
(1967) 11 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petitions No's. 420, 443, 446 to 450 and 453 to 458 of 1967

Hiralal Chhaganlal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-11-1967

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226, 245
Rajasthan Sales Tax Act, 1954 — Section 16A, 21, 22, 22(1), 22(2)
Rajasthan Sales Tax Rules, 1955 — Rule 15, 25, 29

Citation : AIR 1968 Raj 188

Hon'ble Judges : D.S. Dave, C.J; Kan Singh, J

Bench : Division Bench

Advocate : A.K. Sen, C.B. Agarwal, along with Uma Mehta, C.L. Agarwal, R.C. Kasliwal, D.P. Gupta and N.M. Ranka, for the Appellant; C.K. Daphtary, Attorney General of India along with K. Baldeva Mehta and M.M. Vyas, A.A.G., for the Respondent

Judgement

Kan Singh, J.—The thirteen writ petitions before us which were heard together raise a common question about the constitutional validity of Section 22 of the Rajasthan Sales Tax Act, 1954, hereinafter to be referred as the "Act". The petitioners seek appropriate writ, directions and orders against the respondents calling upon them to return to the petitioners all the account books, documents and Roods said to have been seized from them as also to restrain the respondents from taking any further action against the petitioners for forfeiting the goods or from starting enquiries and investigations against the petitioners on the basis of the books of accounts and documents seized from them. It will be convenient to recount the relevant facts pleaded with reference to writ petition No. 420 of 1967 by Messrs. Hiralal Chhaganlal because the events had taken place at their premises.

2. Petitioner Messrs. Hiralal Chhaganlal is a partnership firm having its place of business at Jaipur at Motisingh Bhomiyon-ka- rasta Petitioner deals in the purchase, sale, import and export of precious and semi-precious stones Jaipur

City has been a centre of the trade in precious stones and jewellery since hoary past. It is said that this trade is carried on through the agency of commission agents and brokers. The brokers collect precious stones from their constituents who may be interested in marketing their stock of precious stones. The brokers contact the prospective purchasers and after negotiations sales are effected and the brokers get their brokerage. Jaipur City attracts traders from outside including foreigners According to the petitioner, foreign traders establish contacts with the traders at Jaipur through the agency of their Indian traders or commission agents at places like Bombay. The intermediaries introduce the foreign trader to any local trader at Jaipur who, in his turn, asks the brokers or other traders to come in contact with the foreign trader and then they settle their deal. When the deal goes through, the several intermediaries get their commission or brokerage. It is stated that precious stones, in the nature of things, do not have any fixed price and the prices thereof vary according to the cut and luster of a particular piece.

Till 1-11-65 precious stones were exempt from the payment of any tax under the Act, but from 2-11-65 sales-tax was imposed on the sale of precious stones. Such tax was leviable on the last point in the series of sales of precious stones in Rajasthan. A trader from Milan Mr. Joseph Yadgar along with his companions had visited Jaipur for the purchase of precious stones and on 28-7-67 Mr. Yadgar and his companions came to the petitioner's premises at about 3.00 p. m. The events which are the subject-matter of the present proceedings begin from here. At about 3.30 p. m. on that day when Mr. Joseph Yadgar and his companions were sitting at the petitioner's business premises 11 brokers had come with packets of precious stones for showing the same to Mr. Yadgar for negotiating sales thereof on terms acceptable to both sides. According to the petitioner, the brokers had brought stocks of other local dealers at Jaipur. At about 3.30 p. m. when Mr. Yadgar and the brokers were having their trade talks a huge party of officers of the Commercial Taxes Department headed by respondent No. 3 Shri Surendra Sharma, Special Officer (Anti-Evasion); Commercial Taxes Department raided the shop of the petitioner The raid party is said to have closed the main gate of the house in which the business premises were situate and then they contemptuously treated Mr. Yadgar by insinuating that "all Jews were smugglers and that he was one of them." Shri Surendra Sharma then questioned Shri Dulichand Tak, one of the partners of the petitioner's firm and they are alleged to have abused, threatened and bullied the dealers, brokers and visitors from outside. They recorded something by way of their statements and also forced them to sign the same.

Shri Sharma and his party then took possession of the packets of precious stones which the brokers had in their pockets and prepared an incomplete and defective inventory of such goods. The raiding party then seized the stock of precious stones with the petitioner firm. Thereafter they placed the seized goods including the goods of the brokers in an almirah and having locked the almirah they took away the keys thereof though after putting seals on the almirah. According to the

petitioner, these goods were worth million of rupees. Respondents Nos. 3 and 4 are further alleged to have prepared a "supardnama" in respect of the goods of the brokers which were shown to have been entrusted to Shri Dulichand and the latter was forced to sign the same. Petitioner submits that no goods whatsoever belonging to the brokers were ever handed over to Dulichand. The raiding party was then alleged to have seized all the books, files and loose papers lying in the premises of the petitioner. These books were also put in a room.

Respondent No. 3 then started recording the statement of the petitioner which process continued for almost 8 hours till 11.30 p.m. The petitioner's grievance is that during this long interval they or the brokers were not allowed to leave or even to contact anybody by phone or otherwise and were subjected to great hardship and harassment and had to go even without their meals. The raiding party left at 11.30 p.m., but it returned at about 11.00 a.m. on the following day, that is, 29-7-67. This time they started preparing an inventory of the goods lying in one room, but they could not complete it and, therefore, locked the room and left at 6.00 p.m. The party then returned at 11.30 a.m. on 30-7-67 and prepared a seizure memo of the books, files, loose papers and documents seized by them. The total number of files and account books is stated to have been 202 and also there was one extra file containing 97 loose papers. After preparing the memo the respondents Nos. 3 and 4 had taken away the books, documents and files. Nothing was heard by the petitioners from the respondents till 9-8-67 when the notice Ex-2 was received calling upon the petitioner to appear before one Shri Badri Prasad, Commercial Taxes Officer, Circle-B, Jaipur City "for examination of books of accounts and verification of goods therewith found at (your) business premises on 28-7-67".

Thereafter the petitioner-firm made repeated requests to the respondents for the return of the goods and the account books, but without any result. Then on 16-8-67 Shri Dulichand, the partner of the petitioner firm, had come to Jodhpur for consulting his lawyers and during his absence a notice was affixed at the premises calling upon him to be present before the Commercial Taxes Officer on 17-8-67 for further proceedings. The petitioner's grievance is that this notice was issued during Shri Dulichand's absence and moreover the purpose mentioned in the notice was too vague. The petitioner firm then gave notices to the respondents through their lawyers for the return of the goods as well as the account books, files and documents, but without any success and consequently the present writ petition was lodged in this Court on 21-8-67.

3. Petitioner contends that the search of the petitioner's premises conducted by the raiding party as also the seizure of the goods, account books, files and other documents was illegal. The petitioner's case further is that the respondents were animated by malice and their sole purpose was to humiliate and defame the petitioner in the public eye. In challenging the action of the respondents the petitioner further contends that the provisions of Section 22 of the Act under which the respondents claim to have acted was ultra vires the Constitution.

According to them, this Section violated Articles 19(1)(f) and (G) of the Constitution in that no provision has been made therein for obtaining a search warrant before a search is to be conducted by the Officers of the Commercial Taxes Department and no safeguards whatsoever have been provided as laid down u/s 165 of the Code of Criminal Procedure for taking a search of the premises. According to the petitioner, the provisions regarding search of premises and seizure of account books, files and other documents were most arbitrary and could result in complete destruction of a dealer's business

It is further submitted that Section 22 of the Act was bad also for the reason that it could be used to seize accounts, registers and the other documents as may not be relevant for the evasion of any payment of tax under the Act. Further the officer is authorised to retain the books and other documents as long as he thought necessary and under the garb of this power the officer could retain the account books and other documents indefinitely and this may completely paralyse the business of a dealer. Then as regards Sub-section (6) of Section 22 of the Act, it is contended that the provision regarding the confiscation of the goods was beyond the legislative competence of the State Legislature and the Section was also repugnant to the scheme of the Act inasmuch as the tax was sought to be levied before the goods came to be sold. In other words, the action is sought to be taken before the accrual of any liability to tax and at a time when there could conceivably be no evasion of any tax in respect of the goods sought to be confiscated. Reliance is placed on a recent judgment of the Supreme Court which I will have occasion to refer in the course of the discussion by which, according to the petitioners, analogous provisions of the Madras General Sales Tax Act were struck down.

Then it is contended that there was non-compliance of the provisions of Section 22 itself assuming that it was valid. It is submitted that the officer seizing the account books and other documents had no valid reasons for seizing the same and he did not record any reasons in writing for suspecting that the petitioner was attempting to evade payment of any tax under the Act. Then it is contended that till now not a single case was instituted against the petitioner firm that it had not paid any sales tax in respect of any transaction and the respondents were retaining the account books, files and other documents without any rhyme or reason.

4. D. B. Civil Writ Petition No. 443 of 1967 is by Messrs Kirti Jewellers They are also a firm carrying on business in the sale and purchase of precious and semiprecious stones and their place of business is located in the same premises as that of Messrs. Hiralal Chhaganlal. In this writ petition the facts narrated in the writ petition of Messrs. Hiralal Chhaganlal as to how Mr. Joseph Yadgar and his companions had come there for the purchase of precious stones, how other dealers had collected and how the premises were raided are repeated. Then it is stated that the raiding party had indiscriminately started the search of the premises of the petitioner's firm as well. They seized all the account books,

documents and other papers which were lying in the said premises. These account books, documents and other papers were taken away by the respondents after they prepared an inventory thereof. It was also alleged that the respondents Nos. 3 to 5 had seized all the precious stones belonging to the petitioners as also to other dealers which had been placed with them by such other dealers. These goods were placed in an almirah in the premises of Messrs. Hiralal Chhaganlal and the respondents Nos. 3 to 5 locked the almirah put seals thereon and took away the key of the lock. The difference between the two cases lies in the number and nature of the documents seized as also in the quantum of goods. The documents seized from petitioners were detailed In seizure memo Ex-1 prepared on 28-7-67. The grounds of attack are the same as in the case of Messrs Hiralal Chhaganlal.

5. In the remaining writ petitions the petitioners claim to be merely brokers and according to them, they are not dealers. Their case is that there was no question of seizing any account books or other documents from them, but the stock of precious stones that they carried in their pockets was seized by the respondents at the time of raid on 28-7-67. They challenge the vires of Section 22 of the Act on the grounds taken by Messrs. Hiralal Chhaganlal and in placing reliance on the Supreme Court case they strenuously contend that Sub-section (6) of Section 22 of the Act under which the respondents purport to have acted is unconstitutional and, therefore, they submit that they are entitled to have their goods back forthwith.

