SUPREME COURT OF INDIA

Ghanshyamdas

Vs.

Regional Assistant Commissioner, of Sales Tax, Nagpur

C.A.Nos.101 of 102 of 1961

(S. K. Das, ACTG., C.J.I., K. Subba Rao, Raghubar Dayal, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.)

16.08.1963

JUDGEMENT

SUBBA RAO, J.: (For S. K. DAS ACTG. C. J., himself, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR JJ.):

1. These two appeals by certificate raise the question of the true interpretation of the meaning of the expression "escaped assessment" in S. 11-A of the Central Provinces and Berar Sales Tax Act, 1947 (XXI of 1947), hereinafter called the Act.

2. The facts in Civil Appeal No. 101 of 1961 are as follows : The appellant is the manager of a joint Hindu family firm carrying on business in bidis. He is registered as a dealer under S. 8 of the Act. Every registered dealer under the Act is required to furnish quarterly returns of his turnover within one month from the end of the quarter. For the year 1949-50, i. e., for the period from October 22, 1949 to November 9, 1950, he submitted a return of his turnover on October 5, 1950 for one quarter only and made a default in respect of the other quarters. The Assistant Commissioner of Sales-tax,

Nagpur, issued a notice to the appellant on August 13, 1954 in Form No. 11 under S. 11(1) and (2) of the Act in respect of the turnover of the firm for the said period. The appellant thereafter filed the returns for the three quarters in respect of which he had made default, but in the assessment proceedings he contended, inter alia, that the Assistant Commissioner could not assess his escaped turnover as he could only do so within three years from the expiry of the period in respect whereof his turnover had escaped assessment. The Sales-tax Commissioner rejected the said contention, proceeded with the assessment and determined the tax liability at Rs. 15,846./-. Aggrieved by the said order, the appellant filed a petition under Art. 226 of the Constitution in the High Court of Judicature at Nagpur mainly on the ground that the proceedings before the Sales-tax Commissioner were barred by time under S. 11-A of the Act.

3. Civil Appeal No. 102 of 1961 is in respect of assessment of sales-tax on the turnover of the appellant for the year 1950-51. The appellant had not filed any return for the whole year. The Assistant Commissioner of Sales-tax, Nagpur served a notice on the appellant on October 15, 1954 under S. 11(4) of the Act. The appellant filed his returns and produced the account-books under protest and also raised objections that the assessment proceedings were barred by limitation under S. 11-A of the Act. The Assistant Commissioner rejected his plea of limitation and determined his tax liability at Rs. 16,537-5-0. The appellant filed another petition under Art. 226 of the Constitution in the said High Court for a similar relief.

4. Both the petitions were heard together by Kotval J. The learned Judge, following the decision of a division Bench of that Court in Firm Sheonarayan Matadin v. Sales-tax Officer, Raipur, 1956-7 STC 623 (Nag) held that, as the notices were issued beyond three years from the expiry of the relevant periods, the Sales-tax Commissioner had no jurisdiction to make the assessments. On that ground he quashed the said assessments.

5. The respondent filed Letters Patent Appeals to a division Bench of the said High Court. On the formation of the State of Madhya Pradesh, the above appeals were transferred to the Madhya Pradesh High Court and were heard by a Division Bench consisting of Hidayatullah C. J. and Choudhuri J. The Division Bench held that S. 11-A of the Act could apply only to a case where there was a final assessment and that in the instance cases the first assessment proceedings were pending and, therefore, the said Section had no application thereto. In the result, by a common judgment, they set aside the orders of Kotval J. Hence the present appeals.

6. Mr. J. M. Thakar, learned counsel for the appellant raised before us the following four points: (1) The expression "escaped assessment" in S. 11-A of the Act would apply also to a case where there was no assessment at all. (2) Even if the first assessment proceedings were pending before the appropriate authority the said authority could only make the assessment within three years from the date of the commencement of the said proceedings, which, according to him, would start from the date of issue of notice by the said authority in the manner prescribed by the Central Provinces and Berar Sales Tax Rules, 1947, hereinafter called the Rules. (3) In the present case no proceedings in

respect of the said assessments were pending before the said authority. And (4) as only a part of the fourth quarter in Civil Appeal No. 102 of 1961 falls within three years, the proceedings in respect of the said entire quarter would be barred under S. 11- A of the Act and, in any view, only the turnover escaped in respect of the period between October 16, 1951 and October 31, 1951 could be assessed.

7. Mr. B. Sen, learned counsel for the respondent, controverted the said arguments and contended that in the case of registered dealers there was a statutory obligation to make a return and, therefore, the proceedings must be deemed to be pending from the date an assessee was bound to make his return and that as the proceedings in the present case were pending by statutory force, there was no scope for invoking the provisions of S. 11-A of the Act. In Civil Appeal No. 102 of 1961 he raised the point that a calendar year in S. 11-A must be calculated from January to December and if so calculated no part of the fourth quarter would be beyond three years, but he did not pursue the line of argument.

