Godrej & Boyce Mfg. Co. Pvt. Ltd. And Ors. ... vs Commissioner Of Sales Tax And Ors. Etc. ... on 30 July, 1992

Equivalent citations: 1992 AIR 2078, 1992 SCR (3) 683, AIR 1992 SUPREME COURT 2078, 1992 (3) SCC 624, 1992 AIR SCW 2446, (1992) 4 JT 317 (SC), 1992 (2) UPTC 1011, (1992) 3 SCR 683 (SC), 1992 (3) SCR 683, 1992 (4) JT 317, (1992) 3 SCJ 264, (1992) 87 STC 186

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy

PETITIONER:
GODREJ & BOYCE MFG. CO. PVT. LTD. AND ORS. ETC. ETC.

Vs.

RESPONDENT:
COMMISSIONER OF SALES TAX AND ORS. ETC. ETC.

DATE OF JUDGMENT30/07/1992

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
RANGNATHAN, S.

CITATION:
1992 AIR 2078 1992 SCR (3) 683
1992 SCC (3) 624 JT 1992 (4) 317
1992 SCALE (2)107

ACT:
Bombay Sales Tax Rules, 1959-Rules 41, 41-A-Set off-Claim by assessee-Legislative intention of.
Bombay Sales Tax Rules, 1959-Rule 41(iii) Explanation, Proviso and Rule 41-A(y)-Set off under-One per cent-Calculation of.
Bombay Sales Tax Act, 1959-Section 61(2)-Reference-Whether constitutionality of a rule can be questioned-Rules, 41, 41A of the Bombay Sales Tax Rules, 1959-Validity of.

HEADNOTE:
The facts in all the appeals - (C.A.No. 803/1977 C.A. Nos.800-01 of 1977; 3843-47/1983; and 3849-50/1988 were

identical and common question arose.

C.A.No.803 of 1977

The appellant was a registered dealer under the Bombay Sales Tax Act, 1959 and it engaged in the manufacture of products, like chocolate, drinking chocolate, cocoa, etc. During the assessment years it purchased raw material, packing material and containers both within the State as well as outside. In respect of the raw material, packing material etc. purchased from registered dealers the appellant paid purchase tax to them. On the raw material etc. purchased from un-registered dealers, the appellant paid the purchase tax directly to the Government. The goods manufactured by the apllellant were liable to sales tax, when sold within the State.

Rule 41 and Rule 41A of the Bombay Sales Tax Rules, 1959 enable the manufacturing dealer to claim set-off of the tax paid by him on the purchase of raw materials from out of the tax payable by him on the sale of goods manufactured from out of the said raw material. The rules further provide that in respect of manufactured goods despatched by the manufacturing dealer to his own place of business or to his agent outside the State

684

and actually sold there, the amount of set-off shall be reduced by one per cent of the sale price of the goods so despatached. Applying said rule the assessing authorities made a deduction of one per cent of the sale price of the goods despatched and sold outside the State of Maharasthra.

The petitioners' case was that the raw material, out of which he manufactured the goods, was purchased not only within the State of Maharashtra but also outside the State of Maharashtra. Similarly the goods manufactured by him were sold not only within the State of Maharashtra but also outside of the State of Maharashtra. In such a situation, making a deduction of one per cent of the sale price of the manufactured goods despatched and sold outside the State of Maharashtra amounts in effect to levy of sales tax on purchase of raw material effected outside the State of Maharashtra. He also contended that it also amounts the levy of sales tax on goods sold outside the State of Maharashtra. He pleaded for allocation of sale price in proportion in which raw material was purchased within and outside the State.

Under section 61(2) of the Bombay Sales Tax Act the following two questions were referred to the High Court:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that for the purpose of reducing set-off under clause (iii) of the Proviso to Explanation to Rule 41 of the Bombay Sales Tax Rules, 1959, one per cent, should be calculated not on the entire sale price of the goods despatched by the appellants to their branches, but only on that part of the sale price of the goods sold outside the State which is

attributable to the locally purchased raw material on which the appellants were claiming set off?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that for the purpose of reducing set-off under clause (iii) of the Proviso to Explanation to Rule 41 and clause (y) of the proviso to the Explanation to Rule 41A of the Bombay Sales Tax Rules, 1959, one per cent shall be calculated not on the entire sale price of the goods despatched by the appellants to his branches, but only on the part of the sale price of the goods sold outside, the State which is attributable to the locally purchased raw material on which the appellants were claiming set off?

