CASE NO.:
Appeal (civil) 1922 of 1999

PETITIONER:
India Agencies (Regd.), Bangalore

RESPONDENT:
Addl.Commnr.of Commer.Taxes, Bangalore

DATE OF JUDGMENT: 16/12/2004

BENCH:
S.N.Variava,Dr.AR.Lakshmanan&S.H.Kapadia

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

In the above appeal, the appellant has impugned the judgment dated 12.11.1998 passed by the High Court of Karnataka whereby the order of the Additional Commissioner of Commercial Taxes dated 22.05.1998 was upheld. By this order, the Additional Commissioner of Commercial Taxes disallowed the claim of the appellant for concessional rate of tax on the inter-state sales effected by the appellant on the basis of portions of "Form-C" marked as duplicate and the indemnity bonds furnished by the appellant for the loss of portions of Form-C marked as original.

The Assessing Authority has disallowed the benefit of concessional rate of tax corresponding to duplicate C-Forms filed on the ground that the appellant did not file original of the C-Forms issued by the purchasing dealers for the inter-state sales effected by the appellant. The main contention before the authorities was with regard to non-consideration of duplicate portion of C-Forms filed in support of the claim for benefit of concessional rate of tax under Section 8(2)(a) of the Central Sales Tax, 1956. The appellant challenged the order of the Deputy Commissioner of Commercial Taxes, Bangalore on various grounds before the Joint Commissioner of Commercial Taxes, Bangalore. The Joint Commissioner for the reasons recorded in his order was of the opinion that the assessing authorities should not have rejected the duplicate portion of the C-Forms and the indemnity bonds filed by the appellant and should not have denied the benefit of concessional rate of tax on such turnover covered by duplicate C-Forms. The Assessing Authority was directed to accept the duplicate C-Forms and allow the benefit of concessional rate of tax under Section 8(2)(a) of the Central Sales Tax, 1956. In the light of the above direction, the assessment order was modified and the Assessing Authority was directed to issue revised demand notice accordingly.

Aggrieved by the order passed by the Joint Commissioner of Commercial taxes (Appeals), the matter was taken up before the Additional Commissioner of Commercial Taxes who, by his order, dated 22.05.1998 rejected all the objections filed by the appellant/controller and confirmed the proposal made by the authorities in the show-cause notice dated 11.14.1998. The Additional Commissioner allowed the appeal and set aside the order of the Joint Commissioner to the extent it allowed concessional rate of tax on the inter-state sales effected by the controller on the basis of the portions of the C-Forms marked as duplicate and the indemnity bonds furnished by the dealer for the loss of the portions of the C-Forms marked as original. Aggrieved by the above order, the appellant filed sales tax appeal No. 75 of 1998 before the High Court of Karnataka. The High Court refused to interfere with the order passed by the Additional Commissioner of Commercial Taxes and dismissed the appeal accordingly. Aggrieved by the judgment and order passed by the High Court, the above appeal was filed in this Court by the dealer.

We heard Mr. A.B. Saharya, learned senior counsel for the appellant and Mr. Sanjay R. Hegde, learned counsel for the respondent. Mr. A.B. Saharya made the following propositions at the time of hearing: -

1) The prescribed Form C is executed in several identical parts marked 'Original', 'Duplicate' and 'Counterfoil' respectively. Where the part

marked 'Original' is lost but, the dealer selling the goods furnishes to the prescribed authority the other part marked 'Duplicate' which is also primary evidence of the said document by virtue of the principles enshrined in Sec 62 of the Evidence Act, 1872, the same should be accepted as complete compliance of the requirement under Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (Central Rules) and Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules 1958 (State Rules) for levy of tax @ 4% under sub-section(1) and (4) of Section 8 of the Central Sales Tax Act, 1956 (Central Act).

2) In any event, filing of the 'Original' portion of the C Form is not mandatory, but directory; and, filing 'Duplicate' part thereof is sufficient compliance for levy of lower rate of tax under Rule 12 (1) Central Rules read with Rule 6(b)(ii) of the State Rules and Section 8 of the Central Act. {Maganese Ore (India) Limited vs. Commissioner of Sales Tax, Madhya Pradesh 1991 (83) STC 116 Para 10 and 13}

In the Alternative

3) Where the portion marked 'Original of the C Form is lost and the selling dealer furnishes the indemnity bond together with the portion marked 'Duplicate' of the C Form, which would be the best secondary evidence of the lost counterpart of the original C Form, the same should be accepted as sufficient compliance of the alternative requirement of Rule 12 (2) and (3) of the Central Rules and Rule 6(b)(ii) of the State Rules for the levy of tax @ 4% under Sub-section (1) read with Sub-section (1) and (4) of Section 8 of the Central Act.

