall, subject to the provisions of Sub-section (2), be deemed to have been made on the 30th day of June, 1993 : Provided that on the failure of any dealer to furnish any return for any period of a year, the provisions for assessment of tax under this sub-section for other period or periods of that year shall, notwithstanding that returns have been furnished by such dealer for such period or periods of that year, not be applicable : Provided further that where any assessment made under Sub-section (1) of Section 11 in respect of any of the eligible periods has been set aside Under Section 20 with direction to make fresh assessment, the provisions of this sub-section shall not apply to such fresh assessment.

(2) Where the Commissioner is satisfied on information or otherwise that a registered dealer-- (b) has furnished incorrect statement of his turnover or incorrect particulars of his sales in the return submitted Under Section 10 or otherwise, relating to an assessment made under Sub-section (1) which has resulted in reduction of the amount of tax payable by him under this Act in respect of any of the periods, the Commissioner shall, subject to such conditions as may be prescribed, within six years from the date of such assessment, reopen in the prescribed manner the assessment for such period and, after giving such dealer a reasonable opportunity of being heard, make fresh assessment under Sub-section (1) of Section 11 for such period to the best of his judgment.

(2A) Where a dealer brings to the notice of the Commissioner in writing within one year from the date of assessment made under Sub-section (1) in respect of any year that due to his error in fact or in law, an amount of tax has been paid by him in excess of what was payable in respect of any return period falling within such year, the Commissioner may, if he is prima facie satisfied about such error, reopen by an order in writing such assessment for making a fresh assessment for such year under Sub-section (1) of Section 11.

(3) The Commissioner shall, while making the fresh assessment under Sub-section (2) in respect of any registered dealer for any period, direct such dealer to pay, in addition to tax assessed afresh and penalty imposed, if any, under Sub-section (1) of Section 11 a sum not less than twice, but not exceeding thrice, the amount of tax assessed by way of further penalty : Provided that no penalty shall be imposed under this sub-section on a registered dealer in respect of such period where he discovers omission or error or other facts resulting in short payment of tax due from him according to books of accounts and furnishes a declaration in the prescribed form together with a receipted challan showing payment of the balance amount of tax which is found to be payable within the 31st day of December, 1995." "Rule 54A : Where the assessment of a dealer for any period is deemed to have been made under Sub-section (1) of Section 11E, such dealer shall checkup that the figures shown in the returns for the period of assessment are in agreement with those as per books of accounts and relevant documents and his claims for sales at the concessional rate of tax or exemption from tax are supported by statutory declarations and other documents, and if he finds any discrepancy in this regard which has the effect of increasing the amount of tax payable by him during such period over the amount of tax already paid by him as per returns for such period, he shall pay the balance amount of tax which is found to be payable by him under the Act and should furnish a declaration, as far as practicable in Form III or Form III A, as the case may be, referred to in Rule 26 or Rule 26A within the 31st day of December, 1995." 3. The application appears to be unnecessarily lengthy (149 pages plus 94 pages of annexures) and the contentions are not properly arranged.

As far as possible, we summarise below the material contentions of the applicants : Applicant No. 1 is a company incorporated under the Indian Companies Act, 1913 and applicant No. 2 is a shareholder of that company as well as a citizen of India. They manufacture various types of springs and sell them to railways, automobile industry, engineering companies, steel industry and defence, etc. They also make export sales of the products outside India. Their factory is located in West Bengal at Alampur near Andul within the district of Howrah.

They also have factories at Nagpur in Maharashtra and at Jamshedpur in Bihar. The company is a registered dealer, inter alia, under the Act of 1941. The main raw materials required by it for manufacturing activity in West Bengal are special types of steel rods, bars, etc., which are imported from other States. Such steel is a declared goods Under Section 14 of the Central Sales Tax Act, 1956 and notified goods Under Section 10 of the West Bengal Sales Tax Act, 1994.

