

(1994) 05 KL CK 0019
In the High Court Of Kerala
Case No : O.P. 5084 of 1989-E

Sivaramakrishnan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 24-05-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Criminal Procedure Code, 1973 (CrPC) — Section 165
Income Tax Act, 1922 — Section 34
Income Tax Act, 1992 — Section 4
Kerala General Sales Tax Act, 1963 — Section 14, 19(2), 2, 3(2), 45A
Kerala General Sales Tax Rules, 1963 — Rule 16, 18, 3, 5

Citation : (1994) 05 KL CK 0019

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : S. Padmanabhan, C. Kochunni Nair and G. Sivarajan, for the Appellant; T.K. Nambiar, Special Government Pleader for Taxes and S. Vijayan Nair, Government Pleader, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—I shall state the facts in O.P. No. 5084 of 1989, as that is the case which arises seriously for consideration.

O.P. No. 5084 of 1989

Petitioner P. Sivaramakrishnan is a partner of "Saraswathy Jewellery", a dealer registered under the Kerala General Sales Tax Act, 1963 (the Act for brevity), carrying on a Jewellery business in Main Road, Kollam.

2. On September 24, 1987 the intelligence wing of the Sales Tax Department conducted a search of the business premises of the firm, as also in building No. X/175, stated to be the residence of the Petitioner. The search was simultaneous and was conducted at the business premises by the Intelligence Officer, Alapuzha, and at the residence by the Intelligence Officer, Kottayam, whom I shall hereinafter refer as the Alappuzha and Kottayam Officers respectively for

purposes of convenience. Three pocket diaries marked for identification as A, B and C and 733 slips were seized from building No. X/175, as stated in the Shop Inspection Report. Ext. P-1(b) prepared by the Kottayam Officer, of which a copy was served on spot on the Petitioner's son S. Gopalakrishnan, a partner of the firm who was present at the time of the search. The Kottayam Officer thereafter called upon the dealer to produce its books of account for the year 1987-88 along with the other details called for by his notice Ext. P-3 dated October 7, 1987, on October 17, 1987. Two of the partners Saravanan and, Gopalakrishnan appeared with the accounts on the date notified in response to this notice. According to the counter affidavit filed on behalf of the Respondents, it was then found necessary to verify the accounts for 1985-86 and 1986-87 as well, as some of the seized slips related to those years. The books for those years were accordingly produced and verified on 22nd, 27th and 28th October, 1987 and December 29, 1987, in the presence of the partners. The Kottayam Officer, thereafter issued the notice Ext. P-3 on January 21, 1988 alleging irregularities in the accounts as also stock variation at the time of inspection, and calling upon the dealer to show cause why penalty in the sums mentioned may not be imposed on it for the years 1985-86, 1986-87 and 1987-88, u/s 45A of the Act for failure to maintain true and complete accounts, with a view to evade payment of tax due to the State.

3. The Petitioner replied by Ext. P-4, denying inter alia the seizure of records from his residence, as also the charge of non-maintenance of true and complete accounts. He also questioned the jurisdiction of the Kottayam Officer to levy penalty when the search of the business premises was by the Alappuzha Officer. In addition, he also requested for being furnished with photostat copies of the seized records to enable him to give a detailed and effective reply.

4. The Kottayam Officer was not taken in by this reply, and he sent a detailed letter Ext. P-5, dated February 20, 1988 refuting the various contentions raised by the Petitioner, but not the question of jurisdiction which was left unanswered. I am not entering into the details of his letter except to state that he permitted the Petitioner to take extracts of the seized records from his office during office hours, as it was stated to be a practical impossibility to furnish photostat copies of the three diaries and the 733 slips.

