

(1962) 04 CAL CK 0016
In the Calcutta High Court
Case No : Civil Revn. Case No. 2211 of 1960

Durgasree Stores

APPELLANT

Vs

Board of Revenue, West Bengal and Another

RESPONDENT

Date of Decision : 17-04-1962

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 21, 5(2)
Constitution of India, 1950 — Article 227

Citation : AIR 1963 Cal 409 : 67 CWN 179 : (1964) 15 STC 186

Hon'ble Judges : P.N. Mookerjee, J; Amaresh Roy, J

Bench : Division Bench

Advocate : Alak Gupta, Amiya Kumar Chatterjee and Atindra Kumar Mitter, for the Appellant; K.C. Mukherjee, for the Respondent

Judgement

1. This Rule was issued under Article 227 of the Constitution by (against ?) Shri N. Roy Choudhury, Additional Member, Board of Revenue, West Bengal, rejecting the revisional application of the present petitioner in the matter of assessment of tax under Bengal Finance (Sales Tax) Act, 1941.

2. The petitioner is a partnership firm, engaged in the business of wholesale distributor of stationery and toilet goods, provisions and other allied products. The firm was registered as a "dealer" under the Bengal Finance (Sales Tax) Act, 1941, and Registration Certificate bearing No. C. S. I/2193A, was issued to the petitioner firm.

3. In course of its business, the petitioner firm claims to have sold goods to various parties, many of whom were also "Registered dealers" under the Bengal Finance (Sales Tax) Act, 1941. During the assessment proceeding for the year 1954-55 u/s 11 of the above Bengal Finance (Sales Tax) Act, 1941, the petitioner firm submitted a return, showing the gross turn-over for the period of four quarters, ended 31st March, 1955, at Rs. 15,62,840-5-6 p. and the corresponding Trading Profit and Loss Account was also produced, showing the sales at the same figure. The Commercial Tax Officer verified the sales with the

cash memos and found them to agree.

4. In the above return, submitted by the petitioner (Assesses) firm, exemption was claimed first u/s 5(2)(a)(i) of the aforesaid Act, that is, for sale of goods, declared tax-free u/s 6, for an amount of Rs. 84,248-1-6 ps. That part of the claim was wholly allowed by the assessing officer. The assessee firm also claimed exemption, u/s 5(2)(a)(ii), for sales to "registered dealers", for Rs. 14,78,594-4 as. In respect of this part of the claim of exemption, the assessing officer allowed exemption only to the extent of Rs. 21,073-3 as- but he disallowed the claim in respect of Rs. 14,57,521/-. He found that the sales had apparently been made to "registered dealers" but the reason for his disallowing exemption in respect of Rs. 14,57,521/- was that the said officer was, suspicious about the "genuineness and integrity" of the relative transactions, which were comparatively heavy. The purchasing dealers in those transactions are said to have left the business and the Registration Certificate of each of those dealers has since been cancelled. For these reasons, the Commercial Tax Officer found the very nature of the said transactions to be suspicious and held that they "were fraudulently shown with a view to avoiding payment of tax. This assessment was made by an order, dated 5th December, 1956.

