Anandji Haridas & Co. (P.) Ltd.

Vs

S. P. Kushare, S.T.O. Nagpur & Ors.

Civil Appeals Nos. 511-514 of 1966

(J. C. Shah, S. M. Sikri, J. M. Shelat JJ)

28.09.1967

JUDGMENT

HEGDE J. -

The principal question canvassed in this group of appeals by special leave is whether s. 11(4)(a) of the Central Provinces and Berar Sales Tax, Act 1947 to be referred to as the Act hereinafter is ultra vires Article 14 of the Constitution and consequently the notices impugned in the writ petitions from, which these appeals arise are liable to be struck down and the respondents restrained from levying sales tax on the appellants for the period May 1, 1952 to October 31, 1955.

The appellants are a private limited company carrying on business inter alia as dealers in iron and steel materials in Vidharba region of the Maharashtra State. In that region they have more than one place of business. They registered themselves as dealers under s. 8A of the Act and obtained a certificate of registration on August, 17, 1947. Their assessment year as shown in their registration certificate is from November 1 to October 31. They were required to submit quarterly returns of their turnovers. They did so till April 30, 1952. Thereafter no returns were submitted. On September 13, 1955, the Assistant Commissioner of Sales Tax, the assessing authority at that time, issued a notice calling upon the appellants to show cause why action should not be taken against them under ss. 10(3) and 11(4)(a). On account of their failure to furnish the return for the period 1.1.53 to 31.12.53. Similar notices were issued to them on October 27, 1955 for the period 1.1.54 to 31.12.54 and on July 7, 1956 for the period 1.1.55 to 31.12.55. It appears that the appellants repeatedly took time for submitting their explanation. The first respondent to whom the appellants' case stood transferred issued in 1958 fresh notices to the appellants similar to those issued in 1955. At that stage the appellants objected to the validity of those notices both orally as well as in writing on the ground that their assessment year was not the calendar year as mentioned in those notices but the year ending October 31. Evidently in view of that objection, the first respondent issued another set of notices on July 8, 1959. The appellants contained that those notices were barred by time. Thereafter the appellants challenged the validity of the notices issued in 1959 in the petitions under Art. 226 from, which these appeals arise.

In these appeals the questions arising for decision are whether s. 11(4)(a) or s. 11A(3) or any parts thereof contravene the guarantee of equal protection of the laws or equality before the law or whether those provisions are based on a valid classification which is reasonable in view of the object with which they were enacted. Mr. H. R. Gokhale learned counsel for the appellants, urged that both these provisions deal with the same class of persons having common characteristics and properties and hence there is no just basis for the classification made. According to him the classification complained of has brought about a discrimination. Further he asserted that the Act had

conferred arbitrary power on the assessing authority to pick and choose from the persons belonging to the same class to be dealt with either under s. 11(4)(a) or under 11A(1). He urged that as case coming under s. 11(4)(a) also falls under s. 11A, as the law now stands, the persons proceeded against under s. 11A(1) will have the benefit the period of limitation prescribed therein; while the said benefit is not available for those proceeded under s. 11(4)(a).

According to the learned counsel for the revenue ss. 11(4)(a) and 11A deal with the different classes of persons; the classification made under these provisions is a reasonable classification having nexus with the object sought to be achieved.

Before adverting to the points at issue, it would be convenient to set out the circumstances under which s. 11A(3) which is said to have brought about the discrimination complained of came to be enacted. The Act is in force ever since 1947. Section 11A as it originally was inserted into the Act in 1953. In Bisesar House v. State of Bombay (60 B.L.R. 1395) the question arose whether a notice under s. 11(2) initiate a fresh proceeding and if that is so, whether the limitation prescribed under s. 11A(1) is attracted to that proceeding. A Full Bench of the Bombay High Court speaking through Chagla C.J. held that a notice under s. 11(2) initiate a fresh proceeding and to such a proceeding the limitation prescribed in s. 11A is attracted. From the ratio of that decision it followed that the limitation prescribed under s. 11A also governed proceeding under s. 11(4)(a). Evidently, to get over the effect of that decision, the Bombay Legislature enacted the Bombay Sales Tax Laws (Validating provisions and Amendment) Act 1959 (No. 22 of 1959) which came into force on April 18, 1959. Section 6 of that Act inserted the new sub-section (3) into s. 11A and the reason for that amendment as stated in the statement of objects and reason is as follows :-

> "In its judgment in Bisesar House v. Commissioner of Sales Tax, Nagpur, the Bombay High Court has held that the period of limitation laid down in s. 11A of the Central Provinces and Berar Sales Tax Act, 1947. For reassessment of the turnover which was escaped assessment applied to original assessment also. It has also been found that the said limitation applies to suo motu revision also the said decision affects the original assessments and suo motu revisions, which have been made after the expiry of the period of limitation laid down for the reassessment of turnover escaping assessment under the different sales tax laws in force in this State. It has, therefore, become necessary to establish the validity of all such assessment and to provide that the period of limitation prescribed for reassessment of escaped turnover does not apply to original assessment and suo motu revisions."