5. The Petitioner in his turn replied by his letter Ext. P-6, dated March 7, 1988, in which he requested for a decision on the question of jurisdiction raised by him before proceeding further with the matter. The Kottayam Officer's reply was Ext. P-7, dated April 21, 1988 in which he brushed aside the objection to jurisdiction as "insignificant, irrelevant and unwarranted", since the officer who inspected the business place/residence had initiated the penal proceedings. Besides, he mentioned that the Petitioner had failed to establish that the Kottayam Officer had no jurisdiction in the matter.

6. Further correspondence followed, each side refuting the other and eventually the Petitioner filed a writ petition O.P. No. 8250 of 1988 in this Court challenging

the search and seizure and all proceedings pursuant thereto and to forbear the Kottayam Officer from proceeding in the matter pursuant to the notices issued by him, Sukumaran,J., declined to entertain the matter at this preliminary stage, and dismissed the writ petition by the judgment Ext. P-10 dated October 18, 1988. Inter alia, the learned Judge observed that the expression of opinion by the officer in the various communications was only tentative, which was liable to be revised, if and when necessary materials were furnished before him to that effect.

7. The Kottayam Officer then proceeded to pass his order Ext. P-11 on November 10, 1988 imposing penalties of Rs. 24,32,387 for 1985-86 and Rs. 18,35,249 for 1986-87 u/s 45A of the Act for non-maintenance of true and complete accounts for these two years. He issued a fresh notice Ext. P-12, dated November 14, 1988 to show cause why a penalty of Rs. 8,61,470 shall not be imposed similarly for the year 1987-88. The Petitioner filed the writ petition on receipt of Ext. P-11 and P-12 and further proceedings pursuant thereto were stayed by this Court. The challenge in the writ petition is to Exts. P-11 and P-12.

8. Pending this writ petition, the assessment for the year 1985-86 was completed on March 29, 1990, based on the records Seized at the inspection on September 24, 1987. The Petitioner challenged this order in appeal before the Appellate Assistant Commissioner of Sales Tax together with a petition for staying the recovery of the amounts demanded pending the appeal. In the absence of any order on the application for stay and apprehending coercive proceedings for recovery, the Petitioner filed the writ petition O.P. No. 8422 of 1990 mainly for relief against the recovery pending its appeal, with an incidental challenge to the assessment itself. This Court passed an interim order conditionally staying the recovery proceedings pending the writ petition, and on the conditions being complied with, confirmed the interim order. The recovery of the tax demand for 1985-86 thus stands stayed by this Court. The statutory appeal against it has not so far been disposed of because of the pendency of this writ petition. Copies of the order of assessment, the appeal and the application for stay are Exts. P-2, P-3 and P-4 in O.P. No. 8422 of 1990.

9. So far as O.P. No. 8422 of 1990 is concerned, I do not intend to deal with the matter on the merits, though there is a challenge to the assessment as well. The Petitioner has already invoked the statutory remedy of appeal before the Appellate Assistant Commissioner and that appeal is pending. It is not proper for this Court to deal with the merits of the assessment when it is already the subject of challenge in statutory appeal See *Mc Dowell and Co. Ltd. v. Assistant Commissioner 1985 K.L.T 428*. At the same time the Petitioner is, entitled to relief against the recovery having regard to the fact that the recovery of the amounts demanded as per the order of assessment Ext. P-2 had been stayed by this Court subject to conditions and the Petitioner has complied with those conditions. The stay has enured for the past over three years and a half. I am therefore of the opinion that pending disposal of the appeal Ext. P-3, the

recovery of the amounts demanded as per the order of assessment Ext. P-2 may be kept in abeyance subject to the condition that the bank guarantee and the security bond furnished pursuant to the interim order passed by this Court on September 18, 1990 are kept in force. This is the only relief to which the Petitioner is entitled in O.P. No. 8422 of 1990.

10. Reverting to O.P. No. 5084 of 1989, the first point raised is that Section 45A is unconstitutional and void as violating Article 14 of the Constitution of India. The vires of this section had been upheld by a Division Bench of this Court in *M/s Paisons v. Intelligence Officer* 1991 K.L.J. 557 but says Sri S. Padmanabhan, Senior Advocate who argued the case for the Petitioner, that the attention of the Division Bench had not been focussed on a vital aspect of discrimination which vitiates the section. I shall deal with this aspect in deference to counsel as the validity of the section has otherwise been upheld in *Paisons*.

