

BOMBAY HIGH COURT

H.B. Munshi

Vs

The Oriental Rubber Industries

(M Kania, C.J. V Tulzapurkar, J.)

16.03.1974

JUDGMENT

Tulzapurkar, J.

1. This appeal has been preferred by the Commissioner of Sales Tax, Bombay, and another against the judgment and order of Vimadalal, J., dated 11th April, 1972, whereby the learned Judge quashed and set aside the revisional orders of the Commissioner and two notices of demand issued by the 2nd respondent (Sales Tax Officer, A Ward) and further restrained and prohibited the two respondents (Commissioner of Sales Tax, Bombay, and Sales Tax Officer, A Ward), their officers, servants and agents from taking any steps or proceedings in enforcement, furtherance, pursuance or implementation of the said revisional orders and the said notices of demand.

2. The short facts leading to the filing of Misc. Petition No. 53 of 1967 by the Oriental Rubber Industries Pvt. Ltd. (original petitioner) may be stated : The petitioner-company, at all material times, carried on the business of manufacturing rubber beltings and was registered as a dealer under the Bombay Sales Tax Act, 1959 (hereinafter referred to as the "Act"). In respect of their turnover pertaining to sales of rubber beltings during the periods 1st January, 1960, to 31st March, 1960, and 1st April, 1960, to 31st March, 1961, it had collected sales tax at the rate of 3 per cent, but in respect of the said turnover for the said two periods by his assessment orders dated 17th September, 1963, the then Sales Tax Officer held that the petitioner was liable to pay sales tax in the aggregate at 5 per cent on the total sales. Feeling aggrieved by these assessment orders, the petitioner-company filed appeals before the Assistant Commissioner of Sales Tax. During the pendency of these appeals, the petitioner-company came across a judgment of the Commissioner of Sales Tax in view of which no sales tax was attracted at all in respect of sales of rubber beltings that had been effected by the petitioner-company and this judgment of the Commissioner of Sales Tax was relied upon by the petitioner-company before the Assistant

Commissioner of Sales Tax. By his orders in appeals dated 13th April, 1964, the Assistant Commissioner of Sales Tax held that the sales were not liable to any sales tax, but he further held that the two amounts collected as tax by the petitioner-company for the two periods being Rs. 6,357 and Rs. 24,156 stood forfeited to the Government under section 37 of the Act. Against the orders directing forfeiture of the two amounts of sales tax collected by it, the petitioner-company preferred second appeals which were heard by the Deputy Commissioner, who passed orders dated 16th April, 1965, holding that the orders forfeiting the two amounts were bad in view of the Supreme Court decision in Abdul Quader's case and he, therefore, directed that the two amounts be refunded to the petitioner. In accordance with these directions, refund orders were issued in favor of the petitioner-company, but in those refund orders it was directed that the refund will be adjusted towards the amount of tax due from the petitioner-company for the period from 1st July, 1965, to 30th September, 1965, or any subsequent period. In September, 1966, the petitioner-company received from the Commissioner of Sales Tax (1st respondent) two notices asking the petitioner-company to show cause why the orders of the Deputy Commissioner should not be revised. On hearing the petitioner-company through its Advocate, the 1st respondent by his order dated 12th December, 1966, revised the orders of the Deputy Commissioner and held that the said amount of Rs. 6,357 and Rs. 24,156 stood forfeited to Government under section 37 of the Act. The 1st Respondent took the view that the Supreme Court decision in Abdul Quader's case was not applicable to the case before him in view of another decision of the Gujarat High Court in Ramgopal & Sons v. Sales Tax Officer, Surat, and Another ([1965] 16 S.T.C. 1005.). Pursuant to these revisional orders of the 1st respondent, the 2nd respondent (Sales Tax Officer, A Ward) issued two notices, both dated 24th January, 1967, demanding from the petitioner-company the said two sums. It is these revisional orders passed by the 1st respondent and the two demand notices issued by the 2nd respondent that were challenged by the petitioner-company by filing Misc. Petition No. 53 of 1967 on the Original Side of this Court. The revisional orders and the notices of demand were principally challenged by the petitioner-company on three grounds, namely (a) that section 37 of the Act under which the amounts had been forfeited was ultra vires the State Legislature; (b) that the 1st respondent being the Commissioner of Sales Tax had no power under section 57 of the Act to revise the orders of the Deputy Commissioner, which must be deemed to be an order passed by the Commissioner himself as the Deputy Commissioner could pass orders only as delegate of the Commissioner and not in his own right; and (c) that mens rea ought to have been proved before forfeiture could be directed because the provision for forfeiture was quasi-criminal in nature. On these grounds the petitioner-company sought an appropriate writ or order from the court quashing or setting aside the revisional orders passed by the Commissioner on 12th December, 1966, and the notices of demand issued pursuant thereto by the 2nd respondent as well as for appropriate writ or orders restraining the respondents from enforcing the same.

3. At the hearing the challenge to the vires to section 37 of the Act was not pressed in view of the unreported judgment of a Division Bench of this Court delivered on 25th November, 1971, in Special C.A. No. 818 of 1971, and a right to canvass the point in the higher court was reserved. The learned Judge took the view that since the point was covered by the Division Bench decision, he was bound by it and, therefore, the ground could not succeed before him. The principal ground on which the revisional orders and notices of demand were challenged was, therefore, that the Commissioner had no power under section 57 of the Act to revise the orders passed by the Deputy Commissioner. On this question, after considering the provisions of section 20(5) and sections 55 and 57 of the Act, the learned Judge accepted the petitioner's contention that when the Deputy Commissioner passed his orders dated 16th April, 1965, in appeals from the Assistant Commissioner's orders, he was exercising the power of the Commissioner under section 55(1)(b) of the Act as statutory delegate of the Commissioner and, therefore, the orders made by the Deputy Commissioner must be deemed to be orders made by the Commissioner himself, which it was not open to the Commissioner to revise in exercise of his powers under section 57 of the Act. In other words, the learned Judge took the view that the Act did not confer on the Deputy Commissioner any independent or direct power at all and that the powers that he had or could exercise were the powers conferred upon him by statutory delegation that was to be found in sub-section (5) of section 20 of the Act and since the orders passed by the Deputy Commissioner must be regarded as orders having been passed by the Commissioner himself, the Commissioner had no revisional jurisdiction over such orders under section 57(1) of the Act. In taking this view the learned Judge relied upon the decision of the Supreme Court in the case of *Roop Chand v. State of Punjab and Another*. In this view of the matter, he felt that the impugned revisional orders passed by the 1st Respondent (Commissioner of Sales Tax) and the impugned notices of demand could not be sustained and deserve to be quashed and the petitioner-company was entitled to succeed in its petition on this ground. He, therefore, did not think it necessary to deal with the third contention that was raised on behalf of the petitioner-company for challenging the orders of forfeiture - contention in regard to absence of mens rea. In the view he took on the second contention he made the rule absolute in terms of prayers (a) and (b) of the petition and directed the Commissioner of Sales Tax (respondent No. 1) and the Sales Tax Officer (respondent No. 2) to pay the petitioner's costs. The appellants (Commissioner of Sales Tax and Sales Tax Officer - original respondents) have come up in appeal challenging the judgment and order of the learned Judge.