In Ghanshyam Das v. Regional Assistant Commissioner of Sales Tax, Nagpur, ([1964] 4 S.C.R. 436) the Court did not agree with that decision so far as the scope of s. 11(2) is concerned. Therein it was held that a notice under s. 11(2) does not initiate a fresh proceeding and to that proceeding the limitation prescribed in s. 11A does not apply,. Though in view of that decision, s. 11(A)(3) became superfluous in respect of a proceedings in which a notice under s. 11(2) is given, it undoubtedly changed the law in respect of proceedings under s. 11(4)(a).

Before we proceed to consider the aforementioned complaint of discrimination. It is necessary to have a survey of the relevant provisions of the Act, 'Dealer' is defined in s. 2(c) as meaning a person who whether as principal or agent carries on in the State the business of selling or supplying goods whether for commission, remuneration or otherwise and includes a firm, a partnership, a Hindu undivided family or a State government or any of their departments and includes also a society, club or association selling or supplying goods to its members. A 'registered dealer' is defined in s. 2(f) as

meaning a dealer registered under the Act. Section 2(j) defines 'turnover' as meaning the aggregate of the amounts of sale prices and parts of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract effected or made during the prescribed period; and the expression 'taxable turnover' means that part of a dealer's turnover during such period which remains after deducting therefrom his turnover during that period in respect of the sale of goods declared tax free under s. 6. The definition of the term 'year' as provided in s. 2(1) to the extent necessary for our present purpose reads :-

> "'year' means the 12 months ending on 31st day of March, or if the accounts of the assessee are made up to any other day in respect of a year ending on any date other than the 31st day of March, than at the option of the assessee the year ending on the day to which his accounts have been so made up.....".

Section 8 says :

> "(1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he had been registered as such and possesses a registration certificate."

Section 8A provides for voluntary registration of a dealer. Sub-s. (3) thereof provides that ever dealer who has been registered upon an application made under this section so long as his registration remains in force, be liable to pay tax under this Act. Sub-s. (4) of that section stipulates that the registration of a dealer upon an application made under that section shall be in force for a period not less than three complete years and shall remain in force thereafter unless cancelled under the provisions of the Act.

Section 10 provides for returns by dealers. It reads :

> "(1) 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".
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> Sub-s. (2) of that section is not necessary for our present purpose. Sub-s. (3) of that section reads :
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> "(3) If a dealer fails to comply with the requirements of a notice issued sub-section (1) or a registered dealer fails to furnish his return for any period within the prescribed time to the prescribed authority without any sufficient cause, the Commissioner may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way penalty a sum not exceeding one-fourth of the amount of the tax which my be assessed on him under s. 11.".
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> Sections 11 and 11A are important for our present purpose. They deal with assessment and assessment on turnovers escaping assessment. They, to the extent necessary for our present purpose read :
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> "11(1). If the Commissioner is satisfied that the returns furnished by a dealer in respects of any period are correct and complete. He shall assess the dealer on them.

(2) If the Commissioner is not so satisfied he shall serve the dealer with a notice appointing a place and day and directing him (i) to appear in person or by and agent entitled to appear in accordance with the provisions of section 11B, (ii) to produce evidence or have it produced in support of the returns; or (iii) to produce or cause to be produced any accounts, registers, cash memoranda or other documents as may be considered necessary by the Commissioner for the purpose;

(3) After hearing the dealer or his agent and examining the evidence produced in compliance with the requirements of clause (ii) or clause (iii) of sub-section (2) and such further evidence as the Commissioner my require, the Commissioner shall assess him to tax;

(4) If a registered dealer (a) does not furnish returns in respect of any period by the prescribed date, to (b) having furnished such returns fails to comply with any of the terms of notice issued under sub-section (2), or (c) has not regularly employed any method of accounting, or if the method employed is such that, in the opinion of the Commissioner, assessment cannot properly be made on the basis thereof.

The Commissioner shall in the prescribed manner assess the dealer to the best of his judgment :

Provided that he shall not so assess him in respect of the default specified in clause (a) unless the dealer has been first given a reasonable opportunity of being heard" (Sub-ss. 5 and (6) are not necessary for our present purpose)

Section 11A provides :

"(1). If in consequence of any information which has come into procession, the Commissioner is satisfied that any turnover of a dealer during any period has been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may, at any time within three calendar years from the expiry of such period, after giving the dealer reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed in such manner as may be prescribed to reassess or assess, as the case may be, the tax payable on any such turnover; and the Commissioner may direct that the dealer shall pay, by way or penalty in addition to the amount of tax so assessed, a sum not exceeding that amount.

(2) The assessment or re-assessment made under sub-s. (1) shall be at the rate at which it would have been made, had there been no under-assessment or escapement.

(3) (a). Nothing in sub-sections (1) and (2) (i) shall apply to any proceeding (including any notice issued) under Sections 11 or 22A or 23B and (ii) notwithstanding any judgment, decree or order of a Court or Tribunal, shall be deemed ever to have been applicable to such proceeding or notice.

(b) The validity of any such proceeding or notice shall not be called in question merely on the ground that such proceeding or notice was inconsistent with the provisions of sub-sections (1) and (2)".

