

**Pyarchand Keshrimal Porwal Private Limited Vs. Sales Tax Officer, Flying Squad and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Mar-05-1985

**Reported in :** [1986]61STC381(MP)

**Judge :** P.D. Mulye and ;R.K. Varma, JJ.

**Appeal No. :** Miscellaneous Petition No. 727 of 1983

**Appellant :** Pyarchand Keshrimal Porwal Private Limited

**Respondent :** Sales Tax Officer, Flying Squad and ors.

**Advocate for Def. :** S.R. Joshi, Government Adv.

**Advocate for Pet/Ap. :** G.M. Chaphekar, ; D.S. Kale and ; K.R. Mandovra, Advs.

**Disposition :** Petition allowed

**Judgement :**

P.D. Mulye, J.

1. The petitioner which is a private limited company has filed this petition under articles 226 and 227 of the Constitution of India in the matter of M.P. General Sales Tax Act, 1958, and the Rules framed thereunder.

2. According to the petitioner the company carries on business of manufacture and sale of bidi and has its manufacturing centres in the States of Bihar, Andhra Pradesh and Maharashtra. Initially this business was conducted by a partnership firm under the name and style of M/s. Pyarchand Keshrimal Porwal, which was constituted on or about Diwali, 1963. Later, when the petitioner-company was constituted, it took over the said business of the partnership firm from 20th February, 1978, and the said business since then is being conducted by the petitioner-company. The petitioner-company has no place of business in the State of Madhya Pradesh, and has appointed M/s. Bulldog Bidi Distributors & Company of Kampti as its selling agents for the State of M.P. by and under an agreement dated 3rd June, 1978.

3. Further according to the petitioner the company's selling agents secure orders from customers in Madhya Pradesh who in turn place orders to the petitioner. In pursuance of these orders goods are despatched by the petitioner from their manufacturing centres to the respective customers f. o. r. destination. The price of the goods is remitted to the petitioner by the customers under instructions of the petitioner's said commission agents by deposit in the petitioner's bank account. The

petitioner has an office at Mandsaur which does not deal with sale or purchase of goods, but looks after the monetary and business interests of the petitioner-company. Further, according to the petitioner, even during the time business was being carried on by the firm, M/s. Pyarchand Keshrimal Porwal, it had a similar office at Mandsaur which was registered as a dealer under the Act in the year 1960, but as the said office was not carrying on business of sale and purchase of bidis, and had no turnover, the registration was cancelled by order dated 31st December, 1968, as per annexure A and annexure A1. Since the petitioner was also not carrying on any business in Madhya Pradesh, it did not get itself registered as a dealer under the Act nor did it file any returns under the said Act. This position continued from the inception of the petitioner-company in the year 1978.

4. On 31st August, 1981, an Inspector of the Sales Tax Office, Circle I, Mandsaur, visited the petitioner's office at Mandsaur and after recording the A statement of its employee, respondent No. 4, namely, Assistant Sales Tax Officer, Circle I, Mandsaur, issued a notice dated 16th November, 1981, to the petitioner in form No. 24 for determining the liability of the petitioner to pay tax under the Act, as provided by Section 4-A(1) of the said Act. By the said notice the petitioner was called upon to remain present on 30th November, 1981, before respondent No. 4, Assistant Sales Tax Officer, Circle I, Mandsaur, with all books of account and other material as per annexure B.

5. While the said proceedings under Section 4-A(1) of the Act in connection with the determination of the liability of the petitioner to pay tax under the Act were pending before respondent No. 4, the Sales Tax Officer, Flying Squad, Mandsaur, respondent No. 1, which is established under Section 29-D of the Act, carried on a raid in the premises of the petitioner's said company office at Mandsaur and seized certain records. This was followed by notice dated 13th May, 1982, from the Assistant Sales Tax Officer, Flying Squad, Mandsaur, respondent No. 2, calling upon the petitioner to remain present with necessary records at the time of the scrutiny of the records seized (annexure C) and in the said proceedings, respondent No. 1, Sales Tax Officer, Flying Squad, submitted a report of the enquiry conducted by him to the Sales Tax Officer, Circle I, Mandsaur, on 30th September, 1982. This fact is not disputed by the respondents.

