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JAGANNATH PRASAD

v.

THE STATE OF UTTAR PRADESH

(J. L. KAPUR, K. C. DAS GUPTA and RAGHUBAR DAYAL, JJ.)

Sales Tax—Using forged documents before Sales Tax Officer—Prosecution—If complaint of sales Tax Officer necessary—Sales Tax Officer, whether a Court—Liability to pay tax—Notification prescribing single point for taxation ineffective—Effect of Uttar Pradesh Sales Tax Act, 1948 (U. P. 15 of 1948), ss. 3, 3A, 14(d)—Code of Criminal Procedure 1898 (Act V of 1898), s. 195.

The appellants who carry on the business in vegetable ghee purchased vegetable ghee from outside U. P. in the name of four fictitious firms. In their return of sales tax they did not include the sale proceeds of these transactions on the ground that they had purchased from the four firms and that under a notification made under s. 3A of the U. P. Sales Tax Act, tax was leviable only at a single-point on the sale by the outside suppliers to these four firms. In support of this the appellant No. 1 made a false statement before the Sales Tax Officer and also filed forged bills before him. The return was accepted by the Sales Tax Officer with the result that the sales covered by these transactions were not taxed. The appellants were tried and convicted for offence under s. 471 Indian Penal Code for using forged documents and under s. 14(d) of the Act for fraudulently evading payment of tax due under the Act. The appellants contended that the trial for the offence under s. 471 was illegal as no complaint had been made by the Sales Tax Officer as required by s. 195 Code of Criminal Procedure and that the offence under s. 14 (d) of the Act was not made out as no tax was payable under s. 3A because the notification issued thereunder was invalid.

Held, that the Sales Tax Officer was not a Court within the meaning of s. 195 Code of Criminal Procedure and it was not necessary for him to make a complaint for the prosecution of the Appellants under s. 471 Indian Penal Code. A Sales Tax Officer was merely an instrumentality of the State for purposes of assessment and collection of tax and even if he was required to perform certain quasi-judicial functions he was not a part of the judiciary. The nature of the functions, of a Sales Tax Officer and the manner prescribed for their

performance showed that he could not be equated with a Court. Nor could he be said to be a Revenue Court. Though the definition of Court in s. 195 of the Code was enlarged by the substitution of the word "include" for the word "means" by the amendment of 1923, it did not change the definition of "Revenue Court."

Smt. Ujjam Bai v. *The State of U. P.* (1963) 1 S.C.R. 778), *Shell Co. of Australia Ltd.* v. *Federal Commissioner of Taxation* [*1931*] *A. C. 275* and *Brajnandan Sinha* v. *Jyoti Narain* [*1955*] 2 S.C.R. 955, applied.

Krishna v. *Gocerdhanaiah*, A. I. R. 1954 Mad. 822, approved.

In re: *Punamchand Maneklal*, (1914) I. L. R. 38 Bom. 642 and *State* v. *Nemchand Pashvir Patel*, (1956) 7 S. T. C. 404 not approved.

In re: *R. Nataraja Iyer* (1914) I. L. R. 36 Mad. 72 and *Shri Virender Kumar Satyawadi* v. *The Sate of Punjab*, [1955] 2 S. C. R. 1013 referred to.

Held, further that the appellants were rightly convicted under s. 14 (d) of the Act. Sales tax was payable under s.3 of the Act in respect of all sales. But under s.3A it was leviable only at a single point if the Government issued a notification declaring the point at which tax was payable and it was so prescribed by the rules. Under the notification issued by the Government tax was payable only by the dealer who imported the goods and sold them. The appellants having imported the ghee were liable to pay the tax on the sales of this ghee which they fraudulently evaded. Though the notification was ineffective as no rules were made under the Act prescribing the single point, it did not help the appellants, as the only effect of this was that s. 3A did not come into play. In trying to get the benefit of the ineffective notification under s. 3-A the appellants evaded payment of tax under s. 3 which they were liable to pay.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 152/59.

Appeal by special leave from the judgment and Order dated May 12, 1959 of the Allahabad High Court in Criminal Revision No. 1182 of 1957.

Nur-ud-din Ahmed, *J. B. Dadachanji*, *O. C. Mathur*, and *Ravindar Narain* for the Appellants.

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G. C. Mathur and *C.A. Lal* for the Respondent.

