Before M. M. Kumar, ACJ &
Ajay Kumar Mittal, J.

M/S GHERU LAL BAL CHAND,—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents*

CWP 6573 of 2007

23rd September, 2011

Constitution of India, 1950 - Art. 14, 19(1)(g) & 226 - Haryana Value Added Tax Act, 2003 - S. 8 - Haryana Value Added Tax Rules - Rl. 20(1) & 20(4) - Petitioner firm engaged in business of procuring material from different persons and selling the same and paid tax which is paid by the dealer after deduction of Input Tax Credit in the treasury - Assessing authority observed that petitioner was not entitled for deducting input tax credit as per provisions of Section 8 of the Act, because Value Added Tax (VAT) dealers from whom the petitioner had purchased certain goods had not deposited full tax in the State Treasury - Section 8(3) of the Act and Rules 20(1), 20(4) are challenged on account of being arbitrary and unreasonable.

Held, That the genuineness of the certificate and declaration may be examined by the taxing authority, but onus cannot be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT-C4 was bogus and was procured by the dealer in collusion with the selling dealer.

(Para 27)

Further held, That no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer is established.

(Para 33)

Further held, That it cannot be olheld that the provisions of Section 8(3) of the Act and the sub-rules (1) and (4) of Rules 20 of the Rules are ultra-vires but the same shall be operative in the manner indicated above.

(Para 34)

KL Goyal, Sr.Advocate with Sandeep Goyal, Advocate, *for the petitioner.*

Rajiv Agnihotri and Vijay Pal, Advocates for the petitioner in CWP Nos.9633,10007,11712 and 11713 of 2011.

Avneesh Jhingan, Advocate for the petitioner in CWP Nos.14142, 14150, 14220,14224 and 14248 of 2011.

Vinod S.Bhardwaj, Additional Advocate General, Haryana *for the respondents.*

AJAY KUMAR MITTAL, J.

(1) By this order a bunch of twenty six writ petitions, viz. Civil Writ Petition Nos.6573, 6888, 6913, 6932, 6933, 7015, 7031 and 7107 of 2007, 9350 and 18345 of 2008, 4259 and 11581 of 2009, 2296, 2297, 3340, 8275 and 23400 of 2010, 9633, 10007, 11712, 11713, 14142, 14150, 14220, 14224 and 14248 of 2011 is being disposed of as questions of law involved are common in all these petitions. The common issue raised in these petitions is with regard to denial of Input Tax Credit by the Assessing Authority on the ground that the dealers from whom the petitioners have purchased goods, have not deposited full tax in the State Treasury. The petitioners have not been held entitled for deduction of Input Tax Credit in terms of the provisions of Section 8 of the Haryana Value Added Tax Act, 2003 (for brevity, 'the Act'). The facts have been extracted from Civil Writ Petition No.6573 of 2007.

(2) The prayer made in these petitions filed under Articles 226/227 of the Constitution of India is for issuance of a writ of mandamus for declaring Section 8(3) of the Act as ultra vires on the ground that the same is arbitrary and unreasonable, inasmuch as it violates the Articles 14 and 19 (1)(g) of the Constitution and confer excessive powers on the State Government to frame Rules. Further writ of mandamus has been prayed

for declaring Rules 20(1) and 20(4) of the Haryana Value Added Tax Rules, 2003 (for brevity, 'the Rules') to be unreasonable and arbitrary as the same are hit by the rigors of Article 14 of the Constitution. The petitioner also seeks a writ in the nature of certiorari for quashing the order dated 15.3.2007, Annexure P5, passed by the Excise and Taxation Officer-cumassessing authority, Sirsa on the ground that the same is unconstitutional and has been passed by ignoring the principles of natural justice raising a demand of Rs.2,12,720/-.