Justification for the alternative proposition:

(a) When lower rate of 4% tax would be admissible on production of additional duplicate of the C Form with the prescribed endorsement recorded in red ink on all the three portions of such declaration Form, that too on the basis of the third part of the Form marked 'Counterfoil' retained by the purchasing dealer; it should be admissible where the selling dealer produces the 'Duplicate' part of the very same declaration form duly received by him from the buying dealer in normal course of the sale transaction in the first instance.

(b) Where only the first part marked Original is lost, but, the portion marked 'Duplicate' of the declaration form furnished by the purchasing dealer is in existence and is produced by the selling dealer, together with the indemnity bond, the requirement is fulfilled under Rule 12(1) and 12(2); and, the additional provision made for production of another duplicate declaration Form would not be attracted under Rule 12(3) of the Central Rules.

4) Where both the parts marked "Original" and "Duplicate" of the declaration form furnished by the dealer purchasing the goods are lost, the dealer selling the goods would have the option, in addition to furnish the indemnity bond, he "may" demand from the dealer who purchased the goods another duplicate of the declaration form, and the same shall be acceptable as sufficient compliance of the requirement under Rule 12(2) and (3) of the Central Rules read with Sub-section (1) and (4) of Section 8 of the Central Act.

5) Central Sales Tax vs. Delhi Automobiles (1981 (48) STC 333) upheld by the Hon'ble Supreme Court in (1997 (10) SCC 486) was a case where both portions marked 'Original' and 'Duplicate' were lost and the dealer claimed benefit of lower rate of tax on the basis of photocopies of the 'Counterfoil' of the C Forms, which was rejected. This case is clearly distinguishable on facts. There is no conflict between the observations made in this case by Delhi High Court in (1981 (48) STC 333) or in the judgment of the Hon'ble Supreme Court in (1997 (10) SCC 486) and the observations made in Commissioner of Sales Tax, M.P., Indore vs. Gajanan Bidi Leaves Co. (1986 (62) STC 203) and also the ratio in Manganese Ore (India) Limited vs. Commissioner of Sales Tax, Madhya Pradesh (1991 (83) STC 116) where 'Duplicate' portion of the C Form was accepted as sufficient compliance under Rule 12(1) of the Central Rules.

Mr. Saharya has also made the following submissions at the time of hearing:

a) That the High Court has failed to note that the fact of bona fides of the loss of original portion of the statutory form is not disputed and as such Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 is not applicable;
b) The bonafides of the appellant in the matter of loss of original portion of the C-Forms is not in dispute and also when the bonafides of the efforts made by the appellant to obtain duplicate C-Forms from its customers in terms of Rule 12(3) of the Central Rules which proved to be only marginally successful is also not in dispute, the view of the High Court that even in such a situation the appellant is not entitled to concessional rate of tax on the basis of the duplicate portion of the C-Form is inequitable and works great hardship on the appellant;
c) The appellant has collected only the lower rate of tax from its customers and has paid the same to the Government the High Court ought to have been less rigid in interpreting Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957;
d) Section 8(4) or Rule 12(1) does not say which part of the form was required to be filed before the Assessing Authority. It is the form itself, which by use of the words "original", "duplicate" and "counter foil" gives an indication as to which part of the form is required to be filed before the Assessing Authority. All the three parts are identical in terms and they all form part of Form-C. Therefore, filing the duplicate marked portion there was sufficient compliance of the provisions of the Act and rules so as to entitle the assessee to get the benefit of concessional rate of tax under Section 8(1) of the Central Act;
e) The High Court and the Assessing Authority is not justified in rejecting the claim for concessional rate of tax on the disputed turnover rejecting the duplicate portions of the original C-Forms without considering the facts and circumstances under which the appellant have produced the duplicate portions of the C-Form;
f) Rule 12(1) of the Central Sales Tax (R&T) Rules, 1957, prescribes that the declaration and the certificate referred to in sub-section (4) of section 8 shall be in Form C and D respectively, it does not say that the original portion of C form only to be accepted and that under no circumstances the duplicate portion should not be accepted. Nowhere in the Act or Rules it is specified that duplicate portion of the form is not admissible by the assessing authority under any circumstances. The duplicate portion is meant to be used in extraneous circumstances by the dealer to claim the concessional rate as a proof of quantity of the transactions.
g) The duplicate C-Form is nothing but a replica of the original C-Form is meant for extreme circumstances. The act itself has provided what procedure to be followed in the event of loss of C-Form. This having been fulfilled the High Court and the Assessing Authority have grossly erred in not considering the same and rejected the concessional rate of tax. It is submitted that all possible efforts have been made in order to confirm the transactions from the purchaser like obtaining attested copies on the triplicate and also a letter from them confirming the transactions. This is full compliance of Rule 12(2) as well as Rule 12(3). The appellant has also lodged a police complaint for having lost the forms. Having done all these acts, which are humanly possible, the appellant should not have been denied the option of getting the concessional rate of tax.
h) Placing reliance on Section 62 primary evidence of the Evidence Act, it is submitted that where a number of documents are made by a uniform process, namely, printing, photocopy, cyclostyle they are not copies in the legal sense of the term and that they are of counter part originals and each is primary evidence of the contents of the rest but only secondary evidence of the common original.

