Suryalakshmi Cotton Mills Ltd. and Another Vs Deputy Commissioner of Commercial Taxes, Hyderabad Division and Others

Court: Andhra Pradesh High Court

Date of Decision: Sept. 12, 1968

Acts Referred: Constitution of India, 1950 â€" Article 14, 19, 309, 310, 311

Citation: (1969) 23 STC 178

Hon'ble Judges: P. Jaganmohan Reddy, C.J; Ramachandra Rao, J

Bench: Division Bench

Advocate: D.V. Sastry, in W.P. No. 330 of 1967 and S. Parvat Rao, for Anwarulla Pasha, in W.P. No. 3640 of 1968, for the Appellant; The Principal Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

P. Jaganmohan Reddy, C.J.
In both these petitions, the vires of Sub-section (6) of Section 21 of the Andhra Pradesh General Sales Tax

Act, 1957 (hereinafter referred to as ""the Act"") is challenged on the ground that as it discriminates assessees whose assessments are revised by the

Deputy Commissioner of Commercial Taxes, from all other assessees who though similarly situated are either revised by the Board of Revenue or

by officers above the assessing authority but below the Deputy Commissioner, it violates Articles 14 and 19(1)(f) and (g) of the Constitution, there

being no rational basis or nexus between the classification and the object sought to be achieved.

2. In W.P. No. 330 of 1967, the assessee is a limited company carrying on the business of manufacturing cotton yarn at its mills in

Mahaboobnagar. For the assessment year 1964-65, the company was assessed on 15th June, 1965, by the Commercial Tax Officer, Hyderabad

III, on a net turnover of Rs. 8,09,780.22, after exempting a turnover of Rs. 12,68,626.96 representing inter-State purchases made by the assessee

from the Slates of Maharashtra, Gujarat etc. The Deputy Commissioner of Commercial Taxes, Hyderabad, issued a notice on 9th June, 1966,

purposing to revise the assessment and levying a tax on Rs 12,68,626.96 treating them as intra-State purchases. The petitioner objected to the

levy of tax on this amount and submitted a detailed statement in respect of these purchases, the out-of-State places from which the goods have

moved, the invoice numbers, the contract numbers etc. The Deputy Commissioner however rejected the contentions and passed orders on 3rd

September, 1966, directing the company to pay tax at 2 per cent, on Rs. 11,87,331.00 assessed by him as the turnover. Against this order, an

appeal was filed before the Sales Tax Appellate Tribunal, but unless the tax levied as per the revised orders of the Deputy Commissioner, viz., Rs.

23,746.62 is paid, the petitioner''s appeal cannot be entertained having regard to the provisions of Sub-section (6) of Section 21 of the Act.

3. In the second petition, also, the petitioner is a limited company carrying on business of manganese and iron ore etc. at Visakhapatnam. It was

assessed to tax by the Commercial Tax Officer on 26th November, 1965, on a turnover of Rs. 6,49,915.15, after giving exemption in respect of

various transactions which were in the course of export-import outside/into India, and the petitioner paid the tax demanded. After neatly 3 years,

the petitioner contends, the Deputy Commissioner, Commercial Taxes, Visakhapatnam, purporting to act u/s 20 of the Act, revised the order of

the Commercial Tax Officer by re-estimating and reassessing the turnover of the petitioner by his order dated 9th July, 1968, which was

communicated to the petitioner on 10th July, 1968. By this order, the Deputy Commissioner directed the Commercial Tax Officer to assess the

petitioner on a net turnover of Rs. 2,67,94,211.79 and consequently the Commercial Tax Officer, Visakhapatnam, by his order dated 10th July,

1968, assessed the petitioner on the said turnover and determined the tax payable. as Rs. 8,62,532.65. After deducting the tax of Rs. 21,122.23

already paid, he issued a demand notice for payment of the balance of Rs. 8,41,410.42 within 21 days from the date ?of receipt of the notice,

which was received on 11th July, 1968. The petitioner, in order to file an appeal before the Appellate Tribunal against the order of the Deputy

Commissioner, which appeal could not be entertained without payment of the tax demanded, applied to the Deputy Commissioner, for grant of

stay, to enable him to file an appeal before the Tribunal and continue the stay during its pendency.

4. But by his order dated 31st July, 1968, the Deputy Commissioner held that he has no power to grant an absolute stay and directed payment, of

the amount in two monthly instalments, the first instalment being payable within 30 days from the date of demand notice and the second instalment

within further 30 days, and that failure to adhere, to the time will result in. the order being rescinded. Initially, bias on the part of the Deputy

Commissioner was alleged, but by an additional affidavit, the petitioner has further urged that Section 21(6) is discriminator}'' and violative of

Articles 14 and 19(1)(f) and (g) of the Constitution of India.

5. Sri Venkatappaiah Sastry, on behalf of the petitioner, has urged that dealers are discriminated against merely on the basis of the particular

authority which exercises the revisional powers conferred under the Act, in that the right of appeal which has been conferred upon assessees is

subject to certain onerous restrictions if the appeal is against an order passed in revision by a Deputy Commissioner u/s 20(1), viz., that they

should pay the entire tax demanded before the appeal could be entertained, while there is no such pre-condition if the appeal is against an order

passed by the Board of Revenue in revision u/s 20(1) or against an order revised by a Commercial Tax Officer or Deputy Commissioner u/s 14(4-

C). The restriction imposed u/s 21(6) as a pre-condition to the exercise of the right of appeal, it is further contended, has the effect of taking away

that right and is therefore unreasonable and arbitrary.