6. The writ petitions have been opposed by the respondents. The respondents admit that respondents Nos. 3 and 4 accompanied by certain other officers and inspectors of the Commercial Taxes Department visited the premises of Messrs Hiralal Chhaganlal on 28-7-67 as alleged, but they deny that these officers closed the main-gate of the house in which the premises were situate or that they had treated Mr. Joseph Yadgar or anybody else contemptuously. They deny that any derogatory remarks were made against Mr. Yadgar as alleged by the petitioners. Their case is that respondent No. 3 sought information from Shri Dulichand, regarding his business and particularly the business that was being transacted at that time. According to the respondents, the oral information given by Shri Dulichand was put down in writing by respondent No. 3 and Shri Dulichand signed such writing in token of its correctness. The respondents proceed to say that other dealers were similarly asked to give information about their business and they gave such information They denied all the allegations about giving of threats of any kind or using bullying tactics. According to them whatever information was furnished by the petitioners was so furnished voluntarily without any hesitation. They deny that they took possession of any precious stones from the so-called Dalals (brokers) or to have otherwise seized such goods. Nor do the respondents admit to have seized any goods belonging to Messrs Hiralal Chhaganlal or Messrs. Kirti Jewellers till 20-8-67. They submit that respondent No. 3 wanted only to verify the contents of the several packets, the facts narrated by the petitioners and as it had got late and the petitioners were

feeling uneasy the Dalals themselves proposed that the process of examination and verification be postponed to the following day and according to the respondents, to facilitate this process the so called Dalals offered to place their packets of precious stones in a steel almirah belonging to Shri Dulichand Tak and consequently as a voluntary arrangement the packets were so placed in the almirah of Shri Dulichand Tak. The respondents, however, admitted that they had formally seized the goods of Messrs. Hiralal Chhaganlal on 21-8-67 in exercise of the powers under Sub-section (6) of Section 22 of the Act. As regards the goods of Messrs. Kirti Jewellers they stated that seizure could not be made on 21-8-67 on account of disturbances alleged to have been created by friends of the petitioners and thereafter due to stay order from this Court on the present writ petition.

7. As regards the books of accounts, files and other documents seized either from Messrs. Hiralal Chhaganlal or Messrs. Kirti Jewellers the respondents' stand is that as on the basis of the information obtained by the respondents the officer concerned has reason to suspect that the dealers were attempting to evade the payment of tax, the necessary account books, files and other documents were seized. According to the respondents, these reasons were contained in an order-sheet dated 30-7-67 Annexure-3 in the case of Messrs Hiralal Chhaganlal and order-sheet dated 28-7-67 Annexure R/3 in the case of Messrs Kirti Jewellers. This, according to the respondents, complied with the provisions of the statute. The seizure of documents was necessary, according to the respondents, for the purpose of their proper examination with a view to find out the extent of evasion of tax. The respondents deny that the provisions of Section 22 of the Act were unconstitutional for the reasons set forth by the petitioners. They contend that the Supreme Court case relied on by the petitioners was distinguishable as the relevant Section of the Madras General Sales Tax Act was not in pari materia with Sub-section (6) of Section 22 of the Act.

8. The petitioners submitted a rejoinder and strenuously urged that Annexure R/3 in one case and Annexure 3 in the other were fabricated subsequently sometime after this Court decided the Civil Writ Petn. No. 1407 of 1966 -- Nathulal Fatehpuria Vs. State of Rajasthan and Others, At any rate, according to the petitioners, these order-sheets did not square with the language of the seizure memos prepared by the concerned officers at the time of seizure of the account books, files and other documents. The respondents pointed out certain circumstances for showing that the order-sheets were not genuine and I will have occasion to refer to the circumstances relied on in the course of this Judgment. The respondents sought permission to reply to the rejoinder as they felt that unfounded allegations were levelled against them. I will be dealing with the additional reply of the respondents at the appropriate place in my judgment.

9. Two main questions fall for our consideration:

(1) Whether the provisions of Section 22 of the Act were ultra vires the Constitution on any of the grounds set forth by the petitioners?

(2) Whether the concerned officers had complied with provisions of Section 22 of the Act in making a search or seizure of the goods or account books, files and other documents?

The first question relating to the vires will be sub-divided into convenient subheads in the course of the discussion,

10. Now, in considering the first question I have at the very outset to examine as to what points can be said to have been concluded by the Judgment of their Lordships in *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, as also the Division Bench case of this Court-- *Civil Writ Petn. No. 1407 of 1966*, decided on 22-8-1967 = *Nathulal Fatehpuria Vs. State of Rajasthan and Others*, to which I was a party. For appreciating the importance of this Supreme Court Judgment vis-a-vis Section 22 of the Act, I may reproduce Section 41 of the Madras General Sales Tax Act in juxtaposition with Section 22 of the Rajasthan Sales Tax Act. 1954 :--

RAJASTHAN ACT

MADRAS ACT

Sec. 22. Power of entry, inspection of records and seizure of books of accounts of dealer :--

Sec. 41. Power of entry, inspection of records and seizure of books of accounts of dealer:--

(1)--An assessing authority or any person authorised by the Commissioner in this behalf may, for the purposes of this Act, require any dealer to produce before him the accounts, registers and other documents, and to furnish any other information relating to his business.

(1) Any Officer empowered by the Government in this behalf may, for the purpose of this Act, require any dealer to produce before him the accounts, registers, records and other documents and to furnish any other information relating to his business.

(2)--All accounts, registers, and other documents, pertaining to the business of a dealer, the goods in his possession and his office, shop, godown, factory, vessel or vehicle or any other place in which business is done or accounts are kept shall be open to inspection and examination of any such authority or person at all reasonable times.

(2) All accounts, registers, records and other documents maintained by a dealer in the course of his business, the goods in his possession and his office, shops, godowns, vessels or vehicles shall be open to inspection at all reasonable times by such officer. Provided that no residential accommodation (not being a place of business-cum-residence) shall be entered in-

to and searched by such officers except on the authority of a search warrant

issued by a Magistrate having jurisdiction over the area, and all searches under this sub-section shall so far as may be made in accordance with the provisions of the Code of Criminal Procedure, 1898 (Central Act V of 1898).

(3)--If any such authority or person has reason to suspect that any dealer is attempting to evade payment of any tax or other dues under this Act. he may, for reasons to be recorded in writing, seize such accounts, registers or other documents or other documents of the dealer as he may consider necessary; and shall give the dealer a receipt for the same. The accounts, registers and documents so seized shall be retained by such officer only for so long as may be necessary for their examination or for any inquiry or proceedings under this Act or for a prosecution

(3) If any such officer has reason to suspect that any dealer is attempting to evade the payment of any tax, fee or other amount due from him under this Act he may for reasons to be recorded in writing seize such accounts, registers, records, or other documents of the dealer as he may consider necessary and shall give the dealer a receipt for the same. The accounts, registers, records and documents so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

Provided that the accounts, registers and documents so seized shall not be retained by such officer beyond a period of 3 months from the date of seizure or, in case they were seized before the coming into force of this proviso, beyond a period of 3 months from the date of its coming into force, without the written order of the Commissioner for reasons to be recorded in writing.

Provided that such accounts, registers and documents shall not be retained for more than thirty days at a time except with the permission of the next higher authority.

Provided further that before returning the accounts, registers and documents, such officer may require undertaking that the accounts, registers and documents shall be presented whenever required by any competent authority for any proceedings under this Act and that such undertaking shall be supported by a security in such form as may be prescribed for a sum not exceeding Rs. 5,000/-

(4)--For the purposes of sub-section (2) or sub-sec. (3) any such authority or person shall have power to enter and search at all reasonable times, any office, shop, godown, vessels, vehicle and any other place of business or any building or place where any such authority or person has reason to believe that the dealer keeps or is, for the time being, keeping any goods, accounts, registers or other documents pertaining to his business.

(5)--The powers conferred by subsection (4) shall include the power to break open any box or receptacle in which any goods, accounts, registers or documents of the dealer may be contained, or to break open the door of any premises where any such goods, accounts, registers or documents may be kept.

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises if he is present therein fails or refuses to open the door on being called upon to do so.

(6) Any such authority or person shall have power to seize and confiscate any goods which are found in any office, shop, godown, vehicle, vessel or any other place of business or any building or place of a dealer, but not accounted for by the dealer in his accounts, registers, and other documents maintained in the course of his business.

(4) Any such officer shall have power to seize and confiscate any office, shop, godown, vessel, vehicle or any other place of business or any building or place of the dealer, but not accounted for by the dealer in his accounts, registers, records and other documents maintained in the course of his business;

Provided that before taking action for the confiscation of goods under this subsection, such authority or person shall give the person affected an opportunity of being heard and make an inquiry in the prescribed manner:

Provided that before ordering the confiscation of goods under this sub-section the officer shall give the person affected an opportunity of being heard and make an inquiry in the prescribed manner:

Provided further that such authority or person shall give to the dealer an option to pay in lieu of confiscation such amount, not exceeding four times the tax which would be due on such goods as may be determined by such authority or person.

(7)--Any such authority or person may require any person?

(a) Who transports or holds in custody, for delivery to on behalf of any dealer, any goods, to give any information likely to be in his possession in respect of such goods or to permit inspection thereof, as the case may be;

(b) who maintains or has in his possession any accounts, books or documents relating to the business of a dealer; to produce such accounts, books or documents for inspection

Provided further that the officer ordering the confiscation shall give the person affected option to pay in lieu of confiscation:

(a) In cases where the goods are taxable under this Act, in addition to the tax recoverable, a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater; and

(b) in other cases, a sum of money not exceeding one thousand rupees.

Explanation--It shall be open to the Government to empower different classes of officers for the purposes of taking action under sub-sections (1), (2) and (3).

11. In the Madras case officers of the Commercial Tax Department had raided the

premises of a company known as Zenith Lamps and Electricals Limited. The Officers searched the premises and removed a suitcase containing certain papers belonging to one of the Managing Directors of the Company. The contention raised in that case before the High Court was that on a proper construction of Section 41 of the Madras General Sales Tax Act, the Officers of the department had no authority to search the premises and seize either the account books or the goods found therein. In the second place it was urged that Sub-section (4) of Section 41 was beyond the legislative competence of the State Legislature. Lastly it was urged that provisions of Sections 41 were unconstitutional in view of Article 19(1)(f) and (g) of the Constitution. The High Court of Madras held that Section 41(2) of the Madras Act allowed only inspection and did not authorise the making of a search and according to the learned Judges, search was a thing different altogether from an inspection.