(3) The facts necessary to appreciate the controversy, as reflected in the petition are that the petitioner is a partnership firm under the name and style of M/s Gheru Lal Bal Chand, engaged in the business of sale and purchase of cotton. The petitioner procures material from different persons and sells the same in terms of the provisions of the relevant Act and the Rules and the tax which is paid by the dealer after deduction of Input Tax Credit is paid in the treasury. The firm is registered under the provisions of Act as well as the Central Sales Tax Act, 1956 (in short, the 'Sales Tax Act'). As per the petitioner, the scheme under the Act is that on the sale of goods, tax calculated would be treated as "output tax". But if the purchases are made from within the State of Haryana, the tax paid on such purchases is to be set off from the out-put liability and resultant tax liability is paid by the selling dealer. The assessing authority observed that the petitioner was not entitled for deducting input tax credit as per provisions of Section 8 of the Act, because the Value Added Tax (VAT) dealers from whom the petitioner had purchased certain goods had not deposited the full tax in the State Treasury. The stand of the dealer, however, is that it made bona fide purchases from the selling dealers who were duly registered by the Assessing Authority under the Act and irrespective of the fact, whether they paid full tax or not, he should be allowed the necessary input Tax Credit. The said selling dealers discharged their tax liability and deposited the tax payable by them by deducting the input tax credit available to them.

(4) The case of the petitioner is that when a registered dealer makes sales and issues tax invoice in terms of Section 8 of the Act to the purchasing dealer, the latter is entitled to claim Input Tax Credit. The person making purchases is, thus, required to ensure that the dealer selling the goods is a registered dealer and he has issued the tax invoice as per provisions of the Act. As per the mandate of Section 8(3) of the Act, in the eventuality

of a claim of Input Tax Credit in respect of goods sold to a dealer being called into question, the purchasing dealer may be called upon to produce before the authority conducting the proceedings, a certificate to be issued by the selling dealer. Such claim can only be allowed if the assessing authority is satisfied about the contents of the certificate. It has further been claimed that the selling dealers have also discharged their tax liability and deposited the tax payable in their hands by deducting the input tax credit available to them. Whenever the petitioner effected purchases from the selling dealers, it has obtained requisite VAT invoices. Forms VAT C-4 in terms of Rule 20 of the Rules are also obtained by the petitioner with a certificate from the selling dealers that they have paid full amount of tax under the Act on the sales made to the petitioner. The petitioner also filed its returns for different periods showing sales and purchases made by it. The tax was paid on the value addition and Input Tax Credit has been claimed on the basis of invoices issued by the selling dealers. It is also claimed that annual return in Form R2 has also been filed by the petitioner showing summary of all the sales and purchases conducted by it during the year ending on 31.3.2004. For the year ending on 31.3.2007, the case of the petitioner was taken for scrutiny by the Excise and Taxation Officer-cum-Assessing Authority, Hisar – respondent No.2. In that regard, notices Annexures P3/A and P3/B, under Section 8 of the Act read with Rule 20 of the Rules, were issued to the petitioner on the ground that it had effected purchases from M/s Hans Raj Ram Kumar, Fatehabad, M/s Mohan Lal Manish Kumar, Fatehabad, M/s Chandu Lal Mohan Lal, Fatehabad, M/s Sant Lal Harbans Lal, Fatehabad, M/s Suresh Kumar & Co., Fatehabad, M/s Parteek Enterprises, M/s Jagdish Rai Jai Bhagwan, Fatehabad and M/s Mahavir Parshad Rajat Kumar, Fatehabad, who had not deposited tax in the Treasury. Accordingly, it was proposed to disallow Input Tax Credit to the petitioner. The petitioner was directed to show cause by 13.2.2007 and 6.3.2007 respectively. In its replies, besides other grounds, the petitioner took the stand that once it had filed the tax invoice then it should be considered as sufficient proof of the tax having been paid on the sale of goods for the purpose of Section 8(1) of the Act (Annexures P4/A & P4/B respectively). It is claimed that since the limitation for the purposes of assessment was to expire on 31.3.2007, therefore, the Assessing Authority – respondent No.2 without making any further enquiry, with a pre-determined mind assessed the petitioner vide order dated 15.3.2007 (Annexure P5),

and a demand to the tune of Rs.2,12,720/- has been raised, which is subject matter of challenge in the instant petition.