Rule 19 of the rules framed under the Act provides that every registered dealer should furnish to the

appropriate sales tax officer his quarterly return in the prescribed form within one calendar month from the expiry of the quarter to which the return relates. Each of such returns submitted should be accompanied by a treasury challan in the form prescribed in proof of the fact that he had paid the tax payable on the basis of his return. The only other rule relevant for our present purpose is r. 32 in Part VII of the Rules which deal with the assessment of tax and or penalty. That rule provides that where a registered dealer has rendered himself to a best judgment assessment as well as penalty by reason of his default in furnishing the prescribed return or returns in respect of any period by the prescribed date, the assessing authority shall serve on him a notice in form 12 specifying the default, escapement or concealment as the case may be and calling upon him to show cause by such date ordinarily not less than 30 days, from the date of issue of the notice, as may be fixed in that behalf. Why he should not be assessed or re-assesses to tax, or a penalty should not be imposed upon him and directing him directing him to produce on the said date his books of account and other documents which the assessing authority may require or which he may wish to produce in support of his objection. That rule further provides that no such notice shall be necessary where the dealer having appeared before the assessing authority, waives such notice.

Now we may turn to the questions formulated for decision. As mentioned earlier, the main contention advanced on behalf of the appellants is that sub-s. (3) of s. 11A has brought about discrimination between those dealers proceeded against under s. 11(4)(a) and those dealt with under s. 11A. The contention advanced on behalf of the appellants is that the turnover of a registered dealers who has failed to submit his return and also to deposit the tax due from him, has escaped assessment; the case of such a dealer comes both within s. 11(4)(a) as well as s. 11A; therefore, he can be dealt with under either of those two provisions. Where as, 11A prescribes a period of limitation for a proceeding under that provision, in view of sub-s. 3 of s. 11A a proceeding under s. 11(4)(a) can be initiated at any time; under those circumstances it is open to the authorities to proceed against some of the same class of dealers under s. 11(4)(a) and others under s. 11A. It was said on their behalf that it is well-settled that in its application to legal proceedings, Art. 14 assures to every one the same rules of evidence and modes of procedure; in other words, the same rule msut exist for all in similar circumstances. On the other hand, it was urged on behalf of the revenue that s. 11(4)(a) deals only with registered dealers who have certain advantages under the Act, whereas s. 11A deals with dealers who do not come either under s. 11(4) or s. 11(5), and therefore the classification of dealers made under the various provisions is based on real and substantial distinction bearing a just and reasonable relation to the object sought to be attained.

We have now to see whether the dealers who come within the mischief of s. 11(4)(a) can also be dealt with under s. 11A. Before a person can be dealt with under s. 11A, it must be shown that in consequence of any information which has come into his possession, the Commissioner is satisfied that any turnover of that dealer during any period has been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom. Quite plainly the expression 'dealer' in s. 11A(1) included both registered and unregistered dealers, In this case we are concerned with the escapement of assessment. Therefore the first question that arise for decision is whether it can be said that the appellants' turnovers for the period 1-5-52 to 30-10-55 had escape assessment. There is no dispute that those turnovers has not been assessed. From the fact that those turnovers had not been assessed, can it be said that they had escaped assessment ? In Maharaj Kumar Kamal Singh v. Commissioner of Income-tax, Bihar and Orissa ([1959] Supp. 1 S.C.R. 10), this Court laid down that the expression "has escape assessment" in s. 34(1)(b) of the Indian Income-tax Act. 1922 is applicable not only where the income has not been assessed owing to inadvertence or oversight or owing to the fact that no return has been submitted, but also where a return has been submit but the income-tax officer erroneously failed to tax a part of assessable

income. In Commissioner of Income-tax, Bombay City v. M/s. Narsee Nagsee and Co., Bombay ([1960] 3 S.C.R. 988) interpreting the words "profit escaping assessment" in s. 14 of the Business Profits Tax Act, 1947, this Court held that these words apply equally to cases where a notice Was receive by the assessment but resulted in no assessment, under-assessment or excessive relief in to cases where due to any reason no notice was issue to the assessee and there was no assessment of his income. Kapur, J. speaking for the majority of Judges in that case, observed (at p. 993 of the report) that it is well-settled that an income escapes assessment when the process of assessment has not been initiated as also in a case where it has resulted in no assessment after the completion of the process of assessment. The true scope of the expression "escape assessment" in s. 11A came up for consideration before this Court in Ghanshyam Das v. Regional Assistant Commissioner of Sales Tax Nagpur ([1964] 4 S.C.R. 436). This is what Subba Rao J. (as he then was) who deliver the judgment of the majority of the Judges, observed in that regard :

> "In Commissioner of Income-tax, Bombay v. Pirojbai N. Contractor (5 I.T.R. 338) the words 'escapade 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 s. 22(2) of the Income-tax Act had been issue to the assessee and therefore his income had not been assessee under s. 23 thereof. The said view has been assumed to be correct by this Court in Maharaj Kumar Kamal Singh v. Commissioner of Income-Tax, Bihar and Orissa [1159] Supp. 1 S.C.R. 10 and Maharajadhiraj Sir Kameshwar Singh v. State of Bihar ([1960] 1 S.C.R. 322) 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 Nagsee and Co. ([1960] 3 S.C.R. 988), construing the provisions of s. 14 of the Business Profit Tax Act, 1947, reviewed the law on the subject and came to the following conclusion :
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> "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(1) of the Income Tax Act or s. 14 of the Business Profit Tax Act. but so far as the present enquiry is concerned the said sections are in pari materia with s. 11A 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 tree 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 the State of Madras v. Balu Chettiar (7 S.T.C. 519) following the decision of a Full Bench of that Court, held that where an assessee did not file at any time 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 of 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.
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> It is not necessary to multiply citations. We, therefore, hold that the expression 'escaped assessment' in s. 11A of the Act includes that of 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 thereof."

