NAGPUR HIGH COURT

Nimar Cotton Press

Vs

Sales Tax Officer

Misc. Petn. No. 237 of 1953

(Mangalmurti and Deo, JJ.)

02.07.1954

ORDER

Mangalmurti ,J.

1. This is a petition under Article 226 of the Constitution for a writ of 'certiorari' to quash the order, dated 12-6-1953, passed by the Sales Tax Officer, Khandwa, (respondent 1) and for a writ of mandamus requiring the authority to withdraw the several notices issued by it on or about 12-6-1953.

2. The petitioner firm is a Pressing Company which for a fixed payment per bale presses cotton supplied by customers and delivers it in pressed bales covered with hessian and tied with iron hoops which keep the pressed cotton in position. The loose cotton cannot be made into bales without the use of hessian and iron hoops. The petitioner has been carrying on this business since before the C.P. and Berar Sales Tax Act came into force on 1-4-1947.

3. After examination of the books of account of the petitioner respondent 1 issued a notice dated 24-10-1951 requiring it to apply for registration in Form No. I on the ground that it was liable to pay sales tax from 1-6-1947 as its sales for the year 1945-46 exceeded Rs. 5000/-. This notice was served on 3-11-1951. On 6-11-1951 the petitioner moved the Commissioner of Sales Tax under Section 19 for an adjudication that it is not a dealer and the transactions done by it were not sales. On 28-4-1952 the Commissioner passed the following order :

> "This is an application under Section 19 for determination whether the applicant is a dealer or not within the meaning of the Sales Tax Act. The applicant has stated that he is not carrying on the business of selling or supplying goods and that he owns a cotton press with which he presses the ginned cotton belonging to his clients and that he recovers only pressing charges.

As the applicant does not carry on any business of selling or supplying goods, he is not a dealer as defined by Section 2(c) of the Sales Tax Act".

4. On 20-11-1952 the petitioner was served by respondent 1 with a notice dated 17-11-1952 in Form No. VI under Section 10 read with Rule 22 of the Rules framed under the Act, requiring it to submit 21 quarterly returns beginning from 1-6-1947 and ending with 30-9-1952. One return was to be submitted for each quarter. In answer, the petitioner brought to his notice the order of the Commissioner passed on 28-4-1952. By a memorandum dated 3-12-1952 the officer informed the petitioner that the order of the Commissioner was hypothetical and was not binding on the assessing officer at all if different acts come to notice at the time of assessment, that the notice dated 17-11-1952 was according to law and he had decided to proceed with the case.

5. On 5-1-1953 the petitioner moved this Court under Article 226 of the Constitution (Miscellaneous Petn. No. 4 of 1953, decided on 23-2-1953) to quash the notice dated 17-11-1952, and the order dated 3-12-1952. A writ of 'mandamus' requiring the authority to give certified copies of certain documents which were denied to the petitioner was also prayed for. We are not concerned with this latter relief in these proceedings. In the return filed on behalf of the Sales Tax Officer in that case reference was made only to the relief for certified copies. It was stated that orders were issued to grant the necessary copies applied for. Nothing was said about the other grievance. After hearing arguments the Court passed the following order in the presence of counsel :

> 'This application has become infructuous in view of the fact that the learned Additional Government Pleader informs the Court that the main grievance of the petitioner, viz., that he had not been granted certain certified copies and that lie had been called upon to file returns which were not justified by the rules made under the law, had been met by departmental orders conveyed to the Sales Tax Officer.

In view of that attitude of the department it is not necessary to pass any fresh order quashing the proceedings. There will be no order as to costs. The petitioner is entitled to a refund of the amount of his security deposit".

6. By an order dated 7-4-1953 the Sales Tax Officer cancelled the previous notice in Form No. VI, dated 17-11-1952 By the same order, however, fresh notices in Forms Nos. VI and XII were ordered to issue simultaneously, calling for returns from 6-4-1952, and for the earlier period a complaint case was ordered to be registered as per instructions dated 2-12-1952 said to have been issued by the Sales lax Commissioner. The case was fixed for hearing on 12-6-1953. Accordingly on 9-4-1953 a report was sent to the Commissioner as per his Memo No. 2639 dated 1-4-1953 and notices were issued to the petitioner on 7-4-1953 in Form Nos. VI, XII, and XXI. A notice was issued on 11-4-1953 to show cause why action should not be taken under Section 24(1)(a) of the Act and this matter was fixed for hearing on 2-5-1953.

