Chunni Lal Parshadi Lal vs Commissioner Of Sales Tax, U.P., ... on 18 March, 1986

Equivalent citations: 1986 AIR 1966, 1986 SCR (1) 891, AIR 1986 SUPREME COURT 1966, 1986 TAX. L. R. 2356, 1986 (17) STL 5, 1986 SCC (TAX) 425, 1986 UPTC 747, 1986 UJ(SC) 2 176, (1986) SUPREME 277, 1986 STI 13, (1986) 8 ECR 10, (1986) 62 STC 112, 1986 (2) SCC 501

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, R.S. Pathak

PETITIONER:
CHUNNI LAL PARSHADI LAL

Vs.

RESPONDENT:
COMMISSIONER OF SALES TAX, U.P., LUCKNOW

DATE OF JUDGMENT18/03/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
PATHAK, R.S.

CITATION:
1986 AIR 1966 1986 SCR (1) 891
1986 SCC (2) 501 1986 SCALE (1)1365

ACT:
Uttar Pradesh Sales Tax Act, 1948, s.3AA and Uttar Pradesh Sales Tax Rules, 1948, Rule 12-A - Sale of goods by dealer deemed to be a sale to the consumer - Whether irrebuttable presumption raised - Sales Tax Authorities can only examine certificate in Form III as 'Farzi' or not.
Interpretation of Statutes
Interpretation which implements purpose of Act and makes effective provisions of Act to be preferred.

HEADNOTE:
The turnover of cotton yarn was taxable under s.3-AA of the U.P. Sales Tax Act, 1948 at the point of sale of the consumers. The assessee, a dealer in cotton yarn, in the

assessment year 1960-1961 was granted exemption on the turnover of cotton yarn amounting to Rs. 8,70,810 by the Sales-tax Officer on the basis of Form IIIA filed by him. Subsequently, on receipt of information by the Sales-tax Officer that the purchasing dealer of cotton yarn had not actually sold it but had consumed it himself, proceedings were taken against the assessee under s.21 to reopen the assessment for the assement year 1960-61. A list of dealers to whom sales were made was also obtained from the assesses. In his order under s.21, the Sales-tax Officer had stated that on verification of the aforesaid list, it was learnt that two dealers had consumed the entire cotton yarn in manufacturing handlooms cloth and another dealer had consumed the yarn of Rs. 44,676.12 only out of the amount of Rs. 55,991.87; that dealer No. 4 in the list had admitted the purchases of yarn and had also paid sales tax on the sale of yarn so purchased but the dealer at serial No. 5 in the list had deposed that he had consumed the entire cotton yarn in manufacturing coarse handloom cloth. The order under s. 21 further stated that cotton yarn worth Rs. 8,17,905.39 was sold to dealers who did not resell the same but actually consumed the same and so the assessee was liable to pay sales tax on this turnover.

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On behalf of the assessee it was contended that he was not liable to pay sales tax as he had fulfilled all the conditions laid down in s.3AA of the Act read with Rule 12A of the U.P. Sales Tax Rules inasmuch as he had sold the cotton yarn to registered dealers and had also obtained certificates of resale on Form III-A and that it was not possible to find out what the purchasers subsequently did because it had no control over purchasers of the yarn.

Rejecting this plea of the assessee the Sales Tax Officer held that the assessee had not proved beyond shadow of doubt that sale of cotton yarn was made to the consumers, that the mere fact that the purchasers were registered dealers and they had furnished certificates for resale was not sufficient, that the declaration forms given by the purchaser-dealers were 'farzi', that the assessee was in collusion with them, that the documentary evidence on record showed that the purchasers though registered dealers did not resell the cotton yarn in the same condition in which they had purchased, rather they had themselves consumed cotton yarn and, therefore, the cotton yarn amounting to Rs. 8,16,905.39 was assessable to Sales Tax at 2%.

In the appeal filed by the assessee, the Appellate Authority Sales Tax, held that the assessee was not liable to tax.

The revision filed by the Department was dismissed and it was held that there was not a single bit of evidence for showing that Form III-A certificates were 'farzi' in the sense that they did not bear any signature of the buyer nor there was any collusion between the buyer and the assessee;

that the assessee had sold the goods and accepted the Forms in good faith and that the assessee had no control over the purchaser of the yarn.