11. The contention in short is this. Section 45A(1)(b) entitles imposition of penalty for non-maintenance of true and complete accounts. Sub-section (2) of Section 19 also contains a similar provision which enables the assessing authority to impose penalty as provided in Section 45A if he is satisfied that the escape from assessment was due to wilful non-disclosure of assessable turnover by the dealer. If the penalty is imposed independently u/s 45A., the only remedy available to the aggrieved dealer to get redress is a revision to the Deputy Commissioner u/s 45A(3), with a further revision to the Board of Revenue, followed by a writ petition to this Court. As against this, it is pointed out that an order imposing penalty u/s 19(2) is subject to the right royal remedy of an appeal to the Appellate Assistant Commissioner with a further appeal to the Appellate Tribunal, both of whom possess plenary, powers, followed by a Revision to a Division Bench of this Court. It is thus pointed out that gross discrimination is made between Assessee and Assessee in the matter of the remedies available for redress and therefore Section 45A stands condemned.

12. In this connection, counsel points out that in *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, , the Supreme Court had struck down as discriminatory the provisions of the Taxation on Income (Investigation Commission) Act, 1947 which denied a person who had been proceeded against under the provisions of the said Act, the valuable rights of appeal and second appeal to challenge questions of fact decided by the authority constituted under the Act, while a similar Assessee who had been proceeded against u/s 34 of the Income Tax Act, 1922 had all the statutory remedies available to him to get redress (vide paragraph 18 of the judgment).

13. I am however unable to uphold the submissions of the Petitioner on this point despite the attractive way in which counsel for the Petitioner put it. No doubt, in either case, whether it is Section 45A(1)(b) or Section 19(2), the penalty imposable is that provided u/s 45A, i.e. the quantum of penalty. But there the similarity ends. The circumstances in which the two provisions operate are different. The chargeable event under Sub-section (1)(b) of Section 45A is

the non-maintenance of true and complete accounts, of course with a view to evade payment of tax. On the other hand, Section 19(2) operates in cases where in proceedings to assess escaped turnover, the assessing authority is satisfied that the escape from assessment was due to wilful non-disclosure of assessable turnover by the Assessee. The two provisions thus operate in two different fields, under different sets of circumstances. While non-maintenance of true and complete accounts with a view to evade payment of tax is the chargeable event u/s 45A(1)(b), satisfaction (based on materials) of wilful non-disclosure of assessable turnover by the dealer is the sine qua non for the penalty u/s 19(2). It cannot therefore be stated that persons similarly situated are being meted out differential treatment, attracting the wrath of Article 14 of the Constitution.

14. The case of Suraj Mall Mohta was one where the person proceeded against before the Commission had no statutory remedy at all to get redress. But that is not the position in a proceeding u/s 45A. The dealer on whom a penalty is imposed u/s 45A has the right to make an application under Sub-section (3) to the Deputy Commissioner (referred to as a revision petition), who has got wide powers either to confirm, reduce or waive the penalty, or to remand the case to the original authority for reconsideration. Sub-section (5) confers powers on the Board of Revenue, either suo motu or on application to call for the records either of the original authority or the Deputy Commissioner and to make such order as it thinks fit. These remedies are not so constricted as are portrayed to be. The powers are wide enough to grant relief in proper cases and are not limited to questions of law or jurisdiction only. In fact the Division Bench in Paisons relied on the existence of these remedies as a reason for repelling the attack on Section 45A as conferring any unbridled or uncanalised power (see paragraph 11). The Act itself thus provides adequate remedies for the aggrieved dealer to get redress.