4. In support of the appeal the learned Advocate-General for the appellants has raised a couple of contentions before us. In the first place, he contended that on a plain reading of the relevant provisions contained in section 20(5) in conjunction with the provisions of section 55 and 57 of the Act it was an error on the part of the learned Judge to have taken the view that the Act does not confer on the Deputy Commissioner any independent or direct powers at all or that the only

powers that he had or could exercise were the powers conferred on him by statutory delegation that was to be found in sub-section (5) of section 20 of the Act. He urged that on a close scrutiny of the provision contained in section 20(5) it would appear clear that the powers of the Deputy Commissioner have been conferred by the statute itself and the powers that have been conferred upon him are merely defined by reference to the powers of the Commissioner and if that was the correct position, it would be difficult to sustain the order of the learned Judge that the Deputy Commissioner when he passed his orders on 16th April, 1965, was acting as a delegate of the Commissioner and, therefore, such orders passed by the Deputy Commissioner were clearly revisable by the Commissioner under section 57(1)(a) of the Act. He further contended that the Supreme Court decision on which reliance has been placed by the learned trial Judge dealt with the provisions of a different statute altogether, a statute called the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the provisions and scheme of which were entirely different from the taxing statute like the Bombay Sales Tax Act, 1959, with which the learned Judge was concerned. The provisions of that statute with which the Supreme Court was concerned being not *pari materia* or similar to the provisions of the Bombay Sales Tax Act, 1959, with which the learned Judge was concerned in the instant case, the ratio of that decision ought not to have been applied by the learned Judge to the present case. He also contended that even in that decision the Supreme Court had made it very clear that it was deciding the point that had arisen before it on a pure construction of the relevant provision contained in that Act and, according to him, it is a well-settled principle that in interpretation of the statute the court should decline to consider other statutes proceeding on different lines and including different provisions or the judicial decisions thereon. He, therefore, urged that the learned Judge was in error in applying the ratio of that decision to this case and he should have held that the orders passed by the Deputy Commissioner were subject to revisional jurisdiction of the Commissioner of Sales Tax under section 57(1)(a) of the Act. As regards challenge to the provisions of section 37, he pointed out that the Division Bench judgment should be accepted by this court as a binding decision and that point could not be again canvassed before this court by the petitioner-company. Mr. Chagla appearing for the petitioner-company also fairly conceded before us that he would not be in a position to challenge the provision of section 37 before us in view of the Division Bench judgment but he would like to reserve that point for higher court if at all the matter is carried further.

5. The main question, therefore, which arises for our consideration in this appeal is whether the orders passed by the Commissioner on 16th April, 1965, could be revised by the Commissioner of Sales Tax in exercise of his revisional jurisdiction under section 57(1)(a) of the Act and the question, in our view, must principally depend upon the interpretation of the provisions contained in section 20(5) read with the provisions contained in section 55 and 57 of the Act. It would, however, be desirable to set out the provisions of sub-sections (1) to (6) of section 20 of the Act

in order to appreciate the rival contentions urged before us. The said provisions of section 20 of the Act before its amendment by Maharashtra Act 21 of 1970 ran as follows :

"20. (1) For carrying out the purposes of this Act, the State Government shall appoint an officer to be called the Commissioner of Sales Tax.

(2) To assist the Commissioner in the execution of his functions under this Act the State Government may appoint Additional Commissioners of Sales Tax (if any), and such number of, -

(a) Deputy Commissioners,

(b) Assistant Commissioners,

(c) Sales Tax Officers, and

(d) other officers and persons, and give them such designations (if any), as that Government thinks necessary.

(3) The Commissioner shall have jurisdiction over the whole of the State of Maharashtra; and an Additional Commissioner of Sales Tax, if any be appointed, shall have jurisdiction over the whole of the State, or where the State Government so directs, over any local area thereof. All other officers shall have jurisdiction over such local areas as the State Government may specify.

(4) The Commissioner shall have and exercise all the powers and perform all the duties, conferred or imposed on the Commissioner by or under this Act, and an Additional Commissioner, if any be appointed, shall, save as otherwise directed by the State Government, have and exercise within his jurisdiction all the powers and perform all the duties, conferred or imposed on the Commissioner by or under this Act.

(5) A Deputy Commissioner shall have and exercise in the area within his jurisdiction all the powers, and shall perform all the duties, conferred or imposed on the Commissioner, by or under this Act; but the Commissioner may, by order published in the official Gazette, direct that any Deputy Commissioner or all Deputy Commissioners generally, shall not exercise such powers or perform such duties as are specified in the order, and thereupon such Deputy Commissioner or, as the case may be, all Deputy Commissioners, shall cease to exercise those powers and perform those duties. The Commissioner may, in like manner, revoke any such direction, and thereupon the powers or duties exercisable or performable by such Deputy Commissioner or, as the case may be, all Deputy

Commissioner before such direction was issued, shall be restored to him or them.

(6) Assistant Commissioner, Sales Tax Officers and other officers shall, within their jurisdiction, exercise such of the powers and perform such of the duties of the Commissioner under this Act, as the Commissioner may, subject to such conditions and restrictions as the State Government may by general or special order impose, by order in writing delegate to them either generally, or as respects any particular matter or class of matters

6. The marginal note of section 20 suggests that the section dealt with all sales tax authorities that are created for the purpose of carrying out the purposes of the Act and under sub-section (1) it is provided that the State Government shall appoint an officer to be called the Commissioner of Sales Tax. Section 2(7) defines the expression "Commissioner" as follows :

"'Commissioner' means the person appointed to be the Commissioner of Sales Tax for the purposes of this Act."