Hence, the company is required to obtain permits for consignments of steel imported into West Bengal. A similar consignment of steel was being transported from Ludhiana in Punjab in a truck of Adarsh Parivahan of Bombay. It reached the outskirts of the State of West Bengal at Chirkunda in Bihar on January 29, 1996. Applicant No. 1 approached the Assistant Commissioner of Commercial Taxes, respondent No. 1, for issuance of permit in form 42 on 29th and 31st January, 1996 and also on February 5, 1996. Permits were also desired at the same time for a few future importations. Respondent No. 1 declined to accept the application for permits on the grounds that applicant-company had not filed declaration in terms of Section 11E(3) of the Act of 1941 and Rule 54A in respect of "eligible period", namely, the years for which deemed assessments were made on June 30, 1993 Under Section 11E(1) and no balance tax had been paid therewith. On January 29, 1996 an application was also made by the company for revalidation of blank permit No. 039313B, the validity of which had expired. That prayer was also refused on the same grounds. On February 5, 1996 respondent No. 1 allegedly stated that there were strict instructions from his superiors not to issue either permits or declaration forms until declarations referred to in the proviso to Section 11E(3) were filed and tax was paid for transactions which remained unsupported by declaration forms receivable by applicant No. 1 till December, 1995. Thereafter, the company's lawyer approached the superiors of respondent No. 1 including respondent Nos. 2 and 3 (Deputy and Additional Commissioners), but in vain. Respondent No. 3 advised that the company should quantify and pay the difference of tax in instalments to be granted upon application and only then permits and declaration forms could be issued or revalidated. This he did, despite submission to the effect that applicant, No. 1 was not required to do so, because there was no error or omission resulting in short payment of tax. On account of want of permit the truck which was transporting steel and was waiting at Chirkunda

at West Bengal--Bihar border, was diverted to the factory at Jamshedpur merely for storage, as that steel could not be utilised in the Jamshedpur factory which was manufacturing different products.

Applicant No. 1 paid detention charge of the truck amounting to Rs. 5,620 to satisfy the claim of the transporter. Those goods are required to be transported again to the factory in West Bengal from Jamshedpur at a further cost. Similar other consignments of steel are held up for want of permits. Refusal to issue permits is causing undue hardship, financial loss as well as loss of credit and reputation. Applicant No. 1 is thus prevented from executing orders placed by its customers.

4. The further case of applicants is that declarations in form XXIVA/ form 12 required by the company against its purchases for the years including 1988-89, 1989-90, 1990-91 and 1991-92 were not issued. For the aforesaid years due assessments were made on June 30, 1993 Under Section 11E in respect of selling dealers, but applicant No. 1 failed to issue declarations to them within December 31, 1995, as stipulated in Rule 54A. In paragraph 36 of the application, applicants want this Tribunal to take judicial notice of the chronic complaint of the business community in general and applicant No. 1 in particular that commercial tax authorities do not issue declaration forms as per actual requirements of registered dealers. Arbitrarily they refuse to issue declaration forms in spite of a general direction by respondent No. 4, Commissioner of Commercial Taxes, in his Memo No. 5164 (250) C.T. dated April 26, 1993 to the effect that declaration forms in respect of periods of deemed assessment should be liberally issued to the purchasing dealers. Although a time-limit for collection of declaration forms by December 31, 1995 was laid down in Rule 54A, no corresponding provision was made requiring the purchasing dealers to obtain and the appropriate authority having jurisdiction over them to issue the necessary declaration forms well within December 31, 1995. A list of registered purchasing dealers is furnished in paragraph 47 of the application. From them, applicant No. 1 has not yet received declaration forms in respect of sales of goods at concessional rates during the "eligible period". Rule 215(4) of the West Bengal Sales Tax Rules, 1995 (hereinafter referred to as "the Rules of 1995") does not authorise respondents 1,

2 and 3 to withhold permit in form 42, because applicant No. 1 had not violated the conditions laid down therein.

Similarly, Rule 27AA of the Rules of 1941 and Rules 88 and 89 of the Rules of 1995 have not empowered respondents 1, 2 and 3 to withhold declaration forms, because applicant No. 1 had satisfied the requirements of the relevant provisions. Hence, refusal by respondents to issue declaration forms is without authority or jurisdiction.