15. In any case, the absence of a correcting machinery by itself is not an invalidating factor sufficient to render the provision discriminatory as was held by the Supreme Court in Babubhai and Co. and Others Vs. State of Gujarat and Others, . Regard will have to be had in such cases to several factors, such as the authority on whom the power is conferred, the nature of the power, whether the exercise thereof depends upon the subjective satisfaction of the authority or is it to be exercised objectively, whether it is a quasi-judicial power requiring the authority to observe the rules of natural justice and so on. When this be the position even in relation to the total absence of an appellate or revisional remedy, it cannot for a moment be posited that Section 45A with all the remedies provided by it is hit by the vice of discrimination. I am inclined to accept the submissions of Sri T. Karunakaran Nambiar, Special Government Pleader for Taxes on this point. The plea of invalidity of Section 45A has to fail.

16. I shall deal with two minor points, which though raised, do not really merit any serious consideration. The first is one of violation of the principles of natural justice, by reason of the alleged non-compliance with the observations in the

judgment Ext. P-10 in O.P. No. 8250 of 1988. The Petitioner has no grievance otherwise that he has not had a fair or reasonable opportunity to put forward his case before the Intelligence Officer. The complaint is that no further opportunity was afforded after the judgment Ext. P-10 was rendered. According to the Petitioner such a hearing was postulated by the observations in Ext. P-10. I cannot agree. The only observation in Ext. P-10 which was a judgment of disposal at the admission stage was that the expression of view contained in the officer's communications was only tentative subject to revision, as and when further materials were placed before him. This is only a reiteration of what otherwise is obvious and well accepted that the expression of opinion in a notice to show cause is only tentative, and never conclusive, subject to decision after cause is shown. The judgment Ext. P-10 did not hold that the opportunity afforded to the Petitioner was either inadequate or that further opportunity should be afforded. This plea has therefore only to fail.

17. The other contention raised is regarding the validity of the search and the seizure, for non-compliance with Sub-sections (3) and (4) of Section 28. The submission is that a search is authorised by Sub-section (3) only if the authority had reason to believe (which necessarily had to be on tangible materials available with him), that the dealer was attempting to evade payment of tax under the Act. According to the Petitioner there were no Such materials with the authority for him to form the jurisdictional belief and therefore the search is vitiated. It is also stated that the search has to be conducted in accordance with the provisions of the Code of Criminal Procedure, 1973, but it was not so conducted, as there were no independent witnesses for the search as mandated by Section 165 of the Code.

18. I do not think it necessary to labour long on this submission for the reason that the challenge in the main is to the imposition of the penalty u/s 45A. The question for consideration is whether the authority concerned had materials with him which would justify the imposition of the penalty. The means by which the materials were gathered or came into the possession of the authority concerned are not quite relevant in the matter of adjudication of the validity of the penalty. I need not dwell much on this proposition as the matter is concluded so far as I am concerned by the decision of the Division Bench in Deputy Commissioner of Sales Tax v. Prasad 1993 (1) KLT 935 where relying inter alia on the decision of the Supreme Court in Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, it was held that even if the search and the seizure were illegal, the documents or materials obtained on the search or seizure could be looked into and relied on for the purpose of making the assessment. The order Ext. P-11 cannot therefore be faulted on this ground alleged by the Petitioner, even assuming that the search and the seizure were not in accordance with law, on which I am not rendering any final opinion as it is unnecessary.

19. I might as well dispose of at this stage another minor point of controversy, that there was no search of the Petitioner's house at all. On that basis the

Petitioner had contended in his replies that there was no seizure of any documents from his residence. The search by the Kottayam officer on the basis of the authorisation from the Board of Revenue was of a building bearing Door No. X/175, while the house of Petitioner is stated to be in Door No. X/263. This plea has been taken note of by the officer and dealt with by him. Essentially this is a question of fact which the Petitioner should urge in the statutory remedy available to him u/s 45A(3). In any case, I do not find any substance in it. The search was conducted in the presence of the Petitioner's son Gopalakrishnan who was present throughout and who received a copy of the Shop Inspection Report Ext. P-1(b) on spot. No objection was raised by him that the house searched was not the residential house of the Petitioner. Barring the contention based on door numbers, I could not find any case for the Petitioner that he is residing elsewhere in a building other than the one searched, I do not therefore find any merit in this plea.