7. Nothing was done on 2-5-1953. On 12-6-1953 counsel for the assessee appeared and submitted blank returns with written statements for each quarter from 6-4-1952. Then the notices in Forms Nos. VI and XII issued on 7-4-1953 were cancelled and a fresh notice in Form, No. VI was issued requiring the petitioner to submit returns from 8-9-1950 to 31-3-1953. Another notice in Form No. XII was issued. By this notice account books from 8-9-1950 to 31-3-1953 were ordered to be produced.
A notice was also issued under Section 15(1) requiring the petitioner to produce the books of

account from 1-6-1947 to 7-9-1950. The case was fixed for 13-8-1953. The reason for cancelling the earlier notices and issuing new notices, as given in the order sheet dated 12-6-1953, was the view of the Board of Revenue in - '*Motilal Askaran Bohra v. State*[1]',

8. On 25-7-1953 the petitioner applied under Article 226 for relief against the notices issued in pursuance of the order dated 12-6-1953. Its contentions are : The order dated 28-4-1952 that the petitioner is not a dealer and is not liable to tax is conclusive and binding on the Sales Tax authorities, that respondent 1 cannot go behind the order of this Court dated 25-2-1953 based on the admission of his counsel and cannot issue a notice to submit returns for the period covered by the earlier proceedings and other notices ordered oil 12-6-1953. Consequently, if was submitted that the order dated 12-6-1953 was liable to be quashed as a whole. It was further submitted the pronouncement in - '*Motilal v. State*',, (Supra), was erroneous. Alternatively, it was submitted that the notice in Form No. VI could not be issued in respect of the period for which the notice issued on 17-11-1952 was withdrawn, and that the pronouncement in - 'Motilals case, did not, in any case, entitle respondent 1 to issue notice for a period of more than 12 months prior to 12-6-1953. It was further pleaded that the Sales Tax Officer had no jurisdiction to initiate proceedings under section 11(5) without an order of the Commissioner.

9. In the return it is stated that the petitioner is a dealer carrying on the business of selling and supplying goods taxable under the Act because the pressing charges include the cost of hessian cloth and iron hoops etc., that the order of the Commissioner under Section 19 that the petitioner is not a dealer is not conclusive on that point and that the Sales Tax Officer has jurisdiction to ignore the order and determine the question on the evidence produced before him. It was alleged that the petition was not tenable as the petitioner has not exhausted the remedies under the Act.

10. In our view this preliminary objection is not well founded. If the adjudication by the Commissioner that the petitioner was not a dealer is binding on respondent 1, or if the Counsel for the respondent admitted before this Court in Miscellaneous Petition 4 of 1953 that the petitioner's grievance that in view of the decision of the Commissioner it was not liable to assessment and the notice issued on 17-11-1952 was contrary to law was accepted by the authorities by ordering withdrawal of the notice and that had induced the Court to refrain from passing a formal order quashing the proceedings, the petitioner has certainly a grievance which cannot be redressed by the Sales Tax authorities who have proceeded not only to assess the petitioner but also to prosecute it. As appears from the return, the proceeding are likely to result in the assessment of the petitioner to tax which it will have to deposit before preferring an appeal against that order. In order to escape from such serious consequences and infringement of its fundamental rights, relief by way of mandamus is the appropriate relief. This relief cannot be denied to it merely on the ground that it has not exhausted
the remedies available under the Sales Tax Act, which, in the circumstances of this case, cannot be described as an adequate alternative remedy. - '*Himmatlal v. State of MP*[2]',

11. From a perusal of the order passed by this Court on 25-2-1953 it is manifest that the Additional Government Pleader must have made the statement that

> "the main grievance of the petitioner that he had been called upon the file returns which were not justified by the rules made under the law had been met by departmental orders

conveyed to the Sales Tax Officer".