6. Thereafter, according to the petitioner, respondent No. 4, namely, Assistant Sales Tax Officer, Circle I, Mandsaur, issued a notice dated 19th October, 1982 (annexure D), calling upon the petitioner to furnish certain information in connection with the pending proceedings for determining the liability of the petitioner 'Under the Act. Accordingly the petitioner supplied the requisite information called for in the said notice and also produced all the books of account and other relevant material to show that the petitioner was not liable under the Act.

7. After examining the record produced by the petitioner and after hearing the petitioner, respondent No. 3, i.e., Sales Tax Officer, Circle I, Mandsaur, on 10th November, 1982, passed a detailed order holding that the sales effected by the petitioner were inter-State sales and that the petitioner's office at Mandsaur does not carry on any transaction of sale or purchase and that the petitioner is not liable as a dealer to pay any tax under the Act (annexure E).

8. However, respondent No. 1, Sales Tax Officer, Flying Squad, Mandsaur, by a notice dated 21st January, 1983, called upon the petitioner to appear before him on 31st

January, 1983, in connection with the determination of the liability of the petitioner under the Act as per annexure F. In response to the said notice the petitioner's representative appeared before respondent No. 1 and pointed out, amongst other things, that the question about the liability of the petitioner was already decided by respondent No. 3 vide his order dated 10th November, 1982 (annexure E). However, respondent No. 1, Sales Tax Officer, Flying Squad, Mandsaur, transferred the file to respondent No. 2, Assistant Sales Tax Officer, Flying Squad, Mandsaur, to determine the liability of the petitioner under the Act. The petitioner thereafter received notice dated 30th March, 1983 (annexure G), from respondent No. 2, Assistant Sales Tax Officer, Flying Squad, Mandsaur, calling upon the petitioner to submit certain information and documents showing cause why it should not be held liable to pay tax under the Act to which the petitioner gave a detailed reply. However, respondent No. 1, Sales Tax Officer, Flying Squad, Mandsaur, on 12th April, 1983, passed an order under Section 4-A(1) of the said Act (annexure H) in form 24-A stating that the petitioner is liable to pay tax under the Act. The said order further states that the erstwhile partnership firm Pyarchand Keshritnal Porwal was liable to pay tax from 13th May, 1977, and the petitioner-company is liable from 20th February, 1978.

9. Therefore, in this petition it is the grievance of the petitioner that the said order of respondent NO. 1 holding the petitioner liable for payment of tax under the Act is wholly illegal and without jurisdiction. The petitioner has, therefore, sought the relief of quashing the impugned order 'annexure H' dated 12th April, 1983, as also annexure I dated 18th July, 1983, issued in pursuance thereof passed by the Additional Assistant Commissioner of Sales Tax, Mandsaur, who is respondent No. 7.

10. In this petition the learned counsel for the petitioner raised the following points:

(1) It is only Sales Tax Officer, Circle I, Mandsaur, namely, respondent No. 3, who has the authority and the jurisdiction to issue such a notice and not by respondent No. 1, who is Sales Tax Officer, Flying Squad, Mandsaur, as according to the learned counsel for the petitioner the job of respondent No. 1, namely, Sales Tax Officer, Flying Squad, Mandsaur, is only to investigate and on the basis of the information or material obtained during investigation and submitted by him the only authority who has jurisdiction to determine the liability and assess the petitioner accordingly is respondent No. 3, Sales Tax Officer, Circle I, Mandsaur, or Assistant Sales Tax Officer, Circle I, Mandsaur.

(2) The question of liability of the petitioner having been already determined as per annexure E dated 10th November, 1982, by the Sales Tax Officer, Circle I, Mandsaur, namely, respondent No. 3, there is no question to reassess the petitioner on the basis of some material by respondent No. 1, namely, Sales Tax Officer, Flying Squad, Mandsaur, or respondent No. 2, Assistant Sales Tax Officer, Flying Squad, Mandsaur.

(3) Officers appointed to the flying squad can exercise only those powers under Section 29-D of the M.P. General Sales Tax Act regarding investigation only and they cannot determine the liability of a dealer unless such a power is delegated to them by the Commissioner, which is not the case here.

(4) The impugned order annexure H is not a speaking order, gives no reasons, violates principles of natural justice as hearing was done by respondent No. 2, namely, Assistant Sales Tax Officer, Flying Squad, Mandsaur, but the order was passed by respondent No. 1, Sales Tax Officer, Flying Squad, Mandsaur.