In one of the appeals dealt with in that judgment. i.e. C.A. No. 102 of 1961, this Court had to consider whether a case under s. 11(4)(a) also comes under s. 11A. The Court answered that question in the affirmative.

As seen earlier it was the duty of the appellants not only to submit their quarterly returns but send along with those returns the treasury challans in proof of the payment of the tax admittedly due from them. As they have failed to do so within the prescribed period, it follows that the turnovers in question had escaped assessment.

This takes us to the next question whether in the instant case the assessing authority can be said to have been satisfied about the escapement of the assessment as a consequence of any information which had come into his possession. From the notices issued in 1955 as well as later on, it is clear that the assessing authorities were satisfied about the escapement of the assessment due from the appellants. But the real question is whether they were so satisfied "in consequence of any information which had come into their possession". The assessing authorities knew that the appellants had neither submitted their returns nor treasury challans in proof of the payment of the tax due from them. From that circumstance it is reasonable to hold that in consequence of the information that the appellants had not submitted their returns as well as the treasury challans the assessing authority should have been satisfied about the escapement of the assessment. It was urged on behalf of the revenue that 'information' contemplated by s. 11A should be from some outside source and not something that could be gathered by the assessing authority from his own records. According to the revenue in the instant case there was no information from any outside source, therefore, it cannot be said that the assessing authority was satisfied about the escapement of tax in consequence of 'any information which has come into its possession'. In our view, this contention is untenable. In Maharaj Kumar Kamal Singh v. Commissioner of Income-Tax, Bihar and Orissa, this Court held that the word 'information' in s 34(1)(b) of the Income Tax Act, 1922, includes information as to the true and correct state of the law and so would cover information as to the relevant judicial decisions. It was laid down therein that the information need not be about any fact; it may be even as to the legal position. In other words, the term 'information' in s. 34(1)(b) of the Income Tax Act 1922 really means knowledge, In Salem Provident Fund Society Ltd. v. Commissioner of Income Tax, Madras, (42 I.T.R. 547) a division bench of the Madras High Court interpreting the scope of the words 'information which has come into his possession' found in s. 34 of the Indian Income Tax Act observed thus :

> "We are unable to accept the extreme proposition that nothing that can be found in the record of the assessment which itself would show escape of assessment or under-assessment, can be viewed as information which led to the belief that there has been escape from assessment or under-assessment. Suppose a mistake in the original order of assessment is not discovered by the Income Tax Officer himself on further scrutiny but it is brought to his notice by another assessee or even by a subordinate or a superior officer, that would appear to be information disclosed to the Income Tax Officer. If the mistake itself is not extraneous to the record and the informant gathered the information from the record, the immediate source of information to the Income Tax Officer in such circumstances is in one sense extraneous to the record. It is difficult to accept the position that while what is seen by another in the record is 'information' what is seen by the Income Tax Officer himself is not information to

him. In the latter case he just informs himself. It will be information in his possession within the meaning of section 34. In such cases of obvious mistakes apparent on the face of the record of assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment or under-assessment."

The meaning of the word 'information' came up again for consideration before a division bench of the Kerala High Court in United Mercantile Co. Ltd. v. Commissioner of Income Tax Kerala (64 I.T.R. 218). Their Lordships held that to 'inform' means to 'impart knowledge' and a detail available to the Income Tax Officer in the papers filed before him does not by its mere availability become an item of 'information'. It is transmuted into an item of information in his possession only if and when its existence is realised and its implications recognized. Applying that test to the facts of the case before them, the Court held that the awareness of the Income Tax Officer for the first time after the assessment order of November 19, 1957 that the bonus shares were issued not but of Premiums received in cash and the consequent result in the light of the Finance Act, 1957, was information within the meaning of that expression as used in s. 34(1) of the Indian Income Tax Act, 1922, and consequently, the reopening of the assessment under that provision was not illegal.

In our judgment, the knowledge of the fact that the appellants had not submitted their quarterly returns as well as the treasury challans, constituted an information to the assessing authority from which it could be satisfied and in fact it was satisfied that the turnovers with which we are concerned in this case had escaped assessment.

From the above conclusions it follows that the appellants' case falls both under s. 11(4)(a) and s. 11A(1). Therefore, it was open to the assessing authority to proceed against them under any one of those two sections. But as they were proceeded against under s. 11(4)(a) they cannot have the benefit of the period of limitation prescribed under s. 11A(1). Hence, it must be held that the present case falls within the rule laid down by this Court in Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri & another ([1955] 1 S.C.R. 448). On the facts found it follows that s. 11(4)(a) has become a discriminatory provision in view of s. 11A(3). Hence the same is liable to be struck down under Art. 14. But for the inclusion of sub-s. 3 in s. 11A, there would have been no discrimination between those dealt with under s. 11(4)(a) and those under s. 11A(1). The period of limitation prescribed in s. 11A(1) would have attracted itself to proceedings under s. 11(4)(a) as held by this Court in Ghanshyam Das's case ([1964] 4 S.C.R. 436).