7. Under sub-section (2) of section 20 it is discretionary with the State to appoint Additional Commissioners of Sales Tax (if any) and such number of Deputy Commissioners, Assistant Commissioners, Sales Tax Officers and other officers and persons and give them such designations as the Government thinks necessary, in order that these officers assist the Commissioner in execution of his functions under the Act. Sub-section (3) deals with the territorial jurisdiction of the Commissioner which is the whole of the State of Maharashtra and also an Additional Commissioner of Sales Tax who shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof and all other officers shall have jurisdiction over such local areas as the State Government may specify. Sub-sections (4) and (5) deal with the powers of the Commissioner, Additional Commissioner and Deputy Commissioner and it will appear clear on a plain reading of sub-section (4) and sub-section (5) that powers have been conferred upon these three categories of officers by enactment itself and this is very clear from the expression used in both the sub-sections to the effect that the Commissioner or the Deputy Commissioner or the Additional Commissioner "shall have and exercise in the area within his jurisdiction all the powers, and shall perform all the duties conferred or imposed on the Commissioner by or under this Act." In other words, it is clear that it is by enactment itself that the powers have been conferred upon the Additional Commissioner or the Deputy Commissioner to perform their duties under the Act within his jurisdiction and the scope and ambit of such of the powers of these two officers have been defined by reference to powers and duties conferred or imposed upon the Commissioner by or under the Act. Neither sub-section (4) nor sub-section (5) - particularly sub-section (5) with which we are concerned in

the case - uses the expression "delegates or contemplates delegation of any such powers" on these officers by anybody else. So far as the Deputy Commissioner is concerned, sub-section (5) further goes on to provide that the Commissioner may, by order published in the official Gazette, direct that any Deputy Commissioner or all Deputy Commissioners generally, shall not exercise such powers or performs such duties as are specified in the order and thereupon such Deputy Commissioner, or as the case may be, all Deputy Commissioners, shall cease to exercise those powers and perform those duties. In other words, by the enactment itself all powers and duties which have been conferred and imposed upon the Commissioner have been conferred and imposed upon the Deputy Commissioner, subject to powers being reserved to the Commissioner to withdraw from the totality of such of these powers such powers from the Deputy Commissioner which he thinks the Deputy Commissioner should not exercise or perform and it is upon publication of such orders passed by the Commissioner that the Deputy Commissioner shall cease to exercise those powers or perform those duties. It has been further made clear in sub-section (5) that the Commissioner may revoke any such direction and thereupon the powers or duties exercisable or performable by such Deputy Commissioner before such direction was issued, shall be restored to him. The provisions of sub-section (5), therefore, make the position quite clear. In the first place it is the enactment which confers all powers upon the Deputy Commissioner and the scope and ambit of such powers conferred upon the Deputy Commissioner has been defined by reference to the powers of the Commissioner. Such conferment of powers on the Deputy Commissioner is again made subject to the Commissioner's power to issue direction as to which particular powers should not be exercised by the Deputy Commissioner and upon issue of such direction the Deputy Commissioner shall cease to exercise such power, but upon withdrawal of such direction those powers automatically get restored to such Deputy Commissioner. On a plain reading of sub-section (5) of section 20, therefore, it seems to us very clear that there is no question of there being any statutory delegation in respect of powers and duties to the Deputy Commissioner nor is there any delegation of such power any anybody to him, and if that be so, it will be difficult to hold that the Deputy Commissioner exercising the powers conferred upon him by enactment himself is a delegate of the Commissioner or an agent of the Commissioner and it will be further difficult to hold that whatever orders are passed by the Deputy Commissioner should be regarded as orders passed by the Commissioner himself.

8. In this context it would not be out of place to refer to the provisions of sub-section (6) of section 20. Under sub-section (6) it has been provided that the Assistant Commissioners, Sales Tax Officers and other officers shall, within their jurisdiction, exercise such of the powers and perform such of the duties of the Commissioner under the Act, as the Commissioner may, subject to such conditions and restrictions as the State Government may by general or special order impose, by order in writing, delegate to them either generally or as respects any particular matter

or class of matters. Without expressing any opinion at this stage as to whether the expression "delegate" used in sub-section (6) of section 20 has been employed in the sense in which a delegate or an agent is intended to be appointed, the fact remains that sub-section (6) uses the expression "delegate" implying some sort of delegation of powers and such phraseology could be contrasted with the language in sub-section (5) of section 20 of the Act. At least in sub-section (6), the Legislature has provided that Assistant Commissioners, Sales Tax Officers and other officers shall exercise such of the powers and perform such of the duties of the Commissioner as the Commissioner may delegate to them and, therefore, some sort of delegation of powers is contemplated, but no delegation of any kind whatsoever is contemplated under sub-section (5) of section 20. Contrasting the language of sub-section (6) with sub-section (5), it appears to us very clear that so far as the Deputy Commissioner under sub-section (5) of section 20 is concerned, there could be no question of the Deputy Commissioner exercising his powers or performing his duties as a delegate either of the Commissioner or of anybody else and, as we have indicated above, on a plain reading of sub-section (5), it is by the enactment itself that powers have been conferred upon the Deputy Commissioner but the powers have been defined by reference to the powers of the Commissioner. If once on a true construction of the provisions of sub-section (5) of section 20 of the Act a view is taken that the Deputy Commissioner exercises his powers and performs functions in his own right, the theory that any order passed by him should be regarded as an order having been passed by the Commissioner himself and, therefore, such order is not revisable by the Commissioner must be rejected.

9. Turning to the provisions of sections 55 and 57, which provisions have also to be read in conjunction with the provisions of section 20, the above view of ours get strengthened. Section 55 deals with appeals and the hierarchy of authorities to which appeals could be preferred one after the other. Under sub-section (1) an appeal from every original order not being an order mentioned in section 56 passed under the Act or the Rules made thereunder, has been provided for (a) to the Assistant Commissioner, if the order is made by a Sales Tax Officer or any other officer subordinate thereto, (b) to the Commissioner, if the order is made by an Assistant Commissioner and (c) to the Tribunal, if the order is made by a Deputy Commissioner, Additional Commissioner or Commissioner. Sub-section (2) of section 55 provides for second appeal and it enacts that in the case of an order passed in appeal by an Assistant Commissioner, a second appeal shall lie, at the option of the appellant, either to the Commissioner or to the Tribunal and sub-section (3) of section 55 which is very material provides that every order passed in appeal under this section - which would include an order passed in the first appeal and an order passed in the second appeal - shall, subject to the provisions of sections 57, 61 and 62, be final. In other words, finality is given to every order passed in appeal - either first appeal or second appeal - subject to the same being interfered with in revision under section 57 of the Act. According to Mr. Chagla, sub-section (3) cannot be interpreted to mean that every order passed

in appeal, whether in first appeal or in second appeal, would necessarily be revisable under section 57, but all that sub-section (3) means is that if the order is capable of being revised under section 57, it will become final subject to such revision and, in that behalf, he pointed out that section 61 and section 62 are also mentioned in sub-section (3) of section 55, and it would not be correct to say that every order passed in appeal would necessarily be subject to section 61 of the Act. There Mr. Chagla is undoubtedly right. But the fact remains that under sub-section (3) of section 55, every order passed either in first appeal or in second appeal has been made final subject to it being interfered with in revision under section 57, whenever and wherever such revision is competent; the question whether revision would be competent or not would depend upon whether section 57 is attracted or not. Section 57 runs as follows :