Because of this it was not necessary for the Court to pass a formal order quashing the proceedings of respondent 1 issuing the notice dated 17-11-1952 in Form No. VI. A similar course was followed in - '*Sattar Sahib v. State of Madras*[3]', There the Court did not think it necessary to grant a mandamus because the learned Advocate General stated that the Government were prepared to deal with the applications before them in the light of the judgment of the Court. If the Additional Government Pleader had not made the statement referred to in the order, the petition would have been decided on merits.

12. In spite of this admission, the learned Additional Government Pleader submitted at the hearing that the proceedings taken by respondent 1 on 12-6-1953 were valid and that ho was entitled to require the petitioner to submit returns and to assess if to tax for the periods prior to 30-9-1952 i.e., the period covered by the former proceedings. In para. 8 of the petition it was averred that at the hearing of the petition on 25-2-1953.

> '"the counsel for the state stated before the Honourable Court that the notices requiring the petitioner to file the returns complained of in the petition were not justified by the rules made under the law and that the grievance had been, met by the departmental orders conveyed to the Sales Tax Officer. The petitioner thus succeeded on admission.

In reply to these averments the return states :

> "The points raised in Misc. Petn. No. 4 of 1953 were - (1) that the petitioner had been refused certified copy of order sheet; (2) that the notice under Section 10 (1) read with Rule 22 demanding return from 1-6-1947 was wrong. The Commissioner of Sales Tax directed issue of the certified copies of the order sheets to the petitioner and also directed the reconciliation of the discrepancy in the issue of notice in Form No. VI.

It is however, submitted that this direction in no way changed the petitioner's position in regard to his liability under the Sales Tax Act and the submission of returns prescribed thereunder". The directions conveyed to respondent 1 are not placed on record by the respondents. The return is silent as regards the statement made by the
Additional Government Pleader.

13. The learned Additional Government Pleader does not admit that he made the statement attributed to him. On being asked by the Court why he had not traversed the averments in the petition, he contended that all the allegations in the petition which were not admitted in the return must be deemed to have been denied. He further submitted that the rules of pleadings in the Civil Procedure Code do not apply to proceedings under Article 226. He also stated that he did not understand what a "traverse" was. These contentions cannot be accepted. An express denial of an allegation in a statement of claim is called a "traverse". When the matter is within the knowledge of the defendant, he generally denies any statement which he disputes. When it is within his own knowledge, he usually "does not admit" it. Bullen and Leake's Precedents of Pleadings, Edn. 10, P. 472; Stones Pleadings, Page 156. Order 8, Rules 3 and 5, Civil Procedure Code, place the matter beyond any doubt. The proceedings under Article 226 are civil proceedings and subject to

the rules made by this Court to regulate proceedings under that Article, are regulated by the Code of Civil Procedure. We are, therefore, entitled to hold that averments in para. 8 of the petition, which are not traversed by the respondents, are admitted. The averments in the petition are supported by an affidavit but there is no counter-affidavit. Rule 11(a) of the rules made under Article 226 requires the return to be duly supported by an affidavit. As the respondents have not filed any such affidavit, their return is not a valid return which need be taken into, consideration.

14. The order dated 25-2-1953 is conclusive evidence of what took place at the hearing and it is not open to a litigant to deny his statement recorded in the order. Respondent 1 must, therefore, be held bound by the concession made by his counsel on 25-2-1953.
15. The notice dated 17-11-1952 in Form No. VI was a notice under Section 10 (1) read with Rule 22 and required the petitioner to submit returns from 1-6-1947 to 30-9-1952. Under Section 10(1) a Commissioner is entitled to require any dealer to furnish returns of his sales. Rule 22 runs thus :

> "If, in the opinion of the Commissioner, any dealer other than a registered dealer is liable to pay the tax under the Act in respect of any period, the Commissioner may, at any time within three calendar years from the commencement of the Act and thereafter within twelve months from the expiry of such period, serve a notice on him in Form No. VI, requiring him to furnish within two calendar months of the receipt of the notice, to the appropriate Sales Tax Officer a return or returns in Form No. IV in respect of such period".