(5) The further challenge has been made by the petitioner to the vires of Section 8(3) of the Act read with Rule 20 of the Rules being ultra vires the Constitution of India and, in particular, Article 14 thereof, as according to the petitioner the conditions imposed by way of Section 8(3) of the Act read with Rule ibid are arbitrary, unreasonable and not sustainable in law.

(6) The respondents in the joint written statement vehemently opposed the prayer of the petitioner. It was stated that Section 8(3) of the Act was perfectly valid and did not violate Articles 14 and 19(1)(g) of the Constitution of India. It was specifically denied that the said provisions conferred any excessive power upon the State Government to frame the Rules. It further states that vires of the provisions of the above Section 8(3) of the Act and Rules 20(1) and 20(4) of the Rules framed under the Act have been challenged by the petitioner to bye-pass statutory remedies available to it which could legally be done by availing the remedy of appeal against the order of assessment as provided under Section 33 of the Act. It was further asserted that where a statute provided remedies against the orders of the assessment, the Court should refrain from entertaining writ petition against such orders.

(7) The respondents further demonstrated that sub-section (3) of Section 8 of the Act did not declare certificate in Form VAT C-4 as a conclusive evidence for input tax and the said provision, however, permits the authority to allow the claim only if the authority was satisfied after making enquiry that the particulars contained in the certificate were true and correct. It has further been mentioned that once the petitioner has come to know about the fact that the tax has not been paid by the selling dealers to the State, the petitioner could claim refund of tax from its selling dealers. As regards the averments of the petitioner that the scheme framed under the Act neither violated Section 19(1)(g) nor Article 14 of the Constitution of India and the allegation of the petitioner that Section 8(3) of the Act conferred excessive power upon the State Government to frame Rules was fallacious and misconceived as the Legislature in its wisdom had conferred under Section 60 of the Act, the power to make Rules for carrying out the

purpose of the Act. Similarly, the power conferred under Rule 20 of the Rules by the State Government under Section 60 of the Act was also not excessive as it laid down the procedure for computation of input tax which the legislature defined under Section 2(w) and for reduction under Section 3 (5) of the Act which was the integral part of the scheme for carrying out the purpose of the Act.

(8) We have heard learned counsel for the parties and have perused the record.

(9) Learned counsel for the petitioners submitted that Section 8(3) of the Act read with Rules 20(1) and 20(4) of the Rules are arbitrary and inequitable. He argued that the registered selling dealer who collects tax from the purchasing dealer acts as an agent of the Government and, therefore, no liability could be fastened on the purchasing dealer for any default committed by the registered selling dealer in not depositing the tax so collected. He relied upon the following observations of the Apex Court in **Corporation Bank *versus* Saraswati Abharansala and another (1):–**

> "Sales tax is leviable on sale of goods. It must be collected by the dealer as an agent of the State at such rate as may be specified. Neither the State nor the agent is entitled to collect tax at a rate higher than specified."

(10) Support was also drawn from the following observations of the Hon'ble Supreme Court in **State of Punjab and others *versus* Atul Fasteners Ltd. (2) :–**

> "The question of paying interest will also not arise because sales tax is an indirect tax. It is collected by the assessee from its customers. The incidence of tax falls not on the assessee but on its customers. The assessee collects the sales tax from its customers as a part of sale price. It forms part of his turnover for the stipulated period. Under the Scheme the liability to pay tax by the assessee accrues each year but the payment of tax is deferred. On expiry of seven years the assessee has to pay back the tax collected by it during 7 years. It is a sort of a loan

(1) 2009 (19) VST 84 (SC)
(2) 2007 (4) SCC 471

given by the State to the assessee so that the assessee can use the tax amount to meet its working capital requirement. As stated the liability of the respondent assessee accrued each year, therefore, there is no question of the Department paying interest @ 18% on the tax collected by the assessee during the aforestated period. The tax was collected by the assessee from its customers as an agent for the Government. The assessee is allowed to retain that amount which has accrued to the account of the State Government."

