

(1964) 02 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 277 of 1963

Indian Finances Private Ltd.

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 06-02-1964

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 17, 18(6), 2, 29

Citation : AIR 1964 MP 242 : (1965) ILR (MP) 700 : (1965) JLJ 645 : (1964) 15 STC 254

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : Jagdish Swarup, Y.S. Dharmadhikari and M.V. Tamasker, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.—This order will also govern the disposal of Misc. Petitions Nos. 278, 279 and 281, all of 1963.

2. These are four petitions under Article 226 of the Constitution for the issue of writs of certiorari for quashing the notices issued by the Sales Tax Officer Jabalpur, u/s 29 of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter referred to as the Act), to each of the petitioner. The petitioners also pray that appropriate directions be issued to the opponents to restrain them from making any assessment to sales tax against them in respect of transactions of "hire-purchase" entered into by them.

3. The petitioner's case, broadly stated, is that they carry on the business of financing purchase of motor vehicles on "hire-purchase" system from their offices located at Allahabad, in Uttar Pradesh; that they have no place of business in the State of Madhya Pradesh and never carried on in the past, nor do they carry on now, within the State of Madhya Pradesh any business of buying, selling, supplying or distributing goods to anyone in Madhya Pradesh, directly or

otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, that the transactions of hire-purchase of motor vehicles that have been entered into between them and some persons do not amount to sale of goods according to the meaning of "sale" in the Sale of Goods Act, 1930; that those transactions are merely contracts of hire, the hirer having an option to return goods and an options to purchase, which he may exercise or not according to his desire; that so long as the hirer does not exercise the option of purchase he does not become the owner of the vehicle which remains the property of the petitioners; and that thus the transactions effected by them are not sale transactions.

Thus the petitioners contend that they are not "dealers" as defined in Section 2 (d) of the Act; that the transactions entered into by them with some persons desiring to purchase motor vehicles on hire-purchase system are not "sale" transactions within the meaning of the definition given in Section 2 (n) of the Act; that Explanation-1 to the definition of "sale" "deeming a transfer of goods on hire-purchase or other instalment system of payment, a sale for the purpose of the Act is ultra vires the State Legislature; that, therefore, no notices u/s 29 of the Act could at all be issued to them; and that in any case a dealer could not be called upon to produce his accounts, registers, documents etc., before the initiation of any assessment proceedings under the Act.

4. The notice issued to each of the petitioners by the Sales Tax Officer, Jabalpur, u/s 29 of the Act required him to produce before the Sales Tax Officer on the date mentioned in the notice "books of accounts since the commencement of business to date regarding the finances made for the purchase of vehicles". On receipt of these notices, the petitioners addressed communications to the Sales Tax Officer, Jabalpur, protesting against the issue of notices to them and denying their liability to assessment to sales tax under the Act. In reply to these communications, the Sales Tax Officer informed them that the transactions of hire-purchase entered into by them were sales as defined in Section 2 (n) of the Act; that they carried on this business in the State of Madhya Pradesh "by taking and giving delivery of goods and making payments at Jabalpor"; that this constituted them as "dealers" having a place of business at Jabalpur within the jurisdiction of the Sales Tax Officer Jabalpur; and that, therefore, they were liable to produce account books as directed by the notices issued to them.

5. In the returns filed on behalf of the opponents, the petitioners' statement that they are not dealers under the Act, and they have no place of business in Madhya Pradesh "has been denied: It has been averred that the petitioners carry on a regular business of buying and selling motor vehicles for valuable consideration in the State of Madhya Pradesh on the instalment system of payment under hire-purchase agreements, which are in effect and in law agreements; that even if these transactions of hire-purchase are not sales at the moment they are entered into, they ripen into sale transactions ultimately when the hirers exercise their option under the agreement and purchase the vehicles;

that the question whether the transactions entered into by the petitioners amount to sales liable to tax under the Act still remains to be decided; that it was for the purpose of finding out whether the petitioners were (sic) and whether the transactions effected by them amounted to sales liable to tax under the Act that notices u/s 29 of the Act were issued to them; and that under that provision a notice can be issued even before the initiation of any assessment, proceedings.