"57. (1) Subject to the provisions of section 56 and to any rules which may be made in this behalf, -

(a) the Commissioner, of his own motion, within five years from the date of any order passed by any officer appointed under section 20 to assist him, may call for and examine the record of any such order and pass such order thereon as he thinks just and proper;

(b) the Tribunal on application made to it against an order of the Commissioner [not being an order passed under sub-section (2) of section 55 in second appeal] within four months from the date of the communication of the order, may call for and examine the record of any such order, and pass such order thereon as it thinks just and proper.

(2) Where an appeal lies under section 55 and no appeal has been filed, no proceedings in revision under this section shall be entertained upon application.

(3) No order shall be passed under this section which adversely affects any person, unless such person has been given reasonable opportunity of being heard.

(4) If the Tribunal rejects any application for revision under this section, the Tribunal shall record the reasons for such rejection."

10. It will appear clear from the contents of section 57 that there are two authorities on whom revisional jurisdiction has been conferred and these two authorities would be exercising their revisional jurisdiction in different fields; whereas under clause (a) of sub-section (1) of section 57 power has been conferred upon the Commissioner, of his own motion within the specified period, to call for and examine the record of any order passed by any officer appointed under section 20 to assist him and to pass such order thereon as he thinks just and proper, under clause (b) of sub-section (1) of section 57 such revisional power is to be exercised by the Tribunal, upon an application made to it against an order of the Commissioner [not being an order passed under

sub-section (2) of section 55 in second appeal] within four months from the date of the communication of the order. Sub-section (2) of section 57 is also important, which provides that where an appeal lies under section 55 and no appeal has been filed, no proceedings in revision under section 57 shall be entertained upon application. In other words, the revisional power of the Tribunal under clause (b) of sub-section (1) of section 57 cannot be invoked if an appeal lies under section 55 and no appeal has been preferred. Now the question that we have to consider is whether a revision against an order passed by the Deputy has been provided for by clause (a) of sub-section (1) of section 57 or not and on a plain reading of the said provision it appears to us very clear that against an order passed by the Deputy Commissioner, the Commissioner suo motu within the prescribed period can entertain the revisional application. The reason is he would be exercising the revisional jurisdiction against an order passed by an officer appointed under section 20 to assist him. It was not disputed before us that the Deputy Commissioner exercising his power and performing his functions under sub-section (5) of section 20 would be one of the officers appointed under that section to assist the Commissioner. In the instant case, against an order passed by the Assistant Commissioner in the first appeal, the petitioner-company exercised their option and preferred second appeal to the Commissioner and not to the Tribunal and it was under sub-section (2) of section 55 of the Act that the Deputy Commissioner heard this appeal. When the petitioner-company exercised that option with their eyes wide open, they must be deemed to have known that their second appeal could be heard either by the Commissioner eo nomine or by the Additional Commissioner or by the Deputy Commissioner and having exercised that option the petitioner-company must be deemed to have subjected themselves to the revisional jurisdiction exercisable by the Commissioner under section 57(1)(a) of the Act. Reading section 55 and section 57(1)(a) with the provisions of section 20(5) of the Act it seems to us clear, therefore, that there is no scope for invoking the legal theory that the Deputy Commissioner should be regarded as a delegate or an agent of the Commissioner when he exercised his powers that are conferred on him and, on that basis, further come to a conclusion that the order passed by the Deputy Commissioner should be regarded as one having been passed by the Commissioner himself disabling himself to exercise the revisional jurisdiction conferred upon him under section 57(1)(a) of the Act. It is, therefore, not possible to accept the view taken by the learned Judge that, in the instant case, the Commissioner of Sales Tax was not entitled to exercise the revisional jurisdiction over the orders passed by the Deputy Commissioner on 16th April, 1965.

11. Mr. Chagla, appearing for the petitioner-company, fairly conceded before us that in view of the language employed in sub-section (5) of section 20 of the Act it was not possible for him to say that there was any statutory delegation contemplated under the said provision or that any powers or functions had been delegated to the Deputy Commissioner. In fact, he fairly stated before us that on a reading of sub-section (5) of section 20, the view which we are taking would

be the proper view, namely, that it is by the enactment itself that the Deputy Commissioner has been conferred powers and that those powers have been defined by reference to powers conferred upon the Commissioner by or under the Act. He, however, raised one or two contentions based on proper construction of sections 55 and 57 of the Act with a view to canvass the proposition that the Commissioner should not be held to have revisional powers or revisional jurisdiction over any order that may be passed by the Deputy Commissioner or the Additional Commissioner in second appeal. In the first place, he contended that if the provisions of section 55 and section 57 were carefully read, it would appear that no revisions were contemplated under section 57 against the orders that would be passed in second appeals. In this behalf, he invited our attention to the provisions of sub-sections (2) and (3) of section 55. He first pointed out that sub-section (1) provides for an appeal against the original order and it is sub-section (2) which provides for second appeal against the first appellate order and, according to him, it was because of the provisions contained in sub-section (2) that the Deputy Commissioner, to whom appeals had been administratively assigned or transferred by the Commissioner, had heard the second appeals of the petitioner-company and under sub-section (3) it was provided that every order passed in appeal under this section (section 55) shall, subject to the provisions of sections 57, 61 and 62, be final. He urged that finality had been given to the orders passed in second appeal and such finality was to be interfered with under section 57, section 61 and section 62 only if any of the provisions of the said sections were attracted but not otherwise. He urged that it was not as if that simply because section 57 was mentioned in sub-section (3) of section 55 the order passed in second appeal had been made subject to revision. We have already indicated above that Mr. Chagla is right in this contention of his, but the question whether an order passed in second appeal has been made final or has not been made subject to revision provided for in section 57 would depend upon whether the provisions of section 57(1)(a) are attracted or not and if the provisions of section 57(1)(a) are attracted, it cannot be said that the order passed in second appeal has become final and shall not be interfered with in exercise of revisional jurisdiction. As we have indicated above, on a plain reading of clause (a) of sub-section (1) of section 57 any order passed by the Deputy Commissioner in second appeal has been made subject to revisional jurisdiction of the Commissioner under the said provisions because the Deputy Commissioner must be held to be and is in fact an officer appointed under section 20 to assist the Commissioner and, therefore, any order passed by the Deputy Commissioner in second appeal would be subject to the exercise of revisional jurisdiction by the Commissioner. Mr. Chagla, however, contended that if the appeals preferred by the petitioner-company had not been transferred to the Deputy Commissioner administratively and had been heard by the Commissioner *eo nomine*, then those orders of the Commissioner obviously could not be subjected to revisional jurisdiction of the Commissioner himself and, according to him, the question whether the order passed in second appeal would be subject to revisional jurisdiction or not could not be made to depend whether