(11) It was next contended that no liability could be fastened on the petitioner on account of non-deposit of input tax received by the selling dealer from the purchasing dealer as the term "paid" is to be interpreted to mean "ought to have been paid" as held by the Supreme Court in **Sanjana, Assistant Collector of Central Excise, Bombay and others *versus* The Elphinstone Spinning and Weaving Mills Co. Ltd. (3),** as under:

"This now takes us to the question of proper interpretation to be placed on the expression "short-levied" and "paid" in Rule 10. Does the expression "short-levied" mean that some amount should have been levied as duty as contended by Dr.Syed Mohammad or will that expression cover even cases where the assessment is of nil duty, as contended by Mr.Daphtary? What is the meaning of the word "paid" in Rule 10? It is contended on behalf of the appellants that it means "actually paid", whereas according to the respondents means "ought to have been paid". Taken literally the word "paid" does mean actually paid in cash. That means that a party or an assessee must have paid some amount of duty whatever may be the quantum. If this literal interpretation is placed on the expression "paid" in R.10 it is needless to state that it will support in a large measure the contention of Dr.Syed Mohammad that R.10 contemplates a short-levy in the sense that the amount which falls short of the correct amount has been assessed and actually paid. In our opinion, the expression "paid", should not be read in a vacuum and it will not be right to construe the said word

(3) AIR 1971 SC 2039

literally, which means actually paid. That word will have to be understood and interpreted in the context in which it read in order to discover its appropriate meaning. If this is appreciated and the context is considered it is apparent that there is an ambiguity in the meaning of the word "paid". It must be remembered that Rule 10 deals with recovery of duties or charges short levied or erroneously refunded. The expression "paid" has been used to denote the starting point of limitation of three months for the issue of a written demand. The Act and the Rules provide in great detail the stage at which and the time when the excise duty is to be paid by a party. If the literal construction that the amount should have been actually paid is accepted then in case like the present one on hand, when no duty has been levied, the Department will not be able to take any action under Rule 10. Rule 10-A cannot apply when a short-levy is made through error or misconstruction on the part of an officer, as such a case is specifically provided by Rule 10. Therefore, in our opinion, the proper interpretation to be placed on the expression "paid" is "ought to have been paid". Such an interpretation has been placed on the expression "paid" occurring in certain other enactments as in Gurshai Saigal v. Commissioner of Incometax, Punjab (1963) 3 SCR 893 = (AIR 1963 SC 1062) and in Allen v. Thorn Electrical Industries Ltd., (1968) 1 QB 487."

(12) According to the learned counsel, the sub-rules (1) and (4) of Rule 20 of the Rules and Form VAT C-4 are arbitrary prescribing thereunder requiring the purchasing dealer to establish that the contents thereof are true. Meaning thereby, for the assessee to establish that the registered selling dealer has deposited the tax collected from the purchasing dealer is an onerous condition which is not capable of performance as the purchasing dealer has no control over the registered selling dealer or its predecessors. It was next urged that the State has all the machinery at its command to effect recovery from the real defaulter and no person other than the defaulting person can be penalized for some body else's lapses. Reliance was placed upon the following decisions of various Courts, viz.,

M/s. Chuni Lal Parshadi Lal *versus* Commissioner of Sales Tax, U.P. Lucknow (4), Vikas Pipe *versus* Commissioner of C. Ex. Chandigarh-II (5), Govindan and Co. *versus* State of Tamil Nadu (6), Multi Metal Products *versus* Commissioner of Sales Tax, M.P. (7).