As regards Sub-section (4), the High Court held that the provisions thereof were beyond the legislative competence of the State Legislature. Lastly, the High Court held that the provisions of Sub-sections (2), (3) and (4) were unconstitutional as they were unreasonable restrictions on the fundamental rights guaranteed under Article 19(1)(f) and (g) of the Constitution. In the appeal before the Supreme Court by the Commissioner of Commercial Taxes the above three questions were raised. Their Lordships made a survey of the various provisions of the Madras General Sales Tax Act and observed, regarding Sub-section (1) of the Madras Act that presumably only the officers of the department could act under the provision and it was not disputed that the powers under Sub-section (1) have to be exercised for the purpose of the Act, that is, with reference to assessment proceedings at all stages including recovery of tax and prosecution for offences. It was also not disputed that the power under subsection (1) could only be exercised to require a dealer to produce accounts etc., relating to his business only. As regards the interpretation of Sub-section (2) of Section 41 of the Madras Act, their Lordships held that although the term "inspect" may not include search as such but when the provision was for the inspection of the dealer's offices, shops, godowns, vessels or vehicles, it could be inferred from the other two powers conferred by that Sub-section that the power of search was included therein. Their Lordships, therefore, concluded that Sub-section (2) empowered the officer to take a search of the premises and they consequently overruled the view taken by the High Court.

Then their Lordships took into consideration the proviso to Sub-section (2) and held that the power of search was contained in Sub-section (2) of the Section. Their Lordships also held that Sub-section (2) of Section 41 of the Madras Act was within the legislative competence of the State Legislature as these provisions were ancillary to the power of the State Legislature to levy and recover sales-tax as contained in Item 54, List II of the Seventh Schedule of the Constitution. As regards Sub-section (4) regarding confiscation, their Lordships, however, did not express any opinion whether the power to confiscate goods which are recovered as a result of a search was ancillary power necessary for the purpose of stopping

evasion of tax. Then their Lordships held that though Sub-section (2) itself did not provide any safeguard and it might have been open to objection on that ground. Proviso to that Sub-section provided for ample safeguards inasmuch as the search was to be conducted in the manner laid down by Section 165 of the Code of Criminal Procedure in so far as may be. Then their Lordships considered Sub-section (3) of the Act and held that the same was not violative of Article 19 of the Constitution. Their Lordships observed as follows :--

"Next we come to sub-sec. (3), which as we have already stated, is complementary to Sub-section (2). It provides in addition to the safeguards which have to be complied with when a search is made under Sub-section (2), that the officer may seize accounts etc if he has reason to suspect that any dealer is attempting to evade the payment of any tax etc. due from him under the Act. It also provides that the officer has to record his reasons in writing and we are of opinion that these reasons have to be recorded before the accounts are seized. It further provides that the dealer shall be given a receipt, and this means that the receipt must be given as and when the accounts etc. are seized. Finally it provides that these accounts etc. shall be retained by such officer so long as may be necessary for their examination and for any enquiry or proceeding under the Act. These in our opinion are sufficient safeguards and the restriction, if any, on the right to hold property and the right to carry on trade by Sub-section (3) must therefore be held to be a reasonable restriction. We may add that the proviso to Sub-section (3) has fixed the period for which the officer seizing accounts can keep them namely, 30 days at a time, and if he wants to keep them for more than thirty days he has to take the permission of the next higher officer. This is an additional safeguard entitling the dealer concerning to get back the accounts after every 30 days, unless a higher officer has permitted the retention of accounts for a period longer than 30 days. We cannot therefore agree with the High Court that Sub-sections (2) and (3) of Section 41 of the Act are unreasonable restrictions on the right to hold property or carry on trade for reasons indicated. We are of opinion that they are reasonable restrictions which are protected by Clauses (5) and (6) of Article 19 of the Constitution."

12. As regards Sub-section (4), their Lordships held that it was repugnant to the scheme of the Act which provided for the recovery of the tax at the point of first sale in the State, and consequently it was bad. In the result their Lordships struck down this Sub-section. The essentials of the reasoning of their Lordships are contained in the following passage:--

"Assuming that is so, we have still to see whether Sub-section (4) of the Act can be upheld read along with the second proviso thereof. It may be added that there is no such provision as the second provision in Section 28 of the Andhra Pradesh General Sales Tax Act. We do not therefore propose to express any opinion as to the correctness of the above decision of the Andhra Pradesh High Court. Sub-section (4) of Section 41, before it was amended by the Madras General Sales Tax (Second Amendment) Act from April 1, 1961, had only the first

proviso with respect to giving an opportunity of being heard and making an enquiry in the matter before ordering confiscation. By the amendment of 1961, the second proviso was added. That provides that the officer ordering the confiscation shall give the person affected option to pay in lieu of confiscation, in cases where the goods are taxable under the Act, in addition to the tax recoverable, a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater. This provision clearly requires the officer ordering confiscation to do two things (i) to order the person concerned to pay the tax recoverable, and (ii) to pay a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater. We have already indicated that in a large majority of cases covered by the Act the tax is payable at the point of first sale in the State, But under Clause (a) of the second proviso the tax is ordered to be recovered even before the sale, in addition to the penalty not exceeding Rs. 1000 or double the amount of tax recoverable whichever is greater. Therefore Clause (1) of the second proviso is clearly repugnant to the general scheme of the Act which in the majority of the cases provides for recovery of tax at the point of first sale in the State. In view of this repugnancy one or other of these two provisions must fall. Clearly it is Clause (a) in the proviso which under the circumstances must fall, for we cannot hold that the entire Act must fall because of this inconsistency with respect to recovery of tax under Clause (a) of the second proviso even before the taxable event occurs in the large majority of cases which would be covered by the Act. We are therefore of opinion that Clause (a) of the second proviso being repugnant to the entire scheme of the Act, in so far as it provides for recovery of tax even before the first sale in the State which is the point of time in a large majority of cases for recovery of tax, must fall on the ground of repugnancy."

"It is next urged that in any case the second proviso is severable and therefore only this proviso would fall and not the main part of Sub-section (4). We are however of opinion that Clause (a) of second proviso is not severable. We have already indicated that originally the second proviso was not there in the Act. It was brought in by amendment In 1961 and it compels the officer to give the option, and thus compels recovery of tax even in those cases where the tax is recoverable only at the first point of sale in the State which naturally has not occurred in cases of goods seized from the dealer himself. Considering the fact that the legislature added this compulsory proviso later, it is clear that the legislature intended that the main part of the Section and the second proviso should go together. It is difficult to hold therefore after the introduction of the second proviso in 1961, the legislature could have intended that the main part of Sub-section (4) should stand by itself. We are therefore of opinion that Sub-section (4) with the two provisos must fall on this narrow ground. We therefore agree with the High Court and strike down Sub-section (4) but for reasons different from those which commended themselves to the High Court."

13. In considering the validity of Section 22 of the Act one has to examine the powers of the assessing authority or the authorised officer in respect of (1) to

call upon the dealer to produce the account books, registers and other documents and to furnish any other information relating to his business; (2) power to inspect all accounts, registers and other documents pertaining to the business of a dealer and the goods in his possession and his office, shop, godown etc. or in which business is done or accounts are kept and to operate the same; (3) power to seize the accounts, registers and other documents; (4) power to enter and seize any office, shop, godown, vessel, vehicle or any other place of business or any building or place where any such authority or person has reason to believe that the dealer keeps or is for the time being keeping any goods; and (5) power to seize and confiscate any unaccounted for goods.

14. It will be convenient to take up Sub-section (6) of Section 22 of the Act for consideration first as the stand of the petitioner at the very out-set had been that the judgment of their Lordships of the Supreme Court in the Madras case is on all fours with the present case and we cannot, therefore, uphold the validity of this sub-section. Petitioners contend that the seizure contemplated under Sub-section (6) is for the purposes of confiscation and the dealer is called upon to pay a sum not exceeding four times the tax which would be due on such goods as may be determined by such authority or person. This virtually amounts to collecting tax on goods before the taxable event namely, the sale had taken place in respect of those goods. In the alternative, it is submitted that if Sub-section (6) is held to be unrelated to the question of collecting tax that had fallen due and had been evaded, then it is beyond the legislative competence of the State Legislature and for this proposition reliance is placed on the judgment of the Madras High Court. *Ramkishan Srikishan Jhaver v. Commissioner of Commercial Taxes* (1965) 16 STC 708 (Mad) to the extent it was not reversed by their Lordships of the Supreme Court. Learned Attorney General, on the other hand, has sought to distinguish the judgment of their Lordships urging that while in the Madras case it was provided that in addition to the tax recoverable a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever was greater was to be paid, under the Rajasthan Act, tax is not required to be paid and what is required to be paid is penalty pure and simple, though a maximum limit for it is provided when it is laid down that it is not to exceed four times the tax which would be due. Learned Attorney General urges that in reality Sub-section (6) provides for a punishment for a dealer who has been found in possession of goods which are not accounted for by him in his accounts, registers and other documents maintained in the course of his business.

15. I have given careful consideration to this argument of the learned Attorney General but find myself unable to accept the same. It is true, in the Rajasthan Act there is no provision for the payment of tax as such unlike Sub-section (4) of Section 41 of the Madras General Sales Tax Act yet in substance I am unable to find any difference between the two provisions. In Sub-section (6) of the Rajasthan Act it is mandatory for the assessing authority or the authorised person to give the dealer an option to pay in lieu of confiscation such amount not exceeding four times the tax which would be due on such goods as may be

determined by such authority and I fail to see how tax can be determined without there being the taxable event namely, the sale. I felt that the unit of measure of penalty at four times the tax that would be due is uncertain in the extreme as it cannot be predicated easily as to whether any tax would at all be realisable on any given set of goods and if it is overdue then how much? Sales-tax is not a tax on goods as such, but is a tax on taxable turnover, that is, on the aggregate of sales for a particular period in the event of turnover exceeding the prescribed limit and not otherwise. There is thus no escape from the conclusion that the concept of payment of tax has been brought in even in Sub-section (6) of Section 22 of the Act and as this is before the occurring of the taxable event namely, the sale, it is repugnant to the scheme of the Rajasthan Sales Tax Act, the structure of which is not different from the Madras General Sales Tax Act in material respects.

I may mention that in Rajasthan, Sales-tax on precious stones is payable on the last point in the series of sales namely when the sale is to an unregistered dealer or to a consumer or to a registered dealer for purposes other than re-sale within the State (vide Rule 15 of the Rajasthan Sales Tax Rules, 1955). It is not possible to say in respect of goods in the hands of a dealer as to when the stage of last sale in the series of sale would be reached and in whose hands the goods would be at the time of the incidence of sales-tax. Learned Attorney General submitted that the authority concerned might estimate the penalty at a modest figure in the light of the uncertainty of the unit of measure, but with all respect" I am not impressed by the submission. Learned Attorney General laid emphasis on the words "tax which would be due on such goods" and argued that this would mean tax which might eventually be due on such a sale taking place and, therefore, he sought to argue that this was not the same thing as "tax recoverable", the words used in the Madras Act. I am unable to see any substantial difference between the two expressions. The words "as may be determined by such authority" throw ample light on the meaning of the words "would be due", Though a certain liability is incurred by a dealer as soon as a taxable event happens yet the tax becomes due only when it is determined. I may briefly refer to the provisions of the Act for dealing with this branch of the argument.