5. Against the above order of assessment, the petitioner firm preferred an appeal before the Assistant Commissioner of Commercial Taxes, Calcutta (Central), & the said appellate officer held that the Commercial Tax Officer had disallowed the claim on presumption and suspicion but, in none of the cases in question, the Registration Certificate has been cancelled by any notification, as required by law, at the relevant time. In respect of eight items, however, this appellate officer found the requisite statutory declarations to be defective inasmuch as, in these eight declarations, the purpose of purchase had not been specified, as required under Rule 27 of the Bengal Sales Tax Rules. The total amount of transaction in respect of these eight items comes to Rs. 5,12,430-4 as. and he (the appellate officer) disallowed the claim for exemption in respect of that amount u/s 5(2)(a)(ii). The order of the Commercial Tax Officer was modified accordingly by order, dated 6th May, 1957. Thereafter, however, the Additional Commissioner of Commercial Taxes, West Bengal, by his order, dated 5th August, 1957, in Revision Case No. 195 of 1957-58, disallowed the exemption of claim for a further amount of Rs. 48,178/-, representing sales to Messrs. Narayan Bastralaya, on the ground that the said amount had been left out by a clerical error and had been overlooked by the Assistant Commissioner but he allowed deduction in respect of a sale to Saha Stores for an amount of Rs. 33,937-2 as, which had been disallowed by the Assistant Commissioner. The order of the Additional Commissioner brought the total amount of exemption, disallowed under the above head, to Rs. 5,26,667-2 as. Against the above order, the petitioner firm moved the Board of Revenue, State of West Bengal, by way of Revision u/s 20(3) of the West Bengal Finance (Sales Tax) Act, 1941. and that Revision petition was registered in the Board as Case No. 305 of 1957 and it was heard and rejected by Shri N. Roy Choudhury, Additional Member, Board of

Revenue, by his order, dated 30th March, 1960, where he found inter alia, as follows:

"The declaration forms show that by and large individual transactions were of heavy amounts. The sales are all said to be in cash, purchases by them being also in cash. It is argued that the defects in respect of the 9 Declaration forms are of a technical nature. One of the most curious circumstances is that the registration certificates of all 30 purchasing dealers except one were cancelled; in some cases within months, in some cases within a year and one or two cases within two years of the sale transactions evidenced by them. If, in these circumstances, the authorities below have rejected 9 declaration forms, I do not see any reason why I should Interfere."

6. Against this order of the Board of Revenue, the assessee firm moved, this Court under Article 227 of the Constitution of India and obtained the present Rule.

7. Mr. Alak Gupta, appearing on behalf of the petitioner firm has attacked before us the correctness and propriety of the order of the learned Additional Member, Board of Revenue, mainly on the ground that the Board of Revenue, in disposing of the above Revisional application, did not advert to the record, which shows that the reason of the Commercial Tax Officer, that the very nature of the transactions was suspicious, had not been accepted by either the Assistant Commissioner of Commercial Taxes or, the Additional Commissioner of Commercial Taxes, who allowed the claim in respect of 21 transactions out of 30 items but disallowed the claim only in respect of 9 (8 + 1) transactions and the only reason which weighed with the authorities for disallowing the claim in respect of these nine items was that the purpose of the purchase had not been specified in the relative statutory declarations in these nine cases. The Board of Revenue did not at all apply its mind to that reason of the Assistant Commissioner and the Additional Commissioner of Commercial Taxes, or to the contentions of the assessee firm against the same. But the Board proceeded only upon suspicion, that is, the reason for disallowance, which weighed with the Commercial Tax Officer but which was rejected by the Assistant Commissioner and the Additional Commissioner of Commercial Taxes. In this connection, Mr. Gupta has drawn our attention to the fact that the order of the Assistant Commissioner was not challenged by the department. According to Mr. Gupta, the learned Additional Member, Board of Revenue, *ias*, in the circumstances, acted in excess of his jurisdiction and with gross impropriety and his order is liable to be set aside by this Court in the exercise of its power of superintendence under Article 227 of the Constitution. According to Mr. Gupta, further, the error, he is complaining against, has been caused by violation of canons of natural justice, in so far as the tribunal concerned has been influenced by bias, arising from the fact that Registration Certificates of the purchasing dealers had since been cancelled. Those cancellations, however, were made long after the impugned transactions of purchase from the assessee firm so that, so argued Mr.