Refusal to issue permits allegedly amounts to imposition of unreasonable restriction on inter-State movements of goods, contrary to Section 68 of Act of 1994 and is violative of Articles 301 and 304 of the Constitution. Before refusal to issue permits in form 42, no reasonable opportunity of hearing was given to applicant No. 1. A petition dated February 5, 1996 was filed before respondent No. 4, Commissioner of Commercial Taxes, on behalf of the Commercial Taxes Bar Association protesting against refusal to accept applications for permits and declaration forms. Applicant No. 1 prays for reimbursement of Rs. 5,592 paid as demurrage charges to the transporter, Adarsh Parivahan and Rs. 20,000 as transportation charges. Rule 54A is allegedly a draconian measure causing undue hardship to applicant No. 1 and many other dealers who have failed to collect declaration forms within December 31, 1995. This rule is beyond the rule-making power in Section 26. The contention of the applicants is that Rule 54A does not lay down the proposition that difference of tax should be paid on declaration forms which were not received up to December 31, 1995. Rule 54A is said to be ultra vires the Act of 1941 and violative of Article 245(1) of the Constitution. In any event, it is said to be merely directory.

5. Applicants have contended that since the returns were accepted as correct and complete, the claims made therein regarding sales to registered dealers or other sales at concessional rates of tax or of goods exempted from tax, were accepted as correct and complete. Hence, there was no need to produce declaration forms to substantiate those claims until assessment is reopened Under Section 11E(2). A declaration form, it is claimed, is required to be produced only in a regular assessment Under Section 11 of the Act of 1941 on demand and not otherwise.

Rule 54A is alleged to be ultra vires section HE, because Section 11E(3) does not authorise making of a rule requiring payment of additional tax in lieu of declaration forms not received against sales by 31st December, 1995. Rule 54A was brought into force sometime in April, 1993. The applicants contend that within the short span from April, 1993 to December 31, 1995 it is not possible for a company of the stature of applicant No. 1 to collect declaration forms for several years up to March 31, 1992. The magnitude of the difficulty in this respect is shown from letter dated December 20, 1995 of the Indian Jute Mills Association to the Finance Secretary, Government of West Bengal and Commissioner of Commercial Taxes, West Bengal praying for an extension up to December 31, 1997 for collection of necessary declaration forms. On the next day, on December 21, 1995 by letter No.SS(C) 2379/95 the State Government replied that the letter of the Indian Jute Mills Association had been rejected.

6. A supplementary affidavit was filed on behalf of the applicants with prayers, inter alia, for restraining respondent No. 9, Poddar Udyog Limited from enforcing its demand of tax. Their case is that applicant No. 1 purchased raw materials from Poddar Udyog Limited during 1991-92.

As no declaration forms could be supplied by applicant No. 1, it has sent a debit note No. 96 dated February 20, 1996 for Rs. 42,441.94 as difference of tax. It has also sent several letters making the said demand. Apart from Poddar Udyog Limited, applicant No. 1 purchased raw materials and other goods from others during the "eligible period", but no declaration forms could be supplied to them, since respondent No. 1 failed to issue the same although applied for. In annexure III a list of such suppliers is given. In spite of representations made by various Commercial Tax Bar Associations, the insistence by the authorities to pay the difference of tax in terms of Rule 54A has been continuing.

7. The case of respondents Nos. 1 to 5 in their affidavit-in-opposition is that after December 26, 1995 applicants did not apply for permits to the prescribed authority in the appropriate manner and form. The application for declaration forms made on March 1, 1996 could not be disposed of, as the applicants did not satisfy respondent No. 1 about bona fide requirements of declaration forms and bona fide

use of such forms which were issued on the last two occasions. Applicants were never denied declaration forms or permits on the ground of failure to furnish revised returns for the eligible period. It is denied that applicants made any application on January 29, 1996 or January 31, 1996 for blank permits or that respondent No. 1 declined to accept such application on the ground that revised returns for the periods 1989-90, 1990-91 and 1991-92 were not filed Under Section 11E(3). It is also denied that respondent No. 1 declined to revalidate one blank permit No. 039313B. It will appear from averments made in paragraph 17 of the main application that the applicants did not file any application on February 5, 1996. Application for blank permits was made before a wrong forum, namely, respondent No. 3 which was not the appropriate authority for the purpose. Respondent No. 1 is the assessing authority of the applicants and therefore application for declarations in form "C" or in form XXIVA ought to be appropriately made to him Under Rule 27 AA of the Rules of 1941. It was a statutory obligation of the applicants to comply with legal requirements Under Section 68 of Act of 1994 and Rules 210, 212, 213, 215 to 217 of the Rules of 1995. Under Rule 217, the applicants were liable to produce a blank permit in triplicate duly filled in and signed at the check-post before transporting the goods specified in Part A of Schedule IV to Act of 1994. But they had no such blank permit in their possession and they had not made any application for obtaining such blank permits in accordance withlaw. Therefore, the difficulties they faced in importation of goods were their own creation. They did not apply for blank permits to the appropriate authority after December 26, 1995. On that date only, they applied for ten blank permits, and all those ten permits were issued. Rule 88 of Rules of 1995 lays down the procedure for applying for declaration forms and it also requires a registered dealer to make such application to the appropriate issuing authority. Admittedly, on February 5, 1996 applicants addressed a letter to respondent No. 1 for issuance of declaration forms as well as blank permits. On January 25, 1995 they made application showing their requirement of only seven declaration forms in Form XXIVA which were issued. On April 7, 1992 they had made application for thirty "C" forms which were issued. Thus, if they could not issue declaration forms to their selling dealers, it was because they did not apply for adequate number of such forms. Even by their alleged application made on January 29, 1996 and