20. I shall now turn to the major points raised relating to the merits of the case, the quantum of penalty as well as jurisdiction. Re: the merits, the Petitioner has much to say. According to him; there is no nexus between the jewellery business and the diaries and the slips. He states that when he has denied such connection, the burden was on the department to establish it, but the burden has not been discharged with any relevant material. In any case, it is stated that the element of mens rea on which stress was laid in *Paisons*, has not been established.

21. An equally vehement attack was mounted on the quantum of penalty imposed by Ext. P-11. It was pointed out that the assessments for 1985-86 and 1986-87 have been subsequently completed. The turnover allegedly suppressed and on which penalty at double the amount of tax evaded was imposed was Rs. 2,02,69,890 for 1985-86, going by Ext. P-11. But as per the revised assessment Ext. P-18 for that year (same as Ext. P-2 in O.P. No. 8422 of 1990) the turnover additionally assessed consequent on the search in only Rs. 1,39,02,920 with a tax liability of Rs. 6,95,136 (which itself is under challenge in appeal). The quantum of penalty imposed for 1985-86 is thus out of all proportion to the amount of suppression alleged as per the assessment for that year and therefore Ext. P-11 is unsustainable in law and on facts. This is apart from the contention that no reasons have been stated for imposing the maximum penalty, while the decision in *Paisons* has recognised a discretion in the officer regarding the quantum of penalty. It is also contended that the maximum penalty imposable is only Rs. 5,000 under the last clause of Section 45A(1).

22. I decline to go into these questions as the order Ext. P-11 is, already the subject of a parallel challenge before the statutory authority, namely the Deputy Commissioner under Sub-section (3) of Section 45A of the Act (vide paragraph 8 of the counter affidavit). Apart from the impropriety of dealing with the matter under Article 226 of the Constitution when the matter is pending consideration by the statutory authority, *Mc Dowell and Co. Ltd. v. Assistant Commissioner*

1985 KLT 428 and Shriram Refrigeration Industries Ltd. and another Vs. Commercial Tax Officer and others, it is also not possible to deal with the matter effectively in these proceedings. Various questions of fact requiring examination of the evidence and the materials available in the record are involved, which are best left for consideration by the Deputy Commissioner in the statutory revision pending before him. I leave these questions open.

23. I shall however deal with the question of jurisdiction raised by the Petitioner. I have necessarily to deal with it as the vires of certain notifications issued by the Government is involved which cannot be effectively agitated before the departmental statutory authority in the revision petition pending before him.

24. I have already indicated that the Petitioner had right from the beginning, been questioning the jurisdiction of the Kottayam Officer, though it did not find favour with the said officer. In the impugned proceedings. Ext. P-11, he chose to trace his jurisdiction to a notification S.R.O. No. 281/79 issued by Government on March 2, 1979, a copy of which is Ext. P-13. The counter affidavit filed on behalf of the Respondents in this writ petition, relies on yet another notification S.R.O. No. 316/84, dated March 29, 1984, a copy of which is Ext. P-14, also as forming the foundation of the Kottayam Officer's jurisdiction.

25. The Petitioner has elaborated his challenge to the Kottayam Officer's jurisdiction in paragraphs 19 to 27 of the writ petition and paragraphs 16, 17, 19, 20 and 23 of the reply affidavit. Briefly, the submission is that the Petitioner is carrying on business in Kollam, that he is an Assessee on the files of the Sales Tax Officer, I Circle, Kollam, that he is ordinarily subject to the jurisdiction of the officers at Kollam only, that the Kottayam Officer purports, according to Ext. P-11 and the counter affidavit, to exercise jurisdiction in this matter only because of the Statewide jurisdiction conferred on him by Exts. P-13 and P-14, that these notifications are ultra vires the Act, as the Government's power under the relevant provisions of the Act is only to appoint officers to function within local limits that this has been violated by empowering officers to exercise Statewide jurisdiction and therefore all the proceedings initiated by the Kottayam Officer have to fail.