second appeals are heard by one or the other of the three categories of officers who are competent to hear the same. It is not possible to accept this submission of Mr. Chagla based on the aforesaid ground for two simple reasons. In the first place, if the second appeals are heard by the Commissioner himself, then those orders passed by him in the second appeals would not be subject to revisional jurisdiction because the orders are not passed by any officer appointed under section 20 to assist the Commissioner and it is for this reason that if the second appeals are heard by the Commissioner himself those orders would not be subject to any further revision. As regards the point that revisional jurisdiction could not be made dependent upon the sweetwill of the administration, the answer is very simple. An option is provided to an aggrieved party under sub-section (2) of section 55 to prefer second appeal either to the Commissioner or to the Tribunal and if with open eyes an aggrieved party prefers an appeals to the Commissioner rather than to the Tribunal, then he must be taken to have done so subjecting himself to the futher consequence or possibility of appeal being heard not by the Commissioner eo nomine but by the Additional Commissioner or by the Deputy Commissioner and, in that event, he must be taken to have subjected himself to having orders passed in second appeal being interfered with in revisional jurisdiction.

12. Mr. Chagla then contended that having regard to the scheme of the Act it was fairly clear that in deciding second appeals the Deputy Commissioner or the Additional Commissioner or the Commissioner of Sales Tax will have to be regarded as authorities having co-ordinate or co-extensive jurisdiction and it would be rather bad that an order assed in second appeal by the Deputy Commissioner or by an Additional Commissioner who had co-ordinate jurisdiction with the Commissioner should be made subject to revisional interference at the hands of the Commissioner. Here again, the concept of three categories of officers having co-ordinate jurisdiction will have to be understood in a limited sense. It is true that under section 20, sub-section (4), powers have been conferred upon the Additional Commissioner and he has to exercise within his jurisdiction all the powers and perform all the duties that are conferred or imposed on the Commissioner by or under this Act and, secondly, under sub-section (5) of section 20 powers have been conferred upon the Deputy Commissioner and such Deputy Commissioner has to exercise all such powers and perform all the duties that are conferred or imposed upon the Commissioner by or under the Act and, in that sense, the Additional Commissioner as well as the Deputy Commissioner do possess co-extensive powers, subject, of course, to the Deputy Commissioner being deprived of some of his powers under specific direction issued by the Commissioner under sub-section (5). But the scheme and the provisions of section 20 and particularly sub-section (8) of section 20 make the position very clear that there is hierarchy of officers contemplated by the Act and the subordination of the officers has been specifically provided for by sub-section (8) of section 20. Sub-section (8) of section 20 runs as follows :

"All officers and persons appointed under sub-section (2) shall be sub-ordinate to the Commissioner; and the subordination of officers (other than the Commissioner), and of persons, amongst themselves shall be such as is prescribed."

13. "Prescribed" obviously means prescribed by the Rules. The aforesaid provision, therefore, clearly enacts that all officers and persons appointed under sub-section (2), who are Additional Commissioners, Deputy Commissioners, Assistant Commissioners, Sales Tax Officers and other officers, have been expressly stated to be subordinate to the Commissioner and the subordination of these officers, inter se, has been provided for by the Rules. Rule 5 of the Bombay Sales Tax Rules, 1959, provides for subordination of such officers, inter se, and so far as the material clauses (a), (b) and (c) of rule 5 clearly provided that for the purpose of sub-section (8) of section 20, a Deputy Commissioner shall be subordinate to an Additional Commissioner, an Assistant Commissioner shall be subordinate to a Deputy Commissioner and to an Additional Commissioner, and a Sales Tax Officer shall be subordinate to an Assistant Commissioner, a Deputy Commissioner and an Additional Commissioner. It will thus appear clear that under the scheme of the Act and the relevant Rules the Deputy Commissioner is subordinate to the Additional Commissioner and the Additional Commissioner is sub-ordinate to the Commissioner and the provisions of section 55 which provided for appeals and the provisions of section 57 which provided for revision will have to be understood in the context of this subordination contemplated by the Act and the Rules and it is in view of this subordination of officers, inter se, that has been provided for by the Act and the Rules that under section 55 an order passed by the Sales Tax Officer is made appealable to an Assistant Commissioner and an order made by an Assistant Commissioner is made appealable to the Commissioner and an order passed in appeal by an Assistant Commissioner is made subject to second appeal which shall lie either to the Commissioner or to the Tribunal and similarly clause (a) of sub-section (1) of section 57 provides that any order passed by any officer appointed under section 20 to assist the Commissioner has been made subject to revisional jurisdiction of the Commissioner himself and, therefore, in our view, there is nothing anomalous or awkward for a Commissioner to entertain a revision against an order passed by a Deputy Commissioner or by an Additional Commissioner in second appeal. On the other hand, if the theory is accepted that a Sales Tax Officer or an Assistant Commissioner or a Deputy Commissioner is to be regarded as a delegate of the Commissioner and, therefore, the orders passed by such officers are to be regarded as the orders passed by the Commissioner himself, the entire scheme of appeals and revisions contained in sections 55 and 57 of the Act based on hierarchy of the officers, inter se, will become nugatory.

