Supreme Court of India
Phool Chand Gupta vs State Of Andhra Pradesh on 21 January, 1997
Author: . Ahmadi
Bench: Sujata V. Manohar

PETITIONER:
PHOOL CHAND GUPTA

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 21/01/1997

BENCH:
SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Ahmadi, CJI.

These two appeals arise out of a common judgment delivered on 14.8.1978 by a Division Bench of the High court of Andhra Pradesh whereby it repelled the contention of the appellant firm that Rule 12(3) (ii) of the Central Sales Tax (Andhra Pradesh) Rules was directory and not mandatory and if held to be mandatory the said rule was ultra vires the Central Sales Tax Act, 1956, hereinafter called 'the Act'.

The appellant, M/s. Phool Chand Gupta, was at all material times a dealer in oil seeds. This firm was assessed under the Act by the Commercial Tax Officer, Vizianagaram, for the relevant assessment year 1971-72 and 1972-73. He granted exemption on a turnover in respect of mohwa seeds on the plea that the seeds were purchased by the firm while in transit and were sold to dealers outside the State. The Deputy Commissioner, however, noticed that the assessee had actually purchased the Railway Receipts relating to the mohwa seeds from non-resident dealers while the goods were in transit from places outside the State and were sold to non-resident dealers. He, therefore, opined that the exemption granted was irregular since the transaction fell within Section 3(b) and hence was not eligible for exemption in view of Section 6(2) of the Act unless the dealer furnished a certificate in Form E-1 obtained from the vendor and a declaration in form C received from the

registered dealer to whom he sold the goods. Since no document in Form C was furnished, it was held that the assessee was not entitled to exemption. The Deputy commissioner, therefore, withdrew the exemption allowed by the Assessing Officer. In appeal the Sales Tax Appellate Tribunal affirmed this view since the requirement of Rule 12(3) (ii) of the Central Sales Tax (Andhra Pradesh) Rules (hereinafter called 'the State Rules'), was not satisfied. The High Court also approved the said point of view.

The High Court noticed that the appellant firm had purchased mohwa seeds from a dealer in the State of Orissa and while the consignment was in transit, it sold the same to a dealer in West Bengal by endorsing the Railway Receipt for that consignment. Thus, there is no dispute that the transaction took place in the course of inter-State trade falling within the scope of Section 3(b) of the Act. On the turnover of these seeds exemption was claimed under Section 6(2) of the Act which was denied by the authorities since rule 12(3) (ii) was not complied with. Before the High Court it was contended that the said rule was merely directory and not mandatory and that if it was construed to be mandatory, it would be ultra vires the provisions of the Act. The High court negatived both these contentions and hence the present appeals by special leave.

We may at the outset notice a few relevant provisions of the Act as they stood at the material time. Section 3 provides that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase occasions the movement of goods from one State to another; or is effected by a transfer of documents of title to the goods during their movement from one State to another. Section 6 imposes a liability to tax on inter-State sales. Sub-section (1) provides that subject to the other provisions in the Act, every dealer shall be liable to pay tax on all sales of goods other than electric energy effected by him in the course of inter-State trade or commerce during any year on and from the notified date. Sub- section (2) as it stood before 1.4.1973 read as follows:

> "6(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A) where a sale in the course of inter-State trade or commerce of goods of the description referred to in sub- section (3) of section 8 --
>
> (a) has occasioned the movement of such goods from one State to another; or
>
> (b) has been effected by a transfer of documents of title to such goods during their movement from one State to another;
>
> any subsequent sale to a registered dealer during such movement effected by a transfer of documents of title to such goods shall not be subject to tax under this Act:
>
> Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner a certificate duly filled and signed by the registered dealer from whom the goods were purchased, containing the prescribed particulars."

After its amendment with effect from 1.4.1973, the said sub-section reads as under:

> "6(2) Not withstanding anything contained in sub-section (1) or sub-section (1A) where a sale of any goods in the course of inter- state trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from the State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods, --
>
> (A) to the Government, or (B) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:
>
> Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting that sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit, --
>
> (a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority, and (b) if the subsequent sale is made --
>
> (i) is a registered dealer, a declaration referred to in clause
>
> (a) of sub-section (4) of section 8, or
>
> (ii) to the Government, not being a registered to in clause (b) of sub- section (4) of section 8: Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if, --
>
> (a) the sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than [four per cent] whether called a tax or fee or by any other name; and
>
> (b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (A) or clause (B) of this sub-section."