It is not necessary to deal with this point as the learned Government Advocate, in fairness, submitted that he was not in a position to controvert this fact.

11. According to the respondents, Section 4-A of the Act, proceedings for determination of liability to pay tax can always be initiated in respect of any preceding period up to five years. So far as the order dated 10th November, 1982 (annexure E), is concerned, the information and evidence then produced by the petitioner was held inadequate and insufficient to then fasten the liability on the petitioner. But on subsequent availability of additional requisite documents and evidence other than those enumerated in paragraph 13 of the order (annexure E) the final decision in respect of determining the liability to pay tax by the petitioner was taken afresh by respondent No. 1, namely, Sales Tax Officer, Flying Squad, Mandsaur, who was not barred nor restricted by any other provision under the said Act. Further according to the respondents no prejudice as such has been caused to the petitioner and that the powers to determine liability to pay tax as conferred by Section 4-A of the said Act is delegated to an officer with the previous approval of the Sales Tax Officer in accordance with the delegation order dated 25th August, 1976 (annexure R3). This delegation, which is in terms of Section 30 of the Act fully authorises and empowers the Assistant Sales Tax Officer to determine the liability to pay tax. Further, according to the respondents, officers of the flying squad are of the same category and cadre as any other officers of their rank or position appointed under Section 3 of the Act. They cannot be discriminated or differentiated merely because they are posted in the flying squads, where in addition to their all other usual functions and powers they also have power of speedy and expeditious investigations in cases of alleged or suspected tax evasions and that their additional powers under Section 29-D of the Act do not in any way hamper their functions in exercise of their usual ordinary powers which vests in them by virtue of other provisions of the Act. Further according to the respondents there is no provision under the Act putting the officers of the flying squad under Section 29-D to any disqualification or disability to exercise other functions. In short, a Sales Tax Officer, Flying Squad, appointed in an area or circle can exercise all the powers including that of determination of liability and assessment even though for that area or circle there is already a Sales Tax Officer or an Assistant Sales Tax Officer under that designation is appointed.

12. Further, according to the respondents, respondent No. 3, Sales Tax Officer, Circle I, Mandsaur, is restricted to the territorial jurisdiction of the area where the petitioner had their registered office, whereas the jurisdiction of respondents Nos. 1 and 2, namely, Sales Tax Officer, Flying Squad, Mandsaur, and Assistant Sales Tax Officer, Flying Squad, Mandsaur, by virtue of their additional powers under Section 29-D(2) of the Act is enlarged over the entire sub-division including the area where the petitioner has its office. Further, according to the respondents, order determining the liability does not mean assessment of liability, as the petitioner in pursuance of the order determining the liability can point out and raise all those objections which he has raised here, including that of jurisdiction and consequently no prejudice has been caused to the petitioner as such because assessment proceedings have not yet started, as they have to be started within a period of one year from 12th April, 1983, and have to be completed within a period of two years as provided under Section 18(6) and (8) of the said Act. Further, according to the respondents, Section 29-D is a machinery section to implement the main provisions of the Act relating to charging section and, therefore, the petitioner is not entitled to claim any relief as urged.

13. In order to appreciate the rival contentions it is necessary to look to the relevant

provisions of the M.P. General Sales Tax Act, 1958, and the Rules framed thereunder. Section 2(p) which defines 'Sales Tax Officer' means a Sales Tax Officer appointed under Section 3 and includes an Additional Sales Tax Officer. Section 3 deals with taxing authorities and other officers, wherein it is provided that:

There may be appointed a person to be the Commissioner of Sales Tax and the following category of officers to assist him, namely :-

which also include Sales Tax Officer or Additional Sales Tax Officer and Assistant Sales Tax Officer. Sub-section (3) of this section provides that :

The Commissioner of Sales Tax and the Additional Commissioner of Sales Tax shall exercise all the powers and perform all the duties conferred or imposed on the Commissioner by or under this Act, throughout the State and for this purpose any reference to the Commissioner in this Act shall be deemed to include a reference to the Additional Commissioner of Sales Tax.

Sub-section (4) of Section 3 provides that:

Other persons referred to in Sub-section (2) shall, within such areas as the appointing authority may, by general or special order specify, exercise such powers as may be conferred and perform such duties as may be imposed by or under this Act.