8. The main question in the appeals is the true construction of the provisions of S. 11-A of the Act. The material provisions thereof may be set out. They read:

"Section 11-A. (1) If in consequence of any information which has come into his possession, the Commissioner is satisfied that any turnover of a dealer during any period..... has escaped assessment.... the Commissioner may, at any time within three calendar years from the expiry of such period ..... proceed in such manner as may be prescribed to ..... assess..... the tax payable on any such turnover ....."

Under this Section if the turnover of a dealer during any period has escaped assessment, the Commissioner may at any time within three calendar years from the expiry of such period proceed in the manner prescribed to assess the tax payable on the said turnover. The crucial expression for the present purpose is "escaped assessment". What does it mean? Does it include as learned counsel for the appellant contends, a case where no assessment has been made at all or, as learned counsel for the respondent contends, take in only the post-assessment detection of evasion of tax? This problem has received the attention of Courts in different contexts.

9. In Commissioner of Income-tax, Bombay v. Pirojbai N. Contractor, 1937-5 ITR 338 : (AIR 1937 Bom 214) the words "escaped assessment" in the Indian Income-tax Act were defined. It was held therein that the said words were wide enough to include cases where no notice under Section 22(2) of the Income-tax Act had been issued to the assessee and therefore his income had not been assessed at all under Section 23 thereof. The said view, has been assumed to be correct by this Court in Kamal Singh v. Commissioner of Income-tax, B and O 1959-35 ITR 1: (AIR 1959 SC 257) and Kameshwar Singh v. State of Bihar, 1959-37 ITR 388 : (AIR 1959 SC 1303) and extended to cover a case where the first assessment was made in due course but a part of the income escaped therefrom. This Court in Commissioner of Income-tax, Bombay v. Narsee Narsee and Co. Bombay,

1960-40 ITR 307 at p. 313 : (AIR 1950 SC 1232 at p. 1235) construing the provisions of S. 14 of the Business Profits Tax Act, 1947, reviewed the law on the subject and came to the following conclusion:

"All these cases show that the words "escaping assessment" apply equally to cases where a notice was received by the assessee but resulted in no assessment at all and to cases where due to any reason no notice was issued to the assessee, and, therefore, there was no assessment of his income."

It is true that the said decisions were given with reference to either S. 34(i) of the Income-tax Act or S. 14 of the Business Profits Tax Act, but so far as the present enquiry is concerned the said Sections are pari materia with S. 11-A of the Act. In construing the meaning of the expression "escaped assessment" in S. 11A of the Act there is no reason why the said expression should bear a more limited meaning than what it bears under the said two Acts. All the three Acts are taxing statutes and the three relevant Sections therein are intended to gather the revenue which has improperly escaped. A division Bench of the Madras High Court in State of Madras v. Balu Chettiar, 1956-7 STC 519 at p. 522 : (AIR 1957 Mad 681 at p. 682) following the decision of a Full Bench of that Court, held that where an assessee did not file at any time a return of his turnover for a year and, therefore, there was no assessment made, the turnover, escaped assessment. It was observed therein :

"Whether it was a case of omission or of deliberate concealment on the part of the assessee, he did not submit any return. It was his default that led to the escape of the turnover for 1951-52 from assessment to the tax lawfully due. It was the whole of the turnover for that year that escaped assessment."

It was not necessary to multiply citations. We, therefore, hold that the expression "escaped assessment" in S. 11-A of the Act includes that of a turnover which has not been assessed at all, because for one reason or other no assessment proceedings were initiated and therefore no assessment was made in respect there of.

10. The next question is whether a turnover could be said to escape assessment if proceedings in respect of the first assessments were pending and no final order of assessment was made therein.

11. In In re, Lachhiram Basantlal, ILR 58 Cal 909 : (AIR 1931 Cal 545) (SB) Rankin C. J. tersely observed:

"Income has not escaped assessment if there are pending at the time proceedings for the assessment of the assessee's income which have not yet terminated in a final assessment thereof. " This dictum laid down an clearly understandable principle. How can an escape of a turnover from assessment be predicated before the assessment is completed? The judicial Committee in Rajendra Nath Mukherjee v. Income-ax Commissioner, 61 Ind App 10 at pp. 15-16 : (AIR 1934 PC 30 at p. 33) relied upon his dictum in rejecting the contention to the contrary raised by the assessee before them and endorsed the said view. That decision turned upon the interpretation of S. 34 of the Indian Income-tax Act. There, Burn and Co., an unregistered firm, made a return of their total income on January 13, 1928. On February 25, 1928, the Income-tax Officer made an assessment on Martin and Co., the partners where of purchased the business of Burn and Co., in respect of the combined incomes returned by Martine and Co. and Burn and Co. The High Court held that under the Income-tax Act the income of the said firm could not be aggregated and that the income of each must be separately assessed. Thereafter, on November 8, 1930, an assessment was made on Burn and Co. on their income as returned by them on January 13, 1928. It was contended that under the Income-tax Act it was not competent to make any assessment to tax after the expiry of the year for which the tax was charged except in the cases provided for under S. 34 of the Income-tax Act. It was held by the Judicial Committee that the income of Burn and Co. had not escaped assessment within the meaning of S. 34 of the Income-tax Act. It was observed therein:

"If an assessment is not made on income within the tax year then that income, they submit, has escaped assessment within that year, and can be subsequently assessed only under S. 34 with its time limitation. This involves reading the expression "has escaped assessment" as equivalent to "has not been assessed." Their Lordships cannot assent to this reading. It gives too narrow a meaning to the word "assessment" and too wide a meaning to the word "escaped". That the word "assessment" is not confined in the statute to the definite act of making an order of assessment appears from S. 66, which refers to "the course of any assessment". To say that the income of Burn and Co., which in January, 1928, was returned for assessment and which was accepted as correctly returned, though it was erroneously included in the assessment of Martin and Co., has escaped assessment in 1927-28 seems to their Lordships an inadmissible reading. The fact that S. 34 requires a notice to be served calling for a return of Income which has escaped assessment strongly suggests that income which has already been duly returned for assessment cannot be said to have "escaped" assessment within the statutory meaning."

As. S. 34 of the Income-tax Act had no application and as there was no other time limit prescribed or necessarily implied under that Act, it held that the assessment was not out of time. This decision is a clear authority for the position that if a return was duly made, the assessment could be made at any time unless the statute prescribed a time limit. This can only be for the reason that the proceedings duly initiated, in time will be pending and can, therefore, be completed without time limit. A proceeding is said to be pending as soon as it is commenced, and until it is concluded. On the said analogy, the assessment proceedings under the Sale-tax Act must be held to be pending from the time the said proceedings were initiated until they were terminated by a final order of assessment. Before the final order of assessment, it could not be said that the entire turnover or a part thereof of a dealer had escaped assessment, for the assessment was not completed and, if completed, it might be that the entire turnover would be caught in the net.

12. But the more difficult question is when do the assessment proceedings under the Act in respect of a registered dealer commenced and when do they terminate? While learned counsel for the appellant contends that the said proceedings under the Act start only after the appropriate authority issued a notice under Section 10(1) or S. 11(2) or S. 11(5) of the Act, learned counsel for the respondent contends that whatever may be said in the case of an unregistered dealer, in the case of a registered dealer the proceedings commence from the date fixed in the registration certificate within which the said dealer has a statutory obligation to furnish his return.

13. To appreciate the rival contentions it is necessary to notice the relevant provisions of the Act and the Rules. Under S. 4 of the Act, every dealer whose turnover exceeds the specified limits prescribed under sub-sec. (5) thereof shall be liable to pay tax in accordance with the provisions of the Act on all sales effected by him. Under S. 8 no dealer shall, while being liable to pay tax under the Act, carry on business as a dealer unless he has been registered as such and possesses a registration certificate. Part IV of the Rules prescribes the manner in which a dealer shall get himself registered under the Act. Under S. 8, if the dealer satisfies the requirements prescribed in that regard, the Sales-tax Officer grants him a registration certificate in Form II, which specifies the particulars, such as, the location of the business, the nature of the business etc. The said Officer enters the name of every dealer registered in a ledger maintained under S. 9 and issue copies of registration certificates for exhibition in the places of their business. Under one of the columns in that Form the period for which and the date on which the return has to be furnished has to be mentioned. A list of such registered dealers is also published under S. 17. Under the Act, no dealer, who is liable to pay tax thereunder, shall carry on business unless he has been registered as such and possesses a registration certificate. It is, therefore, clear that registration is mainly conceived in the interest of revenue, to facilitate collection of taxes and to prevent the evasion thereof.

14. Next we come to the provision dealing with the manner in which a registered dealer will be assessed to tax. Under S. 10 every registered dealer shall furnish such returns by such dates to such authority as may be prescribed. Rule 19 prescribes the manner in which such a return has to be furnished. Thereunder every registered dealer shall furnish to the appropriate Sales-tax Officer quarterly returns within one calendar month from the expiry of the quarter to which the return relates and in cases if he has more than one place of business in the Province, he shall submit a consolidated return for all the places of business and also a return separately for each of the places of business within two calendar months from the said date. It also says that each of such returns submitted shall be accompanied by a treasury receipted chalan in Form V in respect of the tax due according to the return. In short he has to file a return or returns in the prescribed form within the prescribed time and also pay the tax payable by him along with the returns. Under S. 11(1) if the Commissioner is satisfied that the return furnished by the dealer in respect of a period is correct and complete, he assesses the dealer on it. If he does not accept it, under cl. (2) thereof he shall serve the dealer with notice appointing the place and date for enquiry and after enquiry he shall assess him to tax under R. 3. Rule 31 prescribes that the notice under S. 11(2) shall be served on the dealer in Form II. It may be stated that the mention of sub-sec. (1) in that rule appears to be a mistake for no notice is contemplated under that sub-section. If the registered dealer fails to furnish his return under S. 10(1) of the Act in the manner prescribed within the time prescribed under sub-sec. (3)