16. Section 3 which lays down the incidence of tax provides that every dealer whose turnover in the previous year in respect of sales or supplies of goods exceeds the prescribed limit (in the case of dealers it is Rs. 15,000/-), he shall be liable to pay tax under this Act on his taxable turnover. Section 7 provides for the submission of returns. A return is to be filed in accordance with rule 25 of the Rules. It is to be on the basis of the previous year. Rule 29 provides for mode of assessment. It lays down that certain amounts have to be deducted from the turnover for the purposes of determining the taxable turnover and it is only after the tax is assessed that a notice of demand: is issued in form No. ST. 7. It is only then that the tax can be said to be due. It is thus evident that Sub-section (8) in effect provides for determination of tax before the accrual of liability to tax

consequent to any sale as might attract the tax. In *State of Rajasthan and Others Vs. Ghasilal*, their Lordships of the Supreme Court in construing the provisions of the Rajasthan Sales Tax Act, observed that "Section 3 of the Rajasthan Sales Tax Act, 1954, which is the charging Section, read with Section 5 creates the liability to pay the tax. But till the tax payable is ascertained by the Assessing Authority u/s 10, or by the assessee u/s 7(2), no tax can be said to be due within Section 16(1)(b), for till then there is only a liability to be assessed to tax and there can be no breach of Section 18(1)(b)." As, in my view, the use of the words "would be due" in the Section does not introduce anything substantially different from what was contained in the corresponding provision of the Madras Act, I am unable to hold that the judgment of their Lordships can rightly be distinguished from the present case. This relieves me from considering the matter on my own and I may mention that Sub-section (6) of Section 22 of the Act is bad, being repugnant to the scheme of the Rajasthan Act. In view of this conclusion I need not proceed to consider whether subsection (6) could have been enacted by the State Legislature.

17. I may now deal with the other subsections of Section 22 of the Act. At this stage it will be pertinent to refer to *Nathulal Fatehpuria Vs. State of Rajasthan and Others*, as the validity of Sub-section (3), and other Sub-sections of Section 22 of the Act came to be considered by a bench of this Court to which, as I have already observed, I was a party. I need not say anything now regarding Sub-section (8) of Section 22, as that point to my mind stands concluded on the basis of the judgment of their Lordships of the Supreme Court discussed above. Learned counsel for the petitioner submitted that in that case some of the points that the present petitioners are raising had not been considered and, therefore, they ask us to examine the validity of the provisions of Section 22 on the new grounds that they are now urging. It will be necessary to recapitulate the grounds of attack taken in that case. The grounds taken by *Nathulal Fatehpuria Vs. State of Rajasthan and Others*, were summarised in para-10 of his writ petition which paragraph is reproduced hereunder:

"Para-10 " That the action of that respondent No. 3 in seizing the petitioner's account books and confiscating the petitioner's goods on 10th of September, 1966, is ab initio illegal and void on the following grounds, amongst others:

(a) that the provisions of Section 22 (6) and (4) of the Rajasthan Sales-tax Act are Inconsistent with Article 19(1)(f) and 19 (1) (g) of the Constitution of India and as such are liable to be struck down.

(b) That the account books, documents, etc. are necessary and useful for carrying on trade and business. In the absence of the account books, it has become impossible for the petitioner to carry on his trade and business and the petitioner's fundamental rights guaranteed under Article 19(1)(f) and 19(1)(g) of the Constitution of India have been infringed.

(c) That the provisions of Section 22(4) of the Rajasthan Sales-tax Act with

regard to the Seizure of the account books are drastic and arbitrary in nature inasmuch as no provision is made for the return of account books, nor is any time limit set for such return. "

(d) That the action of respondent No. 3 in seizing the account books, vouchers etc. is illegal inasmuch as u/s 22 (3) of the Act, he ought to have applied his mind whether the account books etc. seized by him were relevant or required by him for examination in respect of the tax evasion, if any. The action of respondent No. 3 in mechanically seizing the entire account books and vouchers, etc. of the petitioner is illegal and without authority of any law.

(e) That the respondent No. 3 has not given full particulars with regard to the account books, vouchers and files seized by him and as such the seizure of the account books etc. cannot be sustained in the eye of law.

(f) That respondent No. 3 has acted illegally in confiscating the petitioner's goods lying in his shop. The respondent No. 3 has not followed the procedure provided in Rule 51-A of the Rajasthan Sales Tax Rules of 1955 in respect of confiscating the goods.

(g) That the petitioner was not afforded any opportunity of being heard before an action for confiscation of goods under Sub-section (6) of Section 22 of the Rajasthan Sales Tax Act was taken by respondent No. 3.

(h) That the respondent No. 3 along with his party raided the shop of the petitioner on 19th of September, 1966 and during the same time also raided the shops of seven other dealers of Jaipur carrying on similar business. The petitioner's goods were confiscated in a high-handed manner on petitioner's refusal to pay a sum of Rs. 2,000/- by way of composition money. It may be mentioned here that the goods confiscated from the petitioner were all - exempt from sales tax by virtue of Section 4(2) read with Notification No. F. S (99) E&T/ 60 dated March 26, 1962. It may also be mentioned here that the Department has also issued Circular No. F. 219 (Misc.) ST/62/64 dated the 25th May, 1962 whereby tax on Saris and other lengths of cloth on which embroidery or Salma or Sitara work has been done is not taxable. The cyclostyled copy of the Circular issued by the Department is annexed herewith and marked as Ex. P/10.

(i) That the petitioner has been forced to sit idle since 19th of September, 1966 as all goods have been practically Illegally confiscated and he is unable to carry on his trade and business.

(j) That the action of respondent No.3 in confiscating the petitioner's goods is violative of the petitioner's fundamental rights guaranteed under Article 19(1)(f) and 19(1)(g) of the Constitution of India.

(k) That the action of respondent No 3 in confiscating the petitioner's goods is not only high-handed but mala fide also as will be self-evident from the fact that the petitioner was simultaneously served with notices Exs. P. 7 and P. 8 at the time when his goods were confiscated.

(l) That the power of confiscation as provided under the Act is arbitrary and drastic in nature. There are no satisfactory rules for the exercise of this power. In the instant case, even the amount of tax alleged to have been evaded by the petitioner was not determined and communicated to the petitioner and without it the respondent No. 3 could not have passed any order in respect of confiscation of the petitioner's goods.

(m) That the petitioner's goods were confiscated in haste without ascertaining if they were at all liable to sales-tax. The Saries of the customers lying with the petitioner's shop for embroidery work were also confiscated in spite of the protest from the petitioner. The respondent No. 3 even did not give the opportunity to the petitioner to place his own seals on the boxes in which the petitioner's goods were packed and confiscated by him.

(n) That the action of respondent No. 3 in seizing the petitioner's account books etc. and confiscating his goods has the effect of interfering with the petitioner's fundamental rights."

18. Ground (a) related to Section 22 (4) and (6) and is not quite material for the point under consideration. Ground (b) mentioned how the petitioner was not able to carry on his trade and business on account of the taking away of the account books. Ground (c) related to the seizure of account books and the provisions in Section 22 (4) were said to be drastic and arbitrary. Ground (d) also related to the seizure of the account books. Ground (e) was also about seizure. Ground (f) was about confiscation of goods and I am not now concerned with that. Grounds (g), (h) (i), (1), (k), (1) and (m) were again for confiscation of goods and I am not concerned with them. Ground (n) was about seizure of account books. Thus in that case there was no direct attack on the power relating to the search of the premises, but the challenge was directed mainly against the power of seizure of the account books. In this context therefore, in *Nathulal Fatehpuria Vs. State of Rajasthan and Others*, I had no occasion to consider pointedly the provisions relating to searches of premises. In the circumstances I inter alia considered how far the provisions of Sub-section (3) to the extent they related to seizure could be said to be unconstitutional.

I referred to the well known case of their Lordships of the Supreme Court in *State of Madras Vs. V.G. Row*, and observed that the testing of reasonableness wherever prescribed should be applied to each individual statute and no abstract standard or general pattern of reasonableness "can be laid down as applicable to all cases. I noted that several factors have to be taken note of namely, (1) the nature of the right alleged to have been infringed; (2) the underlying purpose of the restrictions imposed; (3) the extent and urgency of the evil sought to be remedied thereby (4) the disproportion of the imposition; (5) the prevailing conditions at the time and they all have to enter into the judicial verdict. These criteria laid down by their Lordships were then applied in considering the validity of Sub-section (3) of Section 22 of the Act. I venture to mention that the observations of Patanjali Sastri C. J., had become classical and have often been

quoted with approval in several subsequent cases of the Supreme Court and High Courts. In *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, their Lordships adopted the same test in judging the constitutional validity of Section 178A of the Sea Customs Act. So also in a very recent case *LaLa Hari Chand Sarda Vs. Mizo District Council and Another*, Shelat J., observed in quoting the observations of Patanjali Sastri C. J. in *State of Madras Vs. V.G. Row*, that "elaborate test of reasonableness" as propounded by Patanjali Sastri C. J., had been accepted in several subsequent decisions of the Supreme Court. The observations of Patanjali C. J. were as follows:

"The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable in all the circumstances of a given case. It is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