(13) Learned counsel argued that the State can be held entitled to enforce recovery from the purchasing dealer in an eventuality when transaction is actuated with fraud or any connivance is established between the purchasing dealer and the registered selling dealer.

(14) Controverting the submission of learned counsel for the assessee, it was urged that the provision of the Act and the Rules are legal and the State is empowered to enact law to safeguard the legitimate revenue due to it. It was contended that under the aforesaid provisions, the State is authorized to collect the tax from the purchasing dealer where it is found that the declaration furnished by the registered selling dealer is false. The provision on these principles cannot be declared to be ultra vires and bad in law. Further, the stand taken in the written statement was re-iterated.

(15) We have given our considerable thought to the respective submissions made by the learned counsel for the parties.

(16) The scheme of the Act envisages that whosoever is liable to pay tax, is required to be registered under Section 11 thereof, with the assessing authority after fully satisfying that the applicant was a bonafide dealer and the application so made for that purpose was in order subject to the provisions of Section 12 for furnishing of security. When a dealer who is liable to pay tax, applies for registration, the assessing authority is obliged to make enquiry and direct, in writing, as a condition precedent for issue of the certificate, for deposit of tax and furnishing of a security. This can also be done even during the currency of the registration certificate if it was deemed necessary to do so for proper realisation of the tax payable. The Act further empowers the assessing authority to direct the dealer to furnish additional security in case the security already furnished was not sufficient for the purpose of securing proper deposit of tax. Once all such

(4) AIR 1986 Supreme Court 1966
(5) 2003 (158) E.L.T. 680 (P&H)
(6) 1975 (35) STC 50 (Madras)
(7) 1999 (112) STC 605 (MP)

requirements and conditions are fulfilled, certificate of registration is issued to the applicant who is also authorized for collection of tax from the purchasers. Chapter VIII of the Act deals with offences and penalties in different eventualities enumerated therein. If, however, the person who does not get himself registered or is not authorized to collect tax and still collects the tax, he would be liable to pay penalty as provided under Section 39 of the Act.

(17) The dealer holding a valid certificate of registration who is authorized to collect tax would be required to pay tax in accordance with the provisions of the Act and the Rules framed thereunder. He is also obliged to furnish returns from time to time in terms of Section 14 of the Act. He is also required to pay tax in terms of Sections 14(3) or 14(4) as the case may be, and if he fails to do so, he would be liable to pay penal interest as provided under Section 14(6) of the Act. Along with the returns, the dealer is further required to furnish a list of purchases and the sales in forms LP-7 and LS-9 respectively to the assessing authority.

(18) It would be expedient to reproduce sub-section (3) of Section 8 of the Act and sub-rules (1) and (4) of rule 20 of the Rules, which read thus:

Section 8. (Determination of input tax)

(1) … … …

(2) … … …

(3) Where any claim of input tax in respect of any goods sold to a dealer is called into question in any proceeding under this Act, the authority conducting such proceeding may require such dealer to produce before it in addition to the tax invoice issued to him by the selling dealer in respect of the sale of the goods, a certificate furnished to him in the prescribed form and manner by the selling dealer; and such authority shall allow the claim only if it is satisfied after making such inquiry as it may deem necessary that the particulars contained in the certificate produced before it are true and correct."

Rule 20 [Form of certificate by a selling VAT dealer. Section 8(3)] :

(1) The certificate referred to in sub-section (3) of section 8 shall be in Form VAT-C4 and shall be furnished by the selling vat dealer to the purchasing VAT dealer in respect of sale of taxable goods made by him to the purchasing dealer on tax invoice when the tax payable under the Act on such sale has been paid by him in full.