In the reference under s.11(5) of the U.P. Sales Tax Act 1948, the High court affirmed the view taken by the Sales Tax Officer.

Allowing the appeal of the assessee on the question whether the sale of yarn made by him against certificates in Form III-A was liable to tax,

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HELD : 1. Under s.3AA of the U.P. Sales Tax Act, 1948, the cotton yarn is to be taxed at a single point i.e. when the sale takes place to the consumer. To ensure this the legislature has enacted s.3-AA in the Act and the State Government has framed Rule 12-A of the U.P. Sales Tax Rules, 1948. Rule 12-A proceeds on the basis that sale of any of the goods specified in s.3-AA of the Act shall be deemed to be a sale to the consumer, unless the dealer furnishes a certificate in Form III-A to the effect that the goods purchased are for resale in the same condition i.e. the tax shall not be realised by a registered dealer from another registered dealer if a certificate in Form III-A is furnished that the goods purchased would not be consumed or used by the purchaser but it will be resold. [899 G; 900 D-G]

2. The combined effect of sub-s.(1), (2) & (3) of s.3-AA of the Act is that tax would be payable if the goods in question, that is cotton yarn, in this case, are sold to a dealer for consumption. Unless the dealer proves otherwise every sale by a dealer shall for the purposes of sub-s.(1) be presumed to be a sale to a consumer. Therefore, a registered dealer has to prove that a sale to another registered dealer or an unregistered dealer is not for consumption. [901 E-G]

3. Rule 12-A provides a method of proving that the sale is not a sale to the consumer. Furnishing of certificate in the form and with the particulars, is one of the methods of proving that sale by a registered dealer is not for consumption. Neither the rule nor the provision of the section suggests that this is the only method. If a dealer can prove by any other way then the way contemplated by Rule 12-A then he is not so precluded. The purpose of the rule would be frustrated if after the dealer proves in the manner indicated in Rule 12-A he has to prove again how the purchasing dealer has dealt with the goods after he obtains the certificates from a registered dealer. That would make the working of the Act and rule unworkable. Indubitably, in the instant case, certificate as mentioned in Rule 12-A were furnished. The furnishing of the certificate in the prescribed manner raises a presumption of proof that the goods were sold to dealer for

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resale in the same condition and not to be consumed by the purchasing dealer, but that was not the only method. [901 G-H; 902 A-D]

The question is whether Rule 12-A raises an irrebuttable presumption by the assessing authority. Even if the assessee had furnished a certificate in Form III-A and the details as stipulated in Form-IV, can the selling dealer be called upon to prove further how the purchasing dealer has dealt with the goods after purchasing the goods. [904 C-D]

4. The purpose of Rule 12-A was to make the object of the provisions of the Act workable i.e. realisation of tax at one single point, at the point of sale to the consumer. The provisions of the rule should be so read as to facilitate the working out of the object of the rule. [906 A-B]

J.K. Manufacturers Ltd. v. The Sales Tax Officer, Sector II, Kanpur & Ors., 26 S.T.C. 310, relied upon.

Commissioner, Sales tax, Uttar Pradesh v. Shankar Lal Chandra Prakash, 26 S.T.C. 386, overruled.

The State of Madras v. M/s. Radio and Electricals Ltd. Etc., [1967] Supp. S.C.R. 198, referred to.

5. The genuineness of the certificate and declaration may be examined by the Taxing Authority but not the correctness or the truthfulness of the statements. The sales tax authorities can examine whether certificate is 'Farzi' or not, or if there was any collusion on the part of selling dealer - but not beyond - i.e. how the purchasing dealer has dealt with the goods.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No.162 (NT) of 1974.

From the Judgment and Order dated 19th April, 1973 of the Allahabad High Court in Sales Tax Reference No. 603 of 1971.

E.C. Agarwal, V.K. Pandita and P.P. Srivastava for the Appellant.

S.C. Manchanda, J.D. Jain and Mrs. Kawaljit Kochar for the Respondent.

The judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This is an appeal by special leave from the decision of the High Court of Allahabad in Sales Tax reference No. 603 of 1971 under section 11(5) of the U.P. Sales Tax Act, 1948 (hereinafter called the 'Act'). The question referred to the High Court under section 11(5) of the Act was as follows:-

> "Whether, on the facts and in the circumstances of the case, the dealer could be declared non-taxable on sales of yarn for Rs.8,70,810, which he made against III-A

Forms though the purchaser instead of selling the said yarn in the same condition, consumed the same?"