685

The High Court answered the reference against the assessee-appellant. The appellant-assessee challenged the judgment of the High Court in this Court by filling the appeal by special leave.

The appellants reiterated the contentions urged before the High Court. They submitted that the deduction of one per cent, in effect, amounts to taxing the raw material purchased outside the State or to taxing the sale of finished goods effected outside the State Maharashtra.

SLP (C) No. 1377/77

The assessment period was April 1, 1957 to March 31, 1958. During this period the Rule in force was Rule 11, which too provided for a benefit accompanied by a deduction as was provided by Rule 41. The petitioner contended that the position under Rule 11(1A) was not different from the one obtaining under Rule 41; that in case the rule was interpreted in the manner done by the High Court, it would expose it to the vice of unconstitutionality; that the said deduction in effect amounted to levy of sales tax on purchases made outside the State of Maharashtra and had the effect of impinging upon the charging provisions of the Act.

Dismissing the appeals of the assessee, this Court,

HELD : 1.01. The intention of the rule making authority is to provide a relief to the dealers so that ultimately the benefit should percolate to the consumer public. A manufacturing dealer pays purchase tax when he purchases raw material and he is again obliged to pay the sales tax when he sells the goods manufactured by him out of the said raw material. Tax on both the transactions has the inevitable effect of increasing the price to the consumers besides adversely affecting the trade. It is for this reason that the Rules 41 and 41A of the Bombay Sales Tax Rules, 1959, enable the manufacturing dealer to claim set-off of the tax paid by him on the purchase of raw materials from out of the tax payable by him on the sale of goods manufactured from out of the said raw material. [691G-692A]

1.02. The purport of Rules 41 and 41A is inter alia this: in respect of manufactured goods despatched by the

manufacturing dealer to his own place of business or to his agent outside the State and actually sold there, the amount of set-off shall be reduced by one per cent of the sale price of the goods so despatched. [692B]

686

2.01. The appellant (manufacturing dealer) purchases his raw material both within the State of Maharashtra and outside the State. In so far as the purchases made outside the State of Maharashtra are concerned, the tax thereon in paid to other States. The State of Maharashtra gets the tax only in respect of purchases made by the appellant within the State. So far as the sales tax leviable on the sale of the goods manufactured by the appellant is concerned, the State of Maharashtra can levy and collect such tax only in respect of sales effected within the State of Maharashtra. It cannot levy or collect tax in respect of goods which are despatched by the appellant to his branches and agents outside the State of Maharashtra and sold there. [692D-E]

2.02. In law (apart from Rules 41 and 41A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules, which, are conceived mainly in the interest of public, that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales. The rule-making authority could well have denied the benefit to such out-State sale as well, subject however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. [693G-694A]

2.03. No valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule making authority to provide for a small abridgement or curtailment while extending a concession. [694B]

3. There is no unconstitutionality in the rule, apart from the fact that question of constitutionality may not be open in a reference made under section 61(2) of the Bombay Sales Tax Act. The said Rules do not provide for levy of any tax as such. Their operation is limited to what they say. [695H]

C.S.T. Bombay v. Bharat Petroleum Corporation Ltd., [1992] 1 SCR 807, distinguished.

687

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 800- 801 of 1977.

From the Judgment and Order dated 24.2.1976 of the Bombay High Court in Sales Tax Nos. 59 and 60 of 1972.

WITH CA Nos. 803/77, 3843-47/88 and 3849-50/88 D.N. Misra for the Appellants.