14. The next contention of Mr. Chagla was based on the provisions of sub-section (6) of section 20 in which the concept of delegation, according to him, has been clearly indicated. According to Mr. Chagla, under sub-section (6), at any rate, it should clearly appear that so far as Assistant

Commissioners, Sales Tax Officers and other officers are concerned, there has been no conferment of powers on them by the enactment itself, for, it has not been enacted in sub-section (6) that these officers "shall have and exercise all the powers and perform all the duties" but it enacts that these officers "shall, within their jurisdiction, exercise such of the powers and perform such of the duties of the Commissioner under this Act, as the Commissioner may by order in writing delegate to them either generally, or as respects any particular matter or class of matters". He, therefore, urged that it was clear from the reading of sub-section (6) that, at any rate, officers like Assistant Commissioners, Sales Tax Officers and other officers below Sales Tax Officers will have to be regarded as delegates of the Commissioner to whom the Commissioner delegates such powers and duties as he thinks fit. Relying upon this aspect, which according to him emerges clearly from sub-section (6), an argument was advanced by him that if these officers were to be regarded as delegates or agents of the Commissioner and, therefore, their orders were to be regarded as if they were passed by the Commissioner himself and, therefore, their orders would not be subject to revision under section 57(1), it would be a little incongruous that orders passed by officers who were superior to those, namely, orders passed by Deputy Commissioner and Additional Commissioner should be held to be subject to revisional jurisdiction of the Commissioner. In the first place, while advancing this argument it is clear that there is an assumption made by Mr. Chagla that the officers mentioned in sub-section (6) of section 20, viz., Assistant Commissioners, Sales Tax Officers and other officers are delegates or agents of the Commissioner enjoying their powers as such delegates of the Commissioner or agents of the Commissioner. However, Mr. Chagla himself realised some difficulty in pressing this argument and applying the same to judicial powers or judicial functions that were required to be performed by these officers, viz., Assistant Commissioners, Sales Tax Officers and other officers. Having regard to the fact that section 55 has expressly provided for appeals being heard by the superior officers to these officers against their orders, he realised the difficulty that when judicial powers or judicial functions were entrusted to a particular officer, such an officer could never be expected to carry out his functions merely as agent of or at the direction of the Commissioner from whom such particular officer derives his powers, but has to carry out his functions independently according to his own right. It is, therefore, clear that even the officers named in sub-section (6) of section 20 cannot be regarded as any delegates of the Commissioner in the sense that they are his agents bound to carry out his directions at least so far as judicial functions are concerned. On the other hand, the learned Advocate-General urged before us that even with regard to these officers, viz., Assistant Commissioners, Sales Tax Officers and other officers indicated in sub-section (6) of section 20, the provision contained in sub-section (6) should be interpreted as being a piece of conditional legislation in the sense that powers should be deemed to have been conferred upon these officers by enactment itself subject to the condition that the Commissioner must issue an order delegating such powers and duties as he thinks fit to confer or

impose on them and if the provisions of sub-section (6) were looked at from this angle, no difficulty would arise in coming to the conclusion that the officers mentioned in sub-section (6) of section 20 could never be regarded as delegates or agents of the Commissioner. That is one way of looking at the matter. However, there is another way in which we would like to look at the matter and it is this : After all the enactment with which we are concerned is a taxing statute like the Bombay Sales Tax Act, that it contains provisions indicating hierarchy of officers being appointed for carrying out the purposes of the Act, that it also contains subordination of such officers, inter se, and what is more, it contains complete code of remedies under sections 52 to 62A in Chapter VII of the Act, which are available to any person aggrieved by any order that may be passed by any officer under the Act. Such remedies lie against the order of an inferior officer to his superior in the hierarchy of officers, including revisions to the Commissioner or the Tribunal and reference to the High Court. Moreover, section 52 bars the jurisdiction of a civil court in regard to orders that might be passed by any officer under the Act, subject to the provisions of section 61. Having regard to this scheme which is very clear on perusal of the relevant provisions contained in the Act and particularly having regard to the fact that complete code of remedies has been provided within the framework of the Act itself, it seems to us very clear that even the officers, viz., Assistant Commissioners, Sales Tax Officers and other officers, should not be held to be delegates or agents of the Commissioner from whom they derive their powers and authority to perform their functions. To hold so would render the entire scheme containing complete code of remedies nugatory. In our view, therefore, having regard to the entire scheme of the Act and the relevant provisions, even the officers mentioned in sub-section (6) of section 20 cannot be regarded as delegates or agents of the Commissioner and if the provisions of sub-section (6) of section 20 are looked at from this angle, the argument based on the language of sub-section (6) as advanced by Mr. Chagla qua sub-section (5) of section 20 must fail. Though we are not really concerned with sub-section (6) of section 20, but are concerned with the proper construction of sub-section (5) of section 20, it has become necessary for us to express our view on the construction of sub-section (6) in order to refute Mr. Chagla's contention and, while refuting the contention of Mr. Chagla based on sub-section (6) of section 20, we would like to observe that, for the reasons indicated above, it is not possible to hold that the officers enumerated in sub-section (6) of section 20 should at any rate in regard to their judicial powers be regarded as delegates of the Commissioner in the sense that they exercise the powers of the Commissioner as his agents.

15. It was next contended by Mr. Chagla that if the view which we are taking above were to prevail, then, it would lead to an anomalous position, namely, that under section 57 there would be two authorities which would be having overlapping revisional jurisdiction and leading to a possible conflict of decisions being arrived at by these two authorities. He pointed out that though under clause (b) of sub-section (1) of section 57 the Tribunal had been empowered to

exercise revisional jurisdiction against an order of the Commissioner [not being an order passed under sub-section (2) of section 55 in second appeal], it was conceivable that if a Deputy Commissioner or an Additional Commissioner were to pass an order against the original order made by an Assistant Commissioner under clause (b) of sub-section (1) of section 55, such an order of a Deputy Commissioner or an Additional Commissioner would be open to revisional jurisdiction, both of Commissioner acting under clause (a) of sub-section (1) of section 57 as well as of Tribunal under clause (b) of sub-section (1) of section 57 and, therefore, the two authorities having the same revisional jurisdiction are likely to come to a conflicting decision. In our view, the apprehension that such overlapping of jurisdiction of the two authorities would lead to a conflicting decision is rather far-fetched and in practice it could be shown as unfounded. If the order passed by the lower authorities, such as Assistant Commissioner, Deputy Commissioner or Additional Commissioner, which is intended to be revised, happens to be in favour of an assessee, then, there is no question of any conflict arising, for ordinarily such an assessee would not think of going to either of the two authorities. If at all, it would be the Commissioner who would suo motu exercise the revisional jurisdiction under clause (a) of sub-section (1) of section 57 after issuing a notice to an assessee, in which case either the order concerned may be confirmed or varied or reversed by the Commissioner exercising his revisional jurisdiction, and there would be no question of the other authority, namely, the Tribunal having anything to do at this stage. If the Commissioner were to decide adversely against any assessee in exercise of his revisional jurisdiction, it would be open to an assessee to carry the Commissioner's order before the Tribunal and call upon the Tribunal to exercise its revisional jurisdiction under clause (b) of sub-section (1) of section 57 over such order. In such a case, it is inconceivable that the Commissioner who has revisional jurisdiction would himself approach the Tribunal for asking the Tribunal to exercise its jurisdiction under clause (b) of sub-section (1) of section 57. On the other hand, if the order in question happens to be against an assessee, then it is open to the assessee to bring the adverse order to the notice of the Commissioner to enable the latter officer to exercise his revisional jurisdiction under clause (a) of sub-section (1) of section 57 or he can directly approach the Tribunal in exercise of his right conferred under clause (b) of sub-section (1) of section 57. It is true that the two authorities would be having revisional jurisdiction. But again it is inconceivable that an assessee who wishes to go in revision against the adverse order would approach both the authorities simultaneously. He would either go to the Commissioner or to the Tribunal in which case also there is least likelihood of any conflicting decision being given by the two authorities concerned. The only possibility of an actual conflict arising to which Mr. Chagla would draw our attention was in a case where the Commissioner can seek to exercise his revisional jurisdiction suo motu when the assessee had already approached the Tribunal in revision or by way of appeal. In such a case, it is quite clear that the provisions of clauses (a) and (b) of sub-section (1) of section 57 will have to be read harmoniously, and it can