The division bench of the Allahabad High Court was of the opinion that the controversy raised in the reference was covered by the decision of the Full Bench of the said High Court in Commissioner,Sales Tax, Uttar Pradesh v. Shankar lal Chandra Prakash, 26 S.T.C. 386 where it was held that the certificate in Form III-A was only a prima facie evidence of the fact that the goods had not been sold to a consumer. The division bench of the Allahabad High Court was further of the opinion that that certificate was not conclusive evidence and the department could go behind the certificate and if it found that the goods had not been resold in accordance with the certificate given in Form III- A and had been consumed, in such a case the department could ignore the certificate and levy tax on the selling dealer. In those circumstances the revising authority was wrong, according to the High Court, in holding that the assessee was not liable to tax even if the department had found that the yarn had been consumed by the purchaser and not re-sold. The division bench answered the question in the negative in favour of the Commissioner and against in the assessee. The assessee has come up in appeal as mentioned hereinbefore by special leave.

In order to appreciate the controversy, it is necessary to refer to certain facts and findings.

The assessee at the relevant time was a dealer in cotton yarn at Moradabad. In the assessment year 1960-61, the Sales-tax Officer had granted exemption to the dealer on the turn-over of cotton yarn amounting to Rs.8,70,810 on the basis of Form III-A filed by the assessee. The turnover of cotton yarn was taxable under section 3-AA at the point of sale to the consumers. The assessee filed certificate in Form III-A from the purchasers. Later, the Sales-tax Officer had received certain information that the purchasing dealer of cotton yarn had not actually sold it but had consumed it himself. Hence the proceedings were taken against the assessee under section 21 of the Act to reopen the assessment for the assessment year 1960-61.

In view of the nature of the findings made, it would be relevant to refer to the order under section 21 of the Act. As mentioned hereinbefore, the assessee was a registered dealer and was originally assessed for the year 1960-61 under section 41(5) of the Act on a net turnover of Rs.20,31,897.58 to a tax of Rs 38,027.60 vide assessment order dated 11th January, 1963 by the Sales-tax Officer.

The attention of the dealer was drawn to the letter of the Sales-tax Officer, Bijnor. A list of dealers to whom sales were made was also obtained from the dealers and the Sales-tax Officer in his order under section 21 of the Act had stated that the same was verified. In the list there were five names indicating the amount of cotton yarn sold to them. The Sales-tax Officer in his order under section 21 had stated that on verification, it was learnt that two dealers had consumed the entire cotton yarn in manufacturing handloom cloth and another dealer had consumed the yarn of Rs.44,676.12 only out of the amount of Rs.55,991.87 sold to him and he had resold the balance in the same condition and paid the sales tax due thereon. It was further recorded that dealer No.2 in the said list had purchased cotton yarn worth Rs.60,514.87 and not for Rs.55,991.87 as given by the Kanth dealer. The other dealer, namely dealer No.4 mentioned in the list had admitted the purchases of yarn and had also paid sales tax on the sale of yarn so purchased but the dealer at serial No.5 in the list had

deposed that he had consumed the entire cotton yarn in manufacturing coarse handloom cloth.

According to the Sales-tax Officer in his order under section 21 of the Act, cotton yarn worth Rs.8,17,905.39 was sold to dealers who did not resell the same but actually consumed the same and so the instant dealer was liable to pay sales tax on this turnover.

It was contended on behalf of the dealer that he was not liable to pay sales tax as he had fulfilled all the conditions laid down under the provisions of section 3-AA of the Act read with rule 12A of the U.P. Sales Tax Rules (hereinafter called the 'rules') inasmuch as he had sold the cotton yarn to registered dealers and had also obtained from them the certificates of resale on Form III-A and it was not possible nor was it his business to find out what the purchasers of the cotton yarn subsequently did.

The Sales-tax Officer found himself unable to accept this contention and after referring to the relevant provisions observed that the selling dealer had not proved beyond shadow of doubt that sale of cotton yarn made by the dealer was to the consumers and that the mere fact that the purchasers were registered dealers and that they had furnished certificates for resale was of not much avail. The Sales-tax Officer concluded that the documentary evidence on record showed that those purchasers though registered did not resell the cotton yarn in the same condition in which they had purchased these.