A.S. Bhasme and Bharat Sangal for the Respondents. The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. Common questions arise in this groups of civil appeals, for which reason they were heard together and are being disposed of under a common judgment. The judgments under appeal were rendered on references made under section 61(2) of the Bombay Sales Tax Act, 1959. The High Court has answered the questions referred against the appellants-dealers and in favour of the Revenue. Hence, these appeals by them. Since the facts in all the appeals are idenctical, it is sufficient if we refer to the facts in Civil Appeal No. 803 (N.T.) of 1977 (Cadbury Fry (India) Private Limited v. Commissioner of Sales Tax and Anr.).

In Civil Appeal No.803/77, the following two questions were referred for the opinion of the High Court under Section 61(2) of the Act:

> (i) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that for the purpose of reducing set-off under clause (iii) of the Proviso to Explanation to Rule 41 of the Bombay Sales Tax Rules, 1959, one per cent, should be calculated not on the entire sale price of the goods despatched by the appellants to their branches, but only on that part of the sale price of the goods sold outside the State which is attributable to the locally purchased raw material on which the appellants were claiming set off.
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> (ii) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that for the purpose of reducing set-off under clause (iii) of the Proviso to Explanation to Rule 41 and clause (y) of the proviso the Explanation to Rule 41A of the Bombay Sales Tax Rules, 1959, one per cent should be calculated not on the entire sale price of the goods despatched by the appellants to his branches, but only on the part of the sale price of the goods sold outside, the State which is attributable to the locally purchased raw material on which the appellants were claiming set-off."

The appellant, a registered dealer under the Act, is engaged in the manufacture of various products such as chocolate, drinking chocolate, cocoa etc, During the assessment years concerned herein, it purchased raw material, packing material and containers both within the State of Maharashtra as well as outside. In respect of the raw material, packing material etc. purchased from registered dealers the appellant paid purchase tax to them. In so far as such raw material etc. was purchased from un- registered dealers, the appellant was liable to and did pay the purchase tax directly to the Government. The goods manufactured by the appellant are liable to sales tax when sold within the State.

In exercise of the Rule-making power conferred by Section 74 of the Act, Rules have been made by the Government of Bombay. We are concerned in this case with only two rules namely 41 and 41A. The purport of both the Rules, in so far as it is relevant for the purposes of these appeals is concerned, is practically the same notwithstanding a good amount of phraseological difference between them. Rule 41 applies in respect of purchases made by a `manufacturing dealer' like the appellant up to 15th July, 1962. From this date onwards, it is rule 41A that operates. In respect of their assessment for the period January Ist, 1960 to December 31, 1960 the appellant (manufacturing dealer) claimed set-off under rule 41 whereas for the period January Ist, 1962 to December 31st, 1962 be claimed it under rule 41A.

Rule 41 and 41A provide for set-off of the purchase tax paid by the manufacturing dealer on the raw material, packing material etc. as against the sales tax payable on the sale of the goods manufactured by him. It would be appropriate at this stage to read both these rules, in so far as they are relevant for our purpose:

> 41. "Drawback, set-off, etc. of tax paid by a manufacturer (In respect of purchases up to 15.6.62). In assessing the amount of tax payable in respect of any period by a Registered Dealer, who manufactures taxable goods for sale (hereinafter in this rule referred to as the "Manufacturing dealer") the Commissioner shall grant him a drawback, set off or as the case may be, a refund of the aggregate of the following same, that is to say:
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> (b).....
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> (c).....
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> (d).....
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> (e) a sum recovered from the manufacturing dealer by another Registered dealer by way of sales tax or general sales tax or both, as the case may be, on the purchase by him, of goods from such Registered dealer, being goods specified in Schedule C to the Act other than in entries 1 to 11 (both inclusive) and 15 therein and in schedule D other than in entries 1 to 4 (both inclusive) therein and in Schedule E other than in entries 1 and 2 therein, when the purchasing dealer did not hold a Recognition or when the dealer held a Recognition but affected the purchase otherwise than against a certificate under section 12 of the Act; provided that such goods are used by him in the manufacture of taxable goods for sale or in the packingof taxable goods manufactured by him for sale.....

