Kamala Mills Ltd

Vs

State of Bombay. K. S. Venkataraman and Co. (P.) Ltd. and Others

Civil Appeal No. 481 of 1963

(CJI P. B. Gajendragadkar, K. N. Wanchoo, V. Ramaswami – I, R. S. Bachawat, J. R. Mudholkar, J. C. Shah, S. M. Sikri JJ)

23.04.1965

JUDGMENT

GAJENDRAGADKAR C.J. -

The principal point of law which arises in this appeal is whether the Bombay High Court was right in holding that the suit filled the appellant, kamala Mills Ltd., against the respondent, the State of Bombay, was incompetent. The appellant is a limited company and owns textile mill at Bombay. It carries on the business of manufacturer and sale of textile both. During the period 26th January, 1950, to 31st March, 1951, the appellant was registered as "dealer" under the provisions of the Bombay Sales Tax Act, 1946, (V of 1946) (hereinafter called "the Act".) The appellants. case is that during the said period, it sold goods inside and outside the state of Bombay. The total value of goods sold by the appellant outside the State of Bombay was Rs. 40,20,623-12-0 and Rs. 1,08,946-14-0. On the said sales of Rs. 40,20,623-12-0 general sales tax of Rs. 61,885-12-0 was levied, whereas on the sales of Rs. 1,08,946-40-0 special sales tax of Rs. 3,301-8-0 was levied. The total sales tax thus levied

On December 20, 1956, the appellant instituted the present suit (No. 402 of 1956). on the original side of the Bombay High Court and claimed to recover the said amount from the respondent on the ground that it has been illegally levied against it. According to the appellant, the illegality of the impugned assessment levy, imposition and collection was discovered by it soon after this court pronounced its judgment in Bengal Immunity Co. Ltd. v. State of Bihar on the 6th September, 1955. The appellant's case further was that section 20 of the Act did not bar the institution of the present suit; and, in the alternative if it was held that it created a bar, the said section was ultra vires the Constitution of India and void.

The claim thus made by the appellant was resisted by the respondent on several grounds. One of the pleas raised by the respondent was that the court had no jurisdiction to entertain the suit. It was urged by the respondent that section 20 of the Act created a bar against the institution of the present suit; and the suit should, therefore, be dismissed on that preliminary ground. The respondent also contended that the plea raised by the appellant that the said section was ultra vires the Constitution was without any substance. On the merits, the respondent pleaded that the appellant was not justified in claiming a refund of the amount of tax recovered from it for the sale transactions in question.

On these pleadings, the learned trial judge framed nine issues. Issue No. 2 was in regard to the jurisdiction of the court to entertain the suit. This issue was tried by the learned trial judge as a

preliminary issue. He held that section 20 of the Act was bar to be the institution of the present suit, and on that view, he upheld the plea raised by the respondent. In the result, the appellant's suit was dismissed.

The appellant challenged the correctness of the said decision by preferring an appeal before a Division Bench of the said High Court under clause 15 of the Letters Patent. The Division Bench agreed with the view taken by the learned trial judge and dismissed the appeal preferred by the appellant. The appellant then appealed for obtained a certificate from the said High Court and it is with the said certificate that it has come to this court in appeal.

When this appeal was argued before a Division Bench of this court on March 23, 1964, Mr. Purshottam for the appellant contended that in addition to the point which had been decided by the High Court, he wanted to urge that section 20 of the Act was invalid. The case which was thus presented by Mr. Purshottam was that on a fair and reasonable constructions, it should be held that section 20 does not create a bar against the institution of the present suit. If, however, it was construed a create a bar, it was constitutionally invalid. It appears that though this alternative plea had been taken by the appellant in its plaint, no issue was framed in respect of it and naturally, the point has not been considered either by the learned trial judge or by the Division bench which heard the Letters Patent Appeal. Even so, the Division Bench of this court which heard the appeal, allowed, mr. purshottam, to raise his alternative contention, and so the appeal was ordered to be placed before a constitution Bench.

The appeal then came on for hearing before the Constitution Bench on April 10, 1964. After it was argued for some time, the court decided to issue notices to the Advocates-General of different states, because it was felt that the question about the constitutionally of section 20 of the Act which the appellant wanted to raise was of considerable importance and different states, may be interested in presenting their case before this court, for a provision similar to that of the impugned section would be found in sales tax statutes passed by many State legislatures. That is why this court directed that notices should be served on the Advocate-General of all states and the matter should be placed for hearing before a Special Bench. That is how this matter has been placed before a special bench for final disposal.