Accordingly, the Sales-tax Officer came to the conclusion that cotton yarn amounting to Rs.8,16,905.39 was assessable to sales tax at 2% There was an appeal from the said decision to the Appellate Authority Sales Tax, Moradabad. On consideration of the evidence, the said Appellate Authority, apart from its view on law after discussing evidence and the Textile Control Order and Licences, came to the categorical finding that there was no case for assessment against the assessee in the year 1960-61, as purchaser named in the order had accepted some resale of yarn to consumers and were assessed under section 21 and the rest three were registered dealers and yarn licencees and admittedly had been assessed to tax under section 21 on the same turnover which had been included in the present assessment under section 21 of the Act.

There was a further appeal to the Commissioner of Sales Tax by revision. After discussing the position in law, the revisional authorities dismissed the appeal.

To the objection to the notice under section 21, the assessee had disputed his liability to tax on the ground that since it had sold the yarn after scrutiny of requisite declaration, it was not liable to tax and further that it had no power to control over the yarn sold to the purchaser. the Sales-tax Officer rejected this plea of the assessee and held that the declaration forms given by the purchaser- dealers were 'farzi' and that the opposite party was in collusion with them. He had held that the purchasing dealers had consumed cotton yarn. The assessment order was followed up by opposite party by appeal and the Appellate Authority nullified the same and held that the assessee was not liable to tax. The State had preferred a revision which was dismissed and the Additional Judge stated that he found that there was not a single bit of evidence for showing that III- A Form certificates were 'farzi' in the sense that it did not bear any signature of the buyer nor there was any collusion between the

buyer and the appellant. The dealer had sold the goods and accepted the forms in good faith and that was so. The dealer had no control over the yarn of the purchaser. In those circumstances the question as mentioned to hereinbefore was referred to the High Court after stating these facts in the statement of case. The High Court answered the question against the dealer as indicated hereinbefore.

At the outset, in view of the statement of facts narrated before, we are of the opinion, that the question proceeded on misapprehension of facts. In this case though the Sales-tax Officer had held that the purchasers of yarn by giving certificates in Form III-A had consumed the said yarn instead of selling the said yarn in the same condition, the said finding was not accepted and was in fact reversed by the Appellate Authority as well as the revising authority.

Therefore, the question proceeded on a mis-apprehension of the factual position.

In order to bring out the true controversy, we reframe the question as follows:

> "Whether,on the facts and in the circumstances of the case, the sale of yarn to the extent of Rs.8,70,810 sold by the dealer against certificates in Form III-A was liable to tax?"

It is necessary in this connection to bear in mind the relevant provisions of the Act as well as the rules with which this appeal is concerned. Section 3 of the Act imposes liability to tax and provides inter alia, that every dealer shall, for each assessment year, pay a tax at the rates specified therein on his turnover of such year, which shall be determined in such manner as might be prescribed.

Section 3-A which was inserted by U.P. Act No. XXV of 1948 as well as U.P. Act No. XXVI of 1950 provides that notwithstanding any-thing contained in section 3, the State Government, may, by notification in the Official Gazette, declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point in the series of sales by successive dealers as the State Government might specify.

Section 3-AA with which this appeal is concerned provides that notwithstanding anything contained in section 3 or 3-A,turnover in respect of certain goods mentioned therein shall not be liable to tax except at the point of sale by a dealer to the consumer and the rate was specified therein.

Clause (ii-a) of sub-section (1) of section 3-AA included inter-alia, cotton yarn with which this appeal is concerned, but not including yarn waste. It is relevant to bear in mind Rule 12A framed under The U.P. Sales Tax Rule, 1948 which is in the following terms:

> "12-A. Exemption of sales under Section 3AA.-A sale of any of the goods specified in Section 3-AA shall be deemed to be a sale to the consumer, unless it is to a dealer who furnishes a certificate in Form III-A to the effect that the goods purchased are for re-sale in the same conditions. Details of all such certificates shall be furnished by the selling dealer with his return in Form IV."

The cotton yarn is to be taxed at a single point i.e. when the sale takes place to the consumer. Section III-A and the scheme thereunder was formulated under the provisions of section 14 of the Central Sales Tax Act, 1956.