Explanation: For the purposes of this rule the word "sale" with all its grammatical variations, shall include the sale of manufactured goods (despatched by the dealer in his own place of business or to his agent outside the State and (actually sold there).

Provided that where such despatch has been made to his place of business or to his agent outside the State but within India (i) such despatch shall have taken place within nine months of the date of purchase of the goods so used;

(ii) the dealer, of his manager or agent as the case may be, is registered under the Central Sales, 1956, in respect of place of business of which the goods are so despatched; and

(iii) the amount of drawback, set-off or refund as the case may be, shall be reduced by 1 per cent of the sale price of the goods so despatched.

Provided further that if the dealer shows to the satisfaction of the Commissioner that not more then 1 per cent of the total value of the finished goods so despatched was comprised of goods in respect of which the drawback, set off or refund is claimed, the Commissioner shall not so reduce the amount of drawback, set-off or refund."

> "41-A (1) Drawback, set-off, etc. of tax paid by a manufacturer in respect of purchases made [during the period from 15th July 1962 to the day immediately preceding the notified day (both days inclusive) - In assessing the amount of tax payable in respect of any period by the Registered dealer [who manufactures taxable goods for sale or export] (hereinafster in this rule referred to as the "Manufacturing dealer"), the Commissioner shall, in respect of the purchases made by such dealer [during the period from 15th July 1962 to the day immediately preceding the notified day (both days inclusive)] of any goods specified in Schedule B,C,D or E and used by him within the State in the manufacture of taxable goods [which have, in fact, been sold by him (and not given away as samples or otherwise or which have been exported by him or used by him in the packing of goods so manufactured] grant him a draw-back, set-off, as the case may be, a refund of the aggregate of the following sums, that it to say:
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> (a) a sum recovered from the Manufacturing dealer by other Registered dealers by way of sales tax, or general sales or, as the case may be, both, on the purchase by him from such Registered dealers, when the Manufacturing dealer did not hold a Recognition or when he held a Recognition but effected the purchase otherwise than against a certificate under sections 11 of the Act.

Explanation:- For the purposes of this rule, [the expression `export' shall include -]

(i) a sale in the course of inter-State trade or commerce, or in the course of the export of the goods out of the territory of India, where such sale occasions the movement of the goods from the State of Maharashtra, and [(i-a) despatches made by the manufacturing dealer to a person outside the territory of India, with a view to selling the goods to the said person and the said goods have actually been sold to him within a period of three years from the date of despatch, and]

(ii) despatches made by the Manufacturing dealer to his own place of business or to his agent outside the State and [which have, in fact been sold (and not given away as samples or otherwise) or

used in the manufacture of goods which have in fact been sold (and not given away as samples or otherwise.)] Provided that, where such despatch has been made to his own place of business or to his agent, outside the State but within India..... (Y) the amount of draw-back, set-off or as the case may be refunds shall be reduced by a sum calculated in accordance with the following formula, namely:-

D multiplied by R

`D' means [the sale price of the goods despatched which have in fact, been sold (and not given away as samples or otherwise or the value of the goods despatched for use in the manufacture of goods which have, in fact, been sold (and not given away as samples or otherwise) and `R' means the rate of tax in force on the sale at the time of despatch of goods, in the course of inter-state trade or commerce, of the same goods under section 8(1) or as the case may be, section 8(2A), of the Central Sales Tax Act, 1956;]....."

A reading of the Rules manifests the intention of the rule making authority. It is to provide a relief to the dealers so that ultimately the benefit should percolate to the consumer public. A manufacturing dealer like the appellant pays purchase tax when he purchases raw material and he is again obliged to pay the sales tax when he sells the goods manufactured by him out of the said raw material. Tax on both the transactions has the inevitable effect of increasing the price to the consumers besides adversely affecting the trade. It is for this reason that the aforesaid Rules enable the manufacturing dealer to claim set-off of the tax paid by him on the purchase of raw materials from out of the tax payable by him on the sale of goods manufactured from out of the said raw material. The Rule further provides - and it is that aspect which is relevant in these appeals - that in respect manufactured goods despatched by the manufacturing dealer to his own place of business or to his agent outside the State and actually sold there, the amount of set-off shall be reduced by one per cent of the sale price of the goods so despatched. This is the result flowing from a combined reading of clause (e) of Rule 41 read with the Explanation and the Proviso appended to the Explanation. Same is the position flowing from the relevant portions of Rule 41A.