14. The State Government in exercise of the powers conferred by Section 51 of the M.P. General Sales Tax Act, 1958, has framed Rules known as the M.P. General Sales Tax Rules, 1959, of which Rule 3, which comes under 'Part II- Sales Tax Authorities' relates to appointments. Rule 2(b) defines 'appropriate Sales Tax Officer':

'appropriate Sales Tax Officer' in relation to any particular dealer meaning the Sales Tax Officer of the circle in which the dealer's place of business is situated, or if a dealer has more than one place of business in the State, the Sales Tax Officer of the circle in which his head office or principal place of business is situated.

Rule 2(c) defines 'assessing authority' which means :

the person to whom the Commissioner has delegated all or any of his powers of assessment and imposition of penalty or levy of fee under the Act.

Rule 2(d) defines 'circle' which means :

the area comprised within the local limits of the jurisdiction of a Sales Tax Officer as specified under Sub-section (3) of Section 3.

15. Section 29-D relating to the establishment of flying squads, which is quoted below, was inserted with effect from 19th January, 1976, vide Act No. 20 of 1976:

29-D. Establishment of flying squads.-(1) The State Government may establish flying squads for investigation into any case of alleged or suspected evasion of tax and the officers of flying squads shall exercise such powers as may be delegated to them by the Commissioner.

(2) Each flying squad shall exercise jurisdiction within such area as may be notified

by the Commissioner.

Section 30 which deals with' delegation of Commissioner's powers and duties, which was substituted with effect from 1st June, 1967, vide Act No. 23 of 1967 is as follows:

30. Delegation of Commissioner's powers and duties.-Subject to the provisions of this Act and to such restrictions and conditions, as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers and duties under this Act except those under Sub-section (2) of Section 46, to any person appointed under Section 3 to assist him :

Provided that power under Section 39 shall not be delegated to an officer below the rank of a Deputy Commissioner of Sales Tax.

By the M.P. General Sales Tax (Third Amendment) Act, 1983 (No. 35 of 1983), which received the assent of the Governor on 11th November, 1983, and published in M.P. Gazette (Extraordinary) dated 15th November, 1983, Sections 29, 29-D and 30 have also been amended. Now the amended Sub-section (1) of Section 29-D reads as follows :

The Commissioner may establish flying squads for investigation of any case of alleged or suspected evasion of tax. Each flying squad shall consist of a Flying Squad Officer who shall be an officer not below the rank of a Sales Tax Officer and such other officers specified in Section 3, as the Commissioner may appoint to assist him.

By amending Section 30, the following explanation has been added :

Explanation.-For the purpose of this section, 'any person appointed under Section 3, to assist him' shall include Flying Squad Officer referred to in Sub-section (1) of Section 29-D and officers appointed to assist him under the said sub-section.

16. The learned counsel for the petitioner, therefore, submitted that according to Section 29-D there is no restriction placed on the State Government while establishing flying squads to include therein only officers belonging to the Sales Tax Department as such as the main duty of flying squads is of investigation into any case of alleged or suspected evasion of tax and the officers of the flying squad can exercise only such powers as may be delegated to them by the Commissioner. He, therefore, submitted that when respondent No. 3 is already appointed as Sales Tax Officer, Circle I, Mandsaur, and respondent No. 4, Assistant Sales Tax Officer, Circle I, Mandsaur, to determine the liability of the petitioner and assess him accordingly, respondents No. 1 and No. 2, namely, Sales Tax Officer, Flying Squad, Mandsaur, and Assistant Sales Tax Officer, Sales Tax Flying Squad, Mandsaur, have no jurisdiction to determine the liability of the petitioner as they have not been delegated the powers of Sales Tax Officer or Assistant Sales Tax Officer, Circle I, Mandsaur. Therefore, their jurisdiction being limited to investigation only, they can only submit their report before the Sales Tax Officer of Circle No. I, Mandsaur, who alone on that basis is competent to determine the liability of the petitioner.

17. Section 18 of the Act deals with assessment of tax and Section 19 deals with assessment of turnover escaping assessment and Section 20 deals with exclusion of time in assessment proceedings. Sub-section (2) of Section 20 provides that :

In computing the period of limitation prescribed for assessment or reassessment, as the case may be, under Section 18 or Section 18-A or Section 19, the time during which any assessment or reassessment proceedings remained stayed under the order of any civil or other competent court, or under special or general order of the Commissioner issued under Section 42-A shall be excluded.