Section 14 of the Central Sales Tax Act specifies certain goods as goods of special importance in inter-state trade or commerce and clause (ii-b) Including cotton yarn waste.

Section 15 imposes certain restrictions and conditions in regard to tax on sale or purchase of declared goods within a State, and clause (a) imposes conditions that the tax payable under any law in respect of any sale or purchase of such goods inside the State shall not firstly exceed four per cent of the sale or purchase price thereof and secondly such tax shall not be levied at more than one stage.

As cotton yarn is one of the goods which has been declared goods of special importance, for the State to levy sales tax on these goods, it is necessary to follow the conditions laid down in section 15 which are essential to ensure that such sales tax should not exceed 4%, of the sale or purchase price and secondly that it shall be imposed at one point.This appeal is not concerned with the question of the limit. The limit in this case of 4% has been fulfilled. The second aspect is that it should not be imposed at more than one point. Law is so framed that it is collected from the consumer. In order to ensure this, the legislature has enacted section 3-AA in the Act and State Govt. has framed Rule 12-A of the Rules. Rule 12-A as set out hereinbefore proceeds on the basis that sale of any of the goods specified in section 3-AA of the Act shall be deemed to be a sale to the consumer. The second aspect of the said rule enjoins that this will not be so that means to say that a sale of goods specified in section-3AA shall not be deemed to be a sale to the consumer unless the dealer furnishes a certificate in Form IIIA and further that that certificate must be to the effect that the goods purchased are for resale in the same condition i.e. the tax shall not be realised by a registered dealer from another registered dealer if a certificate in Form III-A is furnished that the goods purchased would not be consumed or used by the purchaser but it will be resold. The Form IV provides for return of turnover, class of goods and then there is a declaration and then details in respect of sale of goods specified in section 3-AA on which exemption is sought to be claimed. The names of the goods have to be indicated i.e. giving the name and address of purchasing dealer, the Registration certificate number, if any, of the registered dealer, date of sale, sale price and number of certificate in Form III-A noticed before. Sub-section (2) of section 3-AA of the said Act provides that unless the dealer proves otherwise, every sale by a dealer, shall, for the purpose of sub-section (1), be presumed to be to a consumer. An explanation was, however, added to sub-sec- tion (2) to section 3-AA by the Act of 1958 which provides, inter alia, as follows:-

> "Explanation - A sale of any of the goods specified in sub-section (1) to a registered dealer who does not purchase them for resale in the same condition in which he has purchased them, or to an unregistered dealer shall, for purposes of this section, be deemed to be a sale to the consumer."

It means that a sale of any of the goods specified in sub-section (1) to a registered dealer who has purchased them or to any un-registered dealer, shall for the purpose of this section, be deemed to be

a sale to the consumer unless the purchasing dealer purchases the said goods for resale in the same condition. It merely strengthens the provisions of sub-section (2) of section 3-AA i.e. unless the dealer proves otherwise, every sale shall, for the purpose of sub-section (1), be presumed to a consumer. the combined effect of sub-sections(1), (2) and (3) of section 3-AA of the Act is that tax would be payable if the goods in question i.e. cotton yarn, in this case, are sold to a dealer for consumption. Unless the dealer proves otherwise every sale by a dealer shall for the purpose of sub-section (1) be presumed to be a sale to a consumer. A sale of any of the goods mentioned in sub-section (1) to a registered dealer who does not purchase them for resale in the same condition, without processing or sale to unregistered dealer shall be deemed to be a sale to the consumer. Therefore, a registered dealer has to prove that a sale to another registered dealer or an unregistered dealer is not for consumption. In order to facilitate the working of the Act, by rule 12A a method of proving has been provided that the sale is not a sale to the consumer. The reading of the rule along with relevant provisions of the Act leads to the conclusion that 12A method, - furnishing of certificate in the form and with the particulars, is one of the methods of proving that sale by a registered dealer is not for consumption. Neither the rule nor the provision of the section suggests that this is the only method. If a dealer can prove by any other way than the way contemplated by rule 12A then he is not so precluded. For the rule to say otherwise would be exceeding the provision of the section. The purpose for the making of the rule would however, be frustrated if after the dealer proves in the manner indicated in rule 12A he has to prove again how the purchasing dealer has dealt with the goods after he obtains the certificate from a registered dealer. That would make the working of the Act and rule unworkable.