A registered dealer has to furnish four quarterly returns for every account year. Such a return period is not prescribed for unregistered dealers. As appears from the notices on record in Form No. VI, served on the petitioner, a quarter begins on the 1st of April etc. The notice dated 17-11-1952 was issued after the expiry of three years from the commencement of the Act.
It must therefore, be served within 12 months, from the expiry of the period for which the return is required to be submitted. Therefore, the notice could be issued for the periods expiring with 31-12-1951 and onwards. The notice issued on 17-11-1952 for earlier periods was contrary to law even if it is assumed that the petitioner is a dealer. The notice in Form No. VI issued for periods' ending prior to 31-12-1951 is manifestly contrary to law.

16. The order dated 25-2-1953 refers to 21 returns required to be furnished by the notice dated 17-11-1952. Since the petitioner's grievance in respect of all the 21 returns were redressed by the Department, as conceded by the learned Additional Government Pleader, we hold that respondent 1 is not now entitled to issue notice in Form No. VI for any period from 8-9-1950 to 30-9-1952.

17. The next question for consideration, is whether respondent 1 is otherwise entitled to issue notice in Form, No. VI for the period from 7-9-1950 to 31-3-1953. As already pointed out, the notice in this form must be served within 12 months from the expiry of the period for which a return is required to be furnished. The notice was served on 12-6-1953. The earliest period for which this notice could be served should have expired on 30-6-1952. It would be beyond time for the quarter ending 31-3-1952. The notice for the periods expiring prior to 30-6-1952 is therefore contrary to law.

18. On the strength of the decision of the Beard of Revenue in - 'Appln. No. 45/33, 7 of 1952, D/-14-5-1953 (MP), it is argued that a-notice in Form No. VI to an unregistered dealer is not obligatory for an assessment under Section 11(5) of the Act and that the date of proceeding with, the assessment under that Sub-Section is the date' on which the Sales Tax Inspector first submitted a report on 8-9-1951 and consequently respondent 1 could validly issue the notice in Form No. XII and proceed to assess the petitioner to the best of his judgment. This position is not taken in the return nor is the alleged report of the Inspector exhibited. In para. 16 of the return it is stated :

> "The proceedings now started are by virtue of the fresh notice issued, which the Sales Tax Authorities are quite competent to do".

On this stand the petitioner could not be assessed for any period prior to 30-6-1952, or, at any rate, prior to 12-6-1952.

19. The contention based on 'Motilals case" is not sound and cannot prevail. Section 11, Sub-Section (5), runs thus :

> "If upon information which has come into his possession, the Commissioner is satisfied that my 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 commencement of this Act and thereafter within twelve months 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".

Under Rule 67 the power of the Commissioner under this section may be delegated to a Sales Tax Officer in respect of any dealer whose gross turnover of the previous year exceeds five lakhs but does not exceed ten lakhs, or where the taxable turnover of the previous year exceeds one lakh but does not exceed two lakhs. In respect of dealers whose gross turnover and taxable turnover are less than these figures, the power may be delegated to an Assistant Sales Tax Officer. However, as the question of jurisdiction, was not raised by the petitioner, we will assume for the purpose of this case that the Sales Tax Officer had jurisdiction to issue a notice in Form No. XII. The power under Section 10 to require an unregistered dealer to furnish returns is delegated to the Sales Tax Officer and not to the Assistant Sales Tax Officer. The conditions precedent for the commencement of proceedings under this Sub-Section are the satisfaction of the Sales Tax Officer that the dealer way liable to pay tax under the Act in respect of any period for which it is intended to commence proceedings and the satisfaction that the assessee has nevertheless willfully failed to apply for registration. On satisfaction on both these grounds, the Sales Tax Officer is required to proceed to assess the amount of tax due from the dealer in respect of such period and all subsequent periods. If he proceeds to assess the dealer alter 1-6-

1950 he must do so within 12 months of the expiration of the period of the intended assessment, and ho cannot do so without giving the dealer a reasonable opportunity of being heard. There is no averment in the return about the satisfaction of the Sales Tax Officer on one or the other count. Nor is the order or proceeding recording such satisfaction placed on record. From the order sheets on record it appears that Section 11(5) is for the first time referred to in the order sheet dated 12-6-1953. There the Sales Tax-Officer appears to hold that the date of the submission of the report by the Sales Tax Inspector was the date of the commencement of the proceedings under Section 11(5). This is obviously incorrect. On receipt of the information the Sales Tax Officer must be satisfied before he proceeds to assess the dealer. That date evidently is 12-6-1953. This is also clear from the statement in para. 16 of the return reproduced above. In this view, the Sales Tax Officer cannot assess the petitioner for any period prior to the one ending 30-6-1952.