Incidentally, the proviso to sub-section (1) also underwent change with effect from 1.4.1973 and read as under:

> "Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which in accordance with the provisions of sub-section (3) of section 5, is a sale

in the course of export of those goods out of the territory of India."

Section 13 empowers the Central government to make rules, providing for "(b) the form in which and the particulars to be contained in any declaration of certificate and the time within which any such certificate or declaration shall be produced or furnished."

We may now turn to Rule 12(1) of the Central Government Sales tax (Registration and Turnover) Rules, 1957 which lays down that the declaration and certificate referred to shall be in forms 'C' and 'D', respectively. Sub-rule (4) next provides that the certificate referred to in section 6(2) shall be in Form E-I or E-II as the case may be.

Next, we may reproduce rule 12(3)(ii) of the State Rules. it reads:

> "Rule 12(3)(ii) - For the purposes of claiming exemption from tax on his subsequent sale under sub-
>
> section (2) of Section 6, the purchasing dealer who effects a subsequent sale to another registered dealer by transfer of documents of title to the goods during their movement from one State to another, shall furnish to the appropriate assessing authority
>
> (i) the portion marked 'original' of the form E-1 received by him from the registered dealer from whom he purchased the goods, and
>
> (ii) the original of the declaration in form C received from the registered dealer to whom he sold the goods."

On a conjoint reading of the various sub-sections of Section 8 it appears that the concessional rate of three percent of the turnover is admissible on all inter-State sales when the goods in question are of the description referred to in sub-section (3). Thus, the concessional rate prescribed under sub-section (1) is available to goods described under sub-section (3). However, sub-section (4) requires the dealer claiming the benefit of the concessional rate prescribed under sub-section (1) to furnish to the prescribed authority in the prescribed manner a declaration dully filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained form the prescribed under the rules and unless this certificate is produced as required by sub-section (4), the concession under sub-section (1) will not be available.

Turning now to Section 6(2) it is clear that the exemption granted thereunder is also available as in the case of Section 8(1) to the goods of the description referred to in sub-section (3) of Section 8. While granting the exemption certain conditions prescribed by the sub- section have to be met. These are (i) the sale must be a second or subsequent sale effected in the course of inter- state trade, (ii) it must be effected by transfer of documents of title while the goods are in movement from one State to another, (iii) it must be in respect of goods of the description in Section 8(3), (iv) it must be in favour of a registered dealer and (v) the seller too should be shown to have purchased the goods

from a registered dealer. Thus, it seems clear to us that the concessional rate under Section 8(1) and the exemption for the subsequent sale provided by Section 6(2) are, in both cases, in respect of goods of the description referred to in Section 8(3) of the Act. While in the case of a sale governed by Section 8, sub- section (4) thereof requires the production of a certificate in form 'C', in the case of the subsequent sale under Section 6(2) the benefit of the exemption can be availed of only if the dealer effecting the sale furnishes to the prescribed authority a certificate as postulated by the proviso thereto as it stood before 1.4.1973.

Form 'C' has been prescribed under rule 12 of the Rules by the Central Government to satisfy the requirement of Section 8(4) and similarly to satisfy the requirement of Section 6(2), rule 12(3)(ii) of the State Rules provides for the production of the declaration in Form 'C' received from the registered dealer to whom the goods were sold. Of course under the central Rules, sub-rule (4) of Rule 12 the certificate referred to must be in Form 'E-I' or 'E-II' as the case may be. It is the requirement of furnishing Form 'C' under rule 12(3)(ii) of the State rules which is the bone of contention in the present proceedings. It is contended that if this rule is not construed to be directory in character, it will be ultra vires the Act.