6. The learned counsel submits that under the scheme of the Act, against an original assessment made by an assessing authority u/s 14, an appeal

lies to the Assistant Commissioner u/s 19. There is no pre-condition for such an appeal and it can be disposed of even though the tax is not paid.

Further, u/s 19(2-A), on an application filed by the appellant-assessee along with the appeal, the Assistant Commissioner can grant stay of

collection of tax. If, however, the Assistant Commissioner refuses to grant stay, a revision can be filed to the Deputy Commissioner u/s 19(2-B).

u/s 19(2-C) stay granted by the Deputy Commissioner u/s 19(2-B) or a stay granted by the Assistant Commissioner u/s 19(2-A), if continued by

the Deputy Commissioner, will enure till the disposal of the appeal by the Appellate Tribunal. In such cases, the Appellate Tribunal can entertain an

appeal without proof of payment of the tax. Even where the whole or any part of the turnover of business of a dealer has escaped assessment to

tax or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or

has been levied at a rule lower than the correct rate, the assessing authority under Sub-section (4) of Section 14 may, after issuing a notice to the

dealer and making such enquiry as he may consider necessary, by order, setting out the grounds therefore, reassess the turnover, tax, licence fee or

registration fee, as the case may be. Likewise, u/s 14(4-C) any authority other than the assessing authority, including the Deputy Commissioner,

can exercise the powers conferred under Sub-section (4) of Section 14 on the assessing authority. u/s 20(1) the Board of Revenue may suo motu

call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it under the

provisions of the Act. These powers can also be exercised, under Sub-section (2) of Section 20 by the Commercial Tax Officers or the Deputy

Commissioners of Commercial Taxes in the case of orders passed or proceedings recorded by authorities, officers or persons subordinate to

them. Against the orders passed in appeal u/s 19 by the prescribed authorities, or by the Deputy Commissioner suo motu under Sub-section (4-C)

of Section 14 or by the Deputy Commissioner under Sub-section (2) of Section 20, an appeal will lie to the Appellate Tribunal within 60 days

from the date on which the order or proceeding was served on the dealer, and against an order passed by the Board of Revenue under Sub-

section (1) of Section 20 an appeal will lie to the High Court within the same period, u/s 23.

7. It is contended that in none of the appeals provided for against any of the orders passed by the prescribed authorities u/s 19 or Sub-section (4-

C) of Section 14 or under Sub-section (1) or (2) of Section 20 is any restriction imposed, except against orders passed by the Deputy

Commissioner u/s 20(2) an appeal against which can only be entertained by the Appellate Tribunal on satisfactory proof of the payment of tax,

under Sub-section (6) of Section 21. It is this restriction imposed by Sub-section (6) of Section 21 that is challenged before us as being violative of

Articles 14 and 19(1) (I) and (g) of the Constitution.

8. Sri Ramachandra Reddy on behalf of the Government, on the other hand, contends that a right of appeal has been given against orders passed

by the prescribed authorities as well as by the Deputy Commissioner whether the order is passed under Sub-section (4-C) of Section 14 or

Section 20(2), or against orders passed by the Board of Revenue u/s 20(1). The Act, he submits, contemplates four types of assessments: (1)

Original assessment by assessing authority, (2) reopening by assessing authority of escaped assessments or under-assessments u/s 14(4) by

original assessing authority, (3) reopening by authorities higher than the assessing authority, including the Deputy Commissioner u/s 14 (4-C), and

(4) revision by Board of Revenue u/s 20(1) or by the Deputy Commissioner or Commercial Tax Officer u/s 20(2). Appeals against assessments

under (1), (2) and (3) by any higher authority other than the assessing authority except the Assistant Commissioner and the Deputy Commissioner,

are provided to the Assistant. Commissioner of Commercial Taxes, and where the appeal is against an order passed by the Deputy Commissioner,

to the Appellate Tribunal. It is therefore contended that to appeals against orders of any of the authorities except the Deputy Commissioner, Sub-

section (G) of Section 21 does not apply. But u/s 19(2-A) appellate authorities are empowered to grant stay, and against orders refusing to grant,

stay, there is a revision provided to the Deputy Commissioner u/s 19(2-B). Section 19(2-C) provides that the stay ordered u/s 19(2-B) shall be

operative till the disposal of the appeal, but the stay ordered under Sub-section (2-A) shall be operative till the disposal of the appeal only in a case

where the Deputy Commissioner makes a specific order to that effect on an application by the dealer. Where, however, the Deputy Commissioner

himself exercises power in revision, since he is the final authority when he acts suo motu, there is no revisional authority provided against his orders

for grant of stay pending appeal to the Appellate Tribunal. The object and the scheme of the Act, he contends, is that there should be an unfettered

right of first appeal against assessments levying a tax on a particular turnover. Where there is an appeal against revision, or a second appeal, the

condition of obtaining stay pending the appeal is provided for and it applies equally to other cases, and accordingly, Sri Ramachandra Reddy

contends that the provision u/s 21(6) is neither unreasonable nor arbitrary nor is there any discrimination, and consequently, it does not offend

Article 14 or Article 19(1)(f) or (g) of the Constitution.

9. These contentions do not controvert the averment of the petitioners that under the relevant provisions of Sections 14, 19, 20, 21 and 23, which

we shall presently read, while appeals provided against orders passed by any authority higher than the assessing authority, except the Deputy

Commissioner, and appeals against orders passed by the Board of Revenue, are not fettered by the dealer having to furnish proof of payment of

the tax as a pre-condition for the entertainability of appeal, an appeal against an order of the Deputy Commissioner passed u/s 20(2) requires

proof of payment of tax, before the appeal can be entertained. The question is whether this is unreasonable, arbitrary or amounts to discrimination.