26. I shall deal with this point with some prefatory remarks about the introduction of Section 45A and the authorities empowered to act thereunder. The section was inserted in the Act by Act 12 of 1976 with effect from October 27, 1976. It provides that if the assessing authority or the Appellate Assistant Commissioner is satisfied that any person has done or omitted to do any of the acts described in Clauses (a) to (g) thereof, such authority or officer may direct the person to pay the amount mentioned therein by way of penalty. "Assessing Authority" is defined in Section 2(iv) - as meaning any person authorised by the Government or by any authority empowered by them to make any assessment under the Act. This was amplified for purposes of Section 45A by Act by introducing Explanation II to Sub-section (1) thereof by providing that for the purposes of this Sub-section, assessing authority" includes any officer not below

the rank of Sales Tax Officer specified by the Government in this behalf by notification in the Gazette.

27. Sub-section (2) of Section 3 provides that Government shall appoint as many Deputy Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners, Sales Tax Officers and such other officers as they think fit for the purposes of performing the functions respectively assigned to them by or under the Act. The Sub-section further provides-and this is important for purposes of this discussion-That such officers shall perform the said functions within such local limits as the Government or any authority or officer empowered by them in this behalf may assign to them. In exercise of the powers so conferred by Sections 2(iv) and 3(2), Government issued notification S.R.O. No. 335/63 on March 30, 1963 appointing and empowering among others, Intelligence Officers of Agricultural Income Tax and Sales Tax, specified in the second column to the schedule of the notification, to exercise the powers of an assessing authority within the area specified against each in the fourth column of the said schedule. The Intelligence Officer of Kollam was thus empowered to exercise authority over the Revenue Districts of Thiruvananthapuram, Kollam, Alapuzha, Kottayam and Ernakulam. There is no mention of any Intelligence Officer at Kottayam in this notification. This notification was amended by the notification Ext. P-13 on March 2, 1979, by which certain items therein as amended, were substituted by new items. The Intelligence Officers at Kollam, Alapuzha and Kottayam were thus appointed and empowered to exercise jurisdiction throughout the State of Kerala. This is the notification under which the Kottayam Officer purported to act and impose the penalty on the Petitioner at Kollam by the proceedings Ext. P-11.

28. Later Government issued the notification Ext. P-14 on March 29, 1984 under Explanation II to Sub-section (1) of Section 45A, specifying Intelligence Officers of Agricultural Income Tax and Sales Tax as "assessing authorities" for the purposes of the said Sub-section with effect from April 1, 1984. This notification did not prescribe the areas to which the jurisdiction of the respective officers extended. It was a general notification making Intelligence Officers also, among others, as assessing authorities for purposes of Section 45A(1). This notification is relied on in the counter affidavit as a source of power for the Kottayam Officer to make the order Ext. P-11 and issue the notice Ext. P-12.

29. According to the Respondents Exts. P-13 and P-14 empower the Kottayam Officer to exercise authority u/s 45A(1) throughout the State of Kerala and therefore the proceedings Ext. P-11 and the notice Ext. P-12 are sustainable and valid.