19. In the light of the above observations, therefore, I proceeded, as observed above, to consider the provisions of subsection (3) of Section 22 of the Act. I observed that though it was true that as a result of seizure of his account books a dealer was certainly deprived of their use and to that extent there was infraction of his fundamental rights, but at the same time It cannot be forgotten that the underlying purpose of seizing the account books was for the purposes of the Act namely, for the collection of the legitimate tax dues of the State and to prevent evasion thereof. I also found that the Sub-section laid down safeguards against arbitrariness of the officer concerned which were quite sufficient. The relevant passage in my judgment runs as follows:

is true that as a result of seizure of his account books a dealer is certainly deprived of their use and to that extent there is infraction of his fundamental right, but at the same time it cannot be forgotten that the underlying purpose of seizing the account books is for the purposes of the act namely, for the collection of the legitimate tax dues of the State and to prevent the evasion thereof. It is common knowledge that the evil of tax evasion is rampant in the country and, therefore, it cannot be gainsaid that foolproof measures are necessary to prevent the evasion of taxes in the public interest. The question next is whether the restrictions sought to be imposed are, in any manner, disproportionate to the evil

that is sought to be remedied. In this respect it is to be noted that the account books and documents so seized are to be retained by the officer only for so long as may be necessary for their examination or for any enquiry or proceedings under the Act or for a prosecution. Therefore, it will not be open to the concerned officer to retain the account books or documents seized by him indefinitely without his utilising them for the purposes of their examination or for any enquiry or proceeding or for a prosecution. Learned counsel for the petitioner submitted that since no time limit has been prescribed for the retention of the account books, this provision is unreasonable, as thereby the dealer is subjected to a good deal of hardship. It is true no time limit is prescribed by the statute for the retention of the account books, but, in our view, in the very nature of things a particular period could not have been laid down as the necessity of one case may be quite different from that of another. But, when the Legislature has clearly laid down that the account books or the documents could be retained only long as they were required for certain specified purposes it cannot be said that the provision is, in any way unduly harsh. In other words, we do not think the restriction contained in Sub-section (3) is disproportionate to the evils sought to be eliminated. Then Sub-section (3), in our view, provides for two other safeguards; in the first instance, it enjoins that if it is only when such competent authority or person has reason to suspect that any dealer is attempting to evade any tax or other dues that he can proceed under this provision. The second requirement is that the authority has to record his reasons in writing before he proceeds to seize the accounts. The necessity of recording the reasons in writing, in our view, is calculated to eliminate arbitrariness on the part of the authority or officer concerned. While the reason for suspicion in the mind of the officer may not be capable of easy scrutiny, the reasons that the officer has to record in writing are, in our view, capable of a proper scrutiny. Apart from this, Section 14 of the Act provides that the Board of Revenue may on an application for revision of an order call for the record of the proceedings in which the order complained of was passed and after examination of the record pass such order as it thinks fit. It will, therefore, be open to revisional authority to scrutinise the reasons recorded by an authority or person under Sub-section (3) of Section 22 of the Act when the matter is taken before it in revision. This is again a check provided by the Legislature on the action that may be taken under this provision. We are, therefore, satisfied that the provisions of Sub-section (3) cannot be characterised to be wanting in the quality of reason as may contravene Article 19(1)(f) or (g) of the Constitution."

20. Therefore, so far as the question of seizure of account books, files and other documents is concerned, Sub-section (3) of Section 22 of the Act cannot be held to be constitutional, and in my view the judgment in *Nathulal Fatehpuria Vs. State of Rajasthan and Others*, is binding on us. Apart from this certain observations of their Lordships of the Supreme Court in *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, lend support to this conclusion. Sub-section (3) of Section 22 of the Act is analogous to Sub-

section (3) of the Madras General Sales Tax Act. Their Lordships considered the validity of Sub-section (3) and while considering the same observed that it was complementary to Sub-section (2) and then they further observed as follows:

"It provides in addition to the safeguards which have to be complied with when a search is made under Sub-section (2) that the officer may seize accounts etc. if he has reason to suspect that any dealer is attempting to evade the payment of any tax etc. due from him under the Act. It also provides that the officer has to record his reason in writing and we are of opinion that these reasons have to be recorded before the accounts are seized. It further provides that the dealer shall be given a receipt, and this means that the receipt must be given as and when the accounts etc. are seized. Finally it provides that these accounts etc. shall be retained by such officer so long as may be necessary for their examination and for any enquiry or proceeding under the Act. These in our opinion are sufficient safeguards and the restriction, if any, on the right to hold property and the right to carry on trade by Sub-section (3) must therefore, be held to be a reasonable restriction "

For these reasons I am not inclined to hold that Sub-section (3) of Section 22 of the Act contravenes Article 19(1)(f) or (g) of the Constitution. Learned counsel for the petitioners, however, canvassed that the provision in the two Sub-sections were differently worded, whereas under the Madras Act the documents could be retained at a time only for 30 days without the permission of the next higher authorities by the officer concerned, under the Rajasthan Act three months is the period prescribed for retention of the documents and thereafter they could be retained under orders of the Commissioner without any time limit. I have carefully considered this argument but do not find any substantial difference in the two provisions. Under the Madras Act the next higher authority could give extension as many times as it might consider necessary. Therefore, there is element of indefiniteness of time factor under that proviso also. Under the Rajasthan Act the further retention of document can be ordered by the Commissioner, who is a pretty senior officer, for reasons to be recorded by him in writing. Then Sub-section (3) in my view, prescribes the circumscribing limits that the accounts, registers and documents that may have been seized are to be retained only as long as it may be necessary for their examination or for any enquiry or proceeding under the Act or for a prosecution. That overriding consideration will always be there. Therefore, I am unable to accept the contention that the restrictions imposed by Sub-section (3) are in any way unreasonable.

21. I may now turn to Sub-section (2) of Section 22 of the Act. This Sub-section can be broken into two parts. The first part provides that all accounts, registers and other documents pertaining to the business of a dealer, the goods in his possession shall be open to inspection and examination by the competent authority, and the second part provides that the office of the dealer, his shop, godown, factory, vessel or vehicle or any other place in which business is done or

accounts are kept shall be open to inspection and examination of any such authority or person at all reasonable times. It is indisputable that inspection of accounts, registers and other documents pertaining to the business of a dealer is closely related to the question of collection of tax or prevention of its "evasion. The scheme of the Rajasthan Act as of other similar Acts is that Sales tax is payable on the taxable turnover of a dealer (vide Section 3). A dealer is bound to get himself registered in the prescribed manner (vide Section 6). An important step in the assessment and realisation of tax is the submission of returns by a dealer. Returns have to be submitted in the prescribed manner (vide Section 7).

Assessment has to be done for any year after the returns for all the prescribed periods had become due (vide Section 10). Sub-section (2) of Section 10 empowers the authority to call upon the dealer to produce evidence about the correctness of the returns, if it is not satisfied about it and it can order the production of accounts or documents pertaining to the relevant assessment or some preceding years as the authority may require. Then the authority proceeds to make the assessment and recovery of tax. Section 16 of the Act inter alia lays down that if any inaccurate particular has been deliberately furnished in a return, it is an offence under that Section. Section 21 enjoins on all dealers to keep and maintain true and correct accounts showing the value of the goods sold and bought by them. Further the accounts required to be maintained are to be kept by the dealer at a place declared by him to be his place of business. Section 16 (f) also makes it an offence if the dealer keeps his account books at a place other than one declared by him to be his place of business. Then the Act makes elaborate provisions regarding investigation of offences and for other proceedings to prevent evasion of taxes. Section 16-A, runs as under:

16A. "Investigation of offences:-- (1) Subject to such conditions as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases, any officer not below the rank of an Inspector to investigate all or any of the offences punishable under this Act.

(2)--Every officer so authorised, shall, in the conduct of such investigation, exercise the powers conferred by the Code of Cr. Procedure, 1898 (Central Act 5 of 1898) upon an officer in charge of a police station for the investigation of a cognizable offence."

It is in this context that Section 22 falls to be considered. The ordinary dictionary meaning of the term "inspect" is "to look closely into" or "examine officially" vide Oxford Concise Dictionary. Normally this will not involve seizure or search. The dictionary meaning of the term "seizure" vide Oxford Concise Dictionary is "taking possession by warrant or legal right, confiscate, impound or attach, lay hold of forcibly or suddenly, snatch, grasp with hand or mind. Search implies an exploratory examination or probing into or seeking out something which is hidden, sealed, suspected and not open, exposed or demonstrated. This is the sense in which the learned Judges of the Madras High Court had construed these terms vide (1965) 18 S. T. C. 708 (Mad), and I find myself in respectful

agreement with them.

22. Now a dealer may not produce the account books on his own when demanded as contemplated under Sub-section (1) and, therefore, power under subsection (2) was thought necessary for the competent officers to inspect all accounts, registers and other documents pertaining to the business of a dealer or the goods in his possession. This power is, therefore, for the purposes of the Act and cannot be characterised as unreasonable. In *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, their Lordships of the Supreme Court inter alia made the following observations:

"It will be seen that Sub-section (2) differs from Sub-section (1) in one respect. In Sub-section (1) the dealer is required to produce his accounts etc. and to furnish other information relating to his business and it is left to the dealer to produce what accounts he may say he has. The legislature was however cognisant of the fact that dealer may not produce all accounts or furnish all information even though required to do so under Sub-section (1). Therefore, Sub-section (2) provides that all accounts etc. of the dealer shall be open to inspection."

Then their Lordships added that as the power to inspect the premises also has been given, and, therefore, the power of search will be taken to be included in subsection (2) though their Lordships made it clear that generally speaking a power to inspect does not necessarily give power to search. Then their Lordships resorted to the proviso to Sub-section (2) in the Madras Act to support their conclusion regarding the existence of the power of search. Therefore, in so far as the first part of Sub-section (2) is concerned there can be no manner of doubt that this power is reasonable. Regarding the power of search it is not necessary for construing the Rajasthan Act to resort to any rule of interpretation for inferring that power by implication, as there is Sub-section (4) which clearly provides for search of the premises. Then there is Sub-section (5) which also contains certain additional powers regarding the breaking open of the doors of any premises and I, have, therefore, to consider Sub-sections (2), (4) and (5) together for seeing whether the provisions contained therein are reasonable.

23. Regarding the necessity of this power for the purposes of the Act there can be no manner of doubt. In the very scheme of things for judging the correctness of a return the account books of a dealer and the other relevant documents pertaining to his business furnish the relevant date. Then for examining the correctness of the account books and other documents, inspection of the goods may be necessary with a view to checking whether the sale and purchase of goods as shown in the accounts really represent the goods relating to which the dealer carries on his business and also whether stocks are properly kept. At this stage I may refer to Rule 42 of the Rajasthan Sales Tax Rules which lays down how a dealer generally has to maintain his accounts and it is as follows:

42. "Accounts how to be maintained. (1) Every dealer liable to pay tax under the

Act shall maintain a true and correct account of his purchases, sales and stocks showing the quantity and value of the goods.

(2)--Every manufacturer liable to pay tax under the Act shall also maintain a stock book in respect of raw materials and of finished goods."

24. It is thus clear that the power to get at the relevant documents and the goods in which a dealer deals is a necessary power for the purposes of the Act. The main argument of the learned counsel for the petitioners on this aspect of the matter was that for the exercise of this power the Legislature had not made ample safeguards. Relying on *Dr. N.B. Khare Vs. The State of Delhi, Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, and *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, learned counsel for the petitioners submitted that both the substantive and procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness and the Court should consider not only factors such as the duration and the extent of restrictions, but also the circumstances under which and the manner in which the imposition of the restrictions have been authorised. Learned counsel submitted (i) that no provision has been made by the "Legislature for the obtaining of a search warrant from any Magistrate by the officers of the Commercial Taxes Department or the person authorised by the Commissioner, (ii) no safeguards as provided u/s 165 of the Code of Criminal Procedure have been provided for search under this Section and it had been left entirely to the sweet will of the officers concerned to make a search of the premises of a dealer which may have the effect of humiliating him and in the eyes of the general public and the customers.