(2) xxxxxxxx

(3) xxxxxxxx

(4) The liability of a selling VAT dealer to pay tax on sale of goods by him to other VAT dealer on tax invoice shall not abate if he fails to furnish or furnishes a false certificate referred to in the foregoing sub-rule to the purchasing VAT dealer and tax for this reason has been realized from the latter but if the selling VAT dealer later pays the tax due from him, the liability of the purchasing VAT dealer shall accordingly abate and he may, within three years of finalization of his assessment, claim refund of tax paid by him."

The aforesaid rule prescribes Form VAT C-4, a declaration which is required to be furnished by the purchasing dealer at the time of filing the returns under the Act. The format of Form VAT C-4 as amended is as under:

"Form VAT C-4

Serial No.....

{(See rule 20(1), (2) and (3)}

CERTIFICATE

Certificate to be issued by a selling VAT dealer to a purchasing VAT dealer in respect of taxable goods for claim of input tax under sub-section (3) of Section 8. Certified that I/We..... (Name and complete address of the selling dealer) having

Taxpayers Identification Number (TIN)..... registered under the Haryana Value added Tax Act, 2003 in District.....; (i) have paid the full amount of tax under the Haryana Value Added Tax Act, 2003 vide TR No.....date...../(ii) have adjusted the input tax paid to M/s..... (Name and complete address of the selling dealer) holding TIN..... on the goods sold to M/s ..... (Name and complete address of the purchasing dealer) holding TIN ..... as per tax invoice (s) stated below:-

Sr. No.	Description of goods sold	Tax Invoice No.	Date	Taxable Amount	Amount of tax
Total					

1. Total taxable amount:-Rs.....

2. Total amount of tax:- Rs.....

Place.....

Date..... signature of the selling VAT dealer

Name.....

Status.....

Stamp of the Dealer

(official seal)

*Note: 1. Original copy to be issued by the selling dealer to the purchasing dealer.

2. Duplicate copy to be retained by the selling VAT dealer.

3. Strike out whichever is not applicable."

(19) On analysis, the controversy in the petition narrows down to, whether a purchasing dealer can be held liable for input tax which has been recovered from him by the registered selling dealer or its predecessors but not paid into the Government treasury.

(20) A VAT dealer and the taxable turnover has been defined under the Act. Section 2(w) of the Act defines input tax. Section 60 of the Act empowers the State Government to make rules. Determination of input tax has been provided under Section 8 of the Act. A plain reading of Sub Section (3) of Section 8 of the Act spells out that wherever claim of input tax credit with regard to sale of goods to a dealer is to be scrutinized in any proceedings under the Act, it shall be open to the authority conducting the proceedings to require the dealer to produce a tax invoice issued to him by the selling dealer in respect of the sale of goods and a certificate in the prescribed form received from the selling dealer. The purchasing dealer shall be entitled to credit for the claim on satisfying the assessing authority regarding the authenticity and truthfulness of said certificate.

(21) Sub rule (1) of rule 20 stipulates that prescribed certificate under Section 8 (3) of the VAT Act shall be in Form VAT C-4 to be supplied by the selling dealer to the purchasing VAT dealer relating to sale of taxable goods to the purchasing dealer provided the tax payable under the Act had been paid by him in full.

(22) Sub rule (4) of Rule 20 postulates that the purchasing VAT dealer shall not be discharged of its liability in the event of failure to furnish the VAT C-4 certificate or furnishes a false certificate. However, wherever selling dealer later on pays tax due from him, in that eventuality the liability of the purchasing dealer shall stand abated. This shall entitle the purchasing dealer to seek refund of the tax collected from him within three years of finalization of his assessment.

(23) In order to avoid declaration of unconstitutionality, the Courts have adopted such principles of interpretation which would result in sustaining the statute. The Constitution Bench of the apex Court in the **State of Madhya and others *versus* M/s Chhotabhai Jethabhai Patel and Co. and another (8),** in para 10 had held as under:

> "It is settled law that where two constructions of a legislative provision are possible one consistent with the constitutionality of the

(8) AIR 1972 SC 971

measure impugned and the other offending the same, the Court will lean towards the first if it be compatible with the object and purpose of the impugned Act, the mischief which it sought to prevent ascertaining from relevant factors its true scope and meaning."