Mr. Bindra, learned counsel for the revenue, contended that a registered dealer has certain advantages over an unregistered dealer; therefore the classification made under the Act is a reasonable classification. To be a valid classification, the same must not only be founded on an intelligible differentia which distinguishes persons and things that are grouped together from others left out of the group but that differentia must have a reasonable relation to the object sought to be achieved. Both s. 11(4)(a) and s. 11A(1) concern themselves with escaped assessments. The classification suggested has no nexus with object. That much is established by the decision of this Court in Ghanshyam Das's case ([1964] 4 S.C.R. 436) which is binding on us. It is true the State can by classification determine who should be regarded as a class for the purpose of legislation and in relation to a law enacted on a particular subject, but the classification must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be attained and cannot be made arbitrarily and without any substantial basis. Judged from the object sought to be achieved by the Act, we are of the opinion that the classification made between the registered and unregistered dealers is not a reasonable classification. From this conclusion it follows that s.

11(4)(a) is liable to be struck down as being discriminatory in view of s. 11A.

> Section 11(4)(a) is separable from the rest of the sub-section. Its separation from that sub-section does not affect the implementation of the other provisions of the Act.

This takes us to the question which was debated at our instance whether the notices issued by the assessing authority in 1955 were valid notices. The High Court had not considered this question, though it appears that the same was presented to it for decision by the parties. In the course of its judgment, the High Court observed :

> "In this view (in view of its earlier findings) of the matter it is not necessary to consider whether the earlier notices of the year 1955 are good and valid notices or whether they stood superseded by subsequent notices of 1958 and 1959".

For convenience we shall take up for consideration notice No. 4519/STN dated 13-9-55. Our conclusions in respect of that notice would cover the other notices. The material facts as set out by the High Court, the correctness of which was not disputed before us, are these :

> "On the 3rd September, 1955, the Assistant Commissioner, Sales Tax, issued a notice under s. 10(3), s. 11(4)(a), s. 11A and sub-s. (1) of s. 22C of the Act, calling upon the petitioners to show cause why action should not be taken against them under s. 10(3) and s. 11(4) of the Act on account of their failure to furnish the returns for the period 1-1-53 to 31-12-53. Similar notice were given on 27th October, 1955 for the period 1-1-54 to 31-12-54 and on 7th July 1956, for the period 1-1-55 to 31-12-55."

From those facts, it is seen that no notice had been issued within three years in respects of the turnover relating to the period from 1-5-52 to 31-12-52. The assessment in respect of that period is clearly barred in view of our earlier conclusion. The period 1-11-52 to 31-1-53 forms part of the quarter commencing from period 1-11-52. No notice was given in respect of that quarter. A quarter forms a unit by itself. Therefore, it follows that the proceeding in respect of that quarter is also barred by limitation.

Now we shall take up the question whether the notices issued in 1955 in respect of the turnovers relating to other quarters were in accordance with law. The notice No. 4519/STN dated 13-9-55 reads.

> "Notice (for 1-1-53 to 31-12-53) dated 13-9-55. No. 4519/STN. D/- 13-9-55.
>
> Form XII
>
> (See rule 32)

Notice under sub-section (3) of section 10, sub-section (4) (a) and (5) of section 11, sub-section (1) of section 11(A) and sub-section (1) of section 22 of the Central Provinces and Berar Sales Tax Act, 1947.

Whereas Shri Anandji Haridas and Co. Ltd., Nagpur.

You have failed to furnish a return as required by a notice in that behalf served on you under section 10(1) of the Central Provinces and Berar Sales Tax Act, 1947.

OR

You being a registered dealer have failed to furnish a return for the periods 1-1-53 to 31-12-53 and have thereby rendered by yourself liable under section 11(4) to be assessed to the best of judgment;

. . . . .##

Further, you are hereby directed to attend in person or by a person authorised by you in writing in that behalf, being a person specified in section 11B(1) before me and to produce or cause to be produced your books of accounts and the documents specified in the schedule hereunder and any evidence on which you rely in support of your objection at Jabalpur at 11-00 A.M. on 22-9-55.

Sd/- Asstt. Commissioner of Sales Tax Nagpur Region, Nagpur."##

It is true that it is not a notice in respect of any particular quarter, it is a notice in respect of the period 1-1-53 to 31-12-53. In the State of Orissa and another v. M/s. Chakobhai Chelabhai and Company, ([1964] 1 S.C.R. 719) this Court held that the issue of one notice under s. 12(5) of the Orissa Sales Tax Act, 1947 which section is similar to s. 11(4)(a), for several quarters was not contrary to law as the section makes reference to a period which might consist of more than one quarter.