Learned counsel urged that safeguards as were contained in the various provision of the Code of Cr. Procedure were essential as otherwise indiscriminate searches would lead to the complete destruction of the business of a dealer. It is pointed out that the statute has not made it incumbent for the officer concerned to record any reasons for the search. Learned counsel for the petitioners referred to the provision of a number of statutes, such as, Arms Act, Drugs Control Act, Central Excise and Salt Act, Explosives Act, Official Secrets Act, Opium Act, Petroleum Act and Sales Tax Acts of Assam, Madras, Mysore, Kerala and Andhra Pradesh for showing that in all such Acts there were safeguards for taking searches in that provisions of Section 165 of the Code of Criminal Procedure had to be followed. They also referred to the Supreme Court case of *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, and argued that the Supreme Court upheld the validity of Sub-section (2) of the Madras Act on account of there being a safeguard in the proviso to that Section and but for that safeguard the validity of the Madras Act would not have been upheld on this point. They referred to the following observation in that judgment:

"We are also of opinion that though Sub-section (2) itself provides no safeguard and might have been open to objection on that ground, there is a provision in the proviso to Sub-section (2) which lays down that all searches under this Sub-section shall so far as may be, made in accordance with the provisions of the Code of Criminal Procedure."

25. Learned Attorney General, on the other hand, argued with equal vehemence that as laid down by Patanjali Sastri C. J. in *State of Madras Vs. V.G. Row*, the test of reasonableness whenever prescribed has to be applied to each individual statute and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. He referred to analogous provisions of Sales Tax Laws of 10 States in India including Rajasthan, such as, Punjab Delhi, Uttar Pradesh, Madhya Pradesh, Gujarat, Maharashtra, Orissa, Bihar and Bengal for showing that they are worked like Section 22 of the Act. I have already referred to the observations of Patanjali Sastri C. J. and in particular I may notice that in evaluating elusive factors bearing on the question of reasonableness of a statute to some extent social philosophy and the scale of values of Judges would play an important part and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint. They have also to bear in mind that the majority of the elected representatives of the people have in authorising with the imposition of restrictions, considered them to be reasonable. It has been laid down time and again that

"in examining the constitutionality of a statute it must be assumed that the Legislature understands and appreciates the need of the, people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a Legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. The presumption is, therefore, in favour of the constitutionality of an enactment."

Vide *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, and *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, of the Code of Criminal Procedure or any other provisions of penal statutes the provisions of the impugned Section are bad.

The first thing that is to be noticed is that the power is exercisable by an assessing authority who acts quasi judicially in assessment proceedings and can be taken to hold a position of responsibility under the scheme of things. Then it is the Commissioner who can authorise a person to take the search. The Commissioner is an authority higher in the hierarchy of the authorities under the Act. Under Chapter II of the Rules it is the Commissioner who determines the jurisdiction of the assessing authorities and it is he who distributes business amongst various Commercial Taxes Officers. Therefore, it is either when an assessing authority or the Commissioner orders for a search that a search can be taken. Then the action has to be taken for the purposes of the Act and not otherwise. Therefore, the executive action is controlled by the Legislative policy

underlying the statute. Then thirdly, it is only the premises where the dealer carries on his business or has the goods in his possession which are open to inspection and that too has to be at all reasonable time and not arbitrarily at any time. It was argued by learned counsel that the authorised officer can search even the places of residence where business may not be carried on, but I am not persuaded to accept that interpretation. Sub-section (2), in my view, only relates to the place of business or places like godown, factory, vessel or vehicle connected with the business. The term "place of business" has been defined by the Act vide Section 2(kk) to mean any place where a dealer purchases or sells goods and includes (a) any warehouse, godown or other place where the dealer stores or processes his goods; (b) any place where the dealer produces and manufactures goods; (c) any place where a dealer keeps his books of accounts, and (d) in any case where a dealer carries on business through an agent (by whatever name) the place of business of such agent.

As I have already observed, according to Section 21 of the Act accounts books are required to be kept at a place declared by the dealer in his application for registration as the place or places of his business. Therefore, there is no room to think that Section 22(2) empowers the authorised officer to take a general search of the residential premises apart from the ordinary purposes of the Act namely, collection of tax or for evasion thereof. In respect of the Offences that may have been committed by a dealer, Section 16-A however, provides that an officer not below the rank of an Inspector has to be authorised to investigate the offences and when he is so authorised, he will be exercising the powers of the officer-in-charge of a police station in the conduct of the investigation. At any rate, therefore, when Section 22 is being resorted to for the purposes of investigation of offences, safeguards of the Code of Criminal Procedure will be available for the collection of any evidence derived from the possession of goods, account books and other documents. Apart from this, the Legislature may have thought that the inconvenience or hardship caused to a dealer would not be great merely by the inspection of the premises relating to the business or godowns, factories, vessels, vehicles etc. connected therewith at reasonable times. Then as I have already observed, Sub-sections (4) and (5) are linked up with Sub-section (2) in this behalf Sub-section (4) clearly, lays down that the power to enter and search the office, shop, godown, vessels, vehicle or any other place of business or the place could be exercised, if the authority or the authorised person has reason to believe that the dealer keeps there or is for the time being keeping any goods, accounts registers or other documents pertaining to his business. Then Sub-section (5) lays down that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, fails or refuses to open the door on being called upon to do so Having carefully considered the matter I am unable to hold that sufficient safeguards have not been provided by the Legislature in this connection.

Shri C. L. Agarwal strongly relied on a passage occurring in para 36 of Hamdard

Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, which runs as follows;--

"The constitutionality of Section 8 of the Act was challenged on the ground that it violated the petitioners right under Articles 21 and 31. That Section when quoted runs as follows:

"Any person authorised by the State Government in this behalf may, at any time, seize and detain any document, article or thing which such person has reason to believe contains any advertisement which contravenes any of the provisions of this Act and the court trying such contravention may direct that such document (including all copies thereof) article or thing shall be forfeited to the Government."

It was pointed out by Mr. Munshi that there was no limitation placed on, no rules and regulations made for and no safeguards provided in regard to the powers of a person authorised in that behalf by Government to seize and detain any document, article or anything which in the opinion of such person contains any advertisement contravening any provisions of the Act. It was also submitted that in the corresponding English Act of 1939 in Section 10 there are proper safeguards provided in regard to the exercise of the power of seizure etc. The first part of Section 8 of the Act dealing with seizure and detention received slender support from the solicitor-General. It may be contended, that having regard to the purpose and object of the Act the Indian legislature did not think it necessary to provide any safeguards and that the legislature thought that nobody would be prejudiced by reason of the want of safeguards previous to the seizure. In our opinion this portion of the Section goes far beyond the purpose for which the Act was enacted and, the absence of the safeguards which the legislature has thought it necessary and expedient in other statutes e.g. the Indian Drugs Act, is an unreasonable restriction on the fundamental rights of the petitioners and therefore the first portion of the Section i. e. "any person authorised by any of the provisions of this Act" is unconstitutional. What then is the consequence of this unconstitutionally? If this portion is excised from the rest of the Section the remaining portion is not even intelligible and cannot be upheld. The whole of the Section must therefore be struck down."

26. Having considered the case I am satisfied that the provisions of Section 8 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, which were considered, were different in material respects. In the first place Section 8 related to the detention of the document and then it made provision for the forfeiture of the same to the Government. In other words, that was a provision relating to the seizure and confiscation. That provision was struck down because their Lordships thought that it did not provide ample safeguards and the Section went far beyond the purposes of the Act. In the present case as I have already observed, that provisions relating to seizure of account books and other documents contain sufficient safeguards. Section 8, if I may say so, provides a

parallel to Sub-section (6) of Section 22 of the Act which is certainly bad, but any discussion in the above passage does not furnish guidance for judging the vires of the provisions of Sub-sections (2), (4) and (5) of Section 22 of the Act.

27. Lastly, I may refer to a submission regarding Sub-section (1) of Section 22 of the Act to the effect that the Commissioner has been left free to empower any person to take action under the Section and, therefore, it was bad, Shri A. K. Sen attempted to read the Section to mean that the assessing authority as well as any person has to be authorised by the Commissioner and, therefore, the Commissioner may authorise any assessing authority or any person for the purposes of Section 22. I am unable to read the Sub-section in the manner suggested. The words "authorised by the Commissioner" do not govern the words "an assessing authority". In other words the assessing authority has been empowered by the statute itself and it has not been left to the Commissioner to designate it. As I have already observed, the assessing authority is a quasi judicial body entrusted with responsible functions under the statute relating to assessment and collection of sales-tax and Commissioner is a more responsible authority. Therefore, I am unable to hold that they will not act with any due sense of responsibility in carrying out the purpose? of the Act

The position might have been different if the Section were not to contain a legislative policy and the underlying policy is obviously to enable the officers to collect taxes and to curb evasion thereof. The assessing authority or the Commissioner is bound to be guided by that consideration. If, in any case, mala fides on the part of such authorities are shown, then their action might be struck down but that will be no consideration for declaring the statutory provision to be invalid. I am not unmindful of the fact that the provision is capable of being abused, but that will not be a sufficient reason for striking down the provision. I may usefully refer to the observations of their Lordships of the Supreme Court in *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*,

"The possibility of abuse of a statute otherwise valid does not import to it any element of invalidity. The converse must also follow that a statute which is otherwise Invalid as being unreasonable cannot be saved by Its being administered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. If so judged, it passes the test of reasonableness, possibility of the power conferred being improperly used is no ground for pronouncing the law itself invalid, and, similarly, if the law, properly interpreted and tested in the light of the requirements set out in Part III of the Constitution, does not pass the test, it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements. This is not to be understood as laying down that a law which might operate harshly but still be constitutionally valid should be separated always with harshness or that reasonableness and justness ought not to guide the actual administration of such laws."

I am, therefore, not satisfied that the provisions of Sub-sections (1), (2), (3), (4) and (5) of Section 22 of the Act are unconstitutional being in violation of Article 19(1)(f) or (g) of the Constitution as contended.

28. Now, turning to the second question whether the action taken by the officers can be said to be according to the provisions of the statute. I propose first to deal with the question relating to the seizure of goods of the various petitioners.

