(1964) 08 BOM CK 0014

Bombay High Court (Nagpur Bench)

Case No: Special Civil Application No. 486 of 1962

The Commercial Credit Corporation (1943) Private Limited	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision: Aug. 28, 1964

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1965) 67 BOMLR 138

Hon'ble Judges: Wagle, J; V.S. Desai, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

V.S. Desai, J.

This is a petition under Articles 226 and 227 of the Constitution of India challenging'' the notices issued by the Sales Tax Officers of Nagpur and Wardha to the petitioner and praying that a writ may be issued against the said Sales Tax Officers requiring them to withdraw the said notices and prohibiting them from assessing the petitioner to sales tax for the periods covered by the said notices.

2. The petitioner is a financing corporation, and according to it, it carries on the business of financing the purchase of motor vehicles. The petitioner has been carrying on its business at Bombay and it has a representative in Nagpur. On November 12, 1962, the Sales Tax Officer III, Circle II, Nagpur, served a notice on the petitioner directing1 the petitioner to show cause why it should not be assessee/reassessed and why a penalty should not be imposed on it on the ground that being a dealer liable to pay tax under the C.P. and Berar Sales Tax Act, 1947 (XXI of 1947), in respect of the period between January 1, 1950, and December 31, 1959, it had willfully failed to apply for registration. Another similar notice was issued by

the Sales Tax Officer, Wardha, on November 26, 1962, relating to the same period. On December 10, 1962, one more notice was issued by the Sales Tax Officer III, Circle II, Nagpur, by which the petitioner was required to show cause why it should not be assessee for the entire period from June 1, 1950, to December 31, 1959, during which time it had been a dealer liable to pay sales tax under the Sales Tax Act and had willfully failed to apply for registration.

3. The petitioner''s case is that the petitioner is not a dealer. The transactions which it is carrying on are not sales; that it has not been carrying on the business within the territorial jurisdiction of the Sales Tax Officers at Nagpur and Wardha; that its activities, if any, within the jurisdiction of these Sales Tax Officers are not the activities of a dealer; that the Sales Tax Officers have no jurisdiction to issue the notices for the periods for which they have purported to issue the said notices; and that the present notices which have been issued by the Sales Tax Officers are invalid on the ground that the notices in Form VI u/s 10(1) of the Act had never been given to the petitioner prior to the issue of the present notices.

4. In support of its case that the business transactions of the petitioner are not sales which could come within the definition of the expression in the Sales Tax Act, the petitioner gave the description of the nature of its transactions. Ale-cording to the petitioner, a person desirous of purchasing a motor vehicle who had applied to the authorised dealer of the manufacturer and had selected a vehicle which he wanted to buy, had fixed up its price and also made the initial deposit with the dealer, approached the petitioner in case he needed financial help for making payment for the vehicle which he wished to purchase. For that purpose, he and his guarantor made a proposal to the petitioner in a particular form giving certain details as were required by it. This form, it would appear, is the form of a proposal of a hire-purchase agreement to be entered into by the customer with the petitioner. After the acceptance of this proposal by the petitioner, an agreement called a hire-purchase agreement was executed between the customer and his guarantor on the one hand and the petitioner on the other. This agreement of hire-purchase related to the vehicle which the customer had decided to buy from the dealer of the manufacturer. In this agreement, the petitioner was described as the owner and the purchaser as the hirer. After this agreement was executed between the parties, the petitioner informed the dealer of the manufacturer that it had agreed to finance the purchase and requested the dealer to send a debit note for the amount of the bill less the amount received by the dealer from the purchaser. The dealer thereafter delivered the vehicle to the customer and sent the bill to the petitioner. The customer also passed a receipt to the petitioner for having received the vehicle in good order and condition, complete with all tools and accessories in accordance with the terms and conditions of the agreement between him and the petitioner. After the receipt of the vehicle by the customer, he applied to the Regional Transport Authority and got the vehicle registered in his name. In the application, however, which the customer would make to the Regional Transport Authority, he

had to state that the vehicle was held by him under a hire-purchase agreement with the petitioner. According to the petitioner, all transactions of this nature which were entered into by the petitioner with its customers were entered into in Bombay and were also executed there. All the instalments which were due to be received by the petitioner from its customers in respect of these transactions were also payable at Bombay. According to the petitioner, therefore, it did not carry on any business of selling or supplying motor vehicles but acted merely as a financier. It had no show room, no warehouse and no workshop either at Bombay or at Nagpur.