10. We may now read the relevant provisions of Sections 14, 19, 20, 21 and 23.

11. Section 14(4) : ""In any of the following events, namely, where the whole or any part of the turnover of a business of a dealer has escaped

assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has

escaped levy or has been levied at a rate lower than the correct rate, the assessing authority may, after issuing a notice to the dealer, and after

making such enquiry as he may consider necessary, by order, setting out the grounds therefore- -

(a) determine to the best of his judgment the/ turnover that has escaped assessment and assess the turnover so determined ;

(b) assess the correct amount of tax payable on the turnover that. has been under-assessed ;

(c) assess at the correct rate the turnover that has been assessed at a lower rate :

(d) levy the licence fee after determining to the best of his judgment the turnover on which such fee is payable ;

(e) levy the registration fee that has escaped levy ; or

(f) levy the correct amount of licence fee or registration fee in a case where such fee has been levied at a rate lower than the correct rate.

...

(4-A) and (4-B)...

(4-C) ""The powers conferred by Sub-section (4) on the assessing authority may, subject to the same conditions as are applicable in the case of

that authority, be exercised also by any of the authorities higher than the assessing authority including the Deputy Commissioner concerned.

12. Section 19.(1)""Any dealer objecting to an order passed or proceeding recorded by any authority under the provisions of this Act [other than

an order, passed or proceeding recorded by a Deputy Commissioner under Sub-section (4-C) of Section !4| may, within thirty days from the date

on which the order or proceeding was served on him, appeal to such authority as may be prescribed :

Provided...

(2)...

(2-A) Where an appeal is admitted under Sub-section (1), the appellate authority may, on an application filed by the appellant and subject to such

terms and conditions as he may think fit, order stay of collection of the tax under dispute, pending disposal of the appeal.

(2-B) Against an order passed by the appellate authority refusing to order stay under Sub-section (2-A), the appellant may prefer a revision

petition within thirty days from the date of the order of such refusal to the Deputy Commissioner who may, subject to such terms and conditions as

he may think fit, order stay of collection of the tax under dispute pending the disposal of the appeal by the appellate authority.

(2-C) Notwithstanding anything in Sub-section (2-A) or Sub-section (2-B), where a dealer has preferred an appeal to the Appellate Tribunal u/s

21, the stay, if any, ordered under Sub-section (2-B) shall be operative till the disposal of the appeal by such Tribunal, and the stay, if any, ordered

under Sub-section (2-A) shall be operative till the disposal of the appeal by such Tribunal, only in a case where the Deputy Commissioner, on an

application made to him by the dealer in the prescribed manner, makes a specific order to that effect.

(3)...

13. Section 20 : ""The Board of Revenue may suo motu call for and examine the record of any order passed or proceeding recorded by any

authority, officer or person subordinate to it, under the provisions of this Act, including Sub-section (2) of this section, for the purpose of satisfying

itself as to the legality .or propriety of such order or as to the regularity of such proceeding and may pass such order in reference thereto as it

thinks fit.

(2) Powers of the nature referred to in Sub-section (1) may also be exercised by the Deputy Commissioner and the Commercial Tax Officer in the

case of orders passed or proceedings recorded by authorities, officers or persons subordinate to them.

* * * *

14. Section 21(1) : ""Any dealer objecting to an order passed or proceeding recorded-

(a) by any prescribed authority on appeal u/s 19, or

(b) by a Deputy Commissioner suo motu under Sub-section (4-C) of Section 14 or Sub-section (2) of Section 20, may appeal to the Appellate

Tribunal within sixty days from the date on which the order or proceeding was served on him.

(2) ...

(3) ...

(4) ...

(5) ...

(6) Except in a case where a stay is in operation as provided in Sub-section (2-C) of Section 19, no appeal shall be entertained under Sub-section

(1) unless it is accompanied by a satisfactory proof of the payment of tax as determined in any appeal u/s 19 or in revision u/s 20.

...

Section 23(1) : ""Any dealer objecting to an order relating to assessment passed by the Board of Revenue suo motu under Sub-section (1) of

Section 20., may appeal to the High Court within sixty days from the date on which the order was communicated to him :

Provided...

15. The above provisions indicate that there is a discrimination between the authorities higher than the assessing authorities exercising revisional

powers u/s 14(4-C) and those exercised by the Deputy Commissioner u/s 20(2). It may further be noticed that where revisional powers are

exercised by authorities higher than the assessing authorities but below the Assistant Commissioner, appeals are provided for u/s 19 to the

prescribed authority, who, under Rule 33 of the Sales Tax Rules, is the Assistant Commissioner, and from the orders of the Assistant

Commissioner to the Appellate Tribunal. While exercising the right of appeal against these authorities, either to the Assistant Commissioner or to

the Appellate Tribunal, the assessee is not fettered by the provisions of Sub-section (6) of Section 21. No doubt in these cases the Deputy

Commissioner has been given power to stay collection of the tax to be operative till the disposal of the appeal before the Tribunal, under Sub-

section (2-C) of Section 19, which power cannot be exercised by the Deputy Commissioner where the appeal is against an order passed by him in

revision u/s 20(2) of the Act.