The contention of the appellant - which found favour with the Sales Tax Tribunal - runs thus; the appellant purchases the raw material required by him partly within the State of Maharashtra and partly from other States. Similarly, only a portion of the goods manufactured by him is sold within the State of Maharashtra. Bulk of them is sold outside the State of Maharashtra, though within the Country. Rule 41 provides for setting off the purchase tax paid by the appellant on the raw material purchased by him within the State of Bombay. No set-off is given in respect of the tax paid by the appellant on the purchases of the raw material made by him outside the State of

Maharashtra evidently for the reason that such tax is paid to such other States. In such a situation providing for deduction of one per cent of the sale price of the goods despatched to outside-State branches from out of the set-off amount is unjust and impermissible. The manufactured goods came out of the raw material purchased both within and outside Maharashtra and not exclusively out of raw material purchased within the State of Maharasthra. At any rate, the Rules properly interpreted would mean that "the percentage which was to so deducted was one per cent of the sale price of the raw materials which had gone into the manufacture of the finished goods (and of the containers and packing- materials used in marketing the finished goods) and such sale price was to be arrived at by a proportionate allocation of the percentage which such raw materials (packing materials and containers) bore to the sale price of the finished goods". (This is how the appellants' contention is set out in the judgment of the High Court.) Applying such a deduction to the entire sale price of the manufactured goods sent to out-State branches, in effect, amounts to levy of tax on the raw material purchased outside the State or in any event amounts to levy of tax on sales of finished goods effected outside the State of Maharashtra which is clearly beyond the competence of the State Legislature.

The High Court did not agree with the appellant. It was of the opinion that "on a plain reading of the Explanation and the first proviso thereto, it is not possible to accept the contention advanced before us by the respondents. Even viewed from the angle of ordinary legal notions, it is obvious that what in fact are despatached by the manufacturing dealer are the finished goods. The raw material which have gone into manufacture of the said goods are not despatched, some of them can no more be in existence having been consumed in the process of manufacture and others have completely altered in their composition, nature and form and are no more raw materials preserving their individuality in the form which they bore when they were purchased. Similarly in the case of packing materials and containers..... .

Sri Bobde appearing for the appellants reiterated the contentions urged before the High Court. He submitted that the deduction of one per cent, in effect, amounts to taxing the raw material purchased outside the State or to taxing the sale of finished goods effected outside the State of Maharashtra. We cannot agree. Indeed, the whole issue can be put in simpler terms. The appellant (manufacturing dealer) purchases his raw material both within the State of Maharashtra and outside the State. In so far as the purchases made outside the State of Maharashtra are concerned, the tax thereon is paid to other States. The State of Maharastra gets the tax only in respect of purchases made by the appellant within the State. So far as the sales tax leviable on the sale of the goods manufactured by the appellant is concerned, the State of Maharashtra can levy and collect such tax only in respect of sales effect within the State of Maharashtra. It cannot levy or collect tax in respect of goods which are despatched by the appellant to his branches and agents outside the State of Maharashtra and sold there. In law (apart from Rules 41 and 41A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within

> the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules - which, as stated above, are conceived mainly in the interest of public - that he is entitled to such set-off. It is really a concession and an indulgence.

More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out- State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra.

The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be generous and has extended the said benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule making authority to provide for a small abridgment or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion is which raw material was purchased within and outside the State.

It is not necessary for us to discuss the position obtaining under Rule 41A separately inasmuch as it is agreed by the learned counsel for the appellant Sri Bobde that the position obtaining under both the rules, in so far as the aspect in controversy is concerned, is substantially the same, notwithstanding the phraseological difference between both the rules.