18. Section 4-A regarding determination of liability to pay tax under this Act, which is reproduced below, was inserted with effect from 25th August, 1973, vide amending Act No. 35 of 1973 :

4-A. Determination of liability to pay tax under this Act.-(1) For the purpose of determining liability of a dealer to pay tax under this Act, the Commissioner shall institute proceeding in such manner as may be prescribed and such liability shall be determined within a period of twelve months from the date of institution of such proceedings, and

(2) Notwithstanding anything contained in Sub-section (2) of Section 4, liability of a dealer to pay tax under this Act, shall not be determined from a date earlier than five years-

(i) from the date of institution of proceedings under Sub-section (1); or

(ii) from the date of validity of the registration certificate issued to him, whichever is earlier.

19. Rule 68 of the M.P. General Sales Tax Rules, 1959, deals with delegation of Commissioner's powers. Accordingly the Commissioner has delegated the powers under Section 4-A to determine liability to pay tax to the Assistant Sales Tax Officer with the previous approval of the Sales Tax Officer as per annexure R3 dated 25th August, 1976, a bare reading of which would indicate that this power was delegated only to the Assistant Sales Tax Officer with the previous permission of the Sales Tax Officer. Therefore, apparently this power was not delegated to the Sales Tax Officer. Realising this difficulty, annexure R3 has been amended by an order dated 23rd April, 1984, by which this power has been delegated to the Sales Tax Officer from that date.

20. The learned counsel for the petitioner, therefore, submitted that considering the scheme of the Sales Tax Act, all other officers below the rank of Additional Sales Tax Commissioner have to assist the Commissioner of Sales Tax; that according to Section 29-D the officers of the flying squad can exercise only those powers which are delegated to them by the Commissioner. But simply because they are appointed to the flying squad does not give them jurisdiction to exercise the powers of a Sales Tax Officer of a particular circle or area unless and until in addition to their appointment to the flying squad they are also appointed Sales Tax Officers for a particular circle or area and it is in such circumstances only that they acquire jurisdiction to determine the liability. The learned counsel, therefore, submitted that in a circle depending upon the volume of work, more than one Sales Tax Officer could be appointed and then it is for them inter se to decide which cases should be heard and decided by either of them. He, therefore, submitted that in the present case the Sales Tax Officer, Flying Squad, had no jurisdiction to determine the liability of the petitioner in absence of jurisdiction especially when the Sales Tax Officer, Circle I, Mandsaur, by his order annexure E had already decided about the liability of the petitioner, which could not be twice-over reopened by another officer of the flying squad.

21. The learned counsel for the petitioner, after referring to the provisions of Rule 62-A of the M.P. General Sales Tax Rules, 1969, which deals with notice under Sub-section (1) of Section 4-A of the Act, submitted that this rule only speaks about intimation, but even then there should have been a separate order giving reasons on the basis of which the liability of the petitioner was determined by respondent No. 1. He, therefore, submitted that the Sales Tax Officer, Circle I, Mandsaur, on the basis of annexure D having passed the order annexure E, on the same material, respondent No. 1 had no jurisdiction to reopen the same.

22. The learned counsel for the petitioner further submitted that the respondents have not placed any material on record to indicate that respondent No. 1 was also appointed as Sales Tax Officer, Circle I, Mandsaur, in addition to his duties as an officer of the flying squad, even though his jurisdiction as a member of the flying squad might be much more covering a larger area apart from Mandsaur. According to the learned counsel unless and until respondent No. 1 was also appointed and empowered to work as Sales Tax Officer, Circle I, Mandsaur, the impugned order passed by him (annexure H) and the subsequent order (annexure I) being without jurisdiction deserve to be quashed and set aside and in support of his submissions he placed reliance on the decisions reported in *Sunderdas Contractor, Raipur v. Commissioner of Sales Tax 1971 J LJ 80*, *Commissioner of Sales Tax v. Sarjoo Prasad Ram Kumar [1976] 37 STC 533 (SC)*, *Commissioner, Sales Tax, U.P., Lucknow v. Mittal Radios, Rottrkee [1975] 36 STC 29*, *Commissioner of Sales Tax v. Hansraj Vishram Ravani [1978] 42 STC 149* and *Sri Balaji Rice Company v. Commercial Tax Officer, No. 1, Nettore [1984] 55 STC 292*.