The respondents further say that Explanation (sic) to Section 2 (n) of the Act only treats those transactions as sale transactions where there is not only a transfer of goods on hire-purchase or other instalment system of payment but also a transfer of property, and that, therefore, it cannot be said that the State Legislature has by enlarging the definition of "sale", as including transactions mentioned, in Explanation I, taken to itself a legislative power not conferred upon it by Entry-54 List II of the Seventh Schedule to the Constitution, The further objection of the respondents is that all these petitions are premature as no order of any kind has been passed against any of the petitioners and that they have an alternative remedy of appeal if and when assessment orders are made against them.

6. The main submissions of Shri Jagdish Swaroop learned counsel for the petitioners, were these. First, that Explanation I to Section 2 (n) of the Act was ultra vires and as all the transactions concluded by the applicants fell under Explanation I, those transactions could not be regarded as sales liable to tax under the Act and the petitioners could not also be regarded as dealers under the Act in regard to those transactions against whom any notice u/s 29 could be given or against whom any proceedings under the Act could be taken. On the authority of the Supreme Court decisions in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, *Mithan Lal Vs. The State of Delhi and Another*, *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, and *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*, learned counsel argued that in hire-purchase transactions of the type concluded By the petitioners, where the hirer had an option of returning goods and also of purchasing them, there was no contract of sale at all; that u/s 4 of the Sale of Goods Act, 1930, a transaction could be called a "sale" only when for money considerations property in goods was transferred under a contract of sale; that a contract of sale between the parties was a pre-requisite to a sale; that therefore, there was no sale of vehicles at all by persons obtaining delivery of the same from the petitioners under a hire-purchase agreement and ultimately even becoming the owner of them after exercising the option given by the agreement; and that. Explanation-I extended the concept of "sale" beyond the meaning of it under the Sale of Goods Act and Entry 54, List II of Seventh Schedule of the Constitution and sought to deem a transaction, which was not a real sale whether at the time of the conclusion of the hire-purchase agreement or at any time thereafter, to be a sale. Secondly, it was urged that u/s 29 of the Act a notice could be issued only to a "dealer" as defined in Section 2(d) of the Act

and that a the Sales Tax Officer thought that the petitioners were dealers, who were under an obligation to submit returns and also liable to assessment under the Act, then notices u/s 17 of the Act should have been issued to the petitioners, and that it was only after the issue of notices u/s 17 that they could be called upon to produce their accounts, registers or documents relevant to their financial transactions sought to be taxed.

7. In connection with the petitioners' challenge to the vires of Explanation 1 to Section 2(n), it is first necessary to distinguish between (i) contracts to buy and pay by instalments, and (ii) contracts to hire, the hirer having an option to return the goods, with a provision that on payment of certain number of instalments the article shall belong absolutely to the hirer. In a contract of sale for a price payable by instalments the purchaser has no option of terminating the contract and returning the goods, whereas in a contract of hire-purchase the hirer has such an option and has also the option to purchase the chattel which he may or may not exercise according to his sweet will and pleasure. This distinction has been pointed out by the Supreme Court in *Damodar Valley Corporation Vs. The State of Bihar*, : *Damodar Valley Corporation Vs. State of Bihar and Others*, and *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, . In the first case, *Sinha C. j.*, delivering the judgment of the Court, said:

"It is well settled that a mere contract of hiring, without more, is a species of the contract of bailment, which does not create a title in the bailee, but the law of hire-purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories and it becomes a question of some nicety as to which category a particular contract between the parties comes under. Ordinarily, a contract of hire purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions. But a contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the instalments have been paid..... It is equally well settled that for the purpose of determining as to which category a particular contract comes under, the Court will look at the substance of the agreement and not at the mere words describing the category. One of the tests to determine the question whether a particular agreement is a contract of mere hiring or whether it is a contract of purchase on a system of deferred payments of the purchase price is whether there is any binding obligation on the hirer to purchase the goods. Another useful test to determine such a controversy is whether there is a right reserved to the hirer to return the goods at any time during the subsistence of the contract. If there is such a right reserved, then clearly there is no contract of sale, vide *Helby v. Matthews*, (1895) AC 471."