(24) Further, another Constitution Bench of the Supreme Court in **Sunil Batra v. Delhi Administration and others (9)**, in para 38 had observed as under:

"Constitutional deference to the Legislature and the democratic assumption that people's representatives express the wisdom of the community lead courts into interpretation of statutes which preserves and sustains the validity of the provision. That is to say, courts must, with intelligent imagination, inform themselves of the values of the Constitution and, with functional flexibility, explore the meaning of meanings to adopt that construction which humanely constitutionalizes the statute in question. Plainly stated, we must endeavour to interpret the words in Ss.30 and 56 of the Prisons Act and the paragraphs of the Prison Manual in such manner that while the words belong to the old order, the sense radiates the new order. The luminous guideline in **Weems v. United States** (1909) 54 L Ed 793 at p.801 sets our sights high:

"Legislation, both statutory and constitutional is enacted, it is true, from an experience of evils, but – its general language should not, therefore, be necessarily confined to the form that evil had, therefore, taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle, to be vital, must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it". The future is their care and provision for events of

(9) AIR 1978 SC 1675

> good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulae. Rights declared in the words might be lost in reality. And this has been recognised. The meaning and vitality of the Constitution have developed against narrow and restrictive construction."

(25) In legal jurisprudence, the liability can be fastened on a person who either acts fraudulently or has been a party to the collusion or connivance with the offender. However, law nowhere envisages to impose any penalty either directly or vicariously where a person is not connected with any such event or an act. Law cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of Form VAT C-4 which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In the absence of any malafide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of articles 14 and 19 of the Constitution of India.

(26) The rule of interpretation requires that such meaning should be assigned to the provision which would make the provision of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity. Such a construction has to be avoided.

(27) In other words, the genuineness of the certificate and declaration may be examined by the taxing authority, but onus cannot be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer. The department is required to allow the claim once proper declaration is furnished and in the event of its falsity, the department can proceed against the defaulter when the genuineness of the declaration is not in question. However, an exception is carved out in the event where fraud, collusion or connivance is established between the registered purchasing dealer or the immediate preceding selling registered dealer or any of the predecessors selling registered dealer, the benefit contained in Form VAT C-4 would not be available to the registered purchasing dealer. The aforesaid interpretation would result in achieving the purpose of the rule which is to make the object of the provisions of the Act workable, i.e., realization of tax by the revenue by legitimate methods.

(28) The Apex Court in **M/s Chunni Lal Parshadi Lal's case** (supra) considering the provisions of U.P. Sales Tax Act, 1948 where liability of tax was sought to be fastened on the dealer by requiring the dealer to prove further as to how the purchasing dealer had dealt with the goods after the purchase had held that the assessee cannot be made liable to tax on such sale with the following observations:

> "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 refrained for that purpose i.e. to bring about the real controversy in the background of the facts found in this case."

(29) Madras High Court in **Govindan & Co.'s case** (supra) was seized of the matter relating to liability of a dealer where benefit of tax was claimed on the ground that the sales effected by the assessee were second sales, it was held that the assessee was not required to show that their sellers had in fact paid tax. What was required for them was to show that the earlier sales were taxable sales and the tax was really payable by their sellers. The conclusion reads thus:

"Though the order of the Tribunal is one upholding the remit order passed by the Appellate Assistant Commissioner, the learned counsel for the petitioners contends that the direction of the Tribunal that the petitioners are to prove that the twelve dealers from whom they purchased the goods were real persons and that they had in fact paid the tax on the iron and steel is not correct and that it is not the duty of the petitioners to prove that their sellers have in fact paid the tax on their sales. The learned counsel appears to be right in his submission that the petitioners who claimed exemption from tax on the ground that their sales are second sales are bound to show that there has been an anterior taxable sale and that they need not prove that tax had in fact been paid on those anterior sales. To claim the benefit of tax on the ground that their sales are second sales, the petitioners need not show that their sellers have in fact paid tax and it is enough for them to show that the earlier sales are taxable sales and that the tax is really payable by their sellers. Therefore, the

direction given by the Tribunal that the petitioners are to show that the tax has been paid by their sellers on the iron and steel goods sold by them to the petitioners does not appear to be correct."