For the appellant, Mr. Viswanatha Sastri urged two points before us. He urges that on a fair construction of section 20, it should, be held that the present suit is outside the mischief of the said section. In the alternative, he contends that if section 20, creates a statutory bar against the institution of a suit like the present, it should be held ultra vires the constitution.

Before dealing with the points raised in this appeal, it would be necessary to refer to one fact which is not in dispute. The Act was passed in 1946, and it came into force on March 8, 1946. At that time, the word "sale" as defined by section 2(g) of the Act would have taken in all sales whether they were inside sales or outside sales. After the constitution was adopted on January 26, 1950, article 286 came into force and it protected certain sales specified by it from the purview of state taxation. It may theoretically be true that as soon as article 286 became effective, the expression "sale" as defined by the act was automatically constitutionally controlled by the limitations prescribed by it. To make this position clear, however, Bombay Ordinance II of 1952 was passed and by section 3, it added section 30 to the Act. In effect section 30 introduced in the act the relevant provisions prescribed by article 286 of the Constitution, so as to bring the operation of the Act expressly in conformity with the sa

It is well-known that the controversy in regard to the interpretation of article 286 began with the decision of this court in State of Bombay v. United Motors, and ended with the subsequent decision of this court in the case of Bengal Immunity Co. In order to alleviate the economic crisis which was likely to result in view of the subsequent decision of this court. the president promulgated the Sales tax validation Ordinance, 1956, on January 30, 1956, the provision of which were later incorporated in the Sales tax Validation Act, 1956. This act validated sales tax collected by the different states from April 1, 1951, to September 6, 1955, in accordance with the principles laid down by this court in United Motors' case. The sales tax similarly collected between January 26, 1950, to March 31, 1951, was also sought to be validated by the Sales tax Continuance Order, 1950. If we had reached the stage of considering the merits about the validity of the recovery of tax in the present case, it would have become nec

We will not revert to the main profits of law raised before us for our decision. The first question which must be considered relates to the construction of section 20. Let us read the said section :

> "20. Save as is provided in section 23, no assessment made and no order passed under this act or the rules made thereunder by the Commissioner or any person appointed under section 3 to assist him shall be called into question in any civil court, and save as is provided in sections 21 and 22, no appeal or application for revision shall lie against any such assessment or order."

Mr. Sastri contends that section 20 can no application to the present suit, because the order of assessment which the appellant seeks to challenge in the present proceedings as been made by the relevant sales tax authorities without jurisdiction. He concedes that even though an order of assessment made under the act any may be passed on a wrong conclusion of fact, it cannot be challenged by a suit having regard to the provisions of section 20. In other words, an erroneous order of assessment made under the act would be entitled to the protection of section 20; but the said protection cannot be claimed by an order which is passed without jurisdiction. According to Mr. Sastri, the impugned assessment contravenes the provisions of article 286 and as such as invalid. What the assessment order purported to tax was an outside sale and it was beyond the competence of the authority to make the said order. Indeed, it was beyond the competence of the state legislature to levy a tax in respect of an outside sale; and s

Mr. Sastri did not dispute the fact that argument thus presented by him would be equally applicable to cases of assessment made erroneously in respect of transactions which are otherwise statutorily exempted from the operation of the Act. If a sales tax statute exempts certain transactions from the purview of its charging section, and the appropriate authority makes an order of assessment in respect of such an exempted transaction, the assessment would be beyond its jurisdiction and can be impeached by a suit; section 20 will not protect such an assessment. No doubt, Mr. Sastri, emphasised the fact that the constitutional prohibition against an assessment in respect of outside sales stood on a much higher pedestal than the prohibition by a statutory provision in a Sales Tax Act. The first prohibition is a constitutional prohibition and its breach would entitle a citizen to claim the protection of article 265 and article 31(1); but, on principle, according to Mr. Sastri, a transaction which is exempted from a

In dealing with this question, it is necessary to remember that the normal rule prescribed by section 9 of the code of Civil Procedure is that the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. There is no doubt that a claim for the refund of a sales tax alleged to

have been paid by the appellants through mistake is a claim of a civil nature and normally it should be triable by the ordinary courts of competent jurisdiction as provided by section 9 of the code; but this section itself lays down that the jurisdiction of the civil courts to try suits of civil nature can be excluded either expressly or impliedly; and so, the point raised for our decision in the present appeal is whether on a fair and reasonable construction of section 20, it can be said that the jurisdiction of the civil court is barred either expressly or impliedly.