Mr. Sanjay R. Hegde, learned counsel appearing for the respondent, submitted that the order passed by the High Court does not call for any interference and no case is also made out by the appellant for such interference.

In the above background, the High Court was called upon to answer the question as to whether the appellant is entitled to claim concessional rate of tax without complying with the requirement contemplated under Rule 6(b)(ii) of the Central Sales

Tax (Karnataka) Rules, 1957. The High Court answered it in the negative and in favour of the revenue. The assessee is in appeal before us.

The provisions of law involved in the present matter are as under: -

"8. Rates of tax on sales in the course of inter-State trade or commerce \026

(1) Every dealer, who in the course of inter-State trade or commerce \026

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3)

shall be liable to pay tax under this Act, with effect from such date as may be notified by the Central Government in the Official Gazette for the purpose which shall be two per cent, of his turnover or at the rate applicable to t he sale or purchase of such goods inside the appropriate State under the sales tax law of that State, or as the case may be, under any enactment of that State imposing value added tax, whichever is lower:

Provided that the rate of tax payable under this sub-section by a dealer shall continue to be four per cent, of his turnover, until the rate of two per cent, takes effect under this sub-section

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1) \026

(a) In the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State;

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

(c) In the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be nil,

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

Explanation \026 For the purposes of this sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

(3) The goods referred to in clause (b) of sub-section (1)

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the tele-communications network or in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

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

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorized officer of the Government

Provided that the declaration referred to in clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit"

(5) Xxxxxx
(6) Xxxxx
(7) Xxxx

(8) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority referred to in sub-section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6) in sub-section (5), duly filled in and signed by the registered dealer to whom such goods are sold.

Explanation.- For the purposes of sub-section (6), the expression "special economic zone" has the meaning assigned to it in clause (iii) to Explanation 2 to the proviso to section 3 of the Central Excise Act, 1944 (1 of 1944)"

Sec.13 (1) (a) (aa) (b) & (3) read as under:-
"13. Power to make rules \026 (1) The Central Government may, by notification in the Official Gazette, make rules providing for \026
(a) the manner in which application for registration may be made under this Act, the particulars to be contained therein, the procedure for the grant of such registration, the circumstances in which registration may be refused and the form in which the certificate of registration may be given;

(aa) the form and the manner for furnishing declaration under sub-section (8) of Section 8;

(b) the period of turnover, the manner in which the turnover in relation to the sale of any goods under this Act shall be determined, and the deductions which may be made under clause (c) of sub-section (1) of section 8A in the process of such determination;

(c) \005\005\005\005..
(d) \005\005\005\005
(2) \005\005\005\005

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

Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957

reads thus:
"12(1) the declaration and the certificate referred to in sub-section 4 of section 8 shall be in Forms C and D respectively:

Provided that Form C in force before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules 1974, or before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules 1976, may also be used upto the 31st December 1979 with suitable modifications;

Provided further that a single declaration may cover all transactions of sale, which take place in one financial year between the same two dealers.