Gupta, that fact could have no bearing or relevancy whatsoever in relation to the petitioner's claim for exemption u/s 5(2)(a)(ii) of the Act. According to Mr. Gupta, again, the error is apparent on the face of the record, as the impugned order appears to be arbitrary and it does not disclose any relevant reason for rejecting the petitioner's revisional application u/s 20(3) of the Act and it is not possible to ascertain on what legal ground the said rejection is based. Another error also, according to Mr. Gupta, is apparent on the face of the record, namely, that the tribunal below failed to appreciate that, if the sales in question were not genuine transactions, these could not be considered in determining the gross turn-over for the purpose of assessment of tax under the Act. Mr. Gupta also referred to three cases before the Board of Revenue, namely,--

(1) Case No- 22 of 1951 (Shriniwas Jiwanram v. State of West Bengal),

(2) Case No. 268 of 1957 (Royal Stores Supply v. State of West Bengal), and (3) Case No. 1 of 1954 (P. L. Mukherjee and Sons v. State of West Bengal), where the Board of Revenue had held that a seller could not be responsible for the movement of the purchasing dealer and also that defects in declaration forms, similar to those in question in the present case, were immaterial and of no consequence and attacked the order of the Board of Revenue in the present case as having violated canons of natural justice and also basic principles in the matter of exercise of jurisdiction in disregarding its own precedents and procedure. In support of his contention that such defects as above bring the present case within the scope of Article 227 of the Constitution of India, Mr. Gupta relied on Two decisions of the Supreme Court, namely, (1) the case of D.N. Banerji Vs. P.R. Mukherjee and Others, , and (2) the case of Waryam Singh and Another Vs. Amarnath and Another, .

8. Mr. Mukherjee, appearing on behalf of the opposite parties before us, has contended that the present application under Article 227 of the Constitution is not maintainable because the grounds, mentioned by Mr. Gupta, for impugning the order in question, are not sufficient to bring the case within the ambit of that Article of the Constitution. He contested Mr. Gupta's argument about lack of reason or violation of any rule of natural justice because, according to him, the reason for disallowance was the violation of the statutory rules, particularly Rule 27-A of the Bengal Sales Tax Rules, read with Rules 6 and 7, and the relevant forms, prescribed by or under the said Rules. In support of this contention, Mr. Mukherjee relied on the decisions of the Supreme Court, reported in Union of India (UOI) Vs. T.R. Varma, , Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , Phulbari Tea Estate Vs. Its Workmen, , Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, , Satyanarayan Laxminarayan v. Mallikarjun Bhavanappa. Mr. Mukherjee's second submission was that Article 227 of the Constitution could not be availed of by the petitioners, as the Act itself, with which we are here concerned, contains within it a complete remedy, in or u/s 21 thereof. Mr. Mukherjee further contended that there was no error, apparent on

the face of the record, because the decision of the tribunals below was based on an interpretation of certain sections of the Act, which led them to -hold that the particular Declaration Forms had not been "duly filled up" because all the alternative entries, regarding purpose of purchase, printed in the said forms, had been retained without striking out any. According to Mr. Mukherjee, therefore, there was no error, apparent on the face of the record, to bring the case within Article 227 of the Constitution and he relied on the decisions of the Supreme Court, reported in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , and Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, in support of his above contention. Mr. Mukherjee also contended that the impugned order was based on inferences from facts, available to the Tribunals below from the departmental file, and, according to Mr. Mukherjee, such decision was not revisable in the exercise o[the powers of this Court under Article 227 of the Constitution. For this branch of his submission, Mr. Mukherjee relied on the case of Kapur Brothers Vs. Commercial Tax Officer and Another, , as an authority.