20. Form No. XII is an omnibus form to be issued to registered and unregistered dealers for production of account books. It contains a direction to the authorities concerned to strike off such portions as are inapplicable to any particular case. If the Sales Tax Officer was really satisfied under Section 11(5) that the petitioner had wilfully failed to apply for registration, he would not have struck off the following portion in para. 2 of the printed form :

> "Whereas being liable to pay tax under the C.P. and Berar Sales Tax Act, 1947, in respect of the period ..... you have wilfully failed to apply under Section 8 of the said Act for registration".

There is no provision is this form to require an unregistered dealer to furnish a return. The period of the proposed assessment is not stated in this notice. No doubt the period for which accounts are required is stated, but that cannot be presumed to be a notice of the period of the proposed assessment. Rule 32 which enables a Sales Tax Officer to issue a notice in Form No. XII in an assessment under Section 11(5), requires the Officer to serve a notice stating the period or the return period or periods in respect of which assessment is proposed. This period is to be mentioned in paras 1 and 2 of the printed form, but those paragraphs were struck out in the particular notice. This notice by itself is therefore invalid for commencement of proceedings under section 11(5).

21. The submission of the learned Additional Government Pleader that notice under Section 10, Sub-Section (1) in Form No. VI is not obligatory is not well founded. Unregistered dealers may be classified into those :

> (a) who have not submitted returns under a "bona fide' belief that they are not "dealers" within the Act or their taxable turnover did exceed the taxable quantum provided by Section 4 of the Act; and those
> (b) who, believing that they were dealers and were liable to registration, willfully failed to apply for registration.

The proceedings against dealers of class (a) cannot be commenced under Section 11, Sub-Section (5). They are to be commenced by a notice in Form No. VI under Section 10. The

provisions dealing with assessments of registered dealers on their returns are Sections 11(1) to 11(3). No doubt, there is no provision for assessment of unregistered dealers who have filed the returns in response to such notice. This lacuna was removed by Act 20 of 1953 by omitting the word "registered" in Section 11, Sub-Section (1). Section 11, Sub-Section (4) provides for best Judgment assessment of registered dealers for defaults specified in that Sub-Section and Section 11(5) provides for best judgment assessment of unregistered dealers who have wilfully failed to apply for registration though they were liable to pay tax under the Act. Unless, therefore, the Sates Tax Officer is satisfied that an unregistered dealer has wilfully failed to apply for registration, he cannot commence proceedings under Section 11, Sub-Section (5). The proper procedure for him is to issue at notice under Section 10, Sub-Section (1) and after hearing such evidence as may be tendered in support of the return, or if the dealer contends that he is not liable to pay any 'tax, after hearing such evidence as he may adduce, the Sales Tax Officer has to decide his liability as a dealer and to assess him' to tax if he is held so liable. In such proceedings it would be permissible for the Sales Tax Officer to make a reference to the Commissioner under Section 19 for an adjudication on any of the matters specified in that section and arising in the proceedings; and the Commissioner shall determine such question after affording the party concerned an opportunity to be heard. In our opinion, therefore, a notice in Form No. VI is obligatory in case of unregistered dealers unless the Sales Tax Officer is satisfied that the unregistered dealer has willfully failed to apply for registration. It was evidently in this view of the matter that a notice was originally issued on 17-11-1952 in Form No. VI.

22. As already pointed out the Sales Tax Officer started the impugned proceedings against the petitioner by the order dated 12-6-1953. We have already held that a notice in Form No. VI for a period prior to that ending with 30-6-1952 was invalid. We have also held that a notice in Form No. XII by itself was invalid. Therefore, apart from the effect of the order of this Court dated 25-2-1953, respondent 1 was not entitled to proceed to assess the petitioner for any period prior to that ending with 30-6-1952 and could not proceed to assess him under Section 11, Sub-Section (5). However, in view of the order dated 25-2-1953 we hold that respondent 1 is not entitled to assess the petitioner for any period from 8-9-1950 to 30-9-1952.