Provided also\005\005\005\005\005\005

(2) Where a blank or duly completed form of declaration is lost, whether such loss occurs while it is in the custody of the purchasing dealer or in transit to the selling dealer, the purchasing dealer shall furnish in respect of every such form so lost an indemnity bond in Form G to the notified authority from whom the said form was obtained, for such sum as the said authority may having regard to the circumstances of the case, fix. Such indemnity bond shall be furnished by the selling dealer to the notified authority of his State if a duly completed form of declaration received by him is lost, whether such loss occurs while it is in his custody or while it is in transit to the notified authority of his State

Provided that where more than one form of declaration is lost, the purchasing dealer or the selling dealer, as the case may be, may furnish one such indemnity bond to cover all the forms of declaration so lost

(3) Where a declaration form furnished by the dealer purchasing the goods or the certificate furnished by the Government has been lost, the dealer selling the goods, may demand from the dealer who purchased the goods or, as the case may be, from the Government, which purchased the goods, a duplicate of such form or certificate, and the same shall be furnished with the following declaration recorded in red ink and signed by the dealer or authorized officer or the Government, as the case may be, on all the there portions of such form or certificate \026

"I hereby declare that this is the duplicate of the declaration form/certificate No\005\005\005signed on \005\005\005.and issued to \005\005\005\005.who is registered dealer of \005\005\005..(State) and whose registration certificate number is\005\005\005\005"}

Rule 6(a)(i) of the Central Sales Tax (Karnataka) Rules, 1957 reads thus:
"6. (a) (i). A registered dealer, who wishes to purchase goods from another such dealer on payment of tax at the rate applicable under the Act to sales of goods by one registered dealer to another, for the purpose specified in the purchasing dealer's certificate of registration, shall obtain on payment of {fifty paise per form or Rs.12.50 per book of 25 forms or Rs.45-00 per book of 100 forms} from the assessing authority in whose jurisdiction the principal place of business is situated, a blank declaration Form prescribed {under sub-rule (1) of Rule 12} of the Central Sales Tax (Registration and Turnover) Rules, 1957 for furnishing it to the selling dealer. Before furnishing the declaration to the selling dealer the purchasing dealer, or any responsible person authorized by him in this behalf, shall fill in all required particulars in the Form, and shall also affix his usual signature in the space provided in the Form for this purpose. Thereafter, the counterfoil of the Form shall be retained by the purchasing dealer and the other two portions marked "original" and "duplicate" shall be made over by him to the selling dealer.

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(b)(i) The procedure for advance payment of tax shall be for the same as that prescribed by the rules framed under the Karnataka Sales Tax Act, 1957, and for this purpose, every dealer shall submit every month, to the assessing authority, a statement in the form prescribed by the rules framed under the Karnataka Sales Tax Act, 1957, and it shall be accompanied by a receipt from a Government treasury or crossed postal order or crossed cheque or crossed demand draft in favour of the assessing authority for the amount of the tax paid in advance.

(ii) A registered dealer who claims to have made a sale to another registered dealer or to Government shall, in respect of such claim, attach to his return to be filled in Form IV the portion marked 'original' of the declaration or the certificate in Form D, received by him from the purchasing dealer or Government, as the case may be. The assessing authority may, in his discretion, also direct the selling dealer to produce for inspection the portion marked 'duplicate' of the declaration or certificate in Form D, as the case may be.

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(d) Every declaration form obtained from the assessing authority by a registered dealer shall be kept by him in safe custody and he shall be personally responsible for the loss, destruction or theft of any such form or the loss of Government revenue, if any, resulting directly or indirectly from such theft or loss.

(e)(i) Every registered dealer to whom any declaration form is issued by the assessing authority shall maintain, in a register in Form III a true and complete account of every such form received from the assessing authority. If any such form is lost, destroyed or stolen, the dealer shall report the fact to the said assessing authority immediately, shall make appropriate entries in the remarks column thereto and take such other steps to issue public notice of the loss, destruction or theft as the assessing authority may direct."