30. One of the two authorities who could act u/s 45A(1) is "the assessing authority" who includes, thanks to Explanation II, any officer not below the rank of a Sales Tax Officer specified by Government, by notification in the Gazette. The notification Ext. P-14 was intended for this purpose and thereby an Intelligence Officer also became an "assessing authority" entitled to impose penalty u/s 45A(1). But this by itself may not suffice to enable an Intelligence

Officer to impose penalty anywhere in the State. The appointment of an Intelligence Officer is done by Government by virtue of the powers vested in them by Sub-section (2) of Section 3, and on such appointment, he shall perform his functions under the Act within such local limits as the Government or any other authority empowered in that behalf may assign to him. Chronologically therefore, the first act is for Government to appoint Intelligence Officers. On such appointment they perform the functions assigned to them under the Act, but the exercise of the power will be confined to the local limits assigned to each by Government or any other authority. This appointment enables them to impose the penalty under Sub-section (1) of Section 45A by virtue of Explanation II read with the notification Ext. P-14 but this can only be within the local limits assigned to each of them. This is all the effect of the inclusive definition of "assessing authority" in Explanation II of Section 45A(1).

31. Petitioner's case is that, having regard to the express terms of Sub-section (2) of Section 3 and the scheme of the Act, Government has to set the local limits of the jurisdiction of an officer which must be a limited area and not the entire State as done expressly in Ext. P-13 and impliedly in Ext. P-14.

32. I have already referred to the definition of "assessing authority" in Section 2(iv) as also to the prescription in Section 3(2) that the officers appointed pursuant to the power conferred thereunder namely Deputy Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners, Sales Tax Officers and others shall exercise their power within the local limits assigned to them. Ramanatha Iyer in his Law Lexicon defines the expression "local" as relating to a particular place, as belonging or confining to a particular place and relating only to a portion of the people of a State or their property. Similar is the meaning given in Black's Law Dictionary as well as by Webster, Funk and Vagnal and others. I need not elaborate. When a legislation applicable to the entire State speaks of a locality or local limit, it clearly signifies that it does not refer to the entire State, but to a defined part thereof. Therefore when Section 3(2) speaks of the appointed officers exercising their powers within the local limits assigned to them, it means that their jurisdiction cannot extend to the entire State but to defined areas or parts of the State only. The scheme of the Act also requires such an interpretation as otherwise, conflict of jurisdiction will arise if different authorities of equal status and exercising coeval powers purport to exercise jurisdiction over the same person in respect of the same subject matter. I shall refer to some of these provisions which reinforce the above conclusion of mine.

33. Section 14 read with Rules 3(h) and 5 requires an application for registration to be made to the assessing authority in whose area of jurisdiction the principal place of business of the dealer applying for registration is situated. Rule 18 likewise speaks of the assessing authority of the area in which the principal place of business of the dealer is situated as the one to whom the annual return is to be filed; and he is the authority to make the final assessment. Section 19(3) of the

lot dealing with reopening of an assessment is a similar provision.

34. The existence of a multiplicity of officers of the same status exercising power over the same area can lead to chaos and confusion and conflicting orders. It may even lead to multiplicity of proceedings regarding the same subject matter causing hardship and inconvenience to dealers. Questions may also arise as to who should be the revisional or appellate authority in relation to a particular proceeding. Section 3(2) has therefore advisedly limited the area of operation of any particular officer to certain local limits, and not unlimited throughout the State. The conferment of such power throughout the State is not therefore in consonance with Section 3(2) and is ultra vires the said provision.

35. A provision similar to Section 3(2), namely Section 4 of the Andhra Pradesh General Sales Tax Act, 1957 was considered by a Division Bench of the Andhra Pradesh High Court (Ramachandra Rao and Jagannadha Rao, JJ.) in *Sri Balaji Rice Co. v. Commercial Tax Officer* (1984) 55 S.T.C. 292 and it was held at page 304 that any fixation of the territorial jurisdiction of an officers which is not limited to local limits, but extends to the whole of the State of Andhra Pradesh was clearly ultra vires the powers conferred on Government u/s 4. Reliance was placed on the observations of Beaumont, C.J. speaking for the Bench in *DAYALDAS KUSHIRAM Vs. COMMISSIONER OF INCOME TAX, (CENTRAL) AND ANOTHER.*, which was a case u/s 4 of the Income Tax Act, 1992. The Bench also held that the conferment of concurrent jurisdiction on several officers in respect of the same area was likely to result in discriminatory consequences, resulting in violation of Article 14. I am in agreement with this reasoning.