16. The contention of the learned Government Pleader is that there is no fetter imposed for a first appeal preferred against orders passed by any of

the authorities provided under the Act, in all of which the Act further makes a provision for stay of tax pending that appeal. But since the Deputy

Commissioner is the final authority, who alone can grant stay of tax, there is no provision to stay payment of tax pending appeal against his order to

the Tribunal, which provision is not an unreasonable restriction. Nor can it be said to be discriminatory. This argument however does not explain

why there should be discrimination between appeals against orders passed by authorities higher than the assessing authority and those below the

Assistant Commissioner who exercise similar revisional powers to those exercisable by the Deputy Commissioner u/s 20(2) and appeals against

orders passed by the Deputy Commissioner. If appeals against orders passed by the former authorities are first appeals, appeals against orders

passed by the latter authority, namely, the Deputy Commissioner, are equally first appeals. There is also no valid explanation why even where there

is a second appeal to the Tribunal from orders of the Assistant Commissioner passed in appeals against orders passed by authorities lower than

himself or an appeal against orders of the Assistant Commissioner or Deputy Commissioner u/s 14(4-C) there is no fetter imposed under Sub-

section (6) of Section 21, while an appeal against an order passed by the Deputy Commissioner u/s 20(2) is subject to that fetter. If appeals

against orders passed by authorities lower than the Deputy Commissioner, but higher than the assessing authority passed under Sub-section (4-C)

of Section 14 are first appeals, then by the same parity of reasoning, appeals against orders passed by the Deputy Commissioner should also be

first appeals. If so, there is no valid or understandable reason why there should be a difference. This objection is equally valid in respect of appeals

against orders passed by the Board of Revenue against which an appeal is provided to the High Court. The fetter imposed by Sub-section (6) of

Section 21 appears to be more to depend upon a fortuitous circumstance of similar revisional powers being exercised by a particular authority. It is

stated that there is nothing wrong in this, because the Deputy Commissioner being a higher authority, his orders are given greater efficacy, which

argument probably implies that there are lesser chances of they being upset in appeal and consequently payment of the tax is a condition precedent

to the entertanability of the appeal. If such be the possible assumption, then it is unwarranted. Where appeals are provided, it would do violence to

reason to postulate any such assumption. The highest authority in the hierarchy of Tribunals prescribed by the statute is the Appellate Tribunal, and

whether the appeal has merits or not is a matter entirely for that body to determine The Deputy Commissioner from whose orders appeals are

provided to the Tribunal is an authority subordinate to the Tribunal and is hardly a person who could determine whether the appeal has any merits

or not.

17. In all cases where a right of appeal is given, except in the case of appeals against orders of the Deputy Commissioner, a power for granting

stay of payment of tax until the hearing of the appeal before the Tribunal has also been conferred. "I here is no reason why assessees whose cases

are revised by the Deputy Commissioner should be deprived of such a right. It is not. as it revisional powers of the Deputy Commissioner are

confined only to the reopening of cases of escaped turnover of any substantial amount which could be ascertained with reasonable certainly, as

was justified in the case of A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, . In that case the Supreme Court was considering

whether the class of persons who might fall within Section 5(1) of the Travancore Act 14 of 1124 was not the same class of persons who may

come u/s 47(1) of the Travancore Act 23 of 1121, and whether it was not a discrimination falling under the vice of Article 14 of the Constitution. It

was held that the class of persons who might fall within Section 5(1) of Act 14 of 1124 was not the same class of persons who may come u/s

47(1) of Act 23 of 1121, and further that action u/s 5(1) read with Section 8(2) of Act 14 of 1124 was definitely limited to the evasion of payment

of taxation on income made during the war period, and that therefore it cannot be urged that Section 5(1) of Act 14 of 1124 was discriminatory in

comparison with Section 47(1) of Act 23 of 1121, for the persons who came u/s 5(1) were not similarly situated as persons who came u/s 47(1).

Earlier in Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, as well as in Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V.

Visvanatha Sastri and Another, the vires of Sections 5(1) and 5(4) of the Taxation on Income (Investigation Commission) Act, 1947, was

challenged on the ground that those sections are discriminatory as regards the procedure prescribed under that Act in comparison with Section 34

of the Indian Income Tax Act, 1922. Section 5(1) of the Taxation on Income (Investigation Commission) Act provided thus :

The Central Government may at any time before the first day of September, 1948, refer to the Commission for investigation and report any case or

points in a case in which the Central Government has prima facie reasons for believing that a person has to a substantial extent evaded payment of

taxation on income, together with such material as may be available in support of such belief, and may at any time before the first day of

September, 1948, apply to the Commission for the withdrawal of any case or points in a case thus referred....

18. Sub-section (4) further provided :

If in the course of investigation into any case or points in a case referred to it under Sub-section (1), the Commission has reason to believe-

(a) that some person other than the person whose case is being investigated has evaded payment of taxation on income, or

(b) that some points other than those referred to it by the Central Government in respect of any case also require investigation, it may make a

report to the Central Government stating its reasons for such belief and, on receipt of such report, the Central Government shall, notwithstanding

anything contained in Sub-section (1), forthwith refer to the Commission for investigation the case of such other person or such additional points as

may be indicated in that report.

19. The powers possessed by the Commission while conducting an investigation were provided for in Section 6. The procedure to be followed

was contained in Section 7. In Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, after considering the above provisions, the

Supreme Court said :

The result of these provisions is that when the Commission is collecting the materials from different sources against the assessee he is not entitled to

be present at those stages and take part in the enquiry, but after the material is ready and is placed on the record then he can be present and has to

be given a reasonable opportunity of rebutting any evidence that may have been collected against him.