We have carefully considered the elaborate submissions made by the learned senior counsel. It is contended on behalf of the appellant that in respect of the inter-state sales transactions, the appellant had collected 279 original C-Forms and duplicates and that the appellant had separated original C-Forms for submitting the same to the Assessing Officer and kept the duplicate separately. The entire file containing the original had thereafter been misplaced and, therefore, the appellant could file only the duplicate. It is submitted that under Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957 in case of loss of original C-forms, if he complies with the above rule, the appellant will be eligible for the concessional rate of sales-tax. It is stated that when the appellant had complied with the said rule, there is no reason for denial of the concessional rate. The impugned order passed by the respondent was, therefore, erroneous and it is set aside restoring the order of the Assessing Authority. In our opinion, the said contention is not tenable and has no force. We have already extracted Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 and Rule 12(2) and 12(3) of the Central Sales Tax (Registration and Turnover) Rules, 1957. In our view, the Rule has to be strictly construed. Admittedly, the appellant has not complied with the said provisions and, therefore, he is not entitled to the concessional rate of tax under Section 8 of the Central Sales Tax. Section 8(4) specifically provides that the provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner. Rule 8(4)(a) also provides that a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. On the above provision, a registered dealer will not be entitled to the concessional rate of tax in respect of inter-state sales made by him without the production of the declaration referred under clause (a) of sub-section (4) noted above.

Under the Central Sales Tax (Karnataka) Rules, 1957, the dealer is required to

submit along with his return the original of the prescribed forms. As could be seen from the rule extracted above a registered dealer who claims that he has made a sale to another registered dealer is required to attach the original of the declaration forms on the certificate in the prescribed form received by him from the prescribed dealer along with his return filed by him. We have already extracted Section 13 of the Central Sales Tax Act, which deals with the power of the Central Government to make rules, the form and the manner for furnishing declaration under sub-section (8) of Section 8. Sub-clause (3) of Section 13 provides that the State Government may make rules not inconsistent with the provisions of the Central Sales Tax Act, 1956 and the rules made under sub-section (1) to carry out the purposes of the Act. In exercise of the powers conferred by sub-section 3,4, and 5 of Section 13 of the Central Sales Tax, 1956, the Government of Karnataka made the Central Sales Tax (Karnataka) Rules, 1957. Under rule 6(b) (ii) of the Karnataka Rules, the State Government has prescribed as to the procedures to be followed and the documents to be produced for claiming concessional rate of tax under Section 8(4) of the Central Sales Tax Act. Thus, the dealer has to strictly follow the procedure and the Rule 6(b)(ii) and produce the relevant materials required under the said rule. Without producing the specified documents as prescribed thereunder a dealer cannot claim the benefits provided under Section 8 of the Act. Therefore, we are of the opinion that the requirements contained in Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 are mandatory. Section 12(1)(2) and (3) of the Central Sales Tax (R&T) Rules, 1957 provides that the registered dealer is required to file the declaration and the certificate referred to in Section 8(4) in Form-C and D respectively. Form-C is a declaration divided into three parts. All the three parts are identical, the first part of the form being the counter foil and the second part being the duplicate and the third part being the original. The counter foil is to be retained by the purchasing dealer. The original is to be filed before the Assessing Officer by the selling dealer to claim the concessional rate. The duplicate is to be retained by the selling dealer. If the C-Form or the original part of it is lost whilst in the custody of the purchasing dealer or in transit, the purchasing dealer shall have to furnish an indemnity bond for the same as fixed by the concerned authority. If the original part of C-Form is lost by the selling dealer whilst it is in his custody or in transit, the selling dealer sha ll
furnish an indemnity bond as fixed by the concerned authority and follow the procedure prescribed under Rule 12(3).

We are of the view that the Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 which provides for furnishing of the original C-Form in order to claim the concessional rate of tax is consistent with the provisions of the Central Sales Tax Act and there is no conflict between the provisions of Rule 12(2) and (3) of the Central Sales Tax Rules and Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 as contended by the appellant. Rule 12 of the rule is intended to prevent mis-use of C-Forms by unscrupulous and mischievous dealers and makes it obligatory for the dealer to furnish indemnity bond. In other words, in order to claim concessional rate of tax, the original C-Form has to be attached to the return as provided under Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957. It is not a mere formality or technicality but it is intended to achieve the object of preventing the forms being mis-used for the commission of fraud and collision with a view to evade payment of taxes. In our opinion, Rule 6(b)(ii) which is clear and categoric cannot be liberally construed but it should be construed strictly. We, therefore, hold that without producing the original of the C-Form as prescribed under Rule 6(b)(ii) of the Rules the appellant is not entitled for concessional rate of tax under sub-section (4) of Section 8 of the Act.