be presumed that the authorities on whom such revisional jurisdiction has been conferred by the enactment would exercise their revisional jurisdiction harmoniously. In a case where the Commissioner sought to exercise such revisional jurisdiction when the matter was already pending in appeal or revision before the Tribunal, it is inconceivable that the Commissioner would seek to proceed with his revisional power in case of it being brought to his attention by the assessee that the matter was already pending before the Tribunal. Even if he sought to do so, we may point out that any order passed by him would again be subject to the revisional jurisdiction of the Tribunal and, therefore, no real prejudice could be caused to the assessee. In our view, therefore, the anomaly of overlapping jurisdiction leading to a conflicting decision does not present any difficulty in placing the interpretation which we have placed on the provisions of section 20(5) and section 20(6) of the Act.

16. Lastly, Mr. Chagla urged that in the view which we are taking of the matter, there was likelihood of there being indefinite number of revisional applications being preferred one after the other under clause (a) of sub-section (1) of section 57 of the Act. He pointed out that the expression "Commissioner" in clause (a) of sub-section (1) of section 57 would normally include Deputy Commissioners and Additional Commissioners on whom identical powers had been conferred as are exercisable by the Commissioner himself and, therefore, it was conceivable that even after the Deputy Commissioner had exercised revisional jurisdiction and passed certain order, further revision may be entertained against such an order of the Deputy Commissioner by the Additional Commissioner and against the order passed by the Additional Commissioner in exercise of his revisional jurisdiction yet one more revision would lie to the Commissioner himself and, according to him, such a situation could never have been intended by the Legislature. In support of his contention he invited our attention to a similar consideration which weighed with the Supreme Court while deciding the case in Roop Chand v. State of Punjab and Another, and he pointed out that because of such consideration, which weighed with the Supreme Court in that case, the court took the view that the provisions of section 41(1) read with section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, should be so construed that an order passed by an officer appointed by the State Government under section 41(1) should be deemed to be an order passed by the Government itself and there was no question of Government entertaining any further appeal or revision under section 42 of the Act. This will necessitate consideration of the Supreme Court judgment in some greater detail to which we will come to a little later. But, considering the argument presented by Mr. Chagla by itself, we do not think that it would be right to say that our interpretation would lend to repeated interference by way of revision forever as contended for by him. In view of the hierarchy of officers and their subordination, inter se, to which we have already referred, it seems to us clear that such interference by way of exercising revisional jurisdiction would be limited and not repeated forever as suggested by Mr. Chagla and we do not think that such limited

interference by way of revision under section 57(1)(a) of the Act would be either incongruous or anomalous to the detriment of an assessee. In fact, it would be to his advantage, for, if it were the Deputy Commissioner who was exercising the revisional jurisdiction, in the first instance, against an order which has been passed in favour of an assessee previously, the assessee would be enabled to bring the injustice caused to him to the notice of the Additional Commissioner and, similarly, if the Additional Commissioner's orders were against the assessee, he would be again entitled to bring the injustice caused to him to the notice of the Commissioner himself and get injustice rectified. Exercise of revisional jurisdiction in the aforesaid manner would be preferable to a situation where no exercise of revisional jurisdiction at all would be possible if Mr. Chagla's contention that all these officers should be regarded as delegates or agents of the Commissioner were to be accepted. If the theory that Deputy or Additional Commissioners are acting as delegates or agents of the Commissioners were to be accepted, the entire revisional jurisdiction contemplated under section 57 of the Act would be rendered nugatory and it is difficult to hold that such a result was at all contemplated or intended by the legislature.

17. Dealing with the Supreme Court decision in *Roop Chand*, on which the learned Judge has relied and on which Mr. Chagla also relied, it must be observed that the case before the Supreme Court arose under the relevant provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. One of the objects of the Act was to pool together the entire lands held by different persons in a village and redistribute the same among them on a more utilitarian basis in accordance with a scheme framed for the purpose. The final result that the Act achieved was that instead of his original holding a person was given some other holding. Amongst other authorities established by the Act were Settlement Officers (Consolidation), who were referred to as Settlement Officers to consider the objections received and confirm the scheme with or without modification. After that was done it was provided by section 21(1) of the said Act that the Consolidation Officer shall carry out a repartition in accordance with the scheme as confirmed under section 20. Sub-section (4) provided that "any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (2) may within sixty days of that order appeal to the State Government". Under section 41(1) of that Act, the State Government were empowered to appoint such persons as it thought fit and by notification to delegate to them such of the powers or functions as it may choose. Under section 42 of that Act, the State Government was given power of revision similar to the provisions of section 57(1) of the Act before us. In the case before the Supreme Court, being aggrieved by certain order passed by the Settlement Officer, the petitioner appealed to the State Government under section 21(4) of the said Act. The State Government having delegated the power of hearing such appeal to one Shri Brar, Assistant Director, Consolidation of Holdings, Ambala, under section 41, the said appeal was heard and allowed by the said Mr. Brar. The State Government then thought fit under section 42 to revise the order of the said Shri Brar and in exercise of the power of revision the State Government set