1962. May 3. The Judgment of the Court was delivered by

KAPUR, J.—The appellants are father and son carring on business in vegetable ghee at Aligarh. They along with Romesh, the second son of appellant Jagannath Prasad were prosecuted under s. 14 (d) of the U. P. Sales Tax Act, 1948 (U.P. 15 of 1948) hereinafter called the 'Act' and under s. 471 read with s. 468 and s. 417 of the Indian Penal Code. They were all acquitted of the charge under s. 468. Jagannath Prasad was convicted under ss. 471 and 417 of the Indian Penal Code and s. 14 (d) of the Act and was sentenced to two years' rigorous imprisonment under s. 471, to one years' rigorous imprisonment and a fine of Rs. 1,000/- under s. 417 and to a fine of Rs. 1,000 under s. 14 (d) of the Act. Bhagwan Das was convicted under s. 14 (d) of the Act and sentenced to a fine of Rs. 1, 000/—. Romesh was acquitted. The sentences passed on Jagannath Prasad were concurrent. Their appeal to the Sessions Judge was dismissed and in revision to the High Court Jagannath Prasad was acquitted of the offence under s. 417 of the Indian Penal Code but the other convictions and sentences were upheld. Against this judgment and order of the High Court of Allahabad the appellants have come to this court by special leave.

The facts leading to the appeal are these: In 1950-51, the firm of the appellants purchased vegetable ghee valued at about Rs. 3 lacs from places outside the State of U. P. in the name of four fictitious firm. The firm made its return for that year to the Sales Tax Officer Aligarh and did not include the sale proceeds of these transactions on the ground that they had purchased them from these four firms who were supposed to be carrying

on business in Hathras, Aligarh, and other places in U. P. By thus not including the proceeds of the sales of these transactions the firm evaded payment of sales tax for that year on those transactions. The return of sales tax made by the firm was accepted by the Sales Tax Officer with the consequence that the sale of goods covered by those transactions was not taxed. A complaint was made against the Sales Tax Officer in regard to these transactions; an enquiry was held with the result that the appellants and Romesh were prosecuted and convicted as above stated. In the High Court there was no controversy about the facts i. e. the finding of the courts below that the appellants' firm purchased vegetable ghee from outside U. P. and did not show the sale proceeds of the sale of those goods on the ground that they had been purchased from inside the State of U. P. when in reality they had been purchased from outside the State, that the statements made by the appellant Jagannath Prasad before the Sales Tax Officer were false and that the bills produced by him before the Sales Tax Officer were forged. The conviction was challenged on grounds of law alone.

Before us five points were raised: (1) that no sales tax was exigible on these transactions under s. 3A of the Act in 1950-51 and liability arose by the amendment of the Act in 1952 which gave retroactive operation to the section and became applicable to sales in dispute and therefore there could be no prosecution under an *ex post facto* amendment; (2) the trial of the appellants was illegal because of want of complaint by the Sales Tax Officer under s. 195 of the Criminal Procedure Code; (3) there was no offence under s. 14 (d) of the Act; (4) forged invoices were produced by appellant Jagannath Prasad because they were called for by the Sales Tax Officer and therefore it cannot be said that they were used by the appellant and (5) the Sales Tax Officer having accepted

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the invoices as genuine no prosecution could be entertained in regard to those invoices.

Now the appellants cannot be prosecuted on the basis of any amendment subsequent to the date of the alleged offence committed by them. Both parties are agreed on that and therefore we have to see the Act as it stood on the date when the offence is alleged to have been committed. According to the charge the offence was committed on or about July 16, 1951, when forged invoices produced by the appellants before the Sales Tax Officer. So what we have to see is the law as it stood on that day. Section 3 of the Act deals with liability to tax under the Act and s. 3A with single point taxation. Under s. 3 every dealer was required to pay on his turnover of each assessment year a tax at the rate of three pies a rupee. Thus the tax was payable in regard to all sales but under s. 3A (1) the tax was leviable only at a single point. That section provided.

> S. 3A (1) "Notwithstanding anything contained in section 3, the State Government may, by notification in the official Gazette, declare that the turnover in respect of any goods or class of goods shall not be liable to tax except at such single point in the series of sales by successive dealers as may be prescribed".