There is no dispute that in this case certificate as mentioned in rule 12A were furnished.

The questions involved in this case are whether by furnishing certificate in Form III-A and the details of such certificate given in Form IV, the selling dealer got exemption and Rule 12A created an irrebuttable presumption i.e. that no further evidence is required in this matter to prove that the goods were sold to a dealer for resale in the same condition and not to be consumed by the purchasing dealer.

The Full Bench of the Allahabad High Court in J.K. Manufacturers Ltd. v. The Sales Tax Officer, Sector II, Kanpur, and Others, 26 S.T.C. 310 had occasion to deal with this question. In this case one of us (Pathak, J.) was a party. It was observed by Pathak, J. that Rule 12A must be construed to mean to provide merely a convenient mode of proving that the purchase of the goods was for resale in the same condition. It was, however, observed that this rule did not lay down that the only mode of proving this was by furnishing certificates in Form III-A. Beg, J. as the learned Chief Justice then was, observed that the primary object and plain meaning of rule 12A was to prescribe certification by the purchasing dealer as the only means of protection for the selling dealer which enabled him to repel the statutory presumption most conveniently. The rule in addition, the learned judge observed, to preventing the commission of fraud and introducing administrative convenience, was designed to facilitate the task of the dealer who sold. It was further observed by learned judge that it was, therefore, reasonable and valid and did not go beyond the object of section 3-AA. It was further observed by Beg, J. that the question whether the fair and reasonable but obligatory presumption raised by section 3-AA(2) read with first part of rule 12-A was rebutted or not in a particular case,

could be decided, on the totality of evidence before the Sales Tax Officer, when the evidence had to be weighed and assessment order had to be passed. At that time, the Sales Tax Officer might fairly use non-compliance with the last part of rule 12-A as a piece of evidence for concluding that some certificates filed before him in assessment proceedings were not genuine. It was further observed that although the prescribed certificate might provide prima facie evidence protecting the selling dealer it was not conclusive. Rule 12-A specified the kind of evidence which was required for rebutting the presumption, but it did not purport to regulate the question of time at which this evidence should be admitted in the course of assessment proceedings. Nor did it deal with evidence for other purposes which might be needed for assessment. The Sales Tax Officer could only act on legally sustainable grounds in excluding or admitting evidence.

Referring to sub-section (2) of section 3-AA, Pathak, J. observed that at first blush, the rule gave the impression that unless the selling dealer is armed with a certificate in Form III-A from the purchasing dealer the sale made by him must be considered to be a sale to the consmer. The learned judge observed that he was unable to read the rule to mean that. This rule meant a convenient mode to the selling dealer for proving that the goods had not been sold to the consumer. It provided for no more than that. The certificate in Form III-A was one mode in which the dealer might establish that he had not sold the goods to the consumer. But that was not the only mode. If it was accepted that it was the only mode, then it would limit the selling dealer to that mode alone and would preclude him from adopting any other mode of proof.

This case was considered by another Full Bench of the Allahabad High Court in Commissioner, Sales Tax, Uttar Pradesh v. Shankar Lal Chandra Prakash, 26 S.T.C. 386 where Beg, J., as the learned Chief Justice then was, observed that rule 12-A prescribed an indispensable or an imperative mode of rebutting the presumption laid down by section 3- AA(2) and then in rule 12-A, so that other modes of proof were by a necessary implication prohibited as substitutes for fulfilling the same purpose. We are unable to accept this view as correct. The correct position was stated by the majority view Ln J.K. Manufacturers Ltd. (supra).

As we read the rule, the furnishing of the certificate in the manner indicated raises a presumption, but as indicated before that was not the only method, a registered dealer might prove otherwise also. As noted, rule 12-A first states that a sale of any goods specified in sub-section (1) shall be deemed to be a sale to the consumer. But this presumption will not be there if the dealer furnishes a certificate in Form III-A as indicated therein. But the question with which we are concerned in this case did not arise in the form in either of the two cases. It is not the question whether it raises a presumption or not. But the question is whether it raises an irrebuttable presumption i.e. a presumption which cannot be rebutted by the relevant assessing authority. In other words even if the assessee had furnished a certificate in Form III-A, and the details as stipulated in Form IV, can the selling dealer be called upon to prove further how the purchasing dealer has dealt with the goods after purchasing the goods?