The incidents and nature of a hire-purchase agreement were again examined by the Supreme Court in *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, . After referring to the statements in Dictionary of

English Law by Earl Jowitt at pages 913-914 on "Hire Purchase", and in Halsbury's Laws of England, Third Edition, Vol. 19, paragraph 823, at page 511, and to the decision in 1895 AC 471, it was stated by the Supreme Court that:

"It is clear that under the Law, as it now stands, which has now been crystallised into the section of the Hire Purchase Act, quoted above, the transaction partakes of the nature of a contract or bailment with an element of Sale, as aforesaid, added to it. In such an agreement, the hirer may not be bound to purchase the thing hired; he may or may not be. But in either case, if there is an obligation to buy, or an option to buy, the goods delivered to the hirer by the owner on the terms that the hirer, on payment of a premium as also of a number of instalments, shall enjoy the use of the goods, which ultimately may become his property, the transaction amounts to one of hire-purchase, even though the title to the goods has remained with the owner and shall not pass to the hirer until a certain event has happened, namely, that all the stipulated instalments have been paid, or that the hirer has exercised his option to finalise the purchase on payment of a sum, nominal or otherwise."

It is thus plain that a hire-purchase agreement is not a contract of sale but a bailment. While the bailment continues, the property remains in the owner. Again, it is not a conditional contract of sale as the hirer is not under any obligation to pay the whole price, though he may exercise the option and purchase the chattel hired by him. As under such an agreement, the property does not pass to the hirer till the bailment lasts, there is no sale; and there is not even an agreement to sell. The owner hiring out the thing or chattel is not a person who has agreed to sell the goods and the hirer is not a person who has agreed to buy them within the meaning of Sections 2(1), (13) and 30(2) of the Sale of Goods Act. This position has been well pointed out in 1895 AC 471. That was a case where the House of Lords had to decide whether a person, who had entered into a hire-purchase agreement for a piano, and who could terminate the hiring at any time, was "a person having agreed to buy goods". It was held that what the hirer was entitled to, apart from the arrangement relating to the hire of the piano, was an option to buy the piano by continuing the stipulated payment for a sufficient period. Lord Herschell L. C., said at page 477 of the report that:

"It was said in the Court of Appeal that there was an agreement by the appellant to sell, and that an agreement to sell connotes an agreement to buy. This is undoubtedly true if the words "agreement to sell" be used in their strict legal sense; but when a person has, for valuable consideration, bound himself to sell to another on certain terms, if the other chooses to avail himself of the binding offer, he may, in popular language, be said to have agreed to sell, though an agreement to sell in this sense, which is in truth merely an offer which cannot be withdrawn, certainly does not connote an agreement to buy, and it is only in this sense that there can be said to have been an agreement to sell in the present case."

In the same case, Lord Watson expressed himself thus:

"Apart from the arrangement for hire of the piano, the only right given to Brewster by the agreement in question was the option to become a purchaser. It is true that whilst he was under no obligation to buy, the appellant was legally bound to give him that option, and could not re-tract it, if the other stipulations of the contract were duly observed by the hirer. But the possession of such a right of option was, in no sense an agreement by Brewster to buy the piano; and the appellant's obligation to give the option was not, in the sense of law, an agreement by him to sell. In order to constitute an agreement for sale and purchase, there must be two parties who are mutually bound by it. From a legal point of view the appellant was in exactly the same position as if he had made an offer to sell on certain terms, and had undertaken to keep it open for a definite period. "Until acceptance by the person to whom the offer is made, there can be no contract buy. So long as the agreement stood unaltered they could, in this case, be no contract to purchase by Brewster until he had complied with the terms of the option given him" and had duly made the thirty-six monthly payments which it prescribes as the condition of his becoming owner of the piano."

(underlining (here into " ") is ours):

It is on the basis of the authority of 1895 AC 471 that it has been stated in Chitty on Contracts (Vol. II Specific Contracts), 22nd edn., page 1356 that

"There is no sale because the property "has not passed; and there is no agreement to sell because in legal analysis, the owner makes an irrevocable offer to sell which only becomes a contract of sale when the option is exercised."

Learned counsel for the petitioners was, therefore, right in his contention that in a contract of hire-purchase, where the hirer has an option to retain the goods and an option to purchase, which he may or may not exercise, there is no contract of sale or agreement to sell so long as the bailments continues." His further submission that there is no sale of goods as understood in the Sale of Goods Act, 1930, even when the hirer, who has obtained possession of the goods under the agreement, becomes the owner of the same after exercising the option to purchase, is, however, not sound. When the option of purchasing the goods is exercised by the hirer, a contract of sale comes into existence and the hirer's possession thereafter is that of a buyer. The observation of Lord Watson underlined by us pointedly emphasizes this position.