36. A fall out of this decision was an amendment to the Andhra Pradesh Act by Act 18 of 1985 followed by a fresh notification delimiting the jurisdiction of the officers to specified areas. The retrospectivity of this notification was negated by another Bench of the same High Court, Jeevan Reddy and Lakshmana Rao, JJ. in *Mc. Dowell and Co. Ltd. v. Commercial Tax Officer* (1988) 68 S.T.C. 124. I am referring to this decision only to point out that the subsequent Bench proceeded on the basis of the correctness of the earlier decision and did not doubt it.

37. The decision of this Court in *Intelligence Officer v. Swarnamahal Jewellers* (1988) 69 S.T.C. 175 only held that the object of Explanation II to Section 45A(1) was to confer the power u/s 45A(1) on Intelligence Officers as well in addition to the authorities vested with jurisdiction u/s 2(iv) and 3(2). But the further ramification, whether this power of an Intelligence Officer, could be exercised throughout the State, or only within local limits, was not under consideration by the Bench and therefore it is of no assistance to the Respondents.

38. Faced with this situation, the senior Government Pleader (Taxes), Sri T. Karunakaran Nambiar, made an alternate submission that if Exts. P-13 and P-14 are ultra vires to the extent mentioned, the power conferred by S.R.O. No. 335 of 1963 will revive and therefore the Kottayam Officer will have jurisdiction over

the matter. I cannot agree. Apart from the fact that such a plea is not reflected in the correspondence or in the pleadings, no material has also been placed before me to show that the Kottayam Officer had jurisdiction over Kollam on March 2, 1979, apart from the general notification Ext. P-13 vesting him with jurisdiction throughout the State. Even otherwise, the earlier notification, if any, prior to Ext. P-13 will not revive on the declaration of Ext. P-13 as ultra vires the powers of Government u/s 3(2), as was held by the Supreme Court in *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, in paragraph 20 of which it was observed:

It has been urged for the Respondent that if the impugned rule be held to be invalid, old Rule 16 gets revived and that the tax assessed on the Petitioner will be good. We do not agree. Once the old rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be Invalid.

The same is the position here, the only difference being that the substitution here is of an item in a notification and not of a Rule.

39. I therefore hold that the notifications Exts. P-13 and P-14 in so far as they purport to assign the Intelligence Officer, Kottayam with jurisdiction throughout the State is ultra vires the powers of Government u/s 3(2) of the Act. Since the Kottayam Officer has otherwise no jurisdiction over Kollam area the order Ext. P-11 and the notice Ext. P-12 are invalid and without jurisdiction. In this view of the matter, I am not considering the further question raised by the Petitioner that the Kottayam Officer had ceased to have jurisdiction in the matter before he passed the order Ext. P-11, because of some subsequent Government orders realigning jurisdiction.

40. But this will not preclude the Intelligence Officer or other officer having jurisdiction ordinarily over the Kollam area from initiating proceedings against the Petitioner and imposing penalty, if warranted, u/s 45A of the Act. I also make it clear that the materials and records seized at the search on September 24, 1987 need not be eschewed from consideration in such proceedings having regard to the observations made by me in paragraph 18 supra.

O.P. No. 5084 of 1989 is therefore allowed subject to the observations contained in this judgment. Exts. P-11 and P-12 are quashed. O.P. No. 8422 of 1990 is disposed of directing the Respondents to keep in abeyance the recovery of the amounts demanded pursuant to the order of assessment Ext. P-2 pending disposal of the appeal Ext. P-3 by the Appellate Assistant Commissioner, subject to the Petitioner keeping the bank guarantee and the security furnished as per the interim order of this Court dated September 18, 1990 in force pending the said appeal. There will be no order as to costs.