The Government could declare the tax to be payable at a single point but there were two requirements; there had to be a notification in the Official Gazette declaring the point at which the tax was payable and in the series of sales by successive dealers it had to be "as may be prescribed" i. e. as may be prescribed by rules. Section 3A was amended in 1952 with retrospective effect but retroactive provision is not applicable to the present proceedings. Under s. 3A a notification No. 1 (3) was issued on

June 8, 1948, declaring that the proceeds of sales of vegetable ghee imported from outside shall not be included in the turnover of the dealer other than the importer himself. The effect of the notification thus was that if a dealer imported vegetable ghee from outside U. P. and sold it he was required to include the sale proceeds in his turnover but the other dealers who bought vegetable ghee from the importer in U. P. and sold it were not so required. The appellants having thus imported the vegetable ghee from outside U. P. were required by the notification to include the proceeds in their turnover and it was to avoid this that they falsely produced forged invoices that they had purchased the vegetable ghee from those fictitious dealers within the State of U. P. and thus if the notification was an effective notification the appellants successfully evaded the payment of sales tax which under the law they were required to pay. But it was agreed that the notification was ineffective in view of the words "as may be prescribed" because that could only be done by rules and no rules had been made under s. 3A which made every dealer liable to sales tax if he was an importer from outside U. P. To this extent the contention of the appellants is well founded and therefore under s. 3A merely by notification the Government could not prescribe a single point taxation as was done by the notification but that does not help the appellants very much. Under s. 3 every dealer was liable to pay sales tax on every transaction and s. 3A only gave relief in regard to sales at every point and thus prevented multi-point taxation. If the notification under s. 3A was ineffective, as indeed it was, the appellants were required to pay tax on all their sales and in order to escape multi-point taxation they took advantage of an ineffective notification and tried the false plea of the goods having been imported by fictitious persons and their having purchased those goods from those

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fictitious dealers and in this manner the appellants escaped payment of sales tax under s. 3. In other words they tried to take advantage of s. 3A by producing false documents and thereby evaded payment of tax under s. 3 which every dealer was required to pay on his turnover. In trying to get the benefit under the ineffective notification issued under s. 3A the appellants evaded payment of tax under s. 3 which they were in any case liable to pay. It cannot be said therefore that no offence was committed under s. 14 (d) of the Act which provides:—

Section 14. "Offences and penalties.—Any person who—

(a) ....

(b) ....

(c) ....

(d) fraudulently evades the payment of any tax due under this Act,

shall, without prejudice to this liability under any other law for the time being in force, on conviction by a Magistrate of the first class, be liable to a fine which may extend to one thousand rupees, and where the breach is a continuing breach, to a further fine which may extend to fifty rupees for every day after the first during which the breach continues".

It is no defence to say that the appellants were asked by the Sales Tax Officer to produce invoices. The appellants were trying to get exclusion from their turnover of the sale of goods worth about 3 lacs and had made statements before the Sales Tax Officer in regard to it on July 9, 1951, and in order to prove that the goods

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were not required to be included in the turnover the invoices were produced by appellant Jagannath Prasad. When a fact has to be proved before a court or a tribunal and the court or the tribunal calls upon the person who is relying upon a fact to prove it by best evidence it can not be a defence as to the offence of forgery if that best evidence which, in this case, was the invoices turn out to be forged documents. A person who produced those documents cannot be heard to say that he was required to prove his case by the best evidence and because he was so required he produced forged documents.

It was then submitted that the Sales Tax Officer was a court within s. 195 of the Criminal Procedure Code and in the absence of a complaint in writing by such an officer no cognizance could be taken of any offence punishable under s. 471 of the Indian Penal Code. This, in our opinion, is an equally erroneous submission. The Sales Tax Officers are the instrumentalities of the State for collection of certain taxes. Under the Act and the Rules made thereunder certain officers are appointed as Sales Tax Officers who have certain duties assigned to them for the imposition and collection of taxes and in the process they have to perform many duties which are of a quasi-judicial nature and certain other duties which are administrative duties. Merely because certain instrumentalities of state employed for the purpose of taxation have, in the discharge of their duties, to perform certain quasi-judicial functions they are not converted into courts thereby. In a recent judgment of this Court in *Shrimati Ujjam Bai* v. *The State of U.P.* (1), all the opinions were unanimous on this point that taxing authorities are not courts even though they perform quasi-judicial functions. The following observation of Lord

(1) (1963) 1 S.C.R. 778.

Sankey L. C. in *Shell Co. of Australia Ltd.* v. *Federal Commissioner of Taxation* [1]was quoted with approval :—

> "The authorities are clear to show that there are tribunals with many of the trappings of a court which, nevertheless are not courts in the strict sense of exercising judicial power".