Mr. Aggarwala, learned counsel, contended that after a certificate was given, it should be deemed to be not for consumption and the certificate raised an irrebuttable presumption in favour of the dealer and no further examination of evidence was permissible. In support of this contention, reliance was

placed on certain observations of this Court in The State of Madras v. M/s Radio and Electricals Ltd. etc., [1967] Supp. S.C.R. 198. This Court had occasion to deal with sections 7 and 8 of the Central Sales Tax Act, 1956 and rules framed thereunder. There Shah, J. speaking for the Court observed at page 207 of the report that the Act sought to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce and explalning similar provisions in the Central Act, this Court observed that though the tax under the Act was levied primarily from the seller, the burden was ultimately passed on the consumers of goods because it entered into the price paid by them. Parliament with a view to reduce the burden on the consumer arising out of multiple taxation prescribed low rates of taxation, when transactions took place in the course of inter-State trade or commerce. This Court observed that indisputably the seller could have in these transactions no control over the purchaser. He had to rely upon the representation made to him. He must satisfy himself that the purchaser was a registered dealer, and the goods purchased were specified in his certificates but his duty extended no further. If he was satisfied on these two matters on a representation made to him in the manner prescribed by the rules and the representation was recorded in the certificate in Form 'C', the selling dealer was under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplied the goods he incurred a penalty under section 10 of that Act. That penalty was incurred by the purchasing dealer and could not be visited upon the selling dealer. The selling dealer was under the Act authorised to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he could collect that amount only in the light of the declaration mentioned in the certificate in Form 'C'. He could not hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertained whether the purchaser, notwith standing the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form 'C'. There was nothing in the Act and the rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty might be visited upon the selling dealer.

This Court further observed that if the purchasing dealer held a valid certificate specifying the goods which were to be purchased and furnished the required declaration to the selling dealer, the selling dealer became on production of the certificate entitled to the benefit of section 8(1) of that Act. It was of course open to the sales tax authorities to satisfy themselves that the goods which were purchased by the purchasing dealer under certificate in Form 'C' were specified in the purchasing dealer's certificate in Form 'C'. These observations as has been noted before were made in the context of the rules and the provisions of the Central Act, which were on similar lines, though their provisions were not in parinateria.

But it was contended by counsel for the dealer that in order to make the provisions of the Act operative and effective, this was the intention in the instant case and though the rule did not say so that it raised an irrebuttable presumption. We are of the opinion that this submission has to be accepted. After all the purpose of the rule was to make the object of the provisions of the Act workable i.e. realisation of tax at one single point, at the point of sale to the consumer. The provisions of rule should be so read as to facilitate the working out of the object of the rule.

An interpretation which will make the provisions of the Act effective and implement the purpose of the Act should be preferred when possible without doing violence to the language. The genuineness of the certificate and declaration may be examined by the taxing authority but not the correctness or the truthfulness of the statements. The Sales Tax Authorities can examine whether certificate is "farzi" or not, or if there was any collusion on the part of selling dealer but not beyond - i.e. how the purchasing dealer has dealt with the goods. If in an appropriate case it could be established that the certificates were "farzi" or that there was collusion between the purchasing dealer and the selling dealer, different considerations would arise. But in the facts of this case as noticed before, the facts have been found to the contrary by the appellate authority though that was the finding of the Sales Tax Officer. The question has been reframed for that purpose i.e. to bring about the real controversy in the background of the facts found in this case.

In the facts and circumstances of this case, the question posed is academic because it has not been found by the appellate authority that neither the goods have been consumed by the purchasing dealer and not sold to the consumer in terms of the registration certificates furnished by the purchasing dealer, nor that the certificates were forged or fabricated.

It must be held that the Full Bench decision of the Allahabad High Court in Commissioner, Sales Tax, Uttar Pradesh v. Shankar Lal Chandra Prakash (supra) was not correctly decided. In the premises the question reframed above must be answered in the negative and in favour of the dealer. The appeal is, therefore, allowed and the judgment and order of the High Court are set aside. The appellant is entitled to the costs of this appeal.

A.P.J. Appeal allowed.