9. The contention of Mr. Mukherjee regarding the limits of the scope of Article 227 has to be examined before we proceed to consider Mr. Gupta's submissions on the merits. It may perhaps be conceded, for purposes of this case, that the jurisdiction of this Court under Article 227 of the Constitution will not be exercised for correction of mere errors of law or fact of the Tribunals below and that the powers under Article 227 are to be exercised only to keep the subordinate Tribunals within the bounds of their authority or jurisdiction. As a corollary, it may perhaps also be conceded that even an error of law would not attract the power of superintendence under Article 227 of the Constitution unless such error has been on a jurisdictional point. What is jurisdictional error or error on a jurisdictional point we shall presently consider so far as it is necessary for our present purpose, but we deem it pertinent to note here that, even on the highest authority Vide Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, --to cite the latest Supreme Court case on the point--the Article may be attracted, in appropriate cases, to correct errors, other than purely jurisdictional errors, where such errors are apparent on the face of the record. Numerous, indeed, are the judicial decisions on the above Article and, on those authorities, it may now be taken to be firmly settled that the scope of Article 227 of the Constitution of India is at least as wide as that of old Section 107 of the Government of India Act, 1915 Vide Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, .

10. It was pointed out by Chief Justice Harries in the case of Abdul Rahim Naskar Vs. Abdul Jabbar Naskar and Others, as also in the case of Bimala Prosad Ray and Another Vs. State of West Bengal, that, on the High Court's power of superintendence, Section 107 of the Government of India Act, 1915, which had been curtailed by Section 224 of the Government of India Act, 1935, has been restored in full by Article 227 of the Constitution of India. The extent and limits of this power of superintendence was broadly defined in a judgment, delivered by

Rankin C. J.. in the case of Manmatha Nath Biswas Vs. Emperor, , thus:

"The general superintendence which this Court has over all jurisdictions subject to appeal, is a duty to keep them within the bounds of their authority, to see that they do what this duty requires and that they do it in a legal manner.

* * * * * Defects of jurisdiction, fraud on the part of prosecutor and error on the face of the proceedings are all good grounds"

for exercise of the above power of superintendence. This jurisdiction has been held to include judicial as well as administrative superintendence in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , and, as already noticed, it will extend to cases of jurisdictional error as also errors, apparent on the face of the record Vide Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, . The case of Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another, does not, to say the least, lay down anything to the contrary. No doubt, in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , there are some observations, not wholly reconcilable with the above view but, in view of the later Supreme Court decision Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, those observations have lost much of their force. In our view, then, if the decision of a Tribunal can be shown to be arbitrary and devoid of reason or erroneous on the face of it, or to be based on an error on a jurisdictional point then, by the exercise of the power of superintendence under Article 227 of the Constitution, this Court can and should revise the said decision.

11. What is a jurisdictional error has been the subject of illuminating judicial decisions. In this case, however, we need concern ourselves with only one aspect of that matter and it is enough for us to refer in this connection to the decision of the Privy Council in the case of AIR 1949 239 (Privy Council) , where Sir John Beaumont, delivering the judgment of the Board, observed inter alia as follows:

"although error in a decision of a Subordinate Court does not by itself involve that the subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under Subsection (c). nevertheless if the erroneous decision results in the subordinate Court exercising a jurisdiction, not vested in it by law or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b) and Subsection (c) can be ignored."

12. If, therefore, an error, be it an error of fact or of law, is such that the erroneous decision has resulted in the subordinate Court or tribunal exercising jurisdiction, not vested in it by law, or in its having failed to exercise jurisdiction, vested in it by law, that will come within the scope of Section 115 of the CPC or, for the matter of that, of Article 227 of the Constitution, as the case may be. This error may have resulted from a violation of rules of natural justice, by taking into consideration matters which are extraneous and irrelevant, or by substituting judicial consideration by bias, based on suspicion, arising from those

extraneous matters or from any other cause whatsoever but if it has affected the assumption or exercise of jurisdiction, as envisaged above, it will be a jurisdictional error for purposes of the above Article.