It is true that while the proviso to Section 6(2) of the Act imposes the liability of production of Form 'E-J', Rule 12(3)(ii) of the State Rules imposes the additional requirement of filing Form 'C' as well. As pointed out earlier to secure exemption under Section 6(2), proof of the subsequent sale is a sine qua non. Unless the subsequent sale to a registered dealer in the course of inter-State trade of commerce of goods of the description referred to in Section 8(3) is shown to have been effected by the transfer of documents of title to such goods, there could be no question of grant of exemption from payment of tax. In order to claim and secure exemption, this fact has to be proved by the production of Form 'E-I' under rule 12(4) of the Central Rules and Form 'C' under Rule 12(3)(ii) of the State Rules.

We may now consider the challenge to the vires of Rule 12(3)(ii) of the State Rules. It, in no uncertain terms, says that for claiming exemption from tax on his subsequent sale under Section 6(2), the purchasing dealer effecting the subsequent sale to another registered dealer by transfer of documents of title to goods during their inter-state movement, 'shall' furnish to the appropriate assessing authority Form 'E-I' received by him from the vendor registered dealer, and the original of the declaration in Form 'C' received from the registered dealer to whom the goods came to be sold. It must be remembered that it is implicit from the plain language of Section 6(2), proviso, that the seller too must be a registered dealer. In other words, the sale must be form one registered dealer to another registered dealer. This fact can be proved by the production of Form 'C' declaration. The production of these certificates would provide the required proof for claiming and securing the exemption provided in respect of the transaction under Section 6(2) of the Act. Was the State Government empowered in law to frame Rule 12(3)(ii)? The answer to this question must depend on whether or not the Act empowers the State Government to frame such a rule.

Section 13 provides for the rule making power. Sub- section (1) of Section 13 empowers the Central Government to make rules providing inter alia prescribing (d) 'the form in which the particulars to be contained in any declaration of certificate and the time within which any such certificate or

declaration shall be produced or furnished'. It should be remembered that Form C is prescribed under this rule making power by the Central Government. Form 'C' is, therefore, a form prescribed by the Central Government and not the State Government. Next, Section 13(3) provides that the State Government may make rules, not inconsistent with the provisions of the Act and the Rules made under sub-section (1), to carry out the purposes of the Act. Sub-section (4) of Section 13 next provides that in particular and without prejudice to the powers conferred by sub-section (3), the State Government may frame rules for the purposes enumerated therein. The High Court has placed reliance on clause (c) which reads as under:

"(c) The furnishing of any information relating to the stocks of goods of, purchases, sales and deliveries of goods by, any dealer or any other information relating to his business as may be necessary for the purposes of this Act."

Section 13(3) confers wide powers on the State Government to make rules to carry out the purposes of the Act, provided the said rules are not inconsistent with the Act and the Rules framed by the Central Government in exercise of power conferred by sub-section (1) of Section

13. Without prejudice to this power, the State Government may make rules for all or any of the matters enumerated in sub-section (4) thereof which includes the matter in clause

(c) extracted earlier. A provision requiring the production of the declaration in Form 'C' for receiving the benefit of exemption under Section 6(2) does not run counter to any provision in the Act or the Central Rules and seems to be within the scope and ambit of the rule making power under Section 13(3) as well as within the specific provision in clause (c) of Section 13(4) which empowers the making of any rule which requires the furnishing of information relating to purchases, sales and delivery of goods by any dealer. The requirement of the production of Form 'E-I' cannot be said to be inconsistent with the Act or the Central rules. That is because Section 6(2) applies to goods of the description in Section 8(3). The Act prescribes the mode of proof for the purpose of Section 8(1) (b) but does not prescribe any mode of proof for the purpose of Section 6(2) of the Act. How then can Rule 12(3)(ii) be said to be ultra vires Section 6(2) of the Act? All that the State government has done is to accept the same mode of proof for the purposes of Section 6(2) since the latter provision is silent on the point. We are, therefore, in agreement with the High court that rule 12(3) (ii) of the State rules is not ultra vires the Act or the Central Rules.