thereof, the Commissioner, after giving a reasonable opportunity of being heard, may impose on him by way of penalty a sum not exceeding one-fourth of the amount of the tax which may be assessed on him under S. 11. Rule 32, which is an omnibus provision, says that in such an event, a notice in Form III has to be issued on him. Under sub-sec. (4) of S. 11, if a registered dealer makes the defaults mentioned therein the Commissioner shall, in the prescribed manner assess him to the best of his judgment, Rule 32 also governs the procedure for making the said assessment. Rule 33 prescribes the maintenance of a register of cases instituted under S. 11. Rule 34 gives the form of the order to be made and R. 39 provides for the preparation of assessment record.

15. At this stage an argument advanced by learned counsel for the appellant, namely, that under S. 10(1) of the Act the Commissioner has to give notice in the prescribed manner to a registered dealer, may be considered. Section 10(1) reads;

"Every such dealer as may be required so to do by the Commissioner by notice served in the prescribed manner and every registered dealer shall furnish such returns by such dates and to such authority as may be prescribed."

The word "dealer", unless there is anything repugnant in the subject or context, means any person who carries on the business of selling or supplying goods and in its wide meaning it certainly takes in both a registered dealer and a dealer who has not registered himself under the Act. The question, therefore, is whether there is anything repugnant in the subject or context of S. 10 to limit the word "dealer" in the first part of sub-sec. (1) to a dealer other than a registered dealer. Sub-section (1) is in two parts: the first part speaks of a dealer and the second part of a registered dealer and the sub-section says that both of them shall furnish the returns. If the dealer in the first part includes a registered dealer, the mention of "every registered dealer" in the second party will become redundant, for a registered dealer is included in the expression "dealer". A construction which would attribute redundancy to a Legislature shall not be accepted except for compelling reasons. This redundancy disappears if the expression "dealer" in the first part excludes a registered dealer mentioned in the second part. This legislative intention is further made clear by the provisions of Ss. 14 and 17 of the Act. Section 14 imposes a duty on every registered dealer or every dealer on whom notice has been served to furnish returns under sub-sec. (1) of S. 10 to keep a true account of the value of goods bought and sold by him; and S. 17 imposes a duty on the said two categories of dealers to inform the prescribed authority regarding changes of business. The distinction between the two categories of dealers is maintained not only in S. 10 but also in Ss. 14 and 17. It is, therefore, clear that under sub-sec. (1) of S. 10, the Commissioner need not issue a notice to a registered dealer for furnishing the relevant returns, but a statutory obligation is imposed on the said dealer to do so by such dates and to such authority as may be prescribed.

16. Now coming to the case of a dealer who did not register himself under the Act, the position is different. There is no statutory obligation cast on him by any Section to submit a return. His is really a case of evasion from his obligation to get himself registered under the Act. Section 10(1)

enables the Commissioner to issue a notice to him requiring him to furnish a return in the prescribed manner. In his case also the same procedure as prescribed in Ss. 10 (3), 11(1) and 11 (2) has to be followed in the matter of assessment. But sub-sec. (5) of S. 11 introduces a stringent provision to prevent evasion of tax. Under that sub-section if upon information the Commissioner is satisfied that any such dealer, who is liable to pay tax under the Act in respect of any period, has wilfully failed to apply for registration, he shall at any time within three calendar years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed in the manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and of subsequent periods. He may also direct the dealer to pay, by way of penalty, in addition to the amount of tax so assessed a sum not exceeding 1 1/2 times that amount. So in the case of a dealer liable to pay tax, but who has failed to register himself under the Act, the Commissioner may issue a notice to him under R. 22 and assess him under S. 11; and in the case of evasion, on subsequent information, the Commissioner can assess him within three calendar years from the expiry of the period, in respect of which he was liable to pay tax and for subsequent years and also impose a penalty on him. It is clear from this provision that in the case of such a dealer the assessment can be made only within three calendar years from the expiry of the period in respect whereof he has been liable to pay tax under the Act. If the contention of learned counsel for the respondent should prevail, in the case of the a registered dealer there would be no limitation in the matter of assessment, whereas in the case of a dealer who evaded law, he would have the benefit of the three years' limitation.