January 31, 1996, they applied for only ten declaration forms, and that application was not also submitted to respondent No. 1. On March 1, 1996 they applied for 298 declarations in Form XXIVA. They were asked by respondent No. 1 to justify bona fide requirement and to satisfy him about bona fide use of declaration forms issued earlier. As they failed to satisfy on those points, the prayer could not be allowed. Under section HE a selling dealer whose assessment is deemed to have been made, is required to check if his claim for concessional rate of tax or exemption from tax was supported by statutory declaration obtained from his purchasing dealers, and after such checking, if he finds that any amount of tax is payable, he is required to furnish a revised return after paying the required amount of tax by December 31, 1995. Several allegations including the allegation that respondent No. 1 did not issue declaration forms within December 31, 1995 is denied. In terms of circular letter No. 5164 (250), adequate number of declaration forms was issued to dealers according to law. Where no application for declaration forms was made or requirements of law were not complied with, the Commissioner's circular letter was of no help. While dealing with the provisions of Section 11E, respondents point out that reopening of deemed assessment Under Section 11E(2) is subject to fulfilment of certain conditions and restrictions. Sub-section (3) of Section 11 provides for imposition of penalty, but the proviso to it lays down that there may be exemption from penalty, if a dealer pays balance of tax after finding out that certain errors or omissions had been committed in the returns previously filed. Rule 54A does nothing more than reiterate the provisions of Section 11E(3). Since deemed assessments were made as on June 30, 1993, the Legislature was competent to specify December 31, 1995 for finding out errors and omissions in returns, submitting revised returns and paying balance tax. Ordinarily, declaration forms are to be produced at the time of assessment Under Section 11(1). Assessment Under Section 11(1) could be made within the period of four years, being the outer limit. There is no provision for appeal from a summary assessment Under Section 11E(1), but that does not cause prejudice to a dealer, because Section 11E(2A) takes care of a dealer who has paid excess tax. If applicants do not intend to avail the exemption Under Section 11E(3) proviso, they need not comply with it, and in such a case, the specified date December 31, 1995, has no significance for them. Applicants are, however,

required to verify if the figures (in the returns filed) of gross turnover and claims of concessional rate of tax are in agreement with books of account and supported by statutory declaration forms. In case, there was any short payment of tax, declarations in form III or IIIA should have been filed and necessary amount of additional tax should have been paid by December 31, 1995 in order to avoid penalty Under Section 11E(3). If, however, ultimately summary assessments are reopened Under Section 11E(2), and assessments are then made Under Section 11(1), applicants must produce declaration forms, if demanded, at the time of such assessments in order to support their claims of concessional rate of tax. Rule 54AA provides for issuing notice to show cause before a deemed assessment is reopened Under Section 11E(2). Rule 215(4) of Rules of 1995 lays down in what circumstances applications for blank permits can be rejected.