20. Mahajan, C.J., delivering the judgment of their Lordships of the Supreme Court observed at page 550 that though the constitutionality of these

provisions could not be challenged they being well within the legislative power of the Central Legislature when the impugned statute was passed,

the validity of those provisions had to be decided against the touchstone of the new Constitution and all laws made before the coming into force of

the Constitution have to stand the test for their validity on the provisions of Part III of the Constitution. It was contended by the learned Solicitor-

General in that case that the Act was based on a broad and rational classification, that it only dealt with a group of persons who had evaded

Income Tax ""from the beginning of the war, 1st January, 1939 to the period ending with 1st September, 1948"" as a consequence of war controls

resulting in black-marketing activities and huge profits, and that this was a class by itself and needed special treatment and therefore the law did not

offend against the ""equal protection of the laws"" clause of the Constitution. It was also suggested that persons coming under Sub-section (4) of

Section 5 also belonged to the same class and therefore on the same grounds that section also could not be declared void. The counsel for the

petitioners had attacked the provisions of Section 5(1) of the Act on two grounds, namely, (i) that the section was not based on any valid

classification, the word ""substantial"" being vague and uncertain and having no fixed meaning, could furnish no basis for any classification at all; (ii)

that the Central Government was entitled by the provisions of the section to discriminate between one person and another in the same class and it

was authorized to pick and choose the cases of persons who fell within the group of those who had substantially evaded taxation. This contention

was not considered by their Lordships who however confined the decision of the case to the question of the validity of Section 5(4). While doing

so, they held that on the phraseology employed in the subsection, it was difficult to read therein the limitations contained in Sub-section (1) of

Section 5 as contended for by the Solicitor-General. At page 552 it was observed :

On no principle of construction of statutes can the words to a "substantial extent" be read in Sub-clause (a) of Section 5(4). On a plain reading of

the section it is clear that the sub-section is not limited only to persons who made extraordinary profits and to a substantial extent evaded payment

of taxation on income, but applies to all persons who may have evaded payment of taxation on income, irrespective of whether the evaded profits

are substantial or insubstantial.... The scope of Section 5(4) is thus different from the scope of Section 5(1) of the Act, both in its extent and

range...That being the true scope of construction of Sub-section (4), it obviously deals with, the same class of persons who fall within the ambit of

Section 34 of the Indian Income Tax Act and are dealt with in Sub-section (1) of that section and whose income can be caught by proceeding

under that section. Assessees who have failed to disclose fully and truly all material facts necessary for the assessment u/s 34 can be equated with

persons who are discovered in the course of the investigation conducted u/s 5(1) to have evaded payment of Income Tax on their incomes.

21. Mahajan, C.J., said at page 552 :

The result is that some of these persons can be dealt with under the provisions of Act 30 of 1947, at the choice of the Commission, though they

could also be proceeded with under the provisions of Section 34 of the Indian Income Tax Act. It is not possible to hold that all such persons who

evade payment of Income Tax and do not truly disclose all particulars or material facts necessary for their assessment and against whom a report is

made under Sub-section (4) of Section 5 of the impugned Act by themselves form a class distinct from those who evade payment of Income Tax

and come within the ambit of Section 34 of the Indian Income Tax Act.

22. In the result, the Supreme Court had struck down Section 5(4) of the Act without expressing any opinion on the vires of Section 5(1).

23. In the Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another, Section 5(1) of the Taxation on Income

(Investigation Commission) Act, 1947, came in for attack on the very same grounds mentioned in the judgment in Suraj Mall Mohta and Co. Vs.

A.V. Visvanatha Sastri and Another, . At the time when the petitions were presented, the Indian Income Tax (Amendment) Ordinance (8 of 1954)

was promulgated, which subsequently became an Act, viz., the Indian Income Tax (Amendment) Act (33 of 1954) which came into force with

effect from the 17th July, 1954. The provisions of that Act were also subjected to an attack in that case. Two questions were urged before their

Lordships : (1) whether Section 5(1) of Act 30 of 1947 infringes Article 14 of the Constitution inasmuch as it is not based on a rational

classification, and (2) whether, after the coming into force of the Indian Income Tax (Amendment) Act, 1954, which operates on the same field as

Section 5(1) of Act 30 of 1947, the provisions of Section 5(1) of Act 30 of 194/, assuming they were based on a rational classification, have not

become void and unenforceable, as being discriminatory in character. In so far as Section 5(1) before the amendment, is concerned, Mahajan,

C.J., said at page 17 :

Assuming that evasion of tax to a substantial amount could form a basis of classification at all for imposing a drastic procedure on that class, the

inclusion of only such of them whose cases had been referred before 1st September, 1948, into a class for being dealt with by the drastic

procedure, leaving other tax evaders to be dealt with under the ordinary law, will be a. clear discrimination for the reference of the case within a

particular time has no special or rational nexus with the necessity for drastic procedure.

24. The position after the amendment was then considered. The amendment Act had inserted Sub-section (1-A) to Section 34, which was as

follows :

If, in the case of any assessee, the Income Tax Officer has reason to believe-

(i) that income, profits or gains chargeable to Income Tax have escaped assessment for any year in respect of which the relevant previous year falls

wholly or partly within the period beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946 ; and

(ii) that the income, profits or gains which have so escaped assessment for any such year or years amount or are likely to amount to one lakh of

rupees or more, he may, notwithstanding that the period of eight years or, as the case may be, four years specified in Sub-section (1) has expired

in respect thereof, serve on the assessee...a notice containing all or any of the requirements which may be included in a notice under Sub-section

(2) of Section 22, and may proceed to assess or reassess the income, profits or gains of the assessee for all or any of the years referred to in

Clause (1) and thereupon the provisions of this Act...shall, so far as may be, apply accordingly...