From the notice in question it cannot be made out whether the assessing authorities wanted to deal with the appellants under s. 10(1) or under s. 11(4). The notice says that the appellants "had failed to furnish the return as required by a notice in that behalf served on them under s. 10(1) of the Act, or that they being registered dealers had failed to furnish return for the periods mentioned therein and thereby rendered themselves liable under s. 11(4) to be assessed to the best of judgment." Quite clearly, the first alternative mentioned in the notice did not apply to the appellants. They are registered dealers. No notice under s. 10(1) had been given to them, the assessing authority by mistake had failed to strike out the first alternative shown in the printed form. That circumstance could not have prejudiced the appellants. It was held by this Court in Chakobhai Chelabhai's case ([1964] 1 S.C.R. 719) referred to earlier that such a mistake does not vitiate the notice issued.

But the more serious mistake pointed out by Mr. Gokhale in that notice is that the assessment year mentioned in that notice is not the assessment year of the appellants. Their assessment years commenced from 1st November. This error according to Mr. Gokhale vitiated the notices issued. Yet another complaint made by Mr. Gokhale was that though r. 32 provides that ordinarily not less than 30 days notice should be given to the assessee, only 9 days notice was given. But this defect was found only in the notice quoted above and not in the other notices issued in 1955. For the reasons to be mentioned presently, we see no merit in either of these contentions.

We are unable to accept the contention of Mr. Gokhale that a notice under s. 11(4)(a) or 11A(1) is a condition precedent for initiating proceedings under those provisions or that it is the very foundation for the proceedings to be taken under those provisions. The notice contemplated under r. 32 is not similar to a notice to be issued under s. 34(1)(b) of the Income Tax Act, 1922. All that ss. 11(4) and 11A(1) prescribe is that before taking proceedings against an assessee under those provisions, he should be given a reasonable opportunity of being heard. In fact, those sections do not speak of any notice. But r. 32 prescribes the manner in which the reasonable opportunity contemplated by those provisions should be afforded to the assessee. The period of 30 days prescribed in r. 32 is not mandatory. The rule itself says that 'ordinarily' not less than 30 days notice should be given.

Therefore, the only question to be decided is whether the defects noticed in those notices had prejudiced the appellants. It may be noted that when the assessee received the notices in quesiton, they appeared before the assessing authority, but they did not object to the validity of those notices. They asked for time for submitting their explanation. The time asked for was given. Therefore, the fact that only nine days were given to them for submitting explanation could not have in any manner prejudiced them. So far as the mistake in the notice as regards the assessment year is concerned, the assesses kept silent about the circumstance till 1958. It was only when they were sure that the period of limitation prescribed by s. 11A had expired, they brought that fact to the notice of the assessing authority. It is clear that the appellants were merely trying to take advantage of the mistakes that had crept into the notices. They cannot be permitted to do so. We fail to see why those notices are not valid in respect of the periods commencing from February 1, 1953 till 31-10-55. We are unable to agree with Mr. Gokhale's contention that each one of those notices should be read separately and that we should not consider them together. If those notices are read together as we think should be, then it is clear that those notices give the appellants the reasonable opportunity contemplated by ss. 11(4)(a) and 11A(1). In Chatturam and Others v. Commissioner of Income Tax, Bihar, (15 I.T.R. 302) the Federal Court held that any irregularity in issuing a notice under s. 22 of the Income Tax Act, 1922 does not vitiate the proceeding; that the income-tax assessment proceedings commence with the issue of the notice, but the issue or receipt of the notice is, however, not the foundation of the jurisdiction of the Income Tax Officer to make the assessment or of the liability of the assessee to pay the tax. The liability to pay the tax is founded on ss. 3 and 4 of the Income Tax Act which are the charging sections. Section 22 and others are the machinery sections to determine the amount of tax. The ratio of that decision applies to the facts of the present case. In our opinion, the notices issued in the year 1955 are valid notices so far as they relate to the period commencing from February 1, 1953 to 31-10-55.

In view of our conclusion that every escapement of assessment coming within the scope of s. 11(4)(a) is also an escapement of assessment under s. 11A(1), a notice issued under s. 11(4)(a) would be a valid notice in respect of a proceeding under s. 11A(1).

In the result, we hold that the assessing authority has no competence to assess the turnovers of the appellants in respect of the quarters commencing from 1-5-52 and ending with January 31, 1953 as the same is barred by time under s. 11A. We further hold that s. 11(4)(a) is void as it is violative of Art. 14. We accordingly issue a direction to the respondents to refrain from assessing the appellants in respect of those turnovers. In other respects the appeals fail and they are dismissed. In the circumstances of these cases, we make no order as to costs.

Bachawat, J. Sections 11(4), 11(5) and 11-A of the C.P. and Berar Sales Tax Act, 1947 are as follows :

> "11(4) If a registered dealer -
>
> (a) does not furnish returns in respect of any period by the prescribed date, or
>
> (b) having furnished such returns fails to comply with any of the terms of a notice issued under sub-section (2), or
>
> (c) has not regularly employed any method of accounting, or if the method employed is such that, in the opinion of the commissioner, assessment cannot properly be made on the basis thereof,

the Commissioner shall in the prescribed manner assess the dealer to the best of his judgment :

Provided that he shall not so assess him in respect of the default specified in clause (a) unless the dealer has been first given a reasonable opportunity of being heard.