8. Now, it is authoritatively settled by the pronouncements of the Supreme Court in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, *Mithan Lal Vs. The State of Delhi and Another*, and *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*, that for the purpose of imposing a tax or sale of goods under Entry-48, List-II of the Seventh Schedule of the Government of India Act, 1935 or Entry-54, List II of the Seventh Schedule, of the Constitution, the expression "sale of goods" must be understood in the sense in which it is used in the Sale of Goods Act, 1930; that a transaction cannot be made liable to

tax unless it conforms to the requirements of the Sale of Goods Act, 1930¹; that a contract of sale is not constituted merely by reason that property in goods has been transferred to the customer; and that in addition to the transfer of property in the material, there must be an express or implied agreement between the parties for the sale of the material *qua* material. In *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*, it was emphasized that u/s 4 of the Sale of Goods Act a transaction is called "sale" only where for money consideration property in goods is transferred under a contract of sale and that a contract of sale between the parties is a prerequisite to a sale. In that case certain despatches of sugar were made by a sugar factory in Bihar to the State of Madras in compliance with the directions issued by the Sugar Controller of India under Sugar Products Control Order, 1946. It was held that these despatches were not the result of any contract of sale; that in calling upon the sugar factory to supply sugar, the Controller acted in the exercise of his statutory authority; and that there was manifestly no offer to purchase the sugar by the Province of Madras and no acceptance of any offer by the manufacturer. If, therefore, a liability to be assessed to sales tax in respect of a transaction of transfer of goods can arise only if there is a transfer of the property in the goods under a contract of sale, as understood in the Sale of Goods Act, 1930, then it is clear that a transaction of hire-purchase, which is not a contract of sale but a bailment cannot be assessed to sales tax at the time the agreement is entered into and till the bailment lasts. It is only when the hirer exercises his option of purchasing the goods and a contract of sale comes into existence that the liability to pay sales tax in respect of the sale transaction can arise.

9. Turning now to Explanation I to Section 2(n) of the Act, it would be otiose if it were to be construed as meaning only those transactions of hire-purchase where contracts of sale of goods have come into existence as a result of the exercise of option by the hirer of purchasing the goods. Such repented sale transactions would by their very nature be "sales" under the Sale of Goods Act, 1930, and fall within the substantive definition of "sale" given in Section 2(n). It would be wholly unnecessary and inappropriate to describe such sales as fictional sales. The true nature of Explanation I however, is that it enlarges the definition of "sale" by providing that a transfer of goods on hire-purchase or other instalment system of payment, which is not a sale transaction, shall be deemed to be a sale. It thus sweeps into Section 2(n) transactions which are not sale transactions under the Sale of Goods Act, 1930. Thus the State Legislature has, while enacting Explanation I, arrogated to itself a power not conferred upon it by Entry 54, List II of the Seventh Schedule of the Constitution. The Legislature cannot, in the purported exercise of its power to tax sales, tax transactions which are not sales under the Sale of Goods Act, 1930, by merely enacting that they shall be deemed to be sales. Explanation I to Section 2(n) is, therefore, clearly *ultra vires*.

10. On the question of the nature and effect of Explanation I and its *vires* the decisions of the Supreme Court in *Mithan Lal Vs. The State of Delhi and Another*,

and Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others, are decisive. In the latter case, the Supreme Court considered the validity of Explanation I to Section 2(g) of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi. The question was raised in connection with the contention of the petitioner in that case that transaction of hire-purchase giving the hirer an option to return the goods and also an option of purchasing them was not a sale under the Sale of Goods Act, 1930, and, therefore, not liable to any sales tax. Section 2(g) of the Bengal Act, and Explanation I to it, are as follows:

"Sale means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge.

Explanation I. -- A transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale."

It will be noticed that there is no difference whatsoever in the language of the above Explanation I and of Explanation I to Section 2(n) of the local Act. The Supreme Court held that the Explanation contained the categorical statement that

".....A transfer of goods on hire-purchase etc., shall be deemed to be a sale even though there may be stipulation to the effect that in spite of the transfer of goods to the hirer the owner retains title to those goods until the happening of the ultimate event, namely, completion of title at the option of the hirer."

Thus the Supreme Court regarded Explanation 1 to Section 2(g) of the Bengal Act as extending the concept of "sale" to what, in law, is not a real sale. Explanation I to Section 2(g) of the Bengal Act being similar in terms, it must be held that Explanation I to Section 2(n) of the Act enlarges the concept of "sale" to what under the Sale of Goods Act is not a real sale. There is no reason at all for construing Explanation I to Section 2(n) of the Act differently. The question of the validity of Explanation I to Section 2(g) of the Bengal Act arose in the context of the applicability of the Bengal Act to Delhi. It, was in this context that the Supreme Court, following the decision in *Mithan Lal Vs. The State of Delhi and Another*, , held that Explanation I in its applicability to Delhi was not unconstitutional.