25. The argument which was urged both in Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, and Shree Meenakshi Mills Ltd.,

Madurai Vs. Sri A.V. Visvanatha Sastri and Another, namely, that the classification made in Section 5(1) of the impugned Act was bad because

the word ""substantial"" used therein was a word which had no fixed meaning and was an unsatisfactory medium for carrying the idea of some

ascertainable proportion of the whole, and thus the classification being vague and uncertain, did not save the enactment from the mischief of Article

14 of the Constitution, was rejected on the ground that the amendment of Section 34 by Act 33 of 1954 had given a definite and clear meaning to

the word ""substantial"" by enacting that the evasion (sic) below a sum of one lakh is within the meaning of that expression, and accordingly, the

provisions of Act 33 of 1954 were intended to deal with the class of persons who were said to have been classified for special treatment by

Section 5(1) of Act 30 of 1947. The detect, if any, the Supreme Court said, was cured from the vice of Article 14. But inasmuch as the

proceedings taken by the Investigation Commission against the petitioners under the discriminatory procedure of the impugned Act had not been

completed and were pending and that being so there was no justification for continuing those proceedings against them under the procedure of the

impugned Act when other persons of their class and having the same common characteristics could be dealt with by the Income Tax Officer under

the provisions of the amended Act and the procedure of the ordinary law of the land, it held that the proceedings before the Investigation

Commission could no longer be continued under the procedure prescribed by the impugned Act. Section 5(1) was thus struck down as

unconstitutional and void alter the coming into operation of Section 34(1)(a) of the Indian Income Tax Act.

26. It was pointed out in A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, that both in Suraj Mall Mohta and Co. Vs. A.V.

Visvanatha Sastri and Another, as well as Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another, the Supreme Court

had not directly pronounced upon the vires of Section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947, in comparison with

Section 34 of the Indian Income Tax Act though the vires was the subject-matter of a direct challenge therein. The ratio of those decisions, it was

observed, will however help in the determination of the question that arose before them, namely, whether Section 5(1) was discriminatory in

character and violative of the fundamental rights guaranteed under Article 14. In both those cases, the Supreme Court was of the opinion that the

procedure for investigation prescribed by Act 30 of 1947 was of a summary and drastic nature and constituted a departure from the ordinary law

of procedure and in certain aspects was detrimental to persons subjected to it as compared with the procedure prescribed by the corresponding

provisions of the Indian Income Tax Act (corresponding to the Travancore Act 23 of 1121) and was as such discriminatory. After referring to the

dictionary meanings of the word ""substantial"" and stating that that by itself does not afford a definite measure or yard-stick for including particular

individuals within the classification, it was observed at page 266 :

It does not require much effort to pick out persons who would fall within this group or category of substantial evaders of Income Tax and even

though a definite amount be not specified in Section 5(1) of the Act as constituting a substantial evasion of Income Tax the Government, to whom

the process of selection for the purposes of reference of the cases-for investigation to the Commission is entrusted, would not have any difficulty in

finding out the persons coming within this group or category. To use the langauge of Viscount Simon, the Income Tax which has been evaded

would have to be considerable, solid or big, and once that conclusion was reached by the Government, the cases of such persons would indeed be

referred by them for investigation by the Commission u/s 5(1) of the Act.

27. These cases cleanly illustrate that where the game class of persons are treated differently under different provisions, one harsher and the other

less so, and there is no nexus between the classification and the object of the Act, such a provision suffers from the vice of Article 14 of the

Constitution.

28. In Anandji Haridas and Co. (P.) Ltd. v. S.P. Kushare 1968 21 S.T.C. 326, the Supreme Court was considering the provisions of Sections

11(4)(a) and 11A(1) and (3) of the C.P. and Berar Sales Tax Act (21 of 1947). Under both the sections the assessing authority could deal with a

class of assessees whose incomes had escaped assessment. But, while a period of limitation of 3 calendar years was prescribed u/s 11A(1) and

(3), no period of limitation was fixed u/s 11(4)(a) under which, by virtue of Sub-section (3) thereof, proceedings could be initiated at any time. The

principle laid down in Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, was held to apply and that Section 11(4)(a) was

discriminatory having regard to the provisions in Section 11 A(3) and that the same was liable to be struck down under Article 14. Hegde, J.,

delivering the majority judgment observed at page 338 :

To be a valid classification, the same must not only be founded on an intelligible differentia which distinguishes persons and things that are grouped

together from others left out of the group but that differentia must have a reasonable relation to the object sought to be achieved. Both Section

11(4)(a) and Section 11A(1) concern themselves with escaped assessments. The classification suggested has no nexus with that object. That much

is established by the decision of this Court in Ghanshyamdas''s case 1963 14 S.T.C. 976 which is binding on us. It is true the State can by

classification determine who should be regarded as a class for the purpose of legislation and in relation to a law enacted on a particular subject, but

the classification must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be attained

and cannot be made arbitrarily and without any substantial basis. Judged from the object sought to be achieved by the Act, we are of the opinion

that the classification made between the registered and unregistered dealers is not a reasonable classification. From this conclusion it follows that

Section 11(4)(a) is liable to be struck down as being discriminatory in view of Section 11A(3).