> (5) If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless wilfully failed to apply for registration, the Commissioner 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 such 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 all subsequent periods : and the Commissioner may direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed a sum not exceeding one and a half times that amount.
>
> 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 been under-assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom the Commissioner may, at any time within three calendar years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard and after making such inquiry as he considers necessary, proceed in such manner as may be prescribed to re-assess or assess, as the case may be, the tax payable on any such turnover; and the Commissioner may direct that the dealer shall pay, by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount.
>
> (2) The assessment or re-assessment made under sub-section (1) shall be at the rate at which it would have been made, had there been no under-assessment or escapement."

The Bombay Sales Tax Laws (Validating Provisions and Amendment) Act, 1959 inserted the following sub-section (3) in s. 11A :

> '(3)(a) Nothing in sub-sections (1) and (2) -
>
> (i) shall apply to any proceeding (including any notice issued) under section 11 or 22A or 22B, and
>
> (ii) notwithstanding any judgment, decree or order of 'court or Tribunal, shall be deemed ever to have been applicable to such proceeding or notice.
>
> (b) The validity of any such proceeding or notice shall not be called in question merely on the ground that such proceeding or notice was inconsistent with the provisions of sub-sections (1) and (2)."

The appellant is a registered dealer. It failed to file returns for the periods 1-5-1952 to 31-10-1952, 1-11-1952 to 31-10-1953, 1-11-1953 to 31-10-1954 and 1-11-1954 to 31-10-1955. The Sales Tax Officer, Non-resident Circle, Nagpur issued four notices to the appellant initiating proceedings under ss. 10(3), 11(4), 11A(1) and 22C(1) of the Act. The appellant filed a writ petition in the High Court challenging the notices and asking for an order restraining the respondents from taking steps under the notices and making assessments or levying penalties in respect of the aforesaid periods.

The High Court dismissed the application. From this order, the appellant has preferred the present appeals.

Notices under s. 22C(1) can be issued only in course of any proceedings under the Act. As no proceedings were pending against the appellant, no notice under s. 22C(1) could be issued to it. We shall presently show that no notice can be issued to a registered dealer under s. 11A(1) for assessing the turnover which has escaped assessment by reason of his not filing a return. The impugned notices so far as they were issued under ss. 22C(1) and 11A(1) may be treated as surplusage and rejected.

Under s. 10(3), if a registered dealer fails to furnish his return for any period within the prescribed time without any sufficient cause, the Commissioner may after giving him reasonable opportunity of being heard direct him to pay by way of penalty a sum not exceeding one-fourth of the amount which may be assessed on him under s. 11. If no assessment can be made under s. 11, no penalty can be levied under s. 10(3). Therefore, the point for determination is whether the impugned notices so far as they were issued under s. 11(4) are valid.

The contention of the appellant is that the notices under s. 11(4) are invalid as they were not issued within three years from the expiry of the aforesaid periods. We see no force in this contention. Section 11(4) does not prescribe a period of limitation for the issue of a notice under it. In Ghanshyam Das v. Regional Assistant Commissioner of Sales Tax, Nagpur ([1964] S.C.R. 436), the Court by a majority decided with reference to s. 11(4) and s. 11A, as it stood before its amendment by the Bombay Sales Tax Laws (Validating Provisions and Amendment) Act, 1959, that a notice under s. 11(4) initiates new proceedings and it also decided or to be more accurate, assumed that the period of limitation prescribed be s. 11A(1) should be imported into s. 11(4). The case was decided without reference to s. 11A(3) inserted by the Amending Act and is no authority on the interpretation of that sub-section. Section 11A(3) now expressly provides that nothing in s. 11A(1) shall apply to any proceeding including any notice issued under s. 11. The section is retrospective in operation. It follows that the period of limitation prescribed by s. 11A(1) cannot be applied to a proceeding or a notice issued under s. 11(4). There is no period of limitation prescribed for a notice or a proceeding initiated under s. 11(4). Consequently, the impugned notices issued under s. 11(4) are not barred by limitation and are not invalid.

The argument then is that s. 11(4)(a) offends Art. 14 of the Constitution in two ways. Firstly, it is said that it is open to the sales tax authorities to proceed at their sweet will either under s. 11(4)(a) or under s. 11A(1) against a registered dealer for his failure to file returns and the principle of Shree Meenakshi Mills Ltd. v. Sri. A. V. Viswanatha Sastri and Another ([1955] 1 S.C.R. 787) is invoked. We find no merit in this contention. Section 11(4)(a) specially provides for the initiation of proceedings against a registered dealer who has not furnished returns in respect of any period by the prescribed date. Having made this special provision, the legislature must be taken to have intended that in a case falling under s. 11(4)(a) the sales tax authorities must proceed against the registered dealer under s. 11(4)(a) and not under s. 11A(1). The special provision must be taken silently to exclude all cases falling within it from the purview of the more genera provision. Moreover, if a statute is capable of two constructions, that construction should be given which will uphold it rather than the one which will invalidate it. Construing ss. 11A(1)(a) and 11A(1) together we should, therefore, hold that the cases falling within s. 11(4)(a) are excluded from the purview of s. 11A(1). The point that there is no over lapping of ss. 11(4)(a) and 11A(1) is made clearer by s. 11A(3). The decisions under s. 34(1)(b) of the Indian Income-tax Act. 1922 such as Maharaj Kumar Kamal Singh v. Commissioner of Income-Tax, Bihar and Orissa ([1959] Supp. 1 S.C.R. 10) and under s. 14