8. The further case of respondents 1 to 5 is that Rule 54A is not irrational or contrary to the substantive law. Section 11E(2) is in no way violative of Article 19(1)(g) of the Constitution. Blank permits or declaration forms have not been withheld for non-compliance of the proviso to Section 11E(3) or for non-filing of declarations in form III or IIIA by December 31, 1995. Rule 54A does not provide for withholding permits or declaration forms where declarations in form III or III A are not filed within December 31, 1995. Allegations of constitutional or otherwise invalidity of Rule 54A are denied. The State Government is empowered by Section 26(2)(ii-1) to prescribe a form of declaration referred to in Section 11E(3). Rule 54A makes the provision in proviso to Section 11E(3) more elaborate. A selling dealer is competent to recover appropriate tax from a purchasing dealer where the latter fails to furnish declaration form. Respondents have refuted the applicants' contention that once deemed assessments are made Under Section 11E(1) by treating the returns as correct and complete, it is not possible to make fresh assessment by reopening it. The provisions for penalties leviable Under Section 11(1) for non-filing of return in due time, Under Section 20A for concealment of sales and incorrect statements and particulars, and Under Section 11E(3) for non-filing of declarations in form III or IIIA are distinguished from one another. It is stated that the question raised by applicants needs no decision of this Tribunal, because applicants are not yet aggrieved, since no penalty has been imposed. The period of limitation of six years for reopening Under Section 11E(2) is in

conformity with the same length of limitation for suo motu revision Under Section 20(3)(a). An assessment that can be made Under Section 11(1) following the reopening of a deemed assessment Under Section 11E(2), is without any fetter. In view of introduction of Section 11E, the assessment proceeding in respect of the year 1988-89 could not be completed under the old law, and it rightly became a deemed assessment by operation of law. The assessing authority had no more jurisdiction to continue the assessment Under Section 11(1).

9. The Act of 1941 was repealed by Section 106 of the West Bengal Sales Tax Act, 1994, most of the provisions of which came into force with effect from May 1, 1995. There is the usual saving Clause in Sub-section (2) of Section 106 of the West Bengal Sales Tax Act, 1994.

It appears to us that the applicant-company decided to challenge the vires of mainly the proviso to Sub-section (3) of section HE and Rule 54A, because, as alleged (but denied in the affidavit-in-opposition), respondents have been refusing to issue permits and declaration forms for non-filing of declaration and non-payment of additional tax in terms of the said proviso to Section 11E(3) and the said Rule 54A.10. It was contended by Mr. K.K. Saha, learned advocate for respondents, that the applicant has no reason to bring this application, as neither any proceeding has been initiated for reopening of deemed assessments Under Section 11E(2), nor do the said proviso to Section 11E(3) and the said Rule 54A mandatorily require filing of declaration in form III or IIIA (which is nothing but a revised return) or payment of additional tax on the basis of such declaration. To this, Mr. Kothari, appearing for applicant, submitted that issuance of permits and declaration forms for purchases are being refused by respondents because the applicant has not acted in accordance with the aforesaid provisions. Hence, he argued that the present application is perfectly maintainable. He relies on this point on the case of *K.K.Kochunni v. State of Madras* AIR 1959 SC 725 at page 730. In paragraph 8 of the judgment the following passage occurs : "The mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 42, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima facie established on the petition." It will appear from the submissions of

the learned advocate for the respondents recorded in the order of this Tribunal dated March 26, 1996 that, according to respondents, the application of permits said to have been refused was not submitted at all and as regards the application for declaration forms, the stand taken by respondents was that the applicant was asked to satisfy on the bona fide use of declaration forms previously issued and bona fide requirement of declaration forms wanted. By the interim order dated March 26, 1996 respondents 1 to 5 were directed to dispose of, by reasoned order in writing, application for permit within a week from the date of filing of the same. They were directed also to dispose of the pending application for declaration forms according to law within two weeks. Applicants were directed to produce documents before the appropriate officer to satisfy him about bona fide use of declaration forms earlier issued and bona fide requirement of declaration forms wanted. It has been stated in the written argument on behalf of the applicants that subsequent to the interim order respondent No. 1 issued declaration forms for the years 1992-93 onwards and permits. But respondent No. 1 has still been withholding declaration forms in respect of purchases during the years 1988-89 to 1991-92 "for no cogent reason" (see bottom of page 6 of top of page 7 of the written argument). Since the application was already admitted by order dated March 20, 1996, the question of maintainability could not be reagitated at the stage of final hearing.