23. In the decision reported in *Sunderdas Contractor, Raipur v. Commissioner of Sales Tax 1971 J LJ 80* the State had transferred Shri R.N. Mishra, who was then officiating Sales Tax Officer, Flying Squad, Raipur, to the post of officiating Additional Sales Tax Officer, Raipur Circle 2, and it is in these circumstances the question arose, which of the two Sales Tax Officers had the jurisdiction in the circle and it has, therefore, been held that when a Sales Tax Officer is posted to a circle already demarcated, it necessarily implies that the State Government has also specified the area within the circle as the area within which the officer so posted is to exercise jurisdiction. There is nothing in the Act to indicate that there can be only one Sales Tax Officer in a circle. If there is one Sales Tax Officer and another Additional Sales Tax Officer posted in the same circle, both have jurisdiction over the circle. In the present case admittedly respondent No. 1 was appointed by the State Government as Sales Tax Officer, Flying Squad, but no appointment order appointing respondent No. 1 as Sales Tax Officer, Circle I, Mandsaur, has been placed on record. Therefore, it cannot be held by implication that he being the Sales Tax Officer, Flying Squad, automatically acquires jurisdiction to determine the liability of the petitioner. He cannot assume jurisdiction unless it is specifically conferred upon him. No doubt he is a Sales Tax Officer, but if he is appointed as Sales Tax Officer, Flying Squad, he cannot, unless appointed and empowered to act as a Sales Tax Officer or an Additional Sales Tax Officer for a particular circle, determine the liability of the petitioner. Therefore, this authority helps the case of the petitioner. The same principle has been laid down in the other decisions on which the learned counsel for the petitioner has placed reliance.

24. The learned counsel for the petitioner, after referring to the wording of Section 29-D of the Act and relying on it, submitted that the flying squad is empowered only to investigate and the word 'investigation' means in the context the process of

collection of evidence or the gathering of material as has been observed in the decision reported in *Liberty Oil Mills v. Union of India* AIR 1984 SC 1271.

25. The learned counsel for the petitioner after referring to the provisions of Sections 16, 17 and 18 of the Act and also relying on Rule 15 of the Rules submitted that Rule 2(b) defines 'appropriate Sales Tax Officer' referred to above. He, therefore, submitted that even on that basis the Assistant Sales Tax Officer, Flying Squad, namely, respondent No. 2, had no jurisdiction to pass the impugned order.

26. On the other hand the learned counsel for the respondents submitted that at present only sales tax liability is determined and assessment proceedings have not yet started. Therefore, the petitioner cannot make a grievance at this stage. The petition is, therefore, premature. The learned counsel for the respondents after taking us through the relevant provisions of the Sales Tax Act, including the provisions of Section 37 and Section 39 thereof, submitted that Section 4 is the charging section and Section 29-D is a machinery section, which deals mainly with the procedure and, therefore, the petitioner cannot thwart the proceedings initiated against him through such a petition. He also submitted that the Sales Tax Officer, Flying Squad, Mandsaur, or the Assistant Sales Tax Officer, Flying Squad, Mandsaur, namely, respondents Nos. 1 and 2, have got concurrent jurisdiction with respondents Nos. 3 and 4 and consequently even though there may not be a separate order of appointment as such, the officer being the investigating officer, has also got the authority to determine the liability of the petitioner on the basis of the information and material received by him or brought to his notice. He further submitted that the flying squad was established by the Government on 1st July, 1977. He also submitted that even in the absence of the flying squad, the Sales Tax Officer had under the Act the power to raid the premises of the dealer, search and seize the account books in relation to the sales tax liability and, therefore, by introducing Section 29-D in the Act it had only enlarged the scope and authority of the flying squad as due to the pressure of work the officer posted in a circle may not find sufficient time to devote in such cases of alleged or suspected evasion of tax. Therefore, the members of the flying squad are additional help to the Sales Tax Officer appointed to a circle and consequently they too have the jurisdiction to determine the liability of the dealer, and in support of his submissions the learned counsel for the respondents placed reliance on the decisions reported in *Balusu Anandu v. Special Commercial Tax Officer, Kakinada* [1968] 21 STC424 and *Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota* [1981] 48 STC 466 (SC) wherein it has been held that it is settled law that a distinction has to be made by courts while interpreting the provisions of a taxing statute between charging provisions which impose the charge to tax and machinery provisions which provide the machinery for the quantification of the tax and the levying and collection of the tax so imposed. The courts are expected to construe the machinery sections in such a manner that a charge to tax is not defeated. It is the duty of the court while interpreting the machinery provisions of a taxing statute to give effect to its manifest purpose having a full view of it. Wherever the intention to impose liability is clear the courts ought to have no hesitation in giving a common sense interpretation to the machinery sections so that the charge does not fail. The principle enunciated in this decision is not disputed. But the question involved in the present case is about the jurisdiction of respondent No. 1 and respondent No. 2, who admittedly are appointed as Sales Tax Officer, Flying Squad, and Assistant Sales Tax Officer, Flying Squad, Mandsaur, and not as Sales Tax Officer, Circle I, Mandsaur, or as Assistant Sales Tax Officer, Circle I, Mandsaur. If there is no jurisdiction or there is lack of jurisdiction in a particular officer, question of operation