29. Sri Ramachandra Reddy, however, relies upon Kashiram Bhajan Lal Vs. Commissioner of Income Tax, U.P., Lucknow, in which the proviso

to Section 30(1) of the Income Tax Act, 1922, which says that no appeal shall lie u/s 46 unless the tax has been paid, was held to be valid,

inasmuch as it is a rule of public policy meant to make the realisation of taxes easy and has got nothing to do with the merits of the controversy or

the nature of the cause on the basis of which the right of appeal depends. It was held that such a rule cannot be so construed as to destroy the right

altogether and it should be so read as to harmonise with the right of appeal and yet to implement the intention of the Legislature to provide for an

easy recovery of tax. Where an appeal is filed against an assessment order u/s 46 payment of tax is not a pre-condition for the right of appeal, but

under the proviso to Section 30 for an appeal against an order levying penalty, payment of the tax is a pre-condition. It is pointed out by Sri

Venkatappaiah Sastry that under the new Income Tax Act the proviso was deleted.

30. It is not necessary for us, while considering whether Sub-section (6) of Section 21 discriminates the same class of persons against whom

revisional powers are exercised under different provisions, to consider whether the rule insisting on proof of payment of the tax as a precondition

for entertaining an appeal is valid. That is an argument which is germane to the second contention raised by the learned Advocate for the

petitioners, that the restriction u/s 21(6) itself in fact takes away the right of appeal.

31. The learned Government Pleader refers us to a decision in State of Orissa Vs. Bidyabhushan Mohapatra, for the proposition that where there

are two authorities one constituted as the final authority and against the orders of the other a right of appeal is provided under different sets of rules

operating on identical field, it would not be discriminatory. In that case, the Supreme Court was considering the service rules under Article 309 of

the Constitution and reasonable opportunity contemplated under Article 311(2) which had to be in accordance with the rules framed thereunder.

There were operating in the State of Orissa two sets of rules governing enquiries against non-gazetted Government servants, viz., the Disciplinary

Proceedings (Administrative Tribunal) Rules, and the Civil Services (Classification, Control and Appeal) Rules. Under the Tribunal Rules, there

was no enumeration of the penalties, but it was left to the Governor in his discretion to select the appropriate punishment having regard to the

gravity of the delinquency, while the Classification Rules set out the various punishments. While a right of appeal is provided against an order

passed by a departmental head imposing a penalty, there is no such right of appeal against an order imposing penalty by the Governor under the

Tribunal Rules. It was held that this cannot be regarded as a ground for sustaining a plea of unlawful discrimination and that the Tribunal Rules

cannot be held to be ultra vires on the ground of any discrimination contravening Article 14. Shah, J., observed at page 785:

The plea that there was discrimination because there was a right of appeal against an order imposing penalty under one set of rules, and no such

right under the other, was rejected in Jagannath Prasad Sharma Vs. State of Uttar Pradesh and Others, It must therefore be held that the existence

of a right of appeal against the order of an administrative head imposing penalty and absence of such a right of appeal against the order of the

Governor under the Tribunal Rules, does not result in discrimination contrary to Article 14 of Constitution.

32. This decision can be of little assistance in determining the question before us. It may be pointed out that Government servants hold office at the

pleasure of the Governor under Article 310 and as long as reasonable opportunity is afforded under Article 311, no question of an appeal against

the Governor''s order will arise.

33. PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., cited by Sri

Ramachandra Reddy is a case where the impugned provision applied equally to all classes of persons within the classification and the restrictions

imposed were not unreasonable. In that case, Section 5(7A) of the Income Tax Act in the light of Section 64 of that Act was considered. Section

64 of the Income Tax Act, it may be remembered, ""was intended to ensure that as far as practicable an assessee should be assessed locally, and

the area to which an Income Tax Officer is appointed must, so far as the exigencies of tax collection allow, bear some reasonable relation to the

place where the assessee carries on business or resides."" This provision was construed as not conferring any right as such, because whether a

particular Income Tax Officer should assess the case of any assessee depends on (i) the convenience of the assessee as envisaged in Section 64(1)

and (2) and (ii) the exigencies of tax collection. Whether a specific Income Tax Officer should assess a particular assessee in those circumstances

would depend upon the decision of the highest authorities, namely, the Commissioner and the Central Board of Revenue, who are empowered u/s

5(7A) to transfer any case. The argument was that Section 5(7A) itself is discriminatory and violative of Article 14, because the power vested in

the Commissioner of Income Tax and the Central Board of Revenue was a naked and arbitrary power, unguided and uncontrolled by any rules.

That contention was rejected, as there are hierarchy of Tribunals under the Act which can safeguard the rights of the assessees and in any case, the

power conferred u/s 5(7A) is discretionary and not necessarily discriminatory and abuse of power cannot easily be assumed where discretion is

vested in such high officials.

34. The question whether any provision of law transgresses the equal protection of laws clause enshrined in Article 14 is not an easy task to

determine. As observed by Bose, J., in Bidi Supply Co. Vs. The Union of India (UOI) and Others, :

Despite the constant endeavour of Judges to define the limits of this law (Article 14), I am unable to deduce any clear-cut principle from the oft-

repeated formula of classification. As I have said in another case, even the learned Judges who propound that theory and endeavour to work it out

are driven to concede that classification in itself is not enough for the simple reason that anything can be classified and every discriminatory action

must of necessity fall into some category of classification, for classification is nothing more than dividing off one group of things from another; and

unless some difference or distinction is made in a given case no question under Article 14 can arise. It is just a question of framing a set of rules. It

is elementary that no two things are exactly alike and it is equally obvious many things have features that are common. Once the lines of

demarcation are fixed, the resultant grouping is capable of objective determination but the fixing of the lines is necessarily arbitrary and to say that

Governments and Legislatures may classify is to invest them with a naked and arbitrary power to discriminate as they please. Faced with the

inexorable logic of this position, the learned Judges who apply this test are forced to hedge it round with conditions which, to my mind, add nothing

to the clarity of the law.