The very purpose of prescribing the filing of C-Forms is that there should not be suppression of any inter-state sales by a selling dealer and evasion of tax to the State from where the actual sales are affected. Secondly, the purchasing dealer also cannot suppress such purchases once he issues C-Form to the selling dealer. Since the dealer should issue C-Form has to maintain a detailed account of such C-Forms obtained from the department prescribed under the States Taxation law. The C-Form is a declaration to be issued only by the sales tax authorities of concerned States. By issuing declaration in C-Form the purchasing dealer would be benefited as he is entitled to purchase goods by paying only concessional rate of tax of 4% as prescribed by the concerned State of purchasing dealer otherwise the purchasing dealer has to pay tax at a higher rate besides additional taxes on such sales effected within the State where selling dealer is situated.

The authorities cited and relied on by learned senior counsel for the appellant to support his views that concessional rate of tax at 4% should be allowed even on the basis of the duplicate portion of C-Form cannot be accepted and the judgments relied on by the learned counsel for the appellant are distinguishable on facts and law and particularly in view of the specific provisions contained in Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 which requires that the portion of C-Form marked original should be furnished by the selling dealer to avail the concessional rate of tax on his inter-state sales. It is not open to the Assessing Officers under the Act to go into th e
rationale of Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957. Their duty is to simply implement it without going into the question of any hardship that may be caused even to an honest dealer.

We shall now consider the rulings and pronouncements made by this Court on the very subject.

In Kedarnath Jute Manufacturing Co. vs. Commercial Tax Officer, Calcutta and Ors., [1965] 3 SCR 626, the question that arose in this case was whether under Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, the furnishing of declaration forms issued by the purchasing dealers was a condition for claiming the exemption thereunder. This Court held as under:

"Section 5(2)(a)(ii) of the Act in effect exempts a specified turn-over of a dealer from sales tax. The provision prescribing the exemption shall, therefore, be strictly construed. The substantive clause gives the exemption and the proviso qualifies the substantive clause. In effect the proviso says that part of the turnover of the selling dealer covered by the terms of sub-clause (ii) will be exempted provided a declaration in the form prescribed is furnished. To put it in other words, a dealer cannot get the exemption unless he furnishes the declaration in the prescribed form. It is well settled that 'the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it.

There is an understandable reason for the stringency of the provisions. The object of s. 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will wellnigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the twofold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid."

In State of Madras vs. R. Nandlal and Co., AIR 1967 SC 1758, this Court while construing the rule making power of Central Government has observed as under:-
"The Central Government has, in exercise of the power under S. 13(1)(d), prescribed the form of declaration and the particulars to be contained in the declaration. A direction that there shall be a separate declaration in respect of each individual transaction may appropriately be made in exercise of the power conferred under S.13(1)(d). The State Government is undoubtedly empowered to make rules under sub-ss.(3) and (4) of S.13; but the rules made by the State Government must not be inconsistent with the provisions of the Act and the rules made under sub-s.(1) of S.13 to carry out the purposes of the Act."

In a similar matter - Commissioner of Sales Tax, Delhi vs. Delhi Automobiles (P.) Ltd., STC Vol. 48 1981, the Delhi High Court held that the production of a

declaration form is a condition precedent for the availability of the concession. The Bench also has observed that these detailed provisions are intended as a measure of safeguard against possible mis-utilisation of the forms and also to ensure that relief is not obtained by more than one selling dealer in respect of the same declaration form by using the various parts of it differently.

This Court has further held that the essence of these rules and regulations is that before a selling dealer is able to claim the benefit of concessional tax he should be able to produce the original and duplicate issued by him by the purchasing dealer in the first instance or the duplicate which will also contain these two portions of the forms issued along with a declaration subscribed to by the purchasing dealer subsequently on the strength of his earlier records and his personal knowledge and for which he will have to count in due course to the Sales Tax Authorities from whom he obtained these declarations. The bench was of the opinion that the production of the Photostat copy of the counter foil cannot be said to be strict or even substantial compliance of Rule 12(3) and that by merely producing the photostat copy of the counter foil, it cannot be said that the Act and the Rules have been complied with.