13. We shall first examine the present case to see whether any jurisdictional error, as above, has been committed by the tribunal concerned, that is, the Board of Revenue

14. The error, complained of by Mr. Gupta, is omission to deduct sales to a "registered dealer*" from the gross turn-over, to ascertain the taxable turn-over u/s 5(2)(a)(ii). Only by such deduction, can the taxable turn-over be, ascertained for levying the tax u/s 4 of the Act. If, by error in this respect, the Tribunal has omitted to deduct what Section 5(2)(a)(ii) enjoins it to deduct, then the tribunal has failed to grant deduction, to which the assessee is entitled, and the tax has been levied on an amount, which the tribunal has no jurisdiction to tax. In other words, by reason of such error, the tribunal has assumed jurisdiction to levy tax on deductible or non-taxable amount and has failed to exercise jurisdiction to grant deduction or exemption, enjoined by law. It follows, then, that, if there has been an error by the Tribunal of the nature, contended for by Mr. Gupta, it is on a jurisdictional point and, on the authority of the decisions, above referred to, it clearly comes within the purview of Article 227 of the Constitution and makes the decision of the tribunal amenable to the powers of Revisional Superintendence of this Court under that Article.

15. On the merits, Mr. Gupta has pointed out that the impugned transactions were sales to "Registered dealers", who, at the date of the particular transaction, held Registration Certificates, issued by the department. This is admitted on all hands. But the deductions have been disallowed for the reason that, sometime later, these Registration Certificates were cancelled by the department. This cancellation of the Registration Certificates, however, cannot have retrospective effect so as to affect the legality or validity of the above transactions of sale of earlier dates. The reason that impelled the Commercial Tax Officer to disallow the deductions was that he found the very nature of the transactions in question to be suspicious as the transactions had been entered in the books as having been made on cash. Against this order of the Commercial Tax Officer, there was an appeal to the Assistant Commissioner of Commercial Taxes, and he, in his order, did not accept the Commercial Tax Officer's above reason because the latter had not discussed any evidence in support of his suspicion. The Assistant Commissioner, therefore, upheld the disallowance only in respect of those items, in which he found that the Declaration Forms were defective, in so far as the purpose of purchase had not been specified and/or date had not been given below the signature of the declarant. The items, so disallowed, were originally 8 in number but the Additional Commissioner, in revision, added another item on the same ground, which had been dropped by the Assistant Commissioner in his summing up through inadvertence or clerical error. The learned Additional Member of the Board of Revenue, however, while dealing with these 9 items, has

not at all dealt with the reason of alleged defect in the Declaration Forms but has based his decision only on the reason of suspicion, which weighed with the Commercial Tax Officer but which was rejected or overruled by the Assistant Commissioner in appeal. As a matter of fact, the learned Additional Member of the Board of Revenue has based his order, now under challenge herein, mainly upon the following observations:

"One of the most curious circumstances is that registration certificates of all 30 purchasing dealers except one were cancelled; in some cases within a few months, in some cases within a year and one or two cases within two years of the sale transactions evidenced by them. If, in these circumstances, the authorities below have rejected 9 declaration forms I do not see any reason why I should interfere. The petition is rejected."

16. This decision of the Board of Revenue, Mr. Gupta has argued, has also been arbitrary in view of three decisions of the Board, one of which was by the Additional Member of the Board of Revenue himself, in which similar circumstances have been held to be of no consequence in the matter of allowing deduction u/s 5(2)(a)(ii) of the Act and, further, that it is in violation of canons of natural justice, because it proceeds upon a reason which was rejected by the appellate authority, the Assistant Commissioner and also by the Additional Commissioner, against which no objection was or could be taken by the Department.

17. On behalf of the opposite parties, Mr. Mukherjee has not relied on the reason of suspicious nature of the transactions but he has sought to justify the order of the Board of Revenue by relying on the reason that the Declaration Forms were defective as was held by the Assistant Commissioner of Commercial Taxes. Regarding these defects, Mr. Mukherjee has contended that the relevant Form XXIV, prescribed under Rule 27A of the Bengal Sales Tax Rules, requires the purpose of the purchase to be entered in it, where that form provides the following entry:

"are for * resale use in manufacture of goods for sale use in the execution of contracts Packing of goods for resales." and a foot-note in that form says "strike out whichever is not applicable".