11. Now, the judgment of the Supreme Court in *Mithan Lal Vs. The State of Delhi and Another*, leaves no doubt that if the question of the validity of Explanation I to Section 2(g) of the Bengal Act had arisen in connection with its legality and operativeness in Bengal itself, then the Supreme Court would have held the Explanation to be ultra vires. Section 2(g) of the Bengal Act defined "sale" as including "a transfer of property in goods involved in the execution of a contract". It was urged before the Supreme Court on behalf of Mithanlal that the State Legislature acting under Entry 48 had no competence to enact laws imposing tax

on the supply of materials in execution of works contract as there was no sale of any material by the contractor. The Supreme Court said that if *Mithan Lal Vs. The State of Delhi and Another*, had been governed by the judgment in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, , then the contention would have been sound. But it was held that *Mithan Lal Vs. The State of Delhi and Another*, was not governed by that judgment as the, Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, was a law made by Parliament for a Part-C State and Parliament had the power to legislate Part-C States untrammelled by the limitations prescribed by Article 246, Clauses (2) and (3), and Entry 54 of List II of the Seventh Schedule of the Constitution. It was on this reasoning that the validity Of the inclusive provision referred to above in the definition of "sale" in the Bengal Finance (Sales Tax) Act, 1941, was upheld by the Supreme, Court in *Mithan Lal Vs. The State of Delhi and Another*, , and it was on the basis of this reasoning that the constitutionality of Explanation I to Section 2(g) of the Bengal Act was upheld in the case of *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, : *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, . The pronouncements of the Supreme Court in the cases of *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, , *Mithan Lal Vs. The State of Delhi and Another*, and *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, : *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, leave no doubt that Explanation I to Section 2(n) of the Act is ultra vires.

12. Learned Government Advocate referred us to the following observations in the judgment of the Supreme Court in *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, :

"There is thus no doubt that the agreement in question does contain not only a contract of bailment simpliciter but also an element of sale, which element has been seized upon by the legislature for the purpose of subjecting a transaction like that to the Sales Tax."

It was said that these observations indicated that there was a contract of sale in a Hire-purchase agreement. Having regard to what has been said by the Supreme Court earlier in the judgment in *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, : *Instalment Supply (P.) Ltd. and Another Vs. The Union of India (UOI) and Others*, , it is impossible to read the above observations in the manner suggested by the learned Government Advocate. The observations only embody the comment of the Supreme Court that as under a hire-purchase contract a contract of sale may come into existence if the hirer exercises his option of purchasing the goods, the Legislature had "seized upon" the element of this possible sale for subjecting the hire purchase transaction to sales tax. There is no warrant for reading those observations as meaning that a hire purchase contract is a contract of sale.

13. Learned Government Advocate relied on *Commercial Credit Corporation (1943) Ltd. Vs. Deputy Commercial Tax Officer*, and *Kishan Prasad and Co. v.*

Assessing Authority, Ambala, 1961 12 STC 711 (Punj) to support his contention that under Explanation I a hire-purchase transaction could validly be assessed to sales tax. In the first case, the Madras High Court held that the transactions of "hire-purchase" could, having regard to their main intent and purpose, be treated as sales at the moment the agreement was entered into, subject to adjustment by the elimination of such portion of the turnover where no sale resulted. In the other case 1961 12 STC 711 (Punj) the "Punjab High Court held that Explanation I to Section 2(h) of the East Punjab General Sales Tax Act, 1948, (which is similar to Explanation I of the local Act) referred only to contracts which were in reality agreements to purchase chattels by instalments "subject to a condition that the property in them is not to pass until all the instalments have been paid". In regard to both these cases, it is sufficient to say that the view expressed in those cases runs counter to the pronouncements of the Supreme Court on which we have placed reliance for holding that a hire-purchase agreement is not a contract of sale but a bailment and that until the hirer exercises his option of purchasing the goods, no contract of sale comes into existence and that for a "sale" under the Sale of Goods Act, 1930, a contract of sale is a prerequisite.