23. Now remains the question as regards the effect of the order of the Commissioner under Section 19. There is no ground to hold that the order is hypothetical and does not amount to a determination. This is not the plea in the return. It is not pleaded that the order was passed without any enquiry. The books of the petitioner were examined by respondent 1 before the former applied to the Commissioner for adjudication under that section. All that is pleaded in the return is that the order is not conclusive and the Sales Tax Officer has jurisdiction to determine the matter on the evidence produced before him. There is no averment that any fresh evidence was before respondent 1 when he issued the impugned notice. The alleged report of the Sales Tax Inspector, on which he purports to act, is prior to the date of examination of the books of the petitioner.

24. Section 19, which was omitted by the Amending Act 20 of 1953 which came into force on 14-11-1953, runs as follows :

> "If any question arises otherwise than in a proceeding before a Court whether for purposes of this Act,

(a) any person or firm or any branch or department of any firm is a dealer, or,
(b) any transaction is a sale or contract or (c) any dealer is liable to registration, or .... the Commissioner shall determine such question after affording the party concerned an opportunity to be heard".

This section empowers the Commissioner to determine disputes which may arise under this Act between a trader and a sales tax authority. He can exercise this power at the instinct; of either party. Section 22, Sub-Section (1) provides that any dealer aggrieved by an order under this Act may, in the prescribed manner, appeal to the prescribed authority against the order. Rule 53, sub-rule (4) provides for an appeal to the Board of Revenue against an order passed by the Commissioner. In view of these provisions it is idle to contend that the adjudication under Section 19 is not appealable and is not binding on the Sales Tax Officer.

25. In support of his submission the learned Additional Government Pleader relied on - '*D.M. Ranade v. The State*[4]', wherein it was held that the adjudication under Section 19 was not appealable. The appellants in that case had prayed that

"..... in view of the previous decision the two applicants should not be required to pay the tax for the period between 21-7-1947, and 12-9-1948".

This request was turned down by the Commissioner with these words-

"Your request cannot be granted."

Against this order an appeal was filed before the Board of Revenue. The prayer is not really for an adjudication of any of the matters mentioned in Section 19 and on that ground the appeal could have been disposed of. But the Board of Revenue observed that the words "a proceeding before a Court" in Section 19 only meant any "judicial or quasi-judicial proceeding, "If this interpretation is correct then certainly the Commissioner had no jurisdiction to pass an order under Section 19 because the Question arose in a quasi-judicial proceeding before the Sales Tax Officer. In our view, however, the interpretation is erroneous. The word "Court" is not defined in the Act or in the General Clauses Act, but it has a well understood meaning. Section 20 refers to "a Court of civil jurisdiction". Section 21 refers to any "Civil Court. Section 23 refers to a "High Court". Section 24 refers to a "Criminal Court" and Section 27 refers to both civil and criminal Courts. Section 20 invests the authorities mentioned in the section with powers of a Court of civil jurisdiction under the Code of Civil Procedure for the purposes specified in that section. Section 21 bars the jurisdiction of a "Civil Court" over matters specified in that section. Section 23 provides for the powers of the High Court under the Act. Section 24 provides for the jurisdiction of a Criminal Court over offences specified in that section. Section 27 requires that the documents specified in the section shall be accept confidential and provides that no Court shall require them to be produced. Neither the Commissioner nor any of the persons appointed to assist him to exercise the powers, und perform the duties under the Act are an where described as Court. It is not suggested that the word "Court" in the sections referred to above includes any of these officers.

26. The Board of Revenue seems to have based its interpretation on the definition of '"Court" in

the Indian Evidence Act. It is-

> " 'Court' includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to tike evidence".