The second limb of the submission is that unless the said Rule 12(3) (ii) is construed as directory, it would be ultra vires the Act should not detain us. The use of the expression 'shall furnish' would indicate that the choice in regard to production is limited to furnishing the portion marked 'original' of form 'E-I' and the original declaration in Form 'C'. If exemption from tax is sought on the subsequent sale under Section 6(2), the purchasing dealer must produce the documents mentioned in clauses (i) and (ii) of the Rule 12(3) (ii) of the Rules. The rule deliberately restricts itself to the production of the specified documents as that would be the best possible evidence in regard to subsequent. sale under Section 6(2) by transfer of documents of title to the goods. To permit substantial compliance would introduce uncertainty and may lead to avoidable litigation. In order to avail of the concession granted under Section 8(1) (b) of the Act, the dealer has to prove the fact that

the goods are of the description mentioned under Section 8(3) by furnishing the declaration in Form 'C' and in no other manner. So also, in order to claim the benefit under Section 6(2), the very same fact has to be proved and if the State Government adopts the same mode of proof, it is impossible to say tat the mode of proof adopted is inconsistent with the provisions of the Act and/or the Central Rules. All that the State Government has done is to fill the gap left by Section 6(2) in regard to the mode of proof that the goods are of the description of Section 8(3) of the Act. It was open to the State Government to select the mode of proof accepted by the Central Government as the exclusive mode of proof to avoid uncertainly and avoidable litigation. If the provision is held to be directory, substantial compliance would suffice. That would permit the dealer to adopt any other mode of proof. It would be for the authorities to accept it as sufficient or to reject it. If the authorities reject it as insufficient, it would lead to avoidable litigation. It was, therefore, open to the State Government to accept the recognised mode as the exclusive mode of proof to avoid disputes on the sufficiency or otherwise of the proof and also to make the process of granting exemption easy and uniform. Such a rule must be held to be within the scope and ambit of Section 13(3) read with Section 13(4) of the Act and not inconsistent with the Act or the Central Rules.

This is the view taken by the High Court under the impugned decision based on the view taken by a learned Single Judge of the same High Court in the case of Govindarayulu & Brothers v. S.T. Appellate Tribunal, Andhra Pradesh (1974) 33 STC 580. However, our attention was drawn to the decisions of the Madras, Gujarat and Madhya Pradesh High Courts which have taken a different view. We will briefly deal with these cases. In the case of the State of Madras v. P. Subbiah Pillai (1967) 20 STC 263, the Court held that Section 6(2) imposed only the requirement of production of form 'E-1' for availing the exemption and there was no indication in the said provision regarding production of Form 'C'. Therefore, any rule made compelling the production of Form 'C' by the State Government would tantamount to adding a condition not imposed by Section 6(2) and would be outside the scope of Section 13, in particular, Section 13(4) of the Act. However, the High Court did not examine the impact of Section 8 of the Act but merely confined itself to the language of Section 6(2) nor did it appreciate the purpose for the requirement of Form 'C' under the Central rules. The Division Bench of the High court did not bear in mind the entire scheme of the Act and the Central Rules and therefore, in our view, reached an incorrect conclusion. The High Court of Gujarat in the case of State of Gujarat v. Yakubhai Haji Hakumutdin (1969) 23 STC 117 has taken the view that the scheme of the Act shows that Section 6 is the charging Section which fixes the liability of the tax on inter-State sales. Under sub-Section (1) thereof every dealer has to pay the tax on all sales effected by him in the course of inter-State trade or commerce while sub-section (2), which applies notwithstanding sub-section (1), grants and exemption from the liability to pay tax if the conditions stipulated thereunder are met. The proviso merely prescribes the condition in regard to the production of Form 'E-1/E-2' but nowhere provides for the production of Form 'C' and therefore such an additional requirement is not consistent with Section 6(2) of the Act. In fact, the learned Advocate Genera for the State tried to contend that unless a declaration in Form 'C' was produced, there would be nothing to show that goods fell within the description of Section 8(3). Since the question referred to the Court was a limited one, namely, whether the want of a certificate in Form 'C' from the purchaser disentitled the assessee from claiming exemption under Section 6(2), and since the question of production of certificate in Form 'C' must be limited to the requirements of concession under Section 8 of the Act, the learned Advocate General was not allowed to urge the