5. The petitioner''s case is that having- regard to the nature of the transactions which the petitioner had with its customers, it was merely a transaction of financing the customer. There was involved no sale of any vehicle from the petitioner to the customer. The customer bought the vehicle, from the dealer of the manufacturer by applying to the dealer in a prescribed form accompanied by a written guarantee by a bank undertaking to pay to the dealer. The agreement of hire-purchase entered into by the customer with the petitioner was only for the purpose of enabling the petitioner to nuance the customer for the purpose of his purchase of the vehicle from the dealer. The petitioner, therefore, contends that it was not a dealer under the Sales Tax Act and was under no obligation to get itself registered as a dealer under the said Act.

6. The petitioner''s case further is that even assuming that in view of the agreements of hire-purchase entered into by the customers with the petitioner the transactions were in fact hire-purchase agreements, such hire-purchase agreements would not amount to sales of goods, so as to be capable of being made subject to tax under the Sales Tax Act. The petitioner''s contention is that the term "hire-purchase" in Explanation (I) to the definition of "sale" in the Sales Tax Act will not apply to transactions of the nature which have taken place between the petitioner and its customers and alternatively, if that Explanation was intended to apply to these transactions, it was beyond the competence of the State Legislature to tax such transactions. It was contended by the petitioner that even assuming that the transactions between the petitioner and its customers were liable to payment of sales tax, the present notices which have been issued by the Sales Tax Officers to the petitioner were invalid and incompetent as notices u/s 10(1) in Form VI had not been issued to the petitioner prior to the issuance of the said notices. The present notices which are purported to be issued u/s 11(5) or Section 11-A of the Sales Tax Act could not be issued for periods of more than three years prior to the date of the notice, and inasmuch as the periods mentioned in the present notices go beyond the said period of three years, they are invalid and incompetent. The petitioner has, therefore'', prayed for appropriate writs quashing the said notices requiring the Sales Tax Officers to withdraw the said notices and prohibiting them from taking any further action on the said notices.

7. In the affidavit which has been filed in reply to the petition by the respondents, some of the facts mentioned in the petition are controverted. It is contended on behalf of the respondents that the nature of the transactions between (the petitioner and its customers is such that the petitioner purchases vehicles from the dealer of the manufacturer and sells the same on hire-purchase basis to the customers The petitioner thus carries on the business of selling motor vehicles on hire-purchase basis and is, therefore, a "dealer" as defined in the Sales Tax Act. The respondents contend that the petitioner has its sub-office at Nagpur wherefrom it carries on the business of purchasing" motor vehicles at Nagpur and other places in the Vidarbha area. It is contended by the respondents that the notices which have been issued by the Sales, Tax Officers to the petitioner are u/s 11(5) of the Sales Tax Act and they are perfectly good and competent. According to the respondents, the transactions between the petitioner and its customers are transactions which come within Explanation (I) to the definition of "sale" in the Sales Tax Act and the said Explanation is perfectly intra vires and not outside the competence of the State Legislature.

8. At the hearing of this petition, Mr. Hajarnavis, learned Assistant Government Pleader appearing for the respondents, raised a preliminary contention. According to him, the petition involves several disputed questions of fact on the allegations contained in the petition and the reply given to the said allegations by the respondents. Secondly, he said that all that has happened at present is that notices have been issued by the Sales Tax Officers to the petitioner requiring it to show cause why it should not be assessee to sales tax for a certain period. It is possible for the petitioner to appear before the Sales Tax Officers and show cause and satisfy them that it is not liable to pay tax in respect of its transactions. The mere circumstance that notices have been issued by the Sales Tax Officers to the petitioner does not give any cause to the petitioner to come to this Court on a writ petition.