11. At the time of oral argument, nothing was submitted by the learned advocate for the applicants on the question of vires of Sub-Sections (2) and (3) of section HE. Nothing was also stated in their written argument on that question. Therefore, applicants have clearly abandoned that stand. They have, however, concentrated their attack on the vires of Rule 54A. That rule, already quoted, requires a dealer whose assessment is deemed to have been made, to check-up whether the figures shown in the relevant returns tally with those in his books of account and relevant documents and also that his claims for sales on concessional rate of tax or sales claimed to be exempt from tax are supported by statutory declarations and other documents, If upon such self-verification, he finds any discrepancy leading to increase of the amount of payable tax over and above the amount of tax already paid as per returns, he is required to pay the balance amount of tax so found payable by him and should furnish a declaration as far as practicable in form

III or form IIIA (which are for all practical purposes revised returns). Form III is the form of return as per Rule 26(1). Form IIIA is also a similar form as per Rule 26A. Rule 54A further requires that in the event of necessity of furnishing declaration in form III or IIIA and payment of balance of tax, that must be done within December 31, 1995. The stand of respondents 1 to 5 is that the substantive legal provision in the said proviso to Section 11E(3) is elaborated and clarified in Rule 54A. In Sub-section (3) of Section 11E, there is a provision for imposition of a penalty, in the event a fresh assessment is made Under Section 11E(2). The proviso to Section 11E(3) lays down an exception thereto. It provides that no penalty shall be imposed on a registered dealer for a period concerning which he discovers omission or error or other facts resulting in short payment of tax which is due according to his books of account, and furnishes a declaration in the prescribed form together with a receipted challan showing payment of the balance amount of tax within December 31, 1995.

12. Mr. Kothari, learned advocate for the applicants, contended that Rule 54A is ultra vires the proviso to Section 11E(3). But it will appear from the proviso itself that the Legislature fixed the date December 31, 1995, within which the actions contemplated in the proviso are to be taken by the assessee. The same date has been stated in Rule 54A. Therefore, at least in respect of the last date for taking the required actions on the part of an assessee, Rule 54A is in full conformity with the proviso to Section 11E(3).

13. At this stage it is perhaps necessary to dispose of the contention of the applicants that the date is arbitrary and unreasonable. It will appear from Section 11E(1) that deemed assessments were to be made as on June 30, 1993. So, by the impugned proviso to Section 11E(3) and the impugned Rule 54A, the Legislature adopted a date for the desired actions to be taken by an assessee within December 31, 1995 or two years and a half from June 30, 1993. The basic contention of applicants in this respect is that this period is not sufficient to collect all declaration forms from an assessee's purchasing dealers in order to claim either exemption from tax or concessional rate of tax. We feel totally unconvinced by this contention. The Legislature in its wisdom considered a period of time ending on December 31, 1995 to be sufficient for collection of declaration forms

and verification of books of account vis-a-vis other documents including declaration forms.

The period is, in our opinion, sufficient notice to arrange an assessee's affairs in respect of the desired actions to be taken by him. In the absence of anything to show that the cut-off date is unreasonable, we are unable to agree with the contention of the applicants. It seems, the applicants want to say that they should have an indefinite period of time for collection of declaration forms in support of their claims. It has been argued by Mr. Kothari that in case of a regular assessment Under Section 11(1), declaration forms can be produced in respect of similar claims at the time of assessment-hearing, and those forms can also be produced at later stages of appeal and revision. It does not require any elaborate discussion of the various provisions in Act of 1941 and Rules of 1941 to say that declaration forms are primarily to be produced, if required, at the time of assessment hearing. There is a limitation period for making assessments. That declaration forms may also be produced at later stages of appeal and revision is not a matter of right or routine. If the appropriate appellate or revisional authority is satisfied that in a particular case there was reason for non-production of declaration forms at the stage of assessment, he may allow production of the same at the stage of appeal or revision.

Therefore, production at later stage depends on the discretion of the appropriate authority. It is not, as it were, declaration forms can be invariably or in all cases produced at the stage of appeal or revision.

That is not an automatic extension of time for production of declaration forms. In a case where a deemed assessment is reopened Under Section 11E(2), a de novo regular assessment is to take place Under Section 11(1), and since then the usual span of time becomes available for furnishing declaration forms. Rule 54A read with Section 11E(3) proviso is a special provision for special circumstances.

Therefore, the contention of applicants that fixation of December 31, 1995 as the last date for the contemplated actions is arbitrary or unreasonable is not valid. It is up to an assessee to activate himself and to abide the time-limit fixed by the Legislature, if he likes to avail of the exemption from possible penalty under the

proviso to Section 11E(3).