Section 20 protects "assessment made under the Act or the rules made thereunder" by appropriate authorities. There can be little doubt that the clause "an assessment made" cannot mean the assessment properly or correctly made. The said clause takes in all assessments made or purported to have been made under Act. In its plaint, the appellant is undoubtedly calling into question the assessment order made against it, and such a challenge to the assessment order is plainly prohibit by section 20. An order of assessment, though erroneous, and though based on an incorrect finding of fact, is, nevertheless, an order of assessment within the meaning of section 20; and section 20, in terms, provides that it will be called in question in any civil court.

The question has been recently considered by this court in Firm of Illuri Subbayya Chetty & Sons v. State of Andhra Pradesh. Dealing with section 18A of the Madras General Sales tax Act, 1939 (9 of 1939), which corresponds to section 20 with which were concerned in the present appeal this court observed that the expression "any assessment made under this Act" is wide enough to cover all assessments made by the appropriate authorities under this Act whether the said assessments are correct or not. It is the activity of the assessing office acting as such officer which is intended to be protected and as soon as it is shown that exercising his jurisdiction and authority under this act, an assessing officer has made an order of assessment, that clearly falls within the scope of section 18A. It was also observed that whether or not an assessment has been made under this Act, will not depend on the correctness or accuracy of the order passed by the assessing authority.

This position is not seriously disputed by Mr. Sastri before us. He, however, contends that if the impugned order has been passed without jurisdiction, it cannot fall within the purview of section 20 of the Act. In other words, the contention is that when the appropriate authority purported to levy the tax on the appellant in respect of the transactions in question, it was attempting to assessee outside sales; and since the said assessment contravened article 286, it was invalid and the order was without jurisdiction and as such a nullity. How can an order passes by the appropriate authority without jurisdiction claim the protection of section 20, asks Mr. Sastri.

In deciding the validity of this contention, it is necessary to examine the scope of the jurisdiction conferred on the appropriate by the relevant provisions of the Act. Jurisdiction is either territorial, or pecuniary, or in respect of the subject-matter. There is no difficulty about the assessing authorities territorial and pecuniary jurisdiction in the present case. What is the nature of the jurisdiction conferred on the appropriate authority in respect of the subject-matter of sales Tax ? Has the appropriate authority been given power to examine the nature of the transaction and decide whether it is liable to tax or not. Or, can the appropriate authorities proceed to exercise its power of imposing a tax only in cases where the transaction in question is assessable to such tax ? In other words, is the decision about the character of the transaction, the decision of a collateral fact, the finding on which alone confers jurisdiction on the tribunal to left the tax, or is it the decision on a question of fac

As Halsbury : The jurisdiction of an inferior tribunal may depend upon the fulfillment of some condition precedent or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the inferior tribunal has to try, and the determination whether its exists or not is

logically and temporally prior to the determination of the actual question which the inferior tribunal has to try. The inferior tribunal must itself decide as to the collateral fact : when, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether it will act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not. There may be tribunals which, by virtue of legislation constituting them, have the power to determine finally the preliminary facts on which the further exercise of their jurisdiction depends; but subject to that; an inferior tribunal cannot be a wrong decision with reg

It would be noticed that Mr. Sastri's argument that the impugned order of assessment is without jurisdiction and as such does not fall within section 20, proceeds on the assumption that the finding of the appropriate authority that the transaction in question were taxable under the relevant provisions of the Act, is a finding on a fact which is collateral. The question is : is thus assumption well-founded ? In our opinion, the answer to this question must be in the negative.

In this connection, the relevant scheme of the act by which necessary powers have been conferred on the appropriate authorities, falls to be considered. Section 3(1) provides that for carrying out the purposes of this Act, the Provincial Government may appoint any person to be Commissioner of Sales Tax, and such other persons to assist him as the Provincial Government thinks fit. Section 3(2) then lays down that persons appointed under sub-section (1) shall exercise such powers as may be conferred and perform such duties as may be imposed on them by or under this Act. Section 4 deals with the appointment of a tribunal and provides for its constitution. Section 5 is the charging section. Section 8 requires the registration of dealers, the expression "dealer" having been defined by section 2(c). Section 10 imposes an obligation on the dealers to make returns. Section 11 deals with the assessment of tax; sub-section (1)(a) provides that the amount of tax due from a registered dealer shall, in the case of first