9. Now, it is no doubt true that on a writ petition this Court will not go into any disputed questions of fact. It is also true that ''unless the petitioner has a grievance which it can legitimately make on a writ petition, this Court will not entertain a writ petition only in order to decide questions which can well be agitated and decided in a proper forum before which the proceedings between the parties are pending. Mr. Deo, learned advocate for the petitioner, however, has submitted that he does not wish to urge in this petition any questions of disputed fact but will only confine himself to such contentions as are permissible to be made on a writ petition at the present stage, lie has stated that he wishes to urge only three contentions before us, namely-

(i) that the notices issued in Form XII by the Sales Tax Officers to the petitioner u/s 11(5) of the Sales Tax Act are invalid and incompetent by reason of the notices in Form VI u/s 10(1) not having been issued to it earlier; ''

(ii) that at any rate, in so far as the notices issued by the Sales Tax Officers seek to assess the petitioner for a period which is more than throe years prior to the date of the issue of the notices, the said notices are beyond the authority of the Sales Tax Officers and, therefore, incompetent; and

(iii) that on the nature of the transactions between the petitioner and its customers of the type described by the respondents themselves in their affidavit, he would contend that such transactions do not amount to sales under the Sales Tax Act, and that if the extended definition of "sale" given in Explanation (I) to that definition seeks to include the transactions of this nature within its ambit, the said Explanation is beyond the legislative competence of the State Legislature in a legislation enacted under entry 48 of the Provincial Legislative List in the Government of India Act, 1935, or under entry 54 of the State List under the Constitution of India.

10. According to Mr. Deo, his first two contentions are to the effect that the proceedings sought to be instituted against the petitioner by the Sales Tax Officer by the notices issued by them are illegal and without jurisdiction, and the third contention which he seeks to raise relates to the vires of a legislative provision. Mr. Deo contends that all these contentions can legitimately be urged on an application under Articles 226 and 227 of the Constitution, and the present stage at which they are sought to be urged cannot be said to be in any way inappropriate or premature. In our opinion, if the present writ petition is confined only to the three points which Mr. Deo wants to agitate it would be perfectly competent and not open to objection in the nature of a preliminary contention that it is not maintainable: (see for instance Carl Still G.M.B.H. and Another Vs. The State of Bihar and Others, . The State of Bombay v. The United Motors (India) Ltd [1953] S.C.R. 1089 . Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, and The Sales Tax Officer, Pilibhit Vs. Budh Prakash Jai Prakash,) We will, therefore, proceed to deal with and dispose of this petition only on the three points which are stated above.

11. Before proceeding to deal with the three contentions which have been urged by Mr. Deo, it will be desirable to refer to some of the provisions of the C.P. and Berar Sales Tax Act, 1947 (hereafter referred to as the Act). Under the said Act, a "dealer" is a person carrying on the business of selling or supplying or buying goods. "Sale" has been defined as any transfer of property in goods for cash or deferred payment or other valuable consideration including a transfer of property in goods made in course of the execution of a contract but not including a mortgage, hypothecation, charge or pledge. Explanation (I) to the said definition states that 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. There is a second Explanation to the said definition but it is not material to be stated. "Turnover" under the Act means, the aggregate of the amounts of sale prices and parts of sale prices received or receivable by a dealer in

respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract, effected or made during the prescribed period. "Year" under the Act is a financial year from April 1, to March 31, of the subsequent year or at the option of the assessee, the account year followed by him. Section 4 of the Act is the charging section, and it provides that every dealer whose turnover during the year exceeds certain specified limits will be liable to pay tax. All dealers whose turnover during the year preceding the commencement of the Act exceeded the specified limits became liable to pay tax under the Act from the commencement of the Act. In respect of other dealers, they became liable to pay tax from the date of the expiry of two months after the month up to the end of which their turnover calculated from the commencement of the year or from the commencement of the date of their business, if they were in business for less than twelve months, exceeded the specified limits. A dealer who is liable to pay tax continues to be so liable until the expiry of a period of three consecutive years during each of which his turnover has not exceeded the specified limits and such, further period as may be prescribed by the rules. It will thus be seen that the liability of a dealer to pay tax is dependent upon his turnover exceeding certain specified limits. The liability comes in when the turnover exceeds the said specified limits and continues to be in existence for a period of three years after the turnover has fallen below the specified limits for three consecutive years. u/s 8 of the Act it is provided that every dealer who is liable to pay tax has got to get himself registered and possess a registration certificate during the interval during which he is liable to pay tax. The procedure for registration of dealers has been provided in Part IV of the Rules made under the Act. u/s 9 a list of the registered dealers is required to be published by the State Government. Section 10 provides that every registered dealer shall furnish such returns by such dates and to such authorities as may be prescribed and the rules prescribed in that connection are Rules 19 to 21 contained in Part V of the Rules. The said section also provides that every dealer may be required by the Commissioner by a notice served in the prescribed manner to submit a return. The prescribed manner is provided by Rule 22 which occurs in Part Y of the Rules.