of the Business Profits Tax Act, 1947 such as Commissioner of Income Tax v. Narsee Nagsee & Co. ([1960] 3 S.C.R. 988) are distinguishable. In those Acts, there was no special provision corresponding to s. 11(4) for proceeding against registered dealers who have not filed returns, and the question how far the special provisions would exclude cases within it from the purview of the more general provision could not arise. In Ghanshyam Das's case ([1964] 4 S.C.R. 436), none of the notices in question was issued under s. 11A, and the Court did not say that a registered dealer could be proceeded against under s. 11A for not filing a return. Nor did the Court consider the effect of s. 11A(3). It is true that the majority decision held that the phrase "escaped assessment" in s. 11A includes that of a turnover which has not been assessed at all because no assessment proceedings were initiated. But having regard to the special provisions of s. 11(4) read with s. 11A(3), the power under s. 11A(1) as interpreted in Ghanshyam Das's case to assess turnover which escaped assessment by reason of non-filing of returns must be confined to cases of unregistered dealers. As pointed out already, cases of registered dealers falling within s. 11(4) are excluded from the purview of s. 11A(1).

It is next said that s. 11(4) offends Art. 14 of the Constitution because no period of limitation is prescribed for a notice under it, whereas periods of limitation are prescribed for notices under ss. 11A(1) and 11(5). We see no merit in this contention under Act deals with registered and unregistered dealers differently in many ways. The classification and differential treatment of registered and unregistered dealers are based on substantial difference having reasonable relation to the object of the Act. A registered dealer unlike an unregistered dealer is under a statutory obligation to file returns without any notice being served upon him and to pay the full amount of tax due from him before furnishing the return (ss. 10 and 12). A dealer who has registered himself under the Act admits his liability to furnish returns where as a dealer who has not registered himself makes no such admission. A registered dealer has certain advantages under the Act which are denied to an unregistered dealer. Section 2(i)(a)(ii) exempts from tax sales of a registered dealer of goods specified in his certificate of registration as being intended for use by him as raw materials in the manufacture of goods for sale by actual delivery in the State for consumption therein. An unregistered dealer cannot get the benefit of this exemption. Moreover, s. 2(j)(a)(ii) exempts from tax sales to a registered dealer of goods declared by him in the prescribed from as being intended for resale by him by actual delivery in the State for consumption therein. The sales to an unregistered dealer are not so exempt. Consequently, a registered dealer can buy his goods from the producer or the wholesaler at a cheaper price and has thus an economic advantage over an unregistered dealer. In the matter of penalties, ss. 10(3) and 22C(1) treat the two classes of dealers on the same footing, but ss. 11(4), 11(5) and 11A(1) treat them differently. No penalty can be levied on a registered dealer under s. 11(4) but heavy penalties may be levied on an unregistered dealer under ss. 11(5) and 11A(1). While prescribing periods of limitation for proceedings against an unregistered dealer under ss. 11(5) and 11A(1), the legislature has wisely not prescribed a period limitation for a proceeding initiated under s. 11(4)(a) against a registered dealer considering that (1) the registered dealer is under a statutory obligation to file the return, (2) no penalty is leviable under s. 11(4), and (3) the registered dealer is given many advantages under the Act which are denied to an unregistered dealer. The bar of limitation in the case of an unregistered dealer ane the absence of such a bar in the case of a registered dealer cannot be regarded as unjust or discriminatory. Questions of policy are not be debated in this Court. There is no compulsion on the legislature to prescribe a period of limitation in every case. In taxing statutes the legislature has a large measure of discretion. We cannot strike down s. 11(4)(a) because of some preconceived notion that the same period of limitation should be prescribed for proceedings against both registered and unregistered dealers. In Ghanshyam Das's case ([1964] 4 S.C.R. 436), Raghubar Dayal, J. at p. 459 clearly held that s. 11(4) is not violative of

Art. 14. The majority did not dissent from this opinion. We hold that s. 11(4) is not violative of Art. 14 and we uphold it.

It follows that the notices issued on July 8, 1959 under s. 11(4) are valid in respect of the entire period from 1-11-1952 to 31-10-1955. As regards the alternative contention of the respondent that the notices issued in 1955 validly initiated proceedings under s. 11(4) for the period from 1-2-1953 to 31-10-1955 we are glad to find that the majority has accepted this contention. The irregularities, if any, in the notices do not invalidate them. However, for the reasons already mentioned, we are of opinion that the impugned notices issued on July 8, 1959 are valid.

In the result, the appeals are dismissed with costs.

ORDER

In accordance with the opinion of the majority these appeals are partly allowed with respect to turn-over from 1-5-1952 to 31-1-1953. In other respects the appeals are dismissed. No order as to costs.

V.P.S.

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