17. From the foregoing discussion it is seen that in the case of a registered dealer there are four variations in the matter of assessment of his turnover: (1) He submits a return by the date prescribed and pays the tax due in terms of the said return; the Commissioner accepts the correctness of the return and appropriates the amount paid towards the tax due for the period covered by the return (2). The Commissioner is not satisfied with the correctness of the return: he issues a notice to him under S. 11(2), and makes an enquiry as provided under the Act, but does not finalize the assessment. (3) The registered dealer does not submit a return; the Commissioner issues a notice under S. 10 (3) and S. 11(4) of the Act. And (4) the registered dealer does not submit any return for any period and the Commissioner issues notice to him beyond three years. If the return was accepted and the amount paid was appropriated towards the tax due for the relevant period, it means that there has been a final assessment in regard to the said period. If any turnover escaped assessment, clearly it can be reopened only within the period prescribed in S. 11-A. In the case where a return has been made, but the Commissioner has not accepted it, and has issued a notice for enquiry, the assessment proceedings will certainly be pending till the final assessment is made. Even in a case where no return has been made, but the Commissioner initiated proceedings by issuing a relevant notice either under S. 10 (3) or under S. 11 (4), the proceedings will be pending thereafter before the Commissioner till the final assessment is made. But where no return has been made and the Commissioner has not issued any notice under the Act; how can it be held that some proceedings are pending before the Commissioner when none existed as a matter of fact? We are concerned in this case with the last contingency.

18. It is manifest that in the case of a registered dealer the proceedings before the Commissioner starts factually when a return is made or when a notice is issued to him either under S. 10 (3) or under S. 11 (2) of the Act. The acceptance of the contention that the statutory obligation to file a

return initiates the proceedings is to invoke a fiction not sanctioned by the Act. The obligation can be enforced by taking a suitable action under the Act. Taking of such an action may have the effect of initiating proceedings against the defaulter. The default may be the occasion for initiating the proceedings, but the default itself proprio vigore cannot initiate proceedings. Proceedings in respect of the assessment of the turnover for the relevant period cannot, therefore, be said to be pending before the Commissioner. Learned counsel for the respondent contends that the certificate of registration is itself a notice to the registered dealer to furnish his returns within the prescribed time. Reliance is placed upon Form II wherein under the appropriate column the particulars in regard to a dealer's return and the date within which he should submit it are given. The main purpose of the registration certificate is to localize dealers with taxable turnovers and to facilitate the collection of taxes. The registration certificate enables the dealer to carry on the business. Neither S. 8 which enjoins such registration on every dealer with taxable turnover nor Rule 8 which prescribes the particulars to be incorporated in a certificate suggests that the certificate itself is a statutory notice to a dealer. The objects of the certificate and the statutory notices under the Act are different and the former cannot be equated with the latter.

19. Rule 33 provides that the assessing authority shall maintain a register in Form XIII in which he shall enter the details of each case initiated under Rr. 31 and 32. Rule 31 says that on receipt of a return or returns required under Rr. 19, 20, or 22 from any dealer, the assessing authority shall serve on him a notice in Form XI. Rule 32 prescribes, inter alia, the manner of assessment under sub-sec. (3) of S. 10. cl. (a) of sub-sec. (4) of S. 11, sub-s. (5) of S. 11. Form XIII gives the serial number, name of the dealer, nature of the business, gross turnover, taxable turnover as determined for the relevant years and the date of issue of notice in Form XI or Form XII. A perusal of the said rules and the forms discloses that the proceedings in the case of a registered dealer start only on the receipt of a return or returns required to be furnished under the rules. Under R. 33 a register is maintained giving the details of each case "instituted" under Rr. 31 and 32. Rule 34 enacts that a case instituted would be pending till an order of assessment was made. No doubt it would be pending till a final order of assessment was made by the highest tribunal or court under the Act.

20. At this stage some of the decisions cited at the Bar may conveniently be noticed. A Full Bench of the Bombay High Court in Bisesar House v. State of Bombay, 1958-9 STC 654 (FB) (Bom) held that a notice under sub-section (2) of S. 11 of the C. P. and Berar Sales Tax Act, 1947, could not be issued more than three years after the expiry of the period for which it was proposed to make the assessment but an assessment under sub-section (1) of S. 11 could be made more than three years after the expiry of such period. There, a dealer made his return and paid the tax, which according to him was due for three chargeable accounting years. The Commissioner of sales-tax served notices on him under S. 11(2) in respect of the first two years more than three years after the end of the chargeable accounting years. The Court drew a distinction between sub-sections (1) and (2) of S. 11 and came to the conclusion that in the former case it was only a formal appropriation of the amounts paid towards the tax due and therefore it could be done even after three years, but in the latter case the issue of notice under S. 11(2) was in a substantial sense an initiation of proceedings by the Commissioner and his failure to tax these turnovers would constitute "escaped assessment" within the meaning of S. 11A of the Act and therefore it could be reopened only within 3 years prescribed thereunder. The learned Judges, if we may say so with respect, did not consider the question, in what circumstances assessment proceedings could be held to be pending? As we have held that the