aside that order. It was contended before the court that the order which could be revised by the State Government under section 42 had to be an order passed by an officer in his own right and not an order passed either by the State Government itself or by an officer exercising the power delegated to him by the Government under section 41 and that contention was accepted and the court came to the conclusion that having regard to the relevant provisions contained in the enactment, particularly the provisions contained in section 41 and section 42 of the said Act, the Government could not revise the order passed by Shri Brar who had exercised his powers in place of the Government. Relying upon this decision, an argument was advanced before the learned Judge and also by Mr. Chagla before us that, in the instant case also, we should take the view that the order passed by the Deputy Commissioner in second appeal should be regarded as an order passed by the Commissioner himself, the former being regarded as a delegate or an agent of the latter and, therefore, the Commissioner was incompetent to exercise his revisional jurisdiction over such order. It is not possible to accept this contention of Mr. Chagla for more than one reason. In the first place, the enactment with which the Supreme Court was concerned dealt with consolidation and prevention of fragmentation of holdings under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The objects of the enactment were to pool together the entire lands held by different persons in a village and redistribute the same among them on a more utilitarian basis in accordance with a scheme to be framed for the purpose and it was in the context of that subject-matter that the provisions contained in section 42 of the Act had been made enabling the State Government to revise any order that may be passed by the Settlement Officers and the question that arose was whether having regard to the fact that the settlement Officer's orders against which the petitioner was aggrieved having been dealt with by an officer appointed by the State Government under section 41(1) of the Act, the State Government could exercise revisional jurisdiction over the order passed by such officer appointed by the Government under section 41(1) of the Act. The Supreme Court has further made it clear in its judgment that the question that were raised before it depended upon construction of certain relevant provisions of the Act and it was on such construction that the view was taken that the State Government could not exercise its revisional jurisdiction under section 42 of the Act. In our view, the ratio of that decision, therefore, cannot apply to the instant case before us which arose under a taxing statute like the Bombay Sales Tax Act, 1959, under which apart from making a provision for appointing a number of officers for carrying out the purposes of the Act, the hierarchy of such officers has been indicated, the subordination of such officers, inter se, has been indicated and the Act provides for complete code of remedies available to a person who is aggrieved by any order passed by any officer under the Act. In the first place, therefore, the Supreme Court decision dealt with an enactment which was a different type altogether than the subject-matter of the enactment with which we are concerned in this case. Secondly, the decision of the Supreme Court depended upon the proper

construction of the relevant provisions of sections 41(1) and 42 of the said Act whereas, in the instant case, we are concerned with the provisions contained in sections 20(5), (6) and (8), 55 and 57 of the Act. The scheme which is obtained under the Bombay Sales Tax Act is entirely different from the scheme which obtained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, and it is in view of the scheme and from the examination of the relevant provisions of the Act in this case that we will have to consider what interpretation should be put upon the provisions contained in section 20(5) of the Act. In other words, the provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, could never be regarded as being in *pari materia* anywhere similar to the provisions contained in the Act with which we are concerned. Placed in such a situation, what rule of interpretation could be applied has been clearly stated in the following passage occurring in Craies on Statute Law, 7th Ed., p. 133, to which our attention was invited by the learned Advocate-General. The relevant passage runs as follows :

"In the interpretation of statutes the courts decline to consider other statutes proceeding on different lines and including different provisions, or the judicial decisions thereon. Thus in *Re Lord Gerard's Settled Estate* ([1893] 3 Ch. 252.), the Court of Appeal held that the Settled Land Acts formed a code applicable to the subject-matter with which they dealt, and that a decision on the Lands Clauses Act, 1845, was not applicable for their interpretation, because that Act was passed *alio intuitu*, and dealt with a different subject-matter. Lord Macnaghten, when discussing the phraseology of two Revenue Acts, said in *Inland Revenue Commissioners v. Forrest* ((1890) 15 App. Cas. 334, 353.) : 'The two Acts differ widely in their scope; and even when they happen to deal with the same subject their wording is not the same. It was argued, indeed, that the language was "practically identical"; but that expression, to my mind, involves an admission that the language is different', and in 1955 Lord Reid said : 'It does not necessarily follow that if Parliament uses the same words in quite a different context they must retain the same meaning.'"

18. In our view, therefore, having regard to the fact that the statute with which we are concerned is a taxing statute and contains provisions of different types altogether, then what was contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, which was dealt by the Supreme Court, the ratio of that decision would clearly be inapplicable to this case, where we are concerned with the proper interpretation to be placed upon the provisions in section 20(5) read with sections 55 and 57 of the Act. Incidentally, it may be pointed out that under section 41 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, power had been conferred upon the State Government to appoint as many persons as it thought fit for proper administration of the Act and the State Government could delegate any of

its powers or functions under the Act to any of its officers either by name or designation and it was in the context of such provisions which enabled the State Government to appoint as many officers as it liked to whom powers could be delegated by it that the Supreme Court took the view that there was scope for repeated interference by way of revision forever. As we have pointed above, the scheme of the Act with which we are concerned is nowhere near the aforesaid provisions. Under section 20 the officers having specified designations have been contemplated to be appointed by the State Government for carrying out the purposes of the Act and their hierarchy has been indicated and the subordination, inter se, has also been indicated and it is in the context of the hierarchy and the subordination, inter se, of officers that the provisions of sections 55 and 57 have to be understood. We are, therefore, clearly of the view that there would be no question of there being any scope for repeated interference by way of revisional jurisdiction arising under the provisions of the Act with which we are concerned.

19. Having regard to the above discussion, we are of the view that the view taken by the learned trial Judge on the principal contention urged in the petition before him cannot be sustained and, in our view, the orders passed by the Deputy Commissioner in second appeal on 16th April, 1965, were clearly revisable by the Commissioner under section 57(1)(a) of the Act.

20. The third contention pertained to the plea of absence of mens rea and the contention was that having regard to the facts which obtained in the case it could not be said that the petitioner-company had collected sales tax knowing that such collection was illegal or had guilty conscience in collecting such tax recoverable from the parties. However, Mr. Chagla appearing for the respondents did not press this contention, especially in view of the amended provisions of sub-section (6) of section 38 of the Act that has been retrospectively introduced in the provisions of the Act.

21. In the result, the appeal is allowed and the order passed by the learned trial Judge is set aside and the petition is dismissed. Appeal is allowed with costs. The appellants' attorneys permitted to withdraw the amount of Rs. 500 deposited as and by way of security for costs.

22. The learned Advocate-General states that the orders passed by the Commissioner against the assessee will not be enforced or given effect to for a period of 6 weeks from today.

23. Appeal allowed.