S.L.P. (C) No.1377/77:

> Leave Granted The period concerned in this appeal (by Hindustan Lever Limited) is April 1, 1957 to March 31, 1958. During this period the Rule in force was Rule, 11, which too provided for a similar benefit accompanied by a deduction as is provided by Rule 41. Sub-rule(1A), which alone is relevant for our purpose, reads as follows:
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> "Grant of drawback, set-off or refund of sales tax or general sales tax or purchase tax in certain cases.
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> (1A) In assessing the amount of sales tax payable by a registered dealer who manufactures or processes or processes any goods for sale in respect of any period, the collector shall grant him a drawback, set-off or refund as the case may be, of an amount equal to the aggregate of the sums
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> (i) recovered from the dealer by other registered dealers by way of sales tax or general sales tax;

(ii) calculated in the manner specified in sub rule (1) of rule 11_A; and

(iii) payable as purchase tax under clause (a) of section 10 of the purchase of such goods by the dealer;

after deducting therefrom one per cent, and in the case of goods falling under entry 23 or 24 Schedule B to the Act, one quarter per cent of the sale price of any goods manufactured or processed where the sale of the goods takes place at any place in India outside the State of Bombay, the goods having been transported to such place on or after the Ist day of July; 1957;

Provided -

(a) such goods have been used as raw materials processing materials, fuel, lubricants, containers or packing materials in the manufacture or processing of any goods specified in entries 19 to 80 (both inclusive) of Schedule B to the Act for sale;

(b) and the goods so manufactured or processed are not the goods on the sale of which no sales tax is payable under rule 5 or clause (i) of rule 7." It is not suggested by Dr. Pal, the learned counsel for the petitioner that the position under Rule 11(1A) is in any manner different from the one obtaining under Rule 41. Besides reiterating the submissions made by the counsel for the appellant inthe aforesaid group of appeals, Dr. Pal submitted that in case the rule is interpreted in the manner done by the High Court, it will expose it to the vice of unconstitutionality. According to Dr. Pal too, the said deduction in effect amounts to levy of sales tax on purchases made outside the State of Maharashtra and has the effect of impinging upon the charging provisions of the Act. We are however, unable to see any unconstitutionality in the rule apart from the fact that such a question may not be open in a reference made under section 61(2) of the Act. To put the matter beyond any doubt, Mr. Dholakia appearing for the State of Maharashtra stated before us that the State would never demand or recover any tax, on the basis of or by virtue of any of the said Rules, which is not otherwise due. Indeed, none of these Rules provide for levy of any tax as such. Their operation is operation is limited to what they say.

The counsel for the appellant relied upon the recent decision of this court in Civil Appeal No.1031 of 1979 etc. decided on February 18, 1992 by a Bench comprising one of us Ranganathan, J. sitting with V.Ramaswami and S.C.Agarwal, JJ. The said decision also deals with rule 41 but the point arising therein was wholly different than the one concerned herein. We may refer to the facts in Civil Appeal No.1031 of 1979 wherein the respondent was Bharat Petroleum Corporation Limited. Its main activity was refining the crude oil which belonged to another company. The respondent-dealer agreed to refine the crude oil belonging to such other company and to deliver the kerosene derived out of it to it. That other company alone effected the sale of such kerosene, and not the respondent-dealer. Sulphuric acid was one of the raw material required by the respondent- dealer, on purchase of which it paid tax. The process of refining yielded acid sludge which was regularly sold by the respondent dealer to its own purchasers. The respondent dealer sought to set-off the purchase tax paid by it on purchase of sulphuric acid from out of the sales tax payable by it on the sale of acid sludge. This was denied by the Revenue. It is this Controversy which came to this court.

On a literal reading of rule 41 and having regard to the fact that acid sludge was regularly yielded by the manufacturing process undertaken by the respondent-dealer which was sold by it in its regular course of business, this court held that the respondent-dealer was entitled to such set-off. We are unable to see any bearing the said principle has upon the issue in controversy in these appeals.

For the above reasons, the Civil Appeals fail and are dismissed with costs.

V.P.R. Appeals dismissed.