Lord Sankey also enumerated some negative propositions as to when a tribunal is not a court. At p. 297 his lordship said :—

> "In that connection it may be useful to enumerate some negative propositions on this subject : 1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision. 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide. 4. Nor because it gives decisions which affect the rights of subjects. 5. Nor because there is an appeal to a Court. 6. Nor because it is a body to which a matter is referred by another body. See *Rex* v. *Electricity Commissioners* (1924) 1 K.B. 171".

Hidayatullah J., in *Shrimati Ujjam Bhai*[2] case described Sales tax authorities thus :—

> "The taxing authorities are instrumentalities of the State. They are not a part of the legislature, nor are they a part of the judiciary. Their functions are the assessment and collection of taxes and in the process of assessing taxes, they follow a pattern of action which is considered Judicial. They are not thereby converted into Courts of Civil judicature. They still

(1) [1931] A.C. 275, 283. (2) (1963) 1 S.C.R. 778.

remain the instrumentalities of the State and are within the definition of "State" in Art. 12".

No doubt the Sales Tax Officers have certain powers which are similar to the powers exercised by courts but still they are not courts as understood in s. 195 of the Criminal Procedure Code. In sub-section 2 of s. 195 it is provided :—

S. 195(2) "In clauses (b) and (c) of sub-section (1) the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877".

It cannot be said that a Sales Tax Officer is a Revenue Court. Under s. 2(a) of the Act an assessing authority is defined to mean any person authorised by the State Government to make assessment under the Act and under R. 2(h) a Sales Tax Officer means :—

"Sales Tax Officer" means a Sales Tax Officer of a circle appointed by the State Government to perform the duties and exercise the powers of an assessing authority in such circle"

Thus under the Act a Sales Tax Officer is only an assessing authority. Under s. 7 of the Act, if the Sales Tax Officer, after making such enquiries as he thinks necessary, is satisfied that a return made is correct and complete, he shall assess the tax on the basis thereof and if no return is submitted he can make such enquiries as he considers necessary and then determine the turnover of a dealer. Thus his determination depends upon enquiries he may make and which he may consider necessary. Sections 9, 10 and 11 of the Act deal with Appeals, Revisions and Statement of the Case to the High Court. Under s. 13 power is given

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to a Sales Tax Officer to require the production of all accounts, documents and other information relating to business and accounts and registers shall be open to inspection of the Sales Tax Officer at all reasonable times. He has the power to enter any office, shop, godown, vehicle or any other place in which business is done which is a power destructive of the Sales Tax Officer being a Court which is a place where justice is administered as between the parties whether the parties are private persons or one of the parties is the State. Under s. 23 certain secrecy is attached to documents filed before the Sales Tax Officer and information received by him. Similarly under R. 43 certain power is given to the Sales Tax Officer to calculate turnover when goods are sold for consideration other than money and this is after such enquiry as he considers necessary. All these provisions show that the Sales Tax Officer cannot be equated with a Court. In our opinion therefore the Sales Tax Officer is not a Court. In *Krishna* v. *Goverdhansiah*(1), it was held that the Income Tax Officer is not a court within the meaning of s. 195 of the Criminal Procedure Code and this view was accepted by this court in *Shrimati Ujjam Bai's*(2) case. In *Brajnandan Sinha* v. *Jyoti Narain*(3), a Commissioner appointed under the Public Enquiries Act 1950 was held not to be a court. *Shell Co. of Australia* v. *Federal Commissioner of Taxation* (4) was referred to in that case. At p. 967 the following passage from Halsbury's Laws of England, Hailsham Edition, Vol. 8, p. 526 was approved :—

> "Many bodies are not courts, although they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness

(1) A.I.R. (1954) Mad. 822.
(2) (1963) 1 S.C.R. 778.
(3) (1955) 2 S.C.R. 955.
(4) (1931) A.C. 275, 283.

and impartiality, such as assessment committees, guardian committees, the Court of referee constituted under the Unemployment Insurance Acts to decide claims made on the Insurance funds, the benchers of the Inns of Courts when considering the conduct of one of their members, the General Medical Council when considering questions affecting the position of a medical man".

That passage is now contained in Vol. 9 of the 3rd Edition at p. 343.