submission of a statutory return would initiate the proceedings and that the proceedings would be pending till a final order of assessment was made on the said return, no question of limitation would arise. A Division Bench of the same High Court, in Ramkrishna Ramnath v. Sales Tax Officer, Nagpur 1960-11 STC 311 (Bom at Nag), made a distinction between proceedings under Section 11 (4) (a) and those under Section 11 (2) of the Act in that proceedings under S. 11 (2) are for the purpose of assessment whereas those under S. 11(4) (a) are taken in terrorem and the dealer is penalised by a best judgment assessment in default of compliance. On that reasoning they held that the period of limitation prescribed under S. 11-A might apply to a proceeding under S. 11(2), but no such period of limitation was laid down in the Act in respect of a proceeding under S. 10(3) or S. 11(4) (a) of the Act. We find it rather difficult to appreciate the reasoning on which the learned Judges distinguished the Full Bench decision. But the question of pendency of proceedings was not raised before the Division Bench and was not considered by it. For the foregoing reasons we hold that a statutory obligation to make a return within a prescribed time does not proprio vigore initiate the assessment proceedings before the Commissioner; but the proceedings would commence after the return was submitted and would continue till a final order of assessment was made in regard to the said return.

21. Now let us apply the said legal position to the facts of Civil Appeal No. 101 of 1961. The appellant has to submit quarterly returns and assessments are made on the basis of the said returns that is to say, he has to be assessed for his turnover separately in respect of each quarter. Therefore, the question of escape of assessment has to be considered on the ground that each quarter is a separate period for the assessment. For the year 1949-50 i.e., for the period from October 22, 1949 to November 8, 1950, he had to submit 4 returns for the four quarters. But he had submitted only one return on October 5, 1950 for one quarter. No assessment was made in respect of any of the four quarters. So the assessment proceedings must be held to be pending before the Commissioner only in respect of the quarter for which the appellant had made the return. In respect of the other quarters no proceedings could be said to be pending before the Commissioner. The Tribunal has no jurisdiction to issue a notice under S. 11-A with respect to the quarters other than that covered by the return made by the appellant.

22. So far as Civil Appeal No. 102 of 1961 is concerned, the appellant had not submitted any returns for the year 1950-51 i. e., for the period from November 10, 1950 to October 31, 1951. The Assistant Commissioner of Sales-tax issued a notice to him on October 15, 1954 in Form XII purporting to be under S., 11 (4) of the Act. The said notice was within 3 years from October 16, 1951 which fell within the 4th quarter of the concerned year. Under S. 11-A of the Act the period of 3 years has to be calculated from the expiry of the period in regard whereto any turnover has escaped assessment. As the unit of assessment is a quarter, the period in S. 11-A can only mean a quarter and it cannot be further split up into months, weeks and days. The said period is the fourth quarter and it expired on October 31, 1951. If so, it follows that the Commissioner has to assess the turnover in respect of the entire fourth quarter as the notice was issued within there years from the expiry of the said quarter.

23. But in this case the Commissioner assessed the appellant in respect of the turnover of the entire

year without showing separately the assessment of tax payable in respect of each quarter. We cannot, therefore, confine the relief to be given to the appellant in these appeals to the period barred under S. 11-A of the Act. We would, therefore, set aside the assessments in both the appeals giving liberty to the respondent to make the assessment separately for the periods not barred under S. 11-A of the Act either because return was filed, as in the first case, or because the last quarter was within the period of three years, as in the second case.

24. In the result, the appeals are allowed with costs throughout. One hearing fee.

RAGHUBAR DAYAL, J.:

25. I am of opinion that the appeals should be dismissed as the turnover for the years 1949-50 and 1950-51 could not be said to be turnover which escaped assessment, within the meaning of that expression in S. 11-A of the Central Provinces and Berar Sales Tax Act, 1947 (XXI of 1947), hereinafter called the Act and therefore the notices issued by the Assistant Commissioner of Sales Tax in 1954 under Section 11(2) cannot be said to be notices issued under S. 11-A beyond the period within which they could have been issued.

26. It is not disputed that a turnover cannot be said to have escaped assessment if the proceedings for the assessment of the sales tax on the turnover be pending. The question then is whether proceedings for assessment of the turnover for these two years were pending when the impugned notices were issued. To determine this question we have to see when such proceedings for the assessment of the sales tax on the turnover of a dealer in a certain period commences.

27. All dealers whose turnover during a year exceed the limits laid down in sub-sec. (5) of S. 4 of the Act are liable to pay sales tax in accordance with the provisions of the Act. All such dealers have to get themselves registered and obtain a registration certificate vide S. 8. The registered dealer is required by S. 10(1) to furnish the prescribed returns by prescribed dates to the prescribed authority. Rule 19 of the Rules provides for the furnishing to the Sales Tax Officer quarterly returns in Form IV within one calendar month from the expiry of the quarter to which the return relates. In certain cases, such a return is to be submitted within two calendar months. The amount of tax calculated on the turnover shown in the return is to be deposited in the treasury and the treasury receipt in Form V is to accompany the return. If the registered dealer furnishes the necessary return, the Sales Tax Officer can assess on the amount of turnover shown in the returns in case he considers them to be correct and complete: vide S. 11(1). If he be not so satisfied he has to serve a notice under sub-s. (2) of S. 11 on the registered dealer to take the various steps he requires for satisfying him about the correct amount of the turnover and, on his computing this amount, he has to assess the tax in accordance with sub-s. (3) of S. 11 of the Act.