It would thus be seen that the appropriate authorities have been given power in express terms to examine the returns submitted by the dealers and to deal with the questions as to, whether the transactions entered into by the dealers are liable to be assessed under the relevant provisions of the act or not. In our opinion, it is plain that the very object of constituting appropriate authorities under the act is to create a hierarchy of special tribunals to deal with the problem of levying assessment of sales tax as contemplated by the act. If we examine the relevant provisions which confer jurisdiction on the appropriate authorities to levy assessment on the dealers in respect of transaction to which the charging pertaining to the liability of the dealers to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not a return is correct; whether or not transaction which are not mentio

The question was incidentally considered by a Special Bench of this court in Smt. Ujjam Bai v. State of Uttar Pradesh. In that case, the petitioner, Ujjam Bai, challenged the validity of the sales tax levied on her on the ground that the notification issued on December 14, 1957, had exempted "bidis", like those which the petitioner's firm produced, from payment of sales tax. According to the petitioner, the appropriate authority had plainly misconstrued the notification when it held that the bidis produced by the petitioners firm were not entitled to claim the protection of the said notification. The petitioner had moved this court under article 32 of the constitution. Broadly stated, the majority decision was that though the notification may have been misconstrued by the appropriate authority when it rejected the petitioner's contention that the said bidis fell within the purview of the petitioner's under article 32 on the sole ground that the impugned order of the assessment was based on a misconstruction

It is true that the separate concurring judgments delivered by the learned judges who spoke for the majority view indicate that their approach to the several problems posed by the two questions referred to the special bench was not uniform and they emphasised different aspects in somewhat different ways; but in regard to that aspect of the matter with which we are concerned in the present appeal there appears to be unanimity amongst them. Indeed, even the minority judgment which radically dissented from the majority view in regard to the scope and effect of the powers of this court under article 32 and the extent of the fundamental right conferred on the citizen to move this court by the said article, does not appear to have differed from the majority view on this point.

Whilst we are referring to the decision of this court in Ujjam Bai's Case, we would hasten to add that we are not dealing with the scope and effect of our powers under article 32, or with the powers of the High Courts under article 226. Our object in referring to the majority decision in Ujjam Bai's case is merely to show that the tenor of the opinion expressed by the recorded by the taxing authority as to the support of the view that a finding recorded by a taxing authority as to the taxability of any given transactions cannot be said to be a finding on a collateral fact, nut is a finding on a fact, the decision of which is entrusted to the jurisdiction of such authority.

Mr. Sastri has no doubt referred us to the subsequent decision of this court in State Trading Corporation of India Ltd v. State of Mysore in which it appears to have been held that the taxing officer cannot give himself jurisdiction to tax an inter-state sale by erroneously determining the character of the sale transaction seems to have been treated as a decision on a collateral fact. With respect, we may point out that the majority decision in Ujjam Bai's case, on which this conclusion is founded does not support that view. We ought, however, to add that in the case of State Trading Corporation of India Ltd., as in the earlier case of Ujjam Bai, this court was dealing with a petition filed under article 32; and as we have already indicated, we are not called upon to consider the extent of our jurisdiction under article 32, when such questions are brought before us by citizens for relief on the ground that their fundamental rights have been contravened by assessment orders. At this stage, we are only dealing

Reverting then to section 20, it seems to us plain that the words used in this section are so wide that even erroneous orders of assessment made would be entitled to claim its protection against the institution of a civil suit. Several decisions have been cited before us where similar questions have been considered. We may usefully refer to some of them. In Secretary of State, represented by the Collector of South Arcot v. Mask and Company, the Privy Council had occasion to consider the effect of the provision contained in section 188 of the Sea Customs Act, 1878 (VIII of 1878). The said provision was that every order passed in appeal under the said section shall subject to the power of revision conferred by section 191, be final. Mask & Co. had instituted a suit in which it sought to recover duty collected from it under protest on the ground that it was illegally recovered. The trial court had rejected the claim on the ground that the suit was barred under section 188. On appeal, the High Court of Madras to

In Raleigh Investment Company Ltd. v. Governor-General in Council, section 67 of the Indian Income-tax Act, 1922 (XI of 1922) which barred a suit, fell to be considered. The Privy Council held that the said provisions barred a suit where the plaintiff sought to challenge an assessment order made by the appropriate tax authorities under the provisions of the said Act. In construing the effect of the words "no suit shall be brought in any civil court to set aside or modify the assessment made under this Act", the Privy Council thought it necessary to enquire whether the act contained machinery which enables an assessee effectively to raise in the courts the question whether a particular provision of the Income-tax Act bearing on the assessment made, is or is not ultra vires.