14. It has been contended on behalf of applicants that Rule 54A speaks of self-verification not only with reference to books of account, but also relevant documents and statutory declaration forms, but in the substantive provision, namely, the proviso to Section 11E(3) there is no mention of either declaration forms or documents other than books of account. It is argued that, to this extent, Rule 54A travels beyond the scope and ambit of proviso to Section 11E(3). Several cases have been referred to in the written argument on behalf of applicants on the point that a rule cannot be validly prescribed beyond the scope and ambit of the substantive provision under which it is framed. It is true, as already seen, the proviso to Section 11E(3) does not expressly refer to declaration forms or other documents, but it clearly contemplates that an assessee may avoid a possible penalty Under Section 11E(3) by discovering omission or error, if any, resulting in short payment of tax on verifying his books of account and then by furnishing a declaration and paying the balance of tax, if necessary, by the date fixed. The mere fact that no reference to statutory declaration forms or other documents is made in the said proviso, does not, according to us, vitiate Rule 54A. Books of account are written with reference to relevant documents. If in the books of account certain transactions are written as exempt from tax or liable to only a concessional rate of tax on the basis of declaration forms, such forms become an integral part of the books of account. Hence, Rule 54A has really elaborated and clarified what is already said in the proviso. We are, therefore, of the opinion that Rule 54A is well within the scope and ambit of the proviso. The decisions referred to in the written argument on this point are not applicable to this case. Those are *Sales Tax Officer v. K.I Abraham*(SC), *Bimal Chandra Banerjee v. State of Madhya Pradesh* [1971] 81 ITR 105 (SC), *Road Transport Association v. Inspector of Commercial Taxes* [1996] 100 STC 361 (WBTT) at 396, *Hare Krishna Das v. Profession Tax Officer* [1994] 27 STA 213 (WBTT), *Tirukoilur Oil Mills Ltd. v. State of Madras* [1967] 20 STC 388 (Mad.), *Chief Commissioner, Sales Tax v. Raj Kishan Goyal* [1982] 50 STC 1 (Delhi)[FB], *Gaffer Kassam v. Commissioner of Sales Tax* [1974] 33 STC 98 (Orissa), *Haji Ismail Noor Mohammad & Company v. State of Uttar Pradesh* *State of U.P. v. Haji Ismail Noor Mohammad & Co.*(SC), *Vidarbha Co-operative Marketing Society Ltd. v. Sales Tax Officer* [1963] 14 STC

430 (Bom.) and Babulal v. D.P. Dube [1955] 6 STC 255 (Nagpur).

15. One of the contentions of the applicants is that the proviso to Section 11E(3) does not delegate the power to prescribe anything in Rules except to prescribe the form of declaration, but Rule 54A has done more than that. It is also said on behalf of applicants that Section 26(1) of Act of 1941 also does not contemplate framing of any rule like 54A. Let us now examine this contention, Section 26(1) lays down the general rule-making power. Sub-section (2) of Section 26 specifies certain particular powers. There is no such specification for framing a rule except for prescription of a form of declaration Under Section 11E(3). That is laid down in item (ii-1) of Sub-section (2) of Section 26. But Sub-section (1) of Section 26 which generally delegates the power to make rules to the State Government for carrying out the purposes of the Act is not meaningless. Making of Rule 54A in conformity with the proviso to Section 11E(3) for carrying out the purposes of that proviso is well within the ambit of Section 26(1). It is not merely a redundant provision.

16. The other branch of contentions of the applicants is that Rule 54A or the proviso to Section 11E(3) cannot be invoked for the purpose of disposing of applications for sales tax permits and declaration forms, or for renewal of such permits and forms. There is substance in this submission. Mr. K.K. Saha, learned advocate for respondents 1 to 5, conceded that a direction may be given by us that Rule 54A will not be applied unless action is taken in terms of Section 11E(2). The legal position is clear that in a case where a deemed assessment will be reopened (here not yet reopened) Under Section 11E(2) there should be a de novo regular assessment Under Section 11(1). Once such a regular assessment is made and some amount of tax is found still payable, that will come under due consideration according to the provisions relating to issuance of blank permits and declaration forms depending on whether that tax has been paid up or not. It is quite clear that the proviso and Rule 54A both afford an opportunity to a dealer to avoid the penalty Under Section 11E(3) on certain actions being taken by him, namely, self-verification of his returns with reference to books of account and necessarily with reference to documents related to books of account ; and then if it is found that the tax already paid as per returns was less than the proper tax payable, then to also make payment of the additional tax. These actions were to

be taken by December 31, 1995. Therefore, we hold that the proviso to Section 11E(3) and Rule 54A cannot be invoked by taxing authorities for disposal of applications of a dealer for sales tax permits and declaration forms or, in other words, for refusing to issue such permits and such forms.