of the machinery provision does not arise.

27. Thus, after the hearing the learned counsel and after going through the relevant provisions of law and the rules as also the case law cited, besides the notifications issued by the Commissioner of Sales Tax even after annexure R3 referred to above, it would appear that the Sales Tax Officer, Flying Squad, or the Assistant Sales Tax Officer, Flying Squad, is appointed only to investigate so long as their appointment continues in the flying squad. There is no doubt that originally he is a Sales Tax Officer, but when such a Sales Tax Officer, is appointed as Sales Tax Officer, Flying Squad, or an Assistant Sales Tax Officer is appointed as an Assistant Sales Tax Officer, Flying Squad, his jurisdiction is limited to that of only investigation and unless and until such an officer is appointed or transferred as Sales Tax Officer or Assistant Sales Tax Officer to a particular circle or as an Additional Sales Tax Officer or Additional Assistant Sales Tax Officer to that circle, he does not acquire jurisdiction to determine the liability of the petitioner, which is a part and parcel of the assessment proceedings.

28. That apart, Sub-section (1) of Section 29-D gives power to the State Government to establish flying squads for investigation into any case of alleged or suspected evasion of tax and the officers of flying squads shall exercise such powers as may be delegated to them by the Commissioner. Therefore, it is necessary for the Commissioner of Sales Tax to delegate the necessary powers to the members of the flying squad. Similarly Sub-section (2) empowers the Commissioner to the effect that each flying squad shall exercise jurisdiction within such area as may be notified by the Commissioner. Therefore, it is clear that jurisdiction of each flying squad has to be notified by the Commissioner. Each flying squad may contain more than one officer and their jurisdiction may also extend to more than one area depending upon the nature of work in a particular area which may consist of more than one circle. But the powers have to be delegated by the Commissioner. In the present case it would appear that powers of Section 4-A were delegated only to the Assistant Sales Tax Officer with the previous approval of the Sales Tax Officer as per annexure R3, but no such powers were delegated to the Sales Tax Officer as such, as is clear from the subsequent amendment made in annexure R3 dated 23rd April, 1984, by the Commissioner, according to which the Sales Tax Officer has been delegated the powers exercised by him under Section 30 of the said Act. Therefore, at the relevant time, in the present case, no Sales Tax Officer had any such jurisdiction with the result that even on that ground the impugned order annexure H cannot be sustained. The Sales Tax Officer, Flying Squad, or Assistant Sales Tax Officer, Flying Squad, in our opinion, does not have the implied authority to act as Sales Tax Officer or Assistant Sales Tax Officer in a particular circle unless he is so appointed or powers are delegated to him to that effect while working with the flying squad. To elucidate this point further a District Judge, who is appointed as the Registrar or Additional Registrar of the High Court, during his tenure on that post cannot exercise the powers of a District Judge even though his substantive post is that of a District Judge.

29. In the result this petition succeeds and is allowed with no order as to costs. The impugned orders annexure H and annexure I are quashed and set aside. The amount of security deposit, on verification, be returned to the petitioner.