29. So far as the petitioner Messrs Hiralal Chhaganlal is concerned, the respondents admit that the goods were seized though not on 28-7-67, but on 21-8-67. In their case, therefore, it is not now necessary to examine the two rival versions as to what happened between 28-7-67 and 20-8-67 in the case of this petitioner. As I have already held that Sub-section (6) of Section 22 of the Act was bad, the act of seizure or the continued retention of the goods by the respondents infringes the fundamental right of the petitioner under Article 19(1) (f) and (g) of the Constitution. The fundamental right of the petitioner to hold the goods or to dispose them of in the manner it thought best cannot be permitted to be restricted by the respondent's interference with the possession of the goods by the petitioner. Learned Attorney General submitted that the right of inspection of such goods is available to the respondents and, therefore, that could be exercised. As I have already explained, the dictionary meaning of the word "inspect" is "to look closely into", "examine officially". Seizure, on the other hand, means "taking possession by warrant or legal right, confiscate, impound or attach lay hold of forcibly or suddenly snatch, grasp with hand or mind."

The power to inspect therefore, cannot be stretched to such an extent as would limit the right of the citizen to hold exclusive possession of his goods or to sell or dispose them of in the manner he thinks best. The power of inspection of goods, to my mind, is only one of their physical examination while they continue to remain in the exclusive custody of the owner of the goods or any person, lawfully in possession thereof. Though I do not propose to restrain the respondents from inspecting the goods to the extent authorised by Section 22, yet they cannot be allowed to interfere with the exclusive possession of the petitioner over such goods or to prevent it from exercising its fundamental right to dispose of such goods or to have any business in relation thereto. Deprivation of the goods in the manner it was done for the purposes of confiscation under Sub-section (6) of Section 22 of the Act cannot be countenanced.

30. I may next turn to the case of Messrs Kirti Jewellers. The respondents' case is that "no goods of the petitioner have ever been seized. In fact there has never so far been any occasion for seizing the said goods." According to the respondents, respondent No. 5, assisted by certain other officers was inspecting and examining stocks of precious stones produced by the petitioner but one of the partners of the firm Shri Jatanmal Dadda expressed his inability to produce the keys of two of the almirahs in which precious stones were kept. Shri Dadda stated that the goods in the almirahs belonged to certain artisans under training and the keys of the almirahs were with such trainees. It was on account of the

request made by the petitioner for postponing the process of inspection of stocks of precious stones to the following day that with the agreement of the petitioners paper seals were pasted on the two almirahs which were already locked. The precious stones which were outside these two almirahs were put in a third almirah. According to the respondents, these goods are still in the third almirah and there could be no inspection or further examination on account of the stay order of this Court.

The petitioner, on the other hand, contends that the goods had been placed in the almirah and "kotri" and after locking them in the said "kotri" and after putting paper and cloth seals on the locks and on the doors the respondent No. 5 had taken away the keys with him and that, according to the petitioner, amounts to complete seizure of the goods. The petitioner proceeds to say that it has been completely deprived of its possession over the goods since 28-7-67 and consequently it could not deal with the said goods in any manner. The petitioner had given telegram to the Commercial Taxes Officer through his Advocate for return "if the goods but the same was never replied. Looking to the fact that the respondents have interfered with the exclusive possession of the petitioner over the goods and they had not returned the goods when demanded, the restrictions put by the respondents on the fundamental right of the petitioner to hold the goods or to dispose them of is violative of Article 19 of the Constitution specially when the power of seizure of goods cannot legitimately be claimed by the respondents and, to my mind, as observed above, the power of inspection cannot be stretched to interfere with the exclusive possession of the petitioner over the goods.

31. I may lastly turn to the question of seizure of goods from the other petitioners namely, the Dalals. According to the respondents, the Dalals themselves offered to place the goods, in their packets, for facility of subsequent examination in an almirah belonging to Messrs Hiralal Chhaganlal at their premises and Shri Dulichand, partner of the firm of Messrs Hiralal Chhaganlal agreed to keep the goods secure in the almirah. According to the respondents, the petitioners were dealers and, therefore, they had a right to inspect the goods in the possession of the petitioners. As I have already observed in the preceding case, the respondents could not have seized the goods and the right of inspection cannot be extended to deprive the petitioners of their right to possess the goods. Notice Annexure-B issued by the Commercial Taxes Officer, Circle-D, shows that the petitioner Laxminarain was called upon to verify the goods for getting them back. He was further called upon to be present at the premises of Messrs Hiralal Chhaganlal for adducing proof regarding the ownership of the petitioner over such goods and he was asked to produce oral and documentary evidence for the same. This document Annexure-B leaves no doubt in my mind that the respondent had undoubtedly prevented the petitioners from holding possession of the goods.

Section 22 did not, in my view, authorise the respondents to call upon the

petitioner to adduce proof of his ownership over the goods. The respondents could only inspect or examine the goods, if at all, and this, as I have already observed, means only physical examination of the goods without disturbing the exclusive possession of the person holding the goods. The respondents could not have arrogated to themselves the power to call upon the petitioner to adduce proof of his ownership over the goods before returning them. In the additional reply submitted by the respondents on 6-11-67, the respondents stated that it would be necessary to enquire from the petitioners and to find out whether the goods were accounted for in their books of accounts or not. Then what follows is important. They stated: "Therefore, the question of return of goods does not arise till the inspection, examination and verification of the goods and their ownership has been completed." It was maintained that the power of inspection envisaged by Sub-section (2) of Section 22 included the power of temporary detention of the goods. This makes it crystal clear to my mind that the respondents have acquired possession of the goods and they are not prepared to return the goods to the petitioners till they complete certain enquiries according to their way of thinking.

As I have already observed, power of inspection cannot extend to such a degree as might result in seizure of the goods for which there is no warrant under the law. The goods to be inspected at all times should have remained in the possession of the dealer and the Commercial Taxes Officer were not empowered to deprive the dealer of his exclusive rights over the goods or to otherwise dispose them of or to have his business unhampered in relation thereto. It is not for me to suggest what steps could have been taken by the authorities if the inspection of the goods were obstructed, but I have no doubt whatsoever that the right of inspection cannot be construed to mean even a temporary deprivation of the possession of the dealer over such goods. Whatever I have said about Laxminarain applies to other Dalals whose cases are identical, I should add one word about the stand of the respondents that the Dalals were also dealers within the meaning of Section 2(f) of the Act which was as follows:--

"Section 2(f) "dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes -

- (i) -- the Central or a State Govt. or any of their departments, a local authority, a company an undivided Hindu family or any society (including a co-operative society) club, firm or association which carries on such business,
- (ii) -- a society (including a co-operative society) club, firm or association which buys goods from, or sells, supplies or distributes goods to its members;
- (iii) -- a commission agent, a broker, a del credited agent, an auctioneer or any other merchantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal.

(iv) -- A casual trader.

Explanation ;-- Every person who acts as an agent of a non-resident dealer, that is, as an agent on behalf of a dealer residing outside the state and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as -

(i) -- a mercantile agent as defined in the Indian Sale of Goods Act, 1930 (Central Act 3 of 1930), or.

(ii) an agent for handling goods or documents of title relating to goods, or

(iii) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment, and every local branch of a firm or company situated outside the State, shall be deemed to be a dealer for the purposes of this Act."

The respondents submitted that since the Dalals were dealers, the goods could be seized from their possession. Petitioners, on the contrary, asserted that Dalals only brought the two parties namely, sellers and purchasers together face to face and they charged only brokerage for the services that they would render to the parties, but they themselves did not make any sales or purchases. Petitioners submitted that goods on the person of a dealer assuming that the petitioners were dealers could not have been seized. Since it is a question of fact whether a person is or is not a dealer, we are not inclined to go into that question in exercise of our extraordinary jurisdiction. It will be for the proper authority under the Act to determine that question in a proper proceeding. The above discussion proceeded on the assumption that the Dalals were dealers and then I had seen if the goods could have been seized according to Section 22 of the Act or there was in fact a seizure thereof. I do not consider it necessary to go into the question whether goods on one's person could be inspected as in the cases before me. There is a controversy on facts whether they were voluntarily produced or were actually seized, from the person of the petitioners.

32. I may next deal with the question of the seizure of account books, files and the documents of the petitioners. So far as the Dalals are concerned, it is common ground between the parties that there was no seizure of any documents whatsoever. Regarding seizure of account books and the documents, I am, therefore, concerned only with the two writ petitions of Messrs. Hiralal Chhaganlal and Messrs. Kirti Jewellers. The petitioners' contention is that the concerned officer did not record any reasons which was the condition precedent for the seizure of accounts, registers, files and other documents and they vehemently contend that the so-called order-sheets Annexure A/3 in the case and Annexure 3 in the other were subsequently fabricated. The petitioners submitted: (1) no account books or any document was inspected by the respondents on 28th/29th or 30th July, 1967 by any of the officers; (2) no signatures of the petitioners were obtained on the order-sheets nor was their presence noted. According to the petitioners, the invariable practice of the department was both to record the presence of a party and also to get his

signature on the margin of the order-sheet (3) that the language of the seizure memo was not consistent with the existence of any order-sheet. According to the petitioners, if there were already a properly drawn up order-sheet as alleged, then there would be no necessity of repeating the reasons in the seizure memo. The seizure memo is available at page 34 of the paper book in Messrs. Hiralal Chhaganlal's case and it is as follows:---

""Whereas I have reasons to believe that M/s. Heeralal Chhaganlal Tank registered dealer of Kundigaron Ke Bhairon Ka Rasta, Jaipur having R. C. No. 169/16824 R. S T. and No. 677 C. S. T. has been evading tax. Therefore, I, Badri Narain Purohit. Commercial Taxes Officer Circle D. Jaipur, in exercise of powers vested in me u/s 22 of the Rajasthan Sales-Tax Act, 1954 seize the account books and the documents of this concern mentioned in the list enclosed."

33. Order-sheet R/3 is available at page 75 of the same paper book and it is as follows :--

"30-7-1967.

The proceedings were resumed by me at 11-00 A. M. today.

Myself accompanied by C. T. Os. Servshri P. C. Mathur, D. Kumar, H. C. Jain and Surendra Sharma, S. O. (A.E.) and other staff visited the business premises of M/s. Hiralal Chhaganlal at 12.00 noon where Shri Dulichand Tank, Partner, along with his men was present.

The "Kothari" containing some of the records of the firm, was got opened after preparation of a memo. The records brought out by Shri Dulichand and his men were inspected in context with the information recorded in the proceedings of 28-7-67 by Shri Surendra Sharma. Further entries of the goods for which a check-list had been prepared earlier was not found in the firm's books of accounts. Shri Dulichand Tank was given an opportunity to explain this omission and this big discrepancy which he could not do. He could also not say, even after consulting his records, as to how much goods he has in his possession in his own right or on behalf of others.