The case of Manganese Ore (India) Ltd. vs. Commissioner of Sales Tax, Madhya Pradesh STC Vol.83 1991 was relied on by learned counsel for the appellant. In the above case, in order to obtain the benefit of Section 8(1) of the Central Sales Tax Act, it was argued before the High Court that Form-C consists of three parts \026 original, duplicate and counter foil and all the three parts are identical in terms of them and form part of form-C and that Section 8(4) or Rule 12(1) does not say which part of the form is required to be filed before the Assessing Authority. In that case, the dealer filed the duplicate part of form-C instead of the original, the High Court held that there was sufficient compliance with the provisions of Section 8(4) of the Central Sales Tax Act and those of Rule 12(1) of the Central Sales Tax (R&T) rules so as to entitle the dealer to get the benefit of concessional rate of tax under Section 8(1) of the Central Sales Tax Act. The High Court as a result of their discussion held that the filing of original parts of
declaration in C-Form is not mandatory but directory under the Central Sales Tax Act, 1956 read with rules thereunder and in the facts and circumstances of the case, the assessee was entitled to the concessional rate of tax as if it had filed the original parts of the declaration in C-Form as it had filed the original parts in Maharashtra. The Assessing Authority which was also sought to be summoned by an application for their production and further the duplicate parts thereof were filed before the Assessing Authority in Madhya Pradesh.

The above judgment does not help the appellant in the present case. The facts in the above case and the case on hand are different. This apart, there is no similar rule in this case to the one found in the case on hand, namely, Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 that makes of the difference for it is the rule 6(b)(ii) imposes the condition in the instant case.

Against the decision in Commissioner of Sales Tax, Delhi vs. Delhi Automobiles (P.) Ltd., (supra) of the High Court of Delhi, the Delhi Automobiles (P) Ltd. preferred an Appeal in this Court - Delhi Automobiles (P) Ltd. vs. Commissioner of Sales Tax, Delhi (1997) 10 SCC 486 which was dismissed by this Court. The learned judges of this Court has observed in para 7 as under:
In our view, in the first place, the assessee had not done all that it could; it could, and should, have preferred an appeal against the order of the learned Single Judge and persisted in his application for obtaining from the Official Liquidator duplicates of the 'C' Form declarations, as required by Rule 12(3). Since it did not, in the face of the clear language of the rule, its case can hardly be said to be a hard case. The judgment cited by the learned counsel has no application because that was a case where the language of the statute was found to be ambiguous The language of the provision here is clear and was rightly applied by the High Court.

The learned senior counsel for the appellant submitted that there is no suggestion anywhere that there is anything wrong with the genuineness of the transaction or any doubts as to the possession by the purchasing dealer on a certificate enabling the sellers to obtain the concessional rate of tax under Section 8 of the Act.

Under such circumstances, the authorities should not have taken the strict view in rejecting the claim of the concessional rate of tax. At first sight, the argument of the learned counsel for the appellant appears to be genuine and acceptable but considering the mandatory nature of the provisions of the Act and Rules, this Court is called upon to decide the questions involved in this case. The provisions being mandatory they should have been complied with. The appellant made no attempt to comply with Rule 12(3) till after his claim was rejected by the Assessing Authority. Having made no attempt to comply with the mandatory provisions, he disentitled himself from getting the concessional rate. Even otherwise, in our view, it is a pure question of law as to the proper interpretation of the provisions of Section 8 of the Central Sales Tax Act and the provisions of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 and Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957. In view of the decision of this Court in the case of Kedarnath Jute Manufacturing Co. (supra) and of the decision in Delhi Automobiles (P) Ltd. (supra), it is clear that these provisions have to be strictly construed and that unless there is strict compliance with the provisions of the statute, the assessee was not entitled to the concessional rate of tax.

We are of the opinion that a liberal construction was not justified having regard to the scheme of the Act and the Rules in this regard and if there was any hardship, it was for the legislature to take appropriate action to make suitable provisions in that regard. It is also settled rule of interpretation that where the statute is penal in character, it must be strictly construed and followed.

We also realize that the section and the rules as they stand may conceivably cause hardship to an honest dealer. He may have lost the declaration forms by a pure accident and yet he will be penalized for something for which he is not responsible but it is for the legislature or for the rule making authority to intervene soften the rigour of th e
provisions and it is not for this Court to do so where the provisions are clear, categoric and unambiguous.

There is no merit in the appeal and the same shall stand dismissed. We say no costs.