The presence of such machinery", observed that the privy Council, "though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to inquire into the same subject-matter. The absence of s

On the question of construction, Mr,. Sastri has relied on two decisions of this court to which it is necessary to refer before we part with this topic. In Provincial Government of Madras (now Andhra Pradesh) v. J. S. Basappa, it was held by this court that the finality attached to orders passed in appeal by section 11(4) of the Madras General Sales tax Act, 1939, (IX of 1939), was a finality for the purpose of the said act and did not make valid an action which was not warranted by the Act, as for example, the levy of tax on a commodity which was not taxed at all or was exempt. We ought to add that this decision was based on the fact that the said act at the relevant time did not contain section 18A which came into force on May 15, 1951, and it was section 18A which was construed by this court in Firm of Illuri Subbayya Chetty & Sons.

Mr Sastri has also referred to the majority decision in the case of Bharat kala Bhandar Ltd. v. Municipal Committee, Dhamangaon. In that case, according to the majority decision, section 84(3) of the Central Provinces Municipalities Act, 1922, which deals with "bar of other proceedings". did not make incompetent the suit with which the court was dealing. The said section provides that :

> No objection shall be taken to any valuation, assessment levy, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or ny any other authority than is provided in this Act."

According to the majority view, the bar created by this provision did not amount to the exclusion of the jurisdiction of the civil courts to entertain a claim for refund of the tax alleged to be illegally recovered, because there were no words in the said provisions which could be construed as excluding the civil court's jurisdiction either expressly or impliedly. The majority view, however, held that a suit for refund was barred.

We do not think Mr. Sastri can successfully advance his case before us by relying on these two decisions. After all, as the Privy Council observed in the case of Mask & Co., the determination of the question as to whether section 20 bars the present suit, must rest on the terms of section 20 themselves, because that is the provisions under consideration "and decisions on other statutory provisions are laid down". Besides, in regard to these two decisions, we may, with respect, point out that they do not purport to lay down a general rule that the jurisdiction of a civil court cannot be excluded unless it is specifically provided that a suit a civil court would not lie. In fact, as the decision of the Privy Council in the case of Mask & Co. shows, the jurisdiction of a civil courts can be excluded even without such an express provision. In every case, the question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered in the light of the words u

Mr. Sastri has also invited our attention to the decision of the House of Lords in Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government. In that case, the House of Lords repelled the preliminary objection raised by the respondents that the court had no jurisdiction to grant the declaration asked for, since by the combined effect of sections 15 and 17 of the Town and Country Planning Act, 1947, the decision of the Minister on an application to determine whether permission was required was made final and the only method of determining such a question was that provides by section 17(1), and that the wide discretion conferred by section 14 on the Minister to impose conditions disentitled the company from coming to the court for a declaration that the conditions

were invalid. In coming to the conclusion that the jurisdiction of the civil court was not excluded, the House of Lords noticed that there was nothing in section 17 or in the act which excluded the jurisdiction of the court to grant declaratio

There is one more aspect of the matter which must be considered before we finally determine the question as to whether section 20 excludes the jurisdiction of the civil court in entertaining the present suit. Whenever it is urged before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. In cases where the exclusion of the civil court's jurisdiction is expressly provided for the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such consideration would be very important and in conceivable circumstances, might even become decisive. If it appears that a statute creates a special right or

In the present case, the appellant wants relief of refund to tax which is alleged to have been illegally recovered from it by the respondent, and the ground on which the said relief is claimed is that at the time when the tax was recovered, the appellant was under a mistake of fact and law. According to the appellant, even the respondent might have been labouring under the same mistake of fact and law, because the true constitutional and legal position in regard to the jurisdiction and authority of different states to recover sales tax in respect of outside sales was not correctly appreciated until this court pronounced its decision in the Bengal Immunity Co.'s case. That being so, can it be said that the act provides an appropriate remedy for recovering a tax alleged to have been illegal levied and collected, where the party asking for the said relief pleads a mistake of fact and law ? It would be noticed that this inquiry may have some relevance in construing the terms of section 20, and it would be both r