12. Under Sub-section (3) of Section 10, failure on the part of an unregistered dealer to comply with the requirements of a notice issued to him under Sub-section (1) and failure on the part of a registered dealer to furnish his return for any period within the prescribed period have been made liable to the imposition of a penalty by the Commissioner after giving the defaulter an opportunity of being heard. Section 11 deals with the assessment of dealers to tax. The first three Sub-sections of this section apply to all dealers, i.e. registered as well as unregistered. Under Sub-section (1) the Commissioner may accept the returns furnished by dealer and assess him on the said returns without any further inquiry if he finds that the returns are satisfactory. In the event of the Commissioner not being satisfied with the returns submitted, under Sub-section (2) he is enabled to serve a notice on the dealer furnishing the return to appear before him. either by himself or by a

representative for the purpose of being examined on oath and furnishing information with regard to the return submitted, or for the production of other evidence and accounts for the purpose of assessment and assess him to tax under Sub-section (i) after hearing him and after having examined the other evidence. Sub-section (4) of Section 11 applies only to registered, dealers and authorises the Commissioner to assess a registered dealer to a best judgment assessment in the event of the defaults specified in the said sub-section having been committed by the dealer. The manner in which the best judgment assessment will be made by the Commissioner is prescribed in Rule 32 contained in Part VII of the Rules. Sub-section (5) of Section 11 is a provision which relates to the best judgment assessment of an unregistered dealer. The conditions on the satisfaction of which the best judgment assessment of an unregistered dealer can be made are specified in the said sub-section, and the manner in which the assessment will be made is prescribed in Rule 32 which is an omnibus rule providing for other matters as well. Section 11-A of the Act is a provision which provides for the assessment of a turnover which has escaped assessment.

13. The provisions'' so far referred to are mainly the provisions which we may have to consider in deciding the questions which have been raised before us on the present petition. The other provisions to which a passing reference may have to be made are the provisions of Section 15 which authorises the Commissioner to require any dealer to produce before him any accounts, registers or documents relevant to the financial transactions of the dealer or to furnish information relating to the stocks of goods, or purchases, sales and deliveries of goods made by him, and Section 16 under which the Commissioner is authorised to delegate his powers under the Act to persons appointed u/s 3 to assist him.

14. With regard to the first point raised by Mr. Deo, his contention is that in the case of an unregistered dealer, a notice u/s 10(1) of the Act is obligatory before a proceeding for a best judgment assessment can be started against him under Sub-section (5) of Section 11 of the Act. It is urged in that connection that the scheme of the Act shows that the dealers who are liable to pay tax Hinder Section 4 are under an obligation to get themselves registered u/s 8 and also under an obligation to submit returns of their taxable turnover in the prescribed manner and at prescribed intervals u/s 10. The assessment of registered dealers proceeds after the stage of the submission of returns by them as provided under the Act is passed. In the case of unregistered dealers there is no obligation to submit any return unless they arc called upon by a notice served on them under Sub-section (1) of Section 20 to do so by the Commissioner. Section 11 which provides for the assessment of registered dealers also provides for the assessment of unregistered dealers, and the scheme of the said section will show-that just as in the case of registered dealers so also is the case of unregistered dealers, its application comes in after the stage of the submission of the returns by him is over, and their assessment is only consequent on their having been called upon to furnish returns