18. In the Form IIA and IIB, which are the forms of certificates for registration of the dealer, the relevant portion reads as follows:

"the business is

wholly

mainly

partly

partly

partly

Sales of the following goods to this dealer will be free of tax-

(a) for purposes of manufacture, (b) for resale." A foot-note in this form says, in respect of the portion quoted above,--

t "Enter here whether business is wholly agriculture, horticulture, mining, manufacturing, wholesale or retail distribution, contracting or catering, or a combination of any two or more."

Mr. Mukherjee has argued, by reference to the above forms, that, in the Declaration Forms in question, the purpose of the purchase had to be specified by striking out whichever was not applicable and he has produced before us the Declaration Forms, which were used in the transactions, involved in the present case, to show that, in none of those, any of the four alternatives has been struck out. Mr. Mukherjee, accordingly, contends that the said Declaration Forms did not comply with the requirement of Rule 27A. The other defect, which weighed with the Assistant Commissioner of Commercial Taxes and which was relied on by Mr. Mukherjee before us, was that, in the relevant form (No. XXIV), used in the instant cases, at the right hand bottom, below "signature and status of the person signing the declaration", the date had not been mentioned. This second point of alleged defect, urged by Mr. Mukherjee, can at once be disposed of by pointing out that, while, in the forms, which were actually used in these transactions, there is an entry for date printed, yet we find that the form, actually prescribed in Bengal Sales Tax Rules, 1941, and printed in the Government publication, corrected up to 1st September, 1956, at page 50, does not contain any entry for date below or under "signature". Inclusion of entry for date in the forms supplied is, therefore, unauthorised. Accordingly, omission of the date under the signature cannot be considered a defect or non-compliance with any provision of the Act or the Rules. It is curious how, in the printed forms, which were issued by the Department for use by the dealers, this additional entry about date could come to be included, thereby deviating from the form, prescribed under the Act. Mr. Mukherjee could not explain this discrepancy or divergence.

19. Regarding the first defect, said to have been brought about by the non-striking out of any of the four alternatives, mentioned in the printed form (No. XXIV) as purpose of the purchase, it appears that the connected Forms Nos. IIA and I1B (the Registration Certificates) themselves contemplate that the purpose of the purchase may well be either the purpose of manufacture or resale or any of the several alternatives, mentioned in the foot-note of those forms, either "wholly" or "mainly" or "partly". If the Certificate of Registration of any particular registered dealer would include those multiple purposes, then, in the Declaration Form, all the alternatives, taken together, may very well be the purpose of purchase and none of the entries in Form No. XXIV would require to be scored out. In the present case, there is nothing to show that the Certificates

of Registration of the dealers, to whom the goods in question were sold, did not include those multiple purposes. Besides, in view of the contents and structures of the several forms (No. IIA, IIB and XXIV), it seems to us that the mere non-striking out of the alternatives would not, in any sense, be a fatal defect

20. Therefore, the mere fact that none of the four entries above mentioned in Form XXIV has been scored through does not, by itself, show that the Declaration Form used was defective. Yet that is the only reason which weighed with the Assistant Commissioner of Commercial Taxes in disallowing the deduction in respect of nine items of transactions, totalling Rs. 5,26,667-2 as. We have already mentioned that the Additional Member of the Board of Revenue has not at all considered this aspect of the matter and has proceeded on mere suspicion, which is hardly consistent with a judicial or even a quasi-judicial approach. The error, therefore, which the tribunals below have committed is not an error on a mere question of fact or law but an error, touching and concerning jurisdiction. By committing such error, the said tribunals have failed to exercise jurisdiction to grant deduction u/s 5(2)(a)(ii), to which the assessee was entitled, and they have assumed jurisdiction to disallow deduction u/s 5(2)(a)(ii), which jurisdiction they would not have but for such an error; in any view, the error has vitiated the said tribunals' exercise of jurisdiction in the matter. Thus it is a jurisdictional error and Mr. Mukherjee's submission that the order of the tribunal below is based only on an inference from facts or on a mere error of law, not affecting jurisdiction, cannot be accepted. This disposes of the main contentions, raised by Mr. Mukherjee.