If, however, a deemed assessment is reopened Under Section 11E(2) and it is found upon assessment that due tax has not been paid, that fact may be considered according to law in the matter of issuing sales tax permits and declaration forms. To make the position further clear, let us say that non-observance simpliciter of the proviso to Section 11E(3) and Rule 54A within December 31, 1995 cannot be a bar to the issuance of sales tax permits and declaration forms to a dealer in accordance with law, unless that leads to actual default in payment of due assessed tax which is recognised by the relevant provisions or rules.

17. Applicants have prayed for compensation for detention of the truck and also for additional transportation charges incurred by them as a result of the actions of respondents. According to them a sum of Rs. 5,592 had to be paid to the transporter under money receipt No. 53125 dated February 8, 1996 for detention of the transporter's truck. A sum of Rs. 20,000 is also demanded as transportation charges of the consignment from the check-post to the factory of the applicant No. 2 at Jamshedpur in Bihar. These claims are made in paragraph 69 of the main application. That paragraph was dealt with by the respondents in paragraph 16 of their affidavit-in-opposition. The allegations are generally denied therein. It was stated that applicants had not filed any application in form 42, and reference was made in this connection to paragraph 17 of the main application. It actually appears from paragraph 17 that admittedly no application for permit was filed on February 5, 1996. Annexure "F" at pages 16 to 18 is said to be a copy of the petition for permit dated February 5, 1996 which was intended to be filed, but was not actually filed on the volition of the applicants or their advocate. That being so, any charges incurred by the applicants for detention of the truck at the border of the State or for transportation of the goods from the border to Jamshedpur cannot be related to refusal to issue permit for the particular consignment. May be, respondent No. 1 was not in a mood to generally issue permits for importation of

such consignments. But in order to succeed in a claim for compensation, it must be shown that any loss was incurred on account of refusal to issue a particular permit. Since the application for permit was not filed (it is not a question of refusal to accept), it cannot be said that the charges incurred by the applicants are reimbursable from respondents 1 to 5. Moreover, while in paragraph 69 of the main application the detention charges of the truck is said to be Rs. 5,592 and transportation charge is said to be Rs. 20,000, at page 27 (item E) of the written argument on behalf of the applicants the amount of detention charge of the truck is said to be Rs. 5,620. In the said written argument there is no mention of transportation charge of Rs. 20,000. Reference is made in the main application as well as in the written argument to money receipt No. 53125 dated February 8, 1996 and to annexure "I" at pages 26 and 27. But the said money receipt is at page 27 only. There is one bill No. 20726 dated February 8, 1996 at page 26. Both are annexure "I". It appears from page 26 that the detention charge of the truck is Rs. 5,600 out of the total of Rs. 5,620. From page 27 which is money receipt No. 53125, it appears that a sum of Rs. 5,592 was claimed as "octroi charges/N. Form charges" and a sum of Rs. 20,000 was shown as "octroi service charges". Thus, the claims made in paragraph 69 of the application are not supported by the money receipt which is referred to there. The money receipt is for octroi charges and octroi service charges, whatever they may mean. But the said money receipt does not support the claim of detention charge of Rs. 5,592 or transportation charge of Rs. 20,000. In the written argument the amount of detention charge is said to be Rs. 5,620 which is supported by bill No. 20726, but which is otherwise in paragraph 69 of the application, The transportation cost of Rs. 20,000 is missing from the written argument. Thus, we may conclude that the transportation charge of Rs. 20,000 has been abandoned at the time of argument. As regards detention charge of truck, there is enough confusion and no receipt to prove that a sum of Rs. 5,592 or Rs. 5,620 (whichever may be correct) was actually paid to the transporter on that count. Therefore, we are unable to grant any compensation to the applicants.

18. Thus, the application is finally disposed of with the above findings. Respondents 1 to 5 are directed to henceforth dispose of applications filed by the applicants for sales tax permits and declaration forms according to law, but mere

non-submission of any declaration and consequential non-payment of balance amount of tax in accordance with the proviso to Section 11E(3) and Rule 54A should not be considered to be a ground for refusal to issue sales tax permit or declaration form. There will be no order for costs.

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