Before proceeding to examine this matter, we ought to refer to the decision of this court in Sales Tax Officer, Banaras v. Kanhaiya Lal Mukund Lal Saraf. In that case, this court has held that the term "mistake" in section 72 of the Indian Contract Act comprises within its scope a mistake of law as well as a mistake of fact and that, under that section, a party is entitled to recover money paid by mistake or under coercion, and if it is established that the payment, even though it be of a tax, has been made by the party laboring under a mistake of law, the party receiving the money is bound to repay or return it though it might have been paid voluntarily, subject, however, to questions of estoppel, waiver, limitation or the like. Basing himself on this decision, Mr. Sastri contends that since the Act does not provide for adequate remedy to recover illegally collected tax from the respondent, we should either put a narrow construction on section 20 so as to permit institution of a suit like the present, or, i

In support of this contention mr. Sastri has referred to the decision of the Privy Council in Commissioner for Motor Transport v. Antill Ranger & Co. Pty. : Ltd. State of New South Wales v. Edmund T. Lennon : Pty. Ltd. In that case, section 3 of the State Transport, co- ordination (Barring of claims and Remedies) Act, 1954, had provided, inter alia, that every cause of action against Her Majesty or the State of New South Wales for the recovery of any sums collected in relation to the operation of any public motor vehicle in the course of or for the purposes of inter-statute trade before the commencement of this act which were collected pursuant to the relevant was incompetent in view of section 3, it was held that the denial of the right to recover money paid in satisfaction of charges which were illegal by virtue of section 92 of the commonwealth of Australia Constitution

offended equally purported to extinguish absolutely a cause of action, it was struck down as unconstitutional.

Let us, therefore, examine the question as to whether the act with which we are concerned in the present appeal, provides for a remedy to claim a refund of tax alleged to have been illegally recovered. Section 13 of the Act expressly provides for refunds. It lays down that the commissioner shall, in the prescribed manner, refund to a registered dealer applying in this behalf any amount of tax paid by such dealer in excess of the amount due from him under this Act. The proviso to this section prescribes a period of limitation of twenty- four months from the date on which the order of assessment was passed or within twelve months of the final order passed on appeal, revision or reference in respect of the order of assessment whichever period, is later. Then, we have section 21 which provides for the remedy of an appeal; and section 22 which provides for a revisional remedy. It is significant that though section 21(1) prescribed a period of sixty days for appeal and section 22 prescribes a period of four months

This conclusion, however, does not finally dispose of the appeal. Though the appellant's suit may be incompetent in so far as the appellant seeks for a decree for refund, it still remains to be considered whether its suit can be said to be incompetent in so far as it seeks to challenge the validity of section 20 itself. It would be recalled the alternative claim made by the appellant in its plaint was that section 20, on which a plea of bar is raised by the respondent, is invalid. The High Court, has not considered this aspect of the matter; but since the appellant allowed to raise the point about the validity of section 20 we must deal with it.

This point presents no difficulty whatever. The bar created by section 20 cannot obviously be pleaded where the validity of section 20 itself is challenged. That can be course be done a separate suit. In terms, section 20 is confined to cases where the validity of assessment orders made under the Act is challenged. The said provisions cannot take in a challenge to the validity of section 20 itself, and so, we must hold that technically, the appellant's suit is competent in so far as it seeks to challenge the validity of section 20. This finding, however, is of no material assistance to the appellant, because even after it succeeds on this point, it has still to face the plea of the respondent that, on the merits, the suit is barred; and no that plea, the appellant must fail, because section 20 is a bar the appellant's claim that the amount in question which is alleged to have been illegally recovered from it should be refunded to it. That is a matter which falls directly within the mischief of section 20.

What then is the ultimate position in this case ? The Act under which tax was recovered from the appellant is valid and so is charging section valid; the appropriate authorities dealt with the matter in regard to the taxability of the impugned transactions in accordance with the provisions of the act and in consequence, tax in question was recovered on the basis that the said transactions were taxable under the Act. The appellant contends that the transactions were outside sales and they did not and could not fall under the charging section because of article 286, and it argues that the tax was levied because both the appellant and the appropriate authorities committed a mistake of fact as well as law in dealing with the question. Assuming that such a mistake was committed, the conclusion that the transactions in question fell within the purview of the charging section cannot be said to be without jurisdiction or a nullity and the assessment based even on such an erroneous conclusion would claim the protecti

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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