u/s 10(1) of the Act. The first three sub-sis. of Section 11 apply both to registered dealers as well as to unregistered dealers. The first sub-section provides in the ease of either of them that if the returns which are submitted by them are satisfactory, they can be assessee on the basis of the said returns without further inquiry. If the returns which they have submitted are not satisfactory, then under Sub-section (2) the Commissioner may call upon them or their representatives to appear before him, so that be can examine them on oath or he may call upon them to produce evidence or accounts etc. to satisfy himself with regard to the returns. The notice under Sub-section (2) of Section 11 calling upon registered as well as unregistered dealers is governed by the same rule, namely, Rule 31 of the Rules. Under Sub-section (3), assessment is authorised to be made on the examination of the returns and on the examination of the further evidence if any called for by the Commissioner. Sub-section (4) of Section 11 relates to the best judgment assessment of a registered dealer who has committed faults which are specified in the sub-section. These faults are that he has either not furnished returns, or that after having furnished returns, he has not complied with the notice issued to him under Sub-section (2), or that lie has not employed a regular method of accounting which would enable the Commissioner to make a proper assessment. It would be clear from the provisions of Sub-section (4) of Section 11, says the learned advocate, that the stage of making a best judgment assessment against a registered dealer can only be reached after the stage of submission of returns which the registered dealer is under a statutory obligation to furnish u/s 10 is over and the registered dealer has disentitled himself to a regular assessment by reason of the defaults committed by him. The provisions of Sub-section (5) of Section 11 is a provision relating to the best judgment assessment of unregistered dealers. The argument of the learned advocate is that as in the case of a registered dealer so in the case of an unregistered dealer this provision is not intended to apply unless the unregistered dealer has disentitled himself to a regular assessment which in his case can only be by calling upon him to furnish a return u/s 10(1) of the Act, Mr. Deo contends that in the case of a registered dealer, the statute has made no provision requiring the Commissioner to give him a notice to submit his returns. On the other hand, it has put the obligation on the registered dealer himself to submit returns in the prescribed manner and. at the prescribed intervals. The jurisdiction of the Sales Tax Officer, therefore, to proceed to assess in the case of the registered dealer cannot be said to depend upon the issuance of a notice to him to submit returns. There is however no such jurisdiction in the Sales Tax Officer to assess an unregistered dealer in the absence of a notice under Sub-section (1) of Section 10. The first step to bring the unregistered dealer to assessment is to issue a notice to him under Sub-section (1) of Section 10 and it is the issuance of this notice that gives jurisdiction to the Sales Tax Officer to proceed to assessment against him u/s 11. It is, therefore, contended by the learned advocate that a notice under Sub-section (1) of Section 10 is obligatory in the case of the unregistered dealer before lie can be assessee under the provisions of Section 11 including the provision of best

judgment assessment under Sub-section (J) of that section.

15. The second argument of the learned advocate in this connection is that oven on the language employed in Sub-section (5) of Section 11 it will be apparent that that sub-section is intended to come into operation only after the returns as required by Sub-section (1) of Section 10 have been furnished by the unregistered dealer and assessment proceedings on the basis of the said returns have commenced or taken place before the Sales Tax Officer. Sub-section (5) of Section 11 specifies the conditions subject to which the provision can be applied. These conditions are that information must have come into the possession of the Commissioner which is sufficient to satisfy him that the dealer was liable to pay tax under the Act in respect of any period and that he had willfully failed to apply for registration. According to the learned advocate, the information which is spoken of in this sub-section is the information which comes into the possession of the Commissioner during the assessment proceedings commenced on the returns submitted by the unregistered dealer in compliance with the notice issued to him under Sub-section (1) of Section 10. It is the information which the Commissioner obtains subsequent to the returns submitted under Sub-section (1) of Section 10, or at any rate, subsequent to the notice issued by him under Sub-section (1) of Section 10. The stage of operation of the provisions of Sub-section (5) of Section 11, therefore, can only be reached after a notice under Sub-section (1) of Section 10 has been issued. The learned advocate has sought to derive support for his submissions from a decision of the former Nagpur High Court in Nimar Cotton Press v. Sales Tax Officer (1954) 5 S.T.C. 428 and certain observations of the Supreme Court in the case of Ghanshyamdas v. Regional Asst. Commr. of Sales Tax (1963) 14 S.T.C. 976.

16. Now, under the Act, liability to pay tax arises u/s 4 in case of the dealer whose turnover exceeds the specified limits and comes into existence from the point of time as specified in the section and also continues in accordance with the provisions of the said section. The liability to pay tax is neither dependent on the dealer registering himself u/s 8, nor is it dependent on the issuance of a notice to the dealer under subjs. (1) of Section 10 of the Act. The jurisdiction of the Sales Tax Officer to assess a dealer is derived u/s 11 and that jurisdiction to assess is again not dependent upon whether a notice under Sub-section (1) of Section 10 has been issued or not issued to the unregistered dealer. In Central Potteries Ltd. v. Stale of Maharashtra (1962) 13 S.T.C. 472 a contention was raised before the Supreme Court that the jurisdiction of the Sales Tax Officer to take proceedings for assessment with respect to the unregistered dealer depends on the issuance of a notice under Sub-section (1) of Section 10 and Rule 22. The contention was negatived and it was observed (p. 476) :