28. The Sales Tax Officer can also require an unregistered dealer to furnish returns by a certain date, in view of the provisions of sub-sec. (1) of S. 10 and, if the dealer submits such returns, he can make the assessment on the basis of the returns if satisfied with their correctness, or he may serve another notice under Section 11(2) on the dealer to take steps to satisfy him about the correct amount of the turnover and, if the dealer responds to the second notice, he assesses him, after necessary inquiry, to tax under S. 11 (3).

29. So far, the procedure for assessment of tax is the same, both for the registered dealer and the ordinary dealer, in case both of them furnish the returns of the turnover as required by the provisions of sub-s. (1) of S. 10 and also comply, if required, with the provisions of sub s. (2) of S. 11.

30. Different procedures, however, have to be followed if the two types of dealers do not file returns or, after filing returns, do not respond to the notice issued under sub-s. (2) of S. 11. The Act does not provide for the Sales Tax Officer's taking steps for the assessment of the tax on the ground of the unregistered dealer's not complying with either notice, i. e., when the unregistered dealer does not submit a return, or, after submitting a return which is not accepted, does not respond to the notice issued under sub-s. (2) of S. 11.

31. The Sales Tax Officer can, however, proceed against such a dealer under sub-s. (5) of S. 11 and will probably do so as the conduct of the unregistered dealer would tend to confirm the information which led him to issue notice under S. 10(1); but his action will be not on the ground that the dealer had made default in furnishing the return or had failed to comply with the notice issued under sub-s. (2) of S. 11 but will be on the ground that according to his information the dealer had been liable to pay tax under the Act in respect of that period and had, nevertheless, wilfully failed to apply for registration. Under the provisions of sub-s. (5) of S. 11 he, after giving the dealer reasonable opportunity of being heard, can proceed to assess the tax to the best of his judgment within three calendar years from the expiry of the period in respect of the turnover of which he was liable to be assessed to tax. The dealer, in such a case, has not only to pay the tax assessed, but has to pay the penalty which is not to exceed one and a half times the amount of the tax assessed. If such a dealer had been one to whom a notice under sub-sec. (1) of Section 10 had been issued and had failed, without any sufficient cause, to comply with the requirements of that notice, he could also be ordered to pay, by way of penalty, a sum not exceeding one-fourth the amount of the tax which is assessed on him under S. 11, in view of the provisions of sub-s. (3) of S. 10.

32. It will be seen that though the Sales Tax Officer has to proceed to make the assessment within three calendar years of the period whose turnover was liable to tax, there is no time limit within which the he must finish the assessment proceedings. They are simply to be started within the prescribed period of time, but can be finished at any later period.

33. It may also be noticed here that the 'period of three years' in sub-s. (5) of S. 11 was substituted by the amending Act XX of 1953 in place of the expression 'from the commencement of this Act and thereafter within twelve months' and that S. 11-A which deals with the assessment of the turnover escaping assessment was also introduced by the same Act and that these amendments were given retrospective effect from the 1st of June 1947, the date when the Act originally came into force. Section 11-A empowers the Sales Tax Officer to proceed to assess or re-assess turnover, including turnover which escaped assessment, within three years from the expiry of that period.

34. The procedure to be followed against the registered dealer, in case he does not furnish the return in respect of any period by the prescribed date-which he is enquired to do by sub-sec. (1) of S. 10-or, having furnished such returns, failed to comply with the notice issued under sub-sec. (2) of S. 11, is different. Sub-section (4) of S. 11 empowers the Sales Tax Officer, in such circumstances, to assess the registered dealer to the best of his judgment, in the prescribed manner. He has, however, to give a further notice to the registered dealer in case the registered dealer has not furnished the return at all. The registered dealer can also be made to pay a penalty, if his failure to furnish the return is without any sufficient cause, in accordance with the provisions of sub-sec. (3) of S. 10. There is no time limit fixed for the Sales Tax Officer to take action against the registered dealer under sub-ss. (2) and (4) of S. 11.