21. The only other contention which the learned counsel raised was that, u/s 21 of the Act, the assessee had an alternative remedy. That section provides for an application by the assessee to the Board to refer any question of law, arising out of an order, and such an application can be made only by paying a fee of one hundred rupees (Rs. 100/-) under Sub-section (1) and the payment of the amount of tax cannot be stayed pending the disposal of such application in view of Sub-section (7) of that section. The right, thereby given, is, there fore, in no sense a remedy, alternative to the remedy that Article 227 of the Constitution provides and, even apart from that, Section 21 is not a specified or convenient remedy so as to disentitle the petitioner from seeking relief by invoking the jurisdiction of this Court under Article 227.

22. There can be no doubt, also, that, if our above view is correct, there has been grave failure of justice in the instant case before the Tribunal below.

23. In the circumstances, this Rule should succeed but, before we conclude, we would express our views on one other submission of Mr. Gupta which also, as we shall presently see, is of considerable force and merits acceptance.

24. In this last-quoted submission, Mr. Gupta contended that the Board of Revenue having held in several cases that circumstances, similar to those, relied on by Tribunals below on the instant occasion, are of no consequence, they acted

arbitrarily in refusing the deduction, claimed in the present case u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941. There is considerable force in this submission of Mr. Gupta. Even apart from the question whether the doctrine of precedents would apply in full vigour to Tribunals of the nature of Board of Revenue, it is certainly a consideration of natural justice that the authorities in the sphere of taxation cannot hold the citizen to their whims and caprices in matters, concerning essential practices of trade and business, allowing deductions u/s 5(2)(a)(ii) in some cases and disallowing such deductions in some others, although the circumstances, appertaining to both the categories, were exactly similar. In the matter of operation of the Bengal Finance (Sales Tax) Act, the Board of Revenue is, ordinarily, the honest authority and decisions of that Tribunal are binding on the taxing authorities. It is only just and fair that the citizen who has taken his guidance from the earlier decisions of the Board shall not be allowed to be prejudiced or victimised by sudden and unreasoned reversal of the view point of that highest authority.

25. In the above connection. Mr. Gupta relied on a decision of our learned brother P. B. Mukharji, J., in the case of *Mercantile Express Co. Ltd. Vs. Assistant Collector of Customs and Others*, , where his Lordship held that such change of mind, varying from case to case, "will lead to utter confusion in the very basis and principle of taxation and grave uncertainty of business and the most unfair discrimination of taxes". The grave reason behind the above observations of P. B. Mukharji, J. has full application to the facts of the present case.

26. We, accordingly, hold that the Board of Revenue acted arbitrarily and in violation of natural justice by not adhering to their own precedents in administering this taxing statute when there was no reason or circumstance to justify any change of mind of that Tribunal. On that ground, also the order of the Additional Member, Board of Revenue, is liable to be set aside and the prayer of the petitioner for deduction u/s 5(2)(a)(ii) in respect of the disputed 9 items of transactions totalling Rs. 5,26,667-2 as, should be allowed.

27. In the premises, we make this Rule absolute, set aside the orders, disallowing the deductions u/s 5(2)(a)(u) of the Bengal Finance (Sales Tax) Act, 1941, and direct that, in ascertaining the taxable turn-over of the petitioner firm for the period in question, the amounts of those transactions be deducted from the gross turn-over and the tax u/s 4 of the Act be calculated and levied on that footing on the amount, which remains after such further deduction.

28. In the circumstances of this case, we do not make any order as to costs in this Rule.