This gives rise to reasons for me to suspect that the dealer is attempting to evade payment of tax. Also from the information furnished by him on 28th July, 1967, the view is further confirmed where he once stated valuation of goods at 8 or 10 lacs, and thereafter changed his version and figures to 4 to 5 lacs

It was orally conveyed to me by Shri M. M. Joshi, my Assist. Commercial Taxes Officer, who had seized account books and records from M/s. Kirti Jewellers on 28-7-67 (a firm in which Shri Kirti Chand son of Shri Raj Roop Tank is a partner) that Shri Raj Roop Tank partner in M/s. Hiralal Chhaganlal has considerable transactions with that firm. My examination of the books of M/s. Hiralal Chhaganlal in the light of information given to me gives reasons to believe that such transactions are not fully accounted for in their account books, and the dealer may be maintaining a double set of accounts.

It is necessary in view of the above that a detailed check of the accounts and records of M/s. Hiralal Chhaganlal be undertaken so that the extent of evasion can be ascertained. If the books are not immediately taken in possession there is possibility of their being tampered with. The books are accordingly seized by preparation of a memorandum of seizure containing a list of books and documents seized

B. N. Purohit.

30-7-1967."

A copy of the memorandum of seizure was given to Shri Dulichand as a receipt of books seized.

Statements of Shri Dulichand Tank was again recorded today after seizure of books to give him an opportunity. Those statements were recorded in the presence of Shri B. B. Mathur, his counsel, who had been summoned by Shri Dulichand for his assistance.

Shri Dulichand was instructed to come to my office tomorrow.

B. N. Purohit,

30-7-1967."

34. It is urged in this connection that the seizure memo that was drawn up in this case was identical to the one prepared in Nathulal Fatehpuria's case and as that seizure memo was held to be bad for want of recording of reasons, the respondents have fabricated the order-sheets in the present case to meet the requirements laid down for a valid seizure in Nathulal Fatehpuria Vs. State of Rajasthan and Others, The petitioners applied for certified copies of all the order-sheets from 28-7-67 and the copying charges in the shape of stamps were submitted to the department under a receipt but so far no copy of the order-sheets has been supplied to the petitioners. The order-sheets under challenge made a mention of the check list, but according to the petitioners, no such check list was prepared. That according to the recitals in Annexure R/3 Shri Dulichand was given an opportunity to explain the omission of certain entries in the account books relating to the goods sold earlier, but the statement in fact does not show that any such explanation was sought. Then the petitioners submitted certain affidavits to the effect that no order-sheet was recorded in their presence at the premises of the petitioners.

35. Learned Attorney General felt that as a very serious allegation had been made against the concerning officers, he wanted to bring certain material on the record by affidavits. This material according to him, inter alia consisted of the statements of the various petitioners themselves. Having heard both the parties we permitted the respondents to put in additional replies but at the same time we gave opportunity to the petitioners also to file further affidavits to rebut the data that respondents might place on record, if they so desired. Learned

Attorney General referred to the additional replies and affidavits and strongly urged that the order-sheets were drawn up before the officers proceeded to seize the account books, files and other documents. He referred to the several statements, copies of which he had put in. He submitted that the statements of the petitioners themselves went to show that the concerning officer could have reason to suspect that there was evasion of tax. He urged that the petitioners did not have stock registers on their own showing as required by Rule 42 of the Rules and the statements thus furnished provided contemporaneous evidentiary check to establish the genuineness of the order-sheets. I ought to mention that Messrs. Hiralal Chhaganlal filed an affidavit in reply to the additional reply and the additional affidavits filed by the learned Attorney General. By his affidavit the petitioner Messrs. Hiralal Chhaganlal wanted to raise the question about the constitutional validity of Rule 42 of the Rajasthan Sales Tax Rules, but we were not inclined to permit the petitioner to raise this question in the manner it was sought to be done. If the petitioners wanted to question the validity of Rule 42 of the Rules then it was for them to have amended their writ petitions and raise the question in a proper manner. We, therefore, did not go into the question of the vires of that rule.

36. As regards Messrs. Kirti Jewellers, learned Attorney General submitted that examination of the diaries and other papers recovered from that petitioner showed that it was keeping a double set of accounts. While the returns filed by it in respect of its turnover earlier to the date of the raid tallied with the book, the other book showed a much higher turnover.

37. In my view, the questions raised are pure questions of fact and to arrive at a firm conclusion about the genuineness or otherwise of the disputed order-sheet not only proper appreciation of all documentary evidence but production of some oral evidence may also be needed. This, to my mind, cannot conveniently be done in exercise of the extraordinary jurisdiction of this Court and I think it will be for the parties to get this controversy settled in the course of the proceedings that might result from events that had happened. In view of what Shri C. L. Agarwal submitted at the fag end of his reply to the arguments advanced by the learned Attorney General on behalf of the respondents, to my mind, it is not necessary to pursue this matter further. Shri Agarwal submitted that the account books, files and other documents have been in the possession of the respondents for more than three months during which time the respondents had ample opportunity to have proper scrutiny thereof. Eventually he stated at the bar that the respondents should return the documents after identifying them or putting their seal marks thereon and, if necessary, they may also keep duly verified copies with them. He also submitted that with regard to any document if there is apprehension of it being not subsequently made available, then its photo copies may be prepared by the respondents for which the petitioners agree to defray the expenses. Shri M. M. Vyas, learned Additional Advocate General, who was assisting the learned Attorney General, accepted the suggestion. Second proviso to Sub-section (3) provides that before returning the accounts, registers and

documents the officer concerned may require the dealer to give a written undertaking that the accounts, registers and documents shall be presented whenever required by any competent authority or in proceedings under this Act and such undertaking is to be supported by a security in such form as may be prescribed for a sum not exceeding rupees five thousand. In view of this suggestion made by Shri Agarwal and which was accepted by the learned Additional Advocate General, we are not called upon to decide the question about the legality of the search or the seizure of the account books, files and other documents and the parties will be free to get a proper adjudication in this behalf from a competent court or tribunal as they may be advised to do. I think the necessary action should be taken by the parties for these documents within a period of three weeks from the date of the judgment

38. To summarise I hold: (1) that Subsection (6) of Section 22 of the Act is bad and has to be struck down, but this will not affect the validity of the entire Section, as Sub-section (6) is severable from the other Sub-sections; (2) the provisions of Sub-sections (1), (2), (3), (4) and (5) of Section 22 of the Act are not shown to be violative of Article 19 of the Constitution and cannot, therefore, be held to be bad in any manner, (3) all the petitioners are entitled to get back from the respondents exclusive possession of the goods which were locked in the almirahs and the rooms in the premises of Messrs. Hiralal Chhaganlal. The respondents will have to return these goods forthwith, (4) I do not restrain the respondents from exercising their power of inspection of the goods but this will be without depriving the petitioners of the possession over the goods. The goods shall be returned to the several petitioners forthwith under proper receipts from them. While returning the goods the respondents may inspect the goods, if this has not already been done by them. (5) it is not necessary to decide the question of the legality of the search of seizure relating to the account books, files and others documents seized from Messrs. Hiralal Chhaganlal and Messrs Kirti Jewellers. It will be open to both the parties to get the matter adjudicated from a proper court or tribunal as they may be advised The account books, files and other documents shall be returned by the respondents to the petitioners within a period of three weeks from today in the light of the observations made in this judgment.

39. In the result, I will allow all these writ petitions in part and declare: (1) that Sub-section (6) of Section 22 of the Rajasthan Sales Tax Act, 1954, is bad and accordingly T would strike it down; (2) T am unable to declare that the provisions of Subsections (1), (2), (3), (4) and (5) of Section 22 of the Act are, in any manner violative of Article 19(1) (f) and (g) of the Constitution: (3) Sub-section (6) of Section 22 of that Act is severable and, therefore, it will not affect the remainder of the Section.

40. I will order that the respondents shall forthwith return the goods which are locked in that three almirahs and the room in the premises of Messrs. Hiralal Chhaganlal to persons from whose possession they were seized or taken under

control by the respondents. The respondents shall, however, be free to inspect the goods while returning them, but without impairing the rights of the petitioners to be in exclusive possession thereof or to otherwise dispose them of or carry on their business in relation thereto. The respondents shall also return the account books to petitioners Messrs. Hiralal Chhaganlal and Messrs. Kirti Jewellers respectively within three weeks from today. In the meantime it will, however, be open to the respondents to put their identification marks or their seals on the account books, files or documents or to have duly verified copies of any of the document that may be considered necessary or to have photostat copies of any document at the expense of the petitioners as the respondents may consider necessary. It will also be open to the respondents to demand security from the petitioners for the production of the documents as and when necessary in the course of any proceeding as laid down in the second proviso to Sub-section (3) of Section 22 of the Act.

Dave, C.J.

41. I have gone through the judgment of my learned brother and I entirely agree with him that Sub-section (6) of Section 22 of the Rajasthan Sales Tax Act, 1954, is fit to be struck down for reasons given by him and which need not be repeated.

42. As regards Sub-sections (1), (2), (3), (4) and (5) of Section 22 of the said Act, their validity was upheld by a Division Bench of this Court in Civil Writ Petn. No. 1407 of 1966 D/- 22-8-1967 Nathulal Fatehpuria Vs. State of Rajasthan and Others, My learned brother who had produced that judgment, has adhered to the views expressed by him in that case and has further tried to strengthen them by additional arguments. I, however, find it difficult to agree with several observations made by him in this connection. Under the circumstances, I would have referred the case to a larger Bench to examine more thoroughly the validity of these sub-sections, but that step is likely to prolong the agony of the petitioners who are keen not only about immediate restoration of the jewels but also about early return of the account books which have been taken from their possession. Since the order proposed by my learned brother, on the assumption of the validity of the said Sub-sections, practically gives to the petitioners the reliefs asked for by them, I agree in the above order.

ORDER

43. We accordingly allow all these writ petitions in part and declare: that Sub-section (6) of Section 22 of the Rajasthan Sales Tax Act, 1954, is bad and accordingly we strike it down.

44. We order that the respondents shall forthwith return the goods which are locked in the three almirahs and the rooms in the premises of Messrs. Hiralal Chhaganlal to persons from whose possession they were seized or taken under control by the respondents. The respondents shall, however, be free to inspect the goods while returning them, but without impairing the rights of the petitioners to be in exclusive possession thereof or to otherwise dispose them of,

or carry on their business in relation thereto. The respondents shall also return the account books, files and other documents to petitioners Messrs. Hiralal Chhaganlal and Messrs. Kirti Jewellers respectively within three weeks from today. In the meantime it will, however, be open to the respondents to put their identification marks or their seals on the account books, files or documents or to have duly verified copies of any of the document that may be considered necessary or to have photostat copies of any document at the expense of the petitioners as the respondents may consider necessary. It will also be open to the respondents to demand security from the petitioners for the production of the documents as and when necessary in the course of any proceeding as laid down in the second proviso to Sub-section (3) of Section 22 of the Act.

46. In view of all the circumstances of the case we leave the parties to bear their own costs.