14. Even on the view expressed above by us that Explanation 1 to Section 2(n) of the Act is ultra vires, the petitioners' prayer that the opponents be restrained from making against them any assessment in respect of the hire purchase transaction cannot be granted. For, even after striking down Explanation I as Ultra vires if the petitioners are "dealers" as defined under the Act and the hire purchase contracts concluded by them have ripened into contracts of sale, they would be liable to be assessed to sales tax, in respect of those transactions. As yet, there is no determination by the Sales Tax Officer on the nature and effect of any of the transactions said to have been concluded by any of the petitioners and no assessment order against any of the petitioners has been made. Strictly speaking, the proper time for expressing all that we have said above would have been after the adjudication of the Sales Tax Officer on the nature of the transactions concluded by the petitioners and the making of the assessment orders. But we thought it fit to depart from this course and expressed our opinion on the contentions advanced on behalf of the petitioners solely for the reason that on the arguments advanced at the Bar it appeared to us that there was some misconception in the minds both of the petitioners as well as of the taxing authorities on the question of the nature and effect of a hire purchase agreement and of Explanation I to Section 2(n) of the Act, and that in view of the authoritative pronouncements of the Supreme Court there was no justification for this misconception and the removal of the misconception was necessary for guiding both the petitioners as well as the taxing authorities in the matters of assessments of hire purchase transactions.

15. The petitioners' further contention that as they were not dealers, no notice u/s 29 of the Act could be issued to them requiring them to produce accounts, documents, registers etc. and that the Sales Tax Officer should have proceeded

against them u/s 17 of the Act, is altogether unsubstantial. The argument of learned counsel for the applicants was that u/s 29 a notice could be issued only to a dealer and the petitioners were not dealers. The Act nowhere prescribes any procedure for declaring a person to be a dealer for the purposes of the Act before proceeding to take any step against him under the Act. The provisions of Sections 17, 18(6) and 29 of the Act enable the taxing authority to issue a notice not only to a person who admits that he is a dealer under the Act but also to one who denies that he is a dealer. If, as urged by the learned counsel for the applicants, notices could have been issued to the petitioners u/s 17 of the Act, then notices could be issued u/s 29 also. Section 17 also speaks of a notice being issued to a dealer. If the applicants are dealers for the purposes of Section 17, they are so for the purposes of Section 29 also. Section 29 does not contain any words restricting the production of accounts, documents, registers etc., only when assessment proceedings are initiated. It says:

"29(1) The Commissioner may, subject to such conditions as may be prescribed require any dealer to produce before him any accounts, registers or documents, relevant to the financial transactions of a dealer including accounts, registers or documents relating to profits derived from the business of any firm, or to furnish any information, relating to the stock of goods of the dealer, or purchases, sales or deliveries of goods made by him as may be necessary for the purposes of this Act."

Under this provision, the Commissioner has the power to require any person to produce for inspection the documents referred to therein for the purposes of the Act. A notice to a person requiring him to produce accounts, documents etc., in order to enable the taxing authority to determine whether the person is a dealer and whether he is liable to be assessed to sales tax in respect of certain transactions effected by him is plainly for the purposes of the Act. The purpose of the Act is clearly to levy a general tax on the sale or purchase of goods in the State of Madhya Pradesh. The Sales Tax Officer, therefore, acted within his jurisdiction in issuing the notices that he did u/s 29 of the Act to the petitioners.

16. Learned counsel for the applicants also made a complaint that the communication which the Sales Tax Officer addressed to the petitioners informing them that the transactions of hire purchase entered into by them were sales as defined in Section 2(n) of the Act and that they were dealers under the Act showed that the Sales Tax Officer had already decided the question of the nature and effect of the petitioners' transactions and their being dealers without giving a hearing to them. In regard to this, it is sufficient to say that the Sales Tax Officer was no doubt not right in deciding by correspondence with the petitioners the questions which were required to be decided under the Act and the rules made thereunder according to the prescribed procedure. The opinion expressed by the Sales Tax Officer in the letters addressed by him to the petitioners does not and cannot, however relieve him of the duty of adjudicating upon the above points in accordance with law.

We have no doubt that the Sales Tax Officer will determine all the points that may arise in connection with the petitioners' liability to assessment to tax in respect of the transactions effected by them in the light of this decision and uninfluenced by the opinion expressed by him in his replies to the petitioners.

17. For the foregoing reasons, all these petitions are dismissed with costs. Counsel's fee in each case is fixed at Rs. 100/-. The outstanding amounts of security deposits, after deduction of costs, in each case shall be refunded to the petitioner concerned.