35. In that case, while he agreed with the majority judgment that picking out the petitioner from among the beedi merchants and transferring all his

cases by an omnibus order unlimited in point of time u/s 5(7A) of the Income Tax Act was a substantial discrimination calculated to inflict

considerable inconvenience to the petitioner by an executive fiat, which was not: founded on any law and no question of any reasonable

classification for purposes of legislation could therefore arise, he, however, held that Section 5(7A) and Section 64 are themselves ultra vires

Article 14 and not merely the order of the Central Board of Revenue.

36. To sum up our conclusions in the light of the foregoing examination of the cases, to pass the vice of Article 14, the classification may be

founded on different bases ; namely, geographical, or according to objects or occupations or according to the authorities exercising similar powers

in similar circumstances. But what is necessary is that there must be a nexus between the basis of the classification and the object of the impugned

provision. It is well established that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The asses-

sees whose assessments can be reopened u/s 14(4) or u/s 14(4-C) and Section 20(2) are treated differentially in that while appeals against orders

of authorities higher than the assessing authorities and lower than the Deputy Commissioner, can be filed without any fetter, appeals against orders

passed by the Deputy Commissioner u/s 20(2) are subject to the condition of proof of payment of the entire tax before it could be entertained, and

no authority has been even vested with power of granting stay pending appeal. This is sought to be justified on the ground that as the Deputy

Commissioner is the final authority for granting stays, no unfettered right of appeal is provided against his orders. This argument clearly ignores the

fact that an appeal in fact has been provided against the orders of the Deputy Commissioner to a higher authority, namely, the Appellate Tribunal.

While there is a fetter in the exercise of the right of appeal against the orders of the Deputy Commissioner, there is no such fetter against the orders

of the Board of Revenue, which is an authority superior to the Deputy Commissioner and which has been vested with power of revising the Deputy

Commissioner"s orders, in that an appeal lies to the High Court against the orders of the Board of Revenue in revision without the pre-condition of

satisfactory proof of payment of the tax as that contemplated under Sub-section (6) of Section 21. Even in the case of authorities lower in rank

than the Deputy Commissioner, i.e., in appeals against orders passed by the Commercial Tax Officer u/s 20(2) or in appeals against orders passed

u/s 14(4-C) by authorities specified therein, i.e., authorities lower than the Deputy Commissioner and Assistant Commissioner but higher than the

assessing authorities, no fetter is imposed. What is the rationale for singling out in this discriminatory manner orders of the Deputy Commissioner

passed u/s 20(2), placing the said orders on a higher pedestal than the orders of an authority superior to it or authorities though inferior exercising

equal powers ? We say the Deputy Commissioner"s orders are placed on a higher pedestal because he alone is treated as having greater efficacy,

as without proof of payment of the entire tax, those orders cannot be challenged in appeal. Nor is the exercise of the power by the Deputy

Commissioner based on the value of the escaped or under-assessed turnover so as to classify them on a rational and intelligible basis. In our view,

there is no understandable rationale having a reasonable basis for this discrimination. On the other hand, the provisions of Section 21(6) place in

the hands of the Deputy Commissioner arbitrary powers because he will be tempted to exercise the power to the exclusion of the inferior

authorities vested with co-equal powers, inasmuch as the assessee whose assessments are revised can be forced into paying the tax before he is

able to agitate the matter in appeal, however sure and hopeful he may be of succeeding before the Tribunal, either because of concluded Supreme

Court or High Court decisions, binding on it or of the Tribunal"s own decisions taking a contrary view to that taken by the Deputy Commissioner,

on whom all these decisions are binding.

37. The provisions also show a further discrimination in respect of orders passed by the Deputy Commissioner in exercise of his powers u/s 14(4-

C) and those passed u/s 20(2). This invidious discrimination is clearly borne out by the fact that against the orders passed by the Deputy

Commissioner in exercise of his powers u/s 14(4-C), i.e., where a turnover escaped assessment or on other grounds mentioned therein, an

unfettered right of appeal to the Tribunal is provided for, whereas in the case of revisional orders of the Deputy Commissioner passed u/s 20(2) the

right of appeal is subject to the pre-condition of payment of the tax.

38. It is therefore clear that the classification of assessees similarly situated is not based on any intelligible differentia having a rational relation to the

object sought to be achieved by Sub-section (6) of Section 21. That subsection is therefore discriminatory and violative of Article 14 of the

Constitution, and as such, has to be struck down to the extent that it places a fetter on an appeal against the orders of the Deputy Commissioner

u/s 20(2) of the Act. The result will be that appeals against the orders of the Deputy, Commissioner under Sub-section (2) of Section 20 will have

to be entertained and disposed of by the Sales Tax Appellate Tribunal without the pre-condition of proof of payment of tax prescribed u/s 21(6) of

the Act.

39. In the view we have taken, it is unnecessary for us to consider the further contention of the learned Advocate for the petitioners that the fetter

imposed u/s 21(6) of the Act is so onerous as to virtually taking away the right of appeal by making it illusory.

40. In the result, the writ petitions are allowed with costs. Advocate''s fee Rs. 100 in each.