point holding that it was a new point travelling beyond the scope of the reference. In reaching the conclusion it did, the ratio of the Madras case was accepted as correct. The Madhya Pradesh case, Commissioner of Sales Tax, M.P., v. Shivanarayn Jagatnarayn (1978) 42 STC 315, follows the line of reasoning adopted by the Madras and Gujarat High Courts. Dealing with the decision of the Andhra Pradesh High Court in the case of Govindarayulu (supra), the Division Bench of the High Court distinguished it on the ground that it arose out of a writ petition challenging the validity of similar rule framed by the State Government requiring production of Form 'C' to claim exemption under Section 6(2) of the Act. That was, therefore, a case in which the validity of the rule was questioned. Since no such question arose in the case on hand and since the Court had presumed it to be valid, the Andhra Pradesh High Court decision was held to be clearly distinguishable. It was, therefore, held that the rule was directory and not mandatory.

From the aforesaid decisions of the Madras, Gujarat and Madhya Pradesh High Courts, it seems clear to us that they upheld the validity of a similar provision but held that insofar as its application to claims for exemption under Section 6(2) is concerned, it is directory and not mandatory. This view is based on the premise that Section 6(2) requires the production of a certificate in Form 'E-1/E-2' and not a declaration of certificate in Form 'C'. The requirement of Form 'C' is therefore in addition to the requirement under Section 6(2) and can only be directory and not mandatory. But what is overlooked is the fact that even under Section 6(2), the dealer claiming exemption from payment of tax has to show that the goods in question are of the description set out in Section 8(3). Even under Section 8(4), it is stated that sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnished to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form. Therefore, even this provision requires that the particulars referred to in Section 8(3) must be contained and furnished in a prescribed form. As stated earlier, Form 'C' is prescribed under Rule 12 of the Central Rules and not under the State Rules. In a case where concession is claimed under Section 8(2)(b), the dealer must produce a certificate in Form 'C' to prove that the goods are of the description mentioned in Section 8(3). If the mode of proof for claiming a concession under Section 8(2)(b) is Form 'C' to satisfy the requirement of Section 8(3), no exception can be taken if the State Government adopts the same for the purpose of proving the same fact for claiming exemption under Section 6(2) of the Act. If such a rule made by the State Government is intra vires the Act and the Central Rules as held by all the High Courts, we fail to see how it can be said that if that mode is made the sole or exclusive mode of proof in the case of Section 6(2) also, the said rule will be rendered ultra vires the Act and the Central Rules. Since the law provides for a total exemption from the payment of tax levied by Section 6(1), strict proof of the basic fact can be insisted upon. If the State Government, in exercise of its rule-making power under the Act, prescribes that the mode of proof shall be Form 'C', can it be said that such a provision shall be ultra vires the Act and the Central Rules unless it is read down as directory? If the requirement of proof of that very fact under Section 8)2) (b) read with 8(3) is Form 'C' alone, and if that provision is intra vires, it is difficult to appreciate how it becomes ultra vires when applied under Section 6(2) of Act. If the mode of proof is left to the dealer to choose, each dealer may choose his own mode and the concerned authority would be required in each case to apply his mind to each situation and come to an independent conclusion which may on the same set of facts very from authority to authority and thus introduce

uncertainty and consequently lead to avoidable delay and litigation. To avoid such a situation, if the State Government decided to restrict the mode of proof to one, namely, the production of Form 'C', it is difficult to see how the provision can be construed as directory as such an interpretation would destroy the very purpose of the rule. We are, therefore, inclined to take the view which the High Court of Andhra Pradesh took in Govindarayulu's case and which has been approved by the impugned decision.

Before we part, we must notice one observation found in the impugned judgment. In Govindarayulu's case, the learned Single Judge referred to the prescription of production of Form 'C' as the exclusive mode of proof because he held the rule to be mandatory. While referring to this observation, the Division Bench in the impugned judgment observes:

> "We have already made it clear that while the production of Form C is mandatory, that is not the exclusive mode of proof and the assessee will be at liberty to produce in addition to Form C, other evidence."

We must at once clarify that this does not mean that Form 'C' can be substituted by any other evidence but is intended to convey that in addition to Form 'C' if the dealer desires to produce any other additional evidence he may do so. Such additional evidence may be a mere surplusage once Form 'C' is produced.

In the result, we see no merit in these appeals and dismiss them but in view of the conflict of views, we make no order as to costs.