This definition is not exhaustive. In a trial by a judge with a jury, it includes both the Judge and the jury. The accepted meaning of the word "Court" i.e., a Court of law, is enlarged for the purpose of the Evidence Act by including the persons mentioned therein. The definition is framed for the purpose of the Act itself and should not be extended beyond its legitimate scope. - *Hari Charan Kundu v. Kaushi Charan De*[5], That was a case of a Debt Settlement Board under the Bengal Agricultural Debtors Act. The Board is vested with the powers of a civil Court under the Code of Civil Procedure, similar to Section 20 of the Act. The Board has power to determine Questions between private parties relating to the existence and amounts of debts after hearing the parties and considering the evidence produced, and to make final orders regarding the amounts debts recoverable from the debtors and their decisions are executable. Machinery is also provided for appeals against their orders. Not only that, Section 50 of that Act provides that proceedings under the Act should be deemed to be "judicial proceedings" under Section 228, I.P.C. The position of the Board is stronger than that of a Sales Tax authority. The proceedings before the latter are not deemed to be "judicial proceedings" for the purpose of Section 228, Penal Code. The income-tax authorities which exercise functions similar to those of the Sales Tax authorities are not "Courts" though under Section 37, Income-tax Act they are vested
with the powers of 3 Court under the Code of Civil Procedure for purposes similar to those specified in Section 20 and though their proceedings are deemed to be judicial proceedings within the meaning of Sections 193, 228, and for the purposes of Section 198 of the Indian Penal Code. It is manifest that these authorities act in a quasi judicial capacity and have to conform to the elementary rules of judicial procedure.

27. Section 19, Relief of Indebtedness Act runs as follows :

> "The Debt Relief Court, in regard to proceedings under this Act, shall so far as is practicable have the same powers and shall follow the same procedure as it would have and follow if it were a Court of original civil jurisdiction.'

In 'In re Shrikishandas', AIR 1942 Nagpur 98, it was held that the words 'as if it were' predicate that in the opinion of the legislature these tribunals are not 'Courts of original civil jurisdiction. It is therefore clear that an authority charged with the assessment and few of a tax is not a Court of law merely because it has to determine the liability of the assessee according to the statute and not arbitrarily. The authority has to act 'quasi' judicially. It is therefore incorrect to say that the proceedings under Section 19 of the Act are not even quasi-judicial proceedings and the determination of the Commissioner is not of a binding nature. In our view, the Board of Revenue is in error in holding that the jurisdiction of the Commissioner under Section 19 is merely consultative and advisory. Therefore, the Sales Tax Officer was bound by the determination of the Commissioner under Section 10 and he could not issue a notice either in Form No. VI or in Form No. XII to the petitioner who is held not to be a dealer.

28. At this stage it would be convenient to examine the precise decision, of the Commissioner.

The Commissioner accepted the contention of the petitioner that it owned a cotton press with which it pressed ginned cotton belonging to his clients and that it recovered only pressing charges. If the petitioner receives remuneration merely for pressing the bales, it is certainly not carrying on any business of selling and supplying goods and is not a dealer. The order is silent as to the person supplying hessian and iron hoops. If they are supplied by the owner of cotton, then there is no transfer of ownership of hessian and iron hoops from the petitioner to its client. But if this material, which is indispensable of turning out a pressed cotton bale, is supplied by the petitioner, a question may well arise whether there is any sale of this material. The question was not apparently examined by the Commissioner from this point of view. It is therefore open to the Sales Tax authority to examine the question in the light of this material and any further material that may be available in the course of the proposed assessment proceedings. Since the question whether the petitioner is a dealer was answered by the Commissioner in the negative the question whether the pressing charges include the cost of hessian and iron hoops, which the petitioner has to supply, was not argued at the Bar; and we do not, therefore, decide that question.

29. It is unfortunate that the authorities did not act up to the representation made to this Court by the Additional Government Pleader in the previous case. It is equally unfortunate that the Additional Government Pleader should justify their action. In our view, this is an abuse of the process of this Court.

30. In the result, the petition is allowed with costs. The order dated 12-6-1953 and the notices issued thereunder in Form No. VI and Form No. XII are quashed. Counsel's' fee Rs. 200A. After deducting the paper book costs, if any, the deposit amount be refunded to the petitioner.
Petition allowed.

Cases Referred.

[1] Appln. No. 45/33-7 of 1952 D/d. 14-5-1953
[2] AIR 1954 SC 403
[3] AIR 1952 Mad 605
[4] 1952-3 STC 112 (MP-BR)
[5] AIR 1940 Cal 286