But it was submitted that the Sales Tax Officer while acting as an assessing authority is a court within the meaning of s. 195 (2) of the Criminal Procedure Code because by the amendment of 1923 the definition of the word "court" was enlarged by substituting the word "includes" in place of the word "means" and the section now reads as has been set out above. Undoubtedly by this change the legislature did mean to make the definition of the word "court" wider but that does not enlarge the definition of the words "Revenue Court". The track of decision which was pressed on our attention is based primarily on a full bench judgment of the Bombay High Court in *In re Punemchand Maneklal*(1). In that case an Income-tax Collector was held to be a Revenue Court within the meaning of the word as used in s. 195. The learned Chief Justice who gave the judgment of the court proceeded on the basis that inquiries conducted according to the Forms of judicial procedure under Chapter IV of the Income-tax Act were proceedings in a Revenue Court. This was on the ground that under the law as it then stood revenue questions were generally removed from the cognizance of civil courts and the officers charged with the duty of deciding disputed question relating to revenue between an individual and the

(1) (1914) I.L.R. 38, Bom. 642.

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Government would be invested with the functions of a "Revenue Court". This view was followed by the Bombay High Court in *State* v. *Nemchand Pashvir Patel* (1). After referring to the various powers which were given to the Sales Tax Officers under the Bombay Sales Tax Act that Court proceeded to say that the Sales Tax Officers under the Bombay Sales Tax Act were Revenue Courts because they had jurisdiction to decide questions relating to revenue, are exclusively empowered with the powers which are normally attributes of a court or a tribunal land are authorised to adjudicate upon a disputed question of law or fact relating to the rights of the citizens. The Madras High Court in *In re R. Nataraja Iyer* held that a Divisional Officer hearing appeals under the Income tax Act was a court within the meaning of s. 476 of the Criminal Procedure Code but a Tehsildar who was the original assessing authority was not because there was no *lis* before him. There is one passage in the judgment of Sundara Ayyar J., which is of significance. It was said :—

> "I may observe that I am prepared to agree with Dr. Swaminathan that more authority to receive evidence would not make the officer recording it a Court"

At page 84, it was said that the determination of the assessment in the first instance may not be of a court although the assessing officer may have the power to record statements. But an appeal against the assessment is dealt with by the Collector in the manner in which an appeal is disposed of by a Civil Court. In this connection reference may be made to the statement of the law contained in the judgment of Venkatarama Ayyar J., in *Shri Virinder Kumar Satyawadi* v. *The State of Punjab* (2). There

(1) (19*6)7 S.C.R. 404. (2) (1955) 2 S.C.R. 1013, 1018.

the distinction between a quasi-judicial tribunal and a court was given as follows :—

> "It may be stated broadly that what distinguished a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court".

Dealing with quasi-judicial tribunals it was observed in *Gullapelli Negeswara Rao* v. *The State of Andhra Pradesh*(1) :—

> "The concept of a quasi-judicial act implies that the act is not wholly judicial, it describes only a duty cast on the executive body or authority to conform to the norms of judicial procedure in performing some act in the exercise of its executive power".

It is not necessary to refer to other cases because they were decided on their own facts and related to different tribunals. In our opinion a Sales Tax Officer is not a Court within the meaning of s. 195 of the Criminal Procedure Code and therefore it was not necessary for a Sales Tax Officer to

(1) (1959) Supp. I S.C.R. 319, 353-4.

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make a complaint and the proceedings without such a complaint are not without jurisdiotion.

In our opinion the appellants were rightly convicted and we therefore dismiss this appeal. The appellant Jagannath Prasad must surrender to his bail bonds.

Appeal dismissed.

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JIA LAL

v.

THE DELHI ADMINISTRATION

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Criminal Trial—Possession of unlicensed arms Sanction—Provision requiring sanction for prosecution in certain areas and not in other area—If discriminatory—Whether offending portion of provision can be removed and remaining portion allowed to stand—If invalidity of provision regarding sanction affects substantive provisions also—Indian Arms Act, 1878 (XI of 1878), ss. 19(1)(f), 29—Constitution of India, Art. 14.

Section 29 of the Indian Arms Act, 1878, provided that for prosecution for an offence under s. 19(f) of the Act committed in the territories north of the Jumna and Ganga no sanction was required but sanction was required for the prosecution if the offence was committed in other areas. J was found in possession of an unlicensed firearm in Delhi, and though sanction under s. 29 was necessary, he was tried and convicted without obtaining such sanction. B was found in possession of an unlicensed firearm in Saharanpur and as no sanction under s. 29 was necessary for his prosecution he was tried and convicted without obtaining any sanction. The respondents contended that s. 29 offended Art. 14 of the Constitution and was unconstitutional. J contended that even if s. 29 was invalid in its operation as regards territories to the North of the Jumna and Ganga it was not invalid in its