35. The question then is, when do the proceedings for the assessment of sales tax, commence against the registered dealer? I am of the view that they commenced from the prescribed date for his submitting the return which he is required to submit by sub-s. (1) of S. 10. No notice is necessary to be issued to him for the submitting of the return for the purpose of assessment. The statute, by the provisions in sub-sec. (1) of S. 10, gives him the required notice to the effect that he is to submit the necessary returns by the dates prescribed by the rules. The registration certificate issued to him mentions the period of the dealer's year, the prescribed return period and the date by which the dealer had to furnish the returns. The registered dealer is, in this way, in no worse position than an ordinary dealer who receives a notice form the Sales Tax Officer for submitting the returns by a certain date. The object of the notice to submit a return is nothing but the obtaining of the material for the Sales Tax Officer to determine the amount of the turnover and, if assessable to tax, to assess the tax due on that turnover. The notice is a step towards the proceedings for the assessment of the sales tax. In the case of the unregistered dealer, the Sales Tax Officer commences the proceedings for assessment by the issue of a notice under sub-s. (1) of S. 10 and in the case of a registered dealer, the statute has already fixed the date for the furnishing of the return and therefore has set in motion the process for the assessment of the sales tax by the Sales Tax Officer. I do not see any good reason why the statutory notice to the registered dealer be not considered to be at par with the notice issued to the ordinary dealer by the Sales Tax Officer and why it should not be taken to initiate the assessment proceedings just as the issue of a notice by the Sales Tax Officer would have initiated the proceedings against the ordinary dealer. The failure of the registered dealer to furnish the return enables the Sales Tax Officer to assess the tax to the best of his judgment, of course, after giving an opportunity to the registered dealer of being heard. It would be incongruous if the Sales Tax Officer be held not to have initiated the assessment proceedings against the registered dealer and yet, on the failure of such a dealer to furnish the returns, to proceed in the very first instance to assess tax on the dealer to the best of his judgment. Such a power of taxing to the best of his judgment is an indication of the fact that the dealer had defaulted in respect of some proceedings

connected with the assessment of tax and thus has made himself liable to tax on the best judgment basis instead of a tax on the computed amount of turnover according to the records. His default lies in his not submitting the return of turnover and not depositing the tax due on the turnover shown in the return. The payment of tax as a result of the statutory notice under S. 10 (1) and R. 19 well points to the conclusion that the statutory notice and rule initiate the assessment proceedings against the registered dealer at least from the date of the close of the quarter for which the turnover is to be furnished and tax is to be paid.

36. The mere fact that the Sales Tax Officer cannot proceed against an unregistered dealer who, though liable to pay a tax, did not get himself registered after the expiry of three years from the period the turnover in which was liable to tax, cannot lead to the conclusion that the Sales Tax Officer cannot take necessary steps to assess a registered dealer under sub-ss. (2) and (4) of S. 11 after the expiry of three years from the period whose turnover he proceeds to assess, for the simple reason that S. 11 or any other provision of the Act does not lay down any such restriction on the Sales Tax Officer's powers under these sub-sections.

37. Such a power in the Sales Tax Officer does not contravene the provisions of Art. 14 of the Constitution. The registered dealer and the unregistered dealer belong to different classes. The former is one whose liability to tax is admitted. The other has admitted no such liability. The Sales Tax Officer can find out about the liability of the unregistered dealer to tax only by issuing a notice to him under sub-s. (1) of S. 10 when he thinks that such a dealer might be liable to tax. It is only when the information in his possession is sufficiently strong and trustworthy as to satisfy him that a certain unregistered dealer is liable to pay sales tax and has wilfully failed to apply for registration that he can take action under sub-s. (5) of S. 11. The circumstances in which the Sales Tax Officer can take action against the unregistered dealer are different from the circumstances in which he takes action against the registered dealer. I am therefore of opinion that the Sales Tax Officer does not contravene Art. 14 of the Constitution as contended for the appellant, if he takes action against a registered dealer under sub-sec. (2) or (4) of S. 11 even after the expiry of three years from the period whose turnover is to be assessed.

38. It is to be noticed that the Act, as originally enacted, did not have S. 11-A. That was introduced in 1953 and made retrospective from June, 1, 1947. Amendment was made in 1953 in S. 11 (5) and it made the period of limitation for proceeding to assess tax three years. No amendment providing limitation was however made in S. 11(2) and (4) in 1953. This must be deliberate and indicates the intention of the Legislature not to limit the period during which action can be taken under S. 11 (2)and (4).

39. The Register of Cases in Form XIII of the Rules and Forms is for cases instituted under Ss. 10 (3), 11. 11 A and 22 C of the Act. Its columns do not show when the assessment of tax proceedings commence. Still its column 14 is meant for 'Amount of penalty imposed, if any, with relevant Section under which it is imposed and reference to defaulters' list. This shows that the Sales Tax

Officer maintains a list of registered dealers who had defaulted in not complying with the notices under S. 10(1) or 11 (2) or under any other provisions which makes the registered dealer liable to penalty. The maintenance of the defaulters' list indicates that the Sales Tax Officer initiates proceedings for tax assessment prior to his issuing notices under S. 10(3) and that this must be after the expiry of the date of furnishing returns referred to in S. 10(1).

40. In view of the opinion I have expressed above, it is not necessary to decide what the precise scope of the expression 'turnover escaping assessment' in S. 11-A is.

41. It follows that the impugned notices were properly issued by the Assistant Commissioner of Sales Tax to the appellant and that these appeals fail. I would accordingly dismiss these appeals with costs.

ORDER

42. By the Court : In accordance with the opinion of the majority, the appeals are allowed with costs throughout, one hearing fee.

Appeals allowed.