...It is contended that the jurisdiction of the Sales Tax Officer to take proceedings for assessment with respect to non-registered dealers depends, on the issue of a notice such as is prescribed by Section 10 and Rule 22 and that as no such notice had been

issued in the case of the appellant, the assessment proceedings must be held to be incompetent, if the registration certificate is invalid, We see no force in this contention. The taxing authorities derive their jurisdiction to make assessments under Sections 4 and 11 of the Act, and not u/s 10, which is purely procedural.

The argument of the learned advocate, therefore, that the Sales Tax Officer would have no jurisdiction to assess an unregistered dealer unless he has in the, first place issued a notice under Sub-section (1) of Section 10 to him cannot be sustained. It is, however, argued that even though the proceedings of assessment held in the absence of a notice under Sub-section (1) of Section 10 Cannot be said to be incompetent on the ground of want of inherent jurisdiction in the Sales Tax Officer in view of the observations of the Supreme Court in the case referred to above, the said observations do not go to the extent of saying that no notice under Sub-section (1) of Section 10 even as a procedural matter is required to be given or that the provision can be ignored by the Sales Tax Officer. The argument of the learned advocate is that even if it is regarded that the provision of Sub-section (1) of Section 10 is a procedural provision, it is nevertheless a provision which the Sales Tax Officer is required to follow under the law and the proceedings which he purports to hold without following the proper procedure could be complained of by the petitioner, so that the fault in the procedure can be corrected and the Sales Tax Officer could be compelled to adhere to the proper provisions of law. The question to be considered, therefore, is whether the provision of Sub-section (1) of Section 10 is required to be followed by the Sales Tax Officer in every case of assessment of an unregistered dealer, or whether there; may exist cases under the Act in which the assessment of an unregistered dealer can take place even without the issuance of a notice under Sub-section (1) of Section 10.

17. Now, it seems to us that the provisions of Sub-section (1) of Section 10 is an enabling provision which the Commissioner may resort to when he is proceeding to consider the assessment of an unregistered dealer. Where such a notice is issued to the unregistered dealer and he complies with the said notice and furnishes returns, those returns will be dealt with in accordance with the provisions of the first three sub-sections of Section 11. If in the proceedings of assessment or in the inquiry made in the said proceedings, information comes into the possession of the Sales Tax Officer which provides the necessary satisfaction under Sub-section (5) of Section 11, the provision of the said sub-section can also be resorted to against the unregistered dealer. It must, however, be noted that the provisions of Sub-section (5) of Section 11 do not appear to be confined to what transpires in the assessment proceedings instituted on the basis of the returns submitted by the unregistered dealer in pursuance of the notice issued under Sub-section (1) of Section 10. We have already referred to the provisions of Sub-section (4) of Section 11 which relate to the best judgment assessment in the case of a registered dealer. A perusal of the said provisions makes it clear that the best judgment assessment as against a registered dealer is" resorted to for defaults connected with the returns submitted