(30) The civil appeal filed against this judgment was dismissed by the Hon'ble Supreme Court vide order reported as **State of Tamil Nadu *versus* Raman & Co. and others (10).**

(31) Following the aforesaid decision, similar view was taken by Madhya Pradesh High Court in **Multi Metal Products's case** (supra) in the following words:

"Therefore, once it is established that the raw material or incidental goods have been purchased from a registered dealer that shows that the goods are tax-paid and if the goods have not suffered the tax, it is open for the assessing authority to ask the registered dealer. Rule 20-C has been framed in order to give effect to Section 8. Clause (iv) provides that the dealer claiming the set-off shall, at the time of assessment, produce copies of the relevant bills of cash memoranda obtained from the selling registered dealer in support of the fact that the raw material or incidental goods purchased by him have been taxed at full rate under sub-section (1) of section 6 at the hands of the selling registered dealer. Therefore, by virtue of clause (iv) of rule 20-C, once the purchasing dealer produced the bill of registered dealer then it shall be presumed that goods have suffered the incidence of tax. If there is any doubt about it then instead of driving the assessee from pillar to post, he collects the evidence for this. The assessing authority in the event of any suspicion, should call upon that whether the goods have suffered the tax or not. Once the law defines the registered dealer and tax-paid goods, the assessee, i.e., purchasing dealer, produced the bill issued by the registered dealer then his burden is discharged and he cannot be held responsible or he cannot be forced to go around from pillar to post to collect the material in order to get the rebate. Rather, it should be on the assessing authority to obtain the necessary particulars if any suspicion arises. In

(10) 1994 (93) STC 185

Govindan & Co. v. State of Tamil Nadu (1975) 35 STC 50 (Mad.) the question was that whether the goods suffered the tax or not in a single point tax and in that context, it was observed:

"To claim the benefit of tax on the ground that the sales effected by the assessees are second sales, the assessees need not show that their sellers have in fact paid tax. It is enough for them to show that the earlier sales are taxable sales and that the tax is really payable by their sellers."

(32) Further, the selling-registered dealer who had collected tax from the purchasing-registered dealer acts as an agent for the Government as held in **Atul Fasteners Ltd.'s case (supra)**. Still further, paid would mean and embrace within it ought to have been paid as enunciated in **Elphinstone Spinning and Weaving Mills Co.Ltd.'s case** (supra). Moreover, the apex Court in **B. R. Enterprises *versus* State of U.P. (11)**, **Calcutta Gujarathi Education Society *versus* Calcutta Municipal Corporation (12)** and **M.Nagraj *versus* Union of India (13)** has interpreted the rule of reading down statutory provisions to mean that a statutory provision is generally read down so as to save the provision from being pronounced to be unconstitutional or ultra vires. The rule of reading down is to construe a provision harmoniously and to straighten crudities or ironing out creases to make a statute workable.

(33) To conclude, no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or collusion or connivance Civil with the registered selling dealer or its predecessors with the purchasing registered dealer is established.

(34) In view of the above, it cannot be held that the provisions of Section 8(3) of the Act and the sub-rules (1) and (4) of Rule 20 of the Rules are ultra-vires but the same shall be operative in the manner indicated above. Consequently, the writ petitions are partly allowed and assessment orders are set aside and cases are remanded to the assessing authority to pass fresh assessment order in accordance with law.

S. Sandhu

(11) 1999 (9) SCC 700
(12) 2003 (10) SCC 533
(13) 2006 (8) SCC 212