by him. It is either for failure to submit the returns altogether or for submitting faulty returns or maintaining a faulty system of account which does not enable the Commissioner to make a proper assessment on the returns submitted by him, that the best judgment assessment provision is applied against the registered dealer. The provisions of Sub-section (5) of Section 11 however do not confine it to any faults of not submitting returns which the unregistered dealer is called upon to furnish under Sub-section (1) of Section 10, or any faults contained in the returns submitted. The conditions which are required to be satisfied for the operation of Sub-section (5) of Section 11 as against the unregistered dealer are entirely different and relate to the evasion of tax by him. The conditions which are required to be satisfied are that the dealer was liable to tax during a certain period and that he had evaded the liability to pay tax for that period by not getting himself registered willfully. It may be that this information may be discovered on the proceeding instituted against the unregistered dealer on the notice under Sub-section (1) of Section 10 issued against him; but it does not appear that the application of the provision is only confined to such cases. It is possible that the Commissioner may have the necessary information which might give him the satisfaction such as is required under the'' said sub-section even without any notice having been issued to the unregistered dealer in the first place and without his having submitted any return in pursuance of the said notice. u/s 15 of the Act, the Commissioner has power to require any dealer to produce before him accounts, registers and documents relevant to the financial transactions of the dealer, as also information relating to the stock of goods, purchases, sales and deliveries of the goods effected by him. This information the Sales Tax Department is entitled to call from any dealer irrespective of whether a notice under Sub-section (1) of Section 10 has been issued to him or not. If on the information, received in this manner, the Commissioner is satisfied with regard to the conditions mentioned in Sub-section (5) of Section 11, he would be entitled to invoke his jurisdiction under that sub-section irrespective of whether he had issued any prior notice to the unregistered dealer under Sub-section (1) of Section 10, or not. It does not, therefore, appear that the procedural requirement of Sub-section (1) of Section 10 is necessary to be followed in every ease -where the provisions of Sub-section (5) of Section 11 are intended to be resorted to by the Commissioner. As we have already pointed out, the application of the said provisions is not necessarily confined to assessment proceedings commenced on returns filed in compliance with a notice under Sub-section (1) of Section 10. The provisions aim at cases of evasion of tax and not for punishing defaults in the matter of submission of returns. It seems to us, therefore, that the argument of the learned advocate that a notice under Sub-section (1) of Section 10 is obligatory before the proceedings under Sub-section (5) of Section 11 can be taken against an unregistered dealer cannot be sustained.

18. We may also point out in this connection that Rule 32 of the rules framed under the Act, which specifies amongst other things, the manner in which the assessment

under Sub-section (5) of Section 11 can. be made, provides that for the proceedings to be taken under the said sub-section, a notice in Form XII specifying the default committed by the unregistered dealer-which in this case would be that he being liable to tax, had willfully failed to apply for registration-and calling upon him to show cause why he should not be assessee in the manner provided in the said sub-section will have to be served on him and thereafter the assessment made in the manner provided in the said rule. Form XII in which the said notice is to be given shows that the dealer is directed to attend in person or by his representative and to produce his account books and documents specified in the notice or any other evidence on which he may rely. From the provisions of Sub-section (5), therefore, it would appear that its operation is brought in on the satisfaction of the conditions mentioned therein and its application is made in the manner provided by Rule 32. There is nothing in the provision itself which would indicate that its application will necessarily come in only after the submission of returns by an unregistered dealer.

19. Coming now to the cases which have been referred to by the learned advocate in this connection, the first of them is Nimar Cotton Press v. Sales Tax Officer. The question as to whether a notice under Sub-section (1) of Section 10 in Form VI was obligatory for assessing an unregistered dealer was considered in that case. It would seem however that the case does not lay down a proposition as wide as the learned advocate has put before us, namely, that in every case of assessment of an unregistered dealer under Sub-section (5) of Section 11, a prior notice under Sub-section (1) of Section 10 is obligatory. The learned Judges in that ease proceeded to consider the unregistered dealers in two categories, namely-

(i) those who had not got themselves registered and submitted returns under a bona fide belief that they were not dealers within the Act or their taxable turn-over did not exceed the taxable quantum provided u/s 4: and

(ii) those who, though they believed were dealers and liable to registration, had willfully failed to apply for registration ;

and the view they took was that in the case of unregistered dealers falling in the first category, since they could not be regarded as having willfully failed to apply for registration, the provisions of Sub-section (5) of Section 11 can have no operation against them, and in their ease, therefore, if at all they were to be assessee, the provisions of Sub-section (1) of Section 10 will have to be followed. The learned Judges observed (p. 439):

...Unless, therefore, the Sales Tax Officer is satisfied that an unregistered dealer has willfully failed to apply for registration, he cannot commence proceedings u/s 11, Sub-section (5). The proper procedure for him is to issue a notice u/s 10, subjection (1), and after hearing such evidence as may be tendered in support of the return, or if the dealer contends that he is not liable to pay any tax, after hearing such evidence as he may adduce, the Sales Tax Officer has to decide his liability as a

dealer and to assess him to tax if he is held liable... In our opinion, therefore, a notice in Form No. VI is obligatory in case of unregistered dealers unless the Sales Tax Officer is satisfied that the unregistered dealer has willfully failed to apply for registration.

20. Now, in the present case, the notice under Sub-section (5) of Section 11 has been issued to the petitioner by the Sales Tax Officer on the basis that he is satisfied that the conditions as to the application of the said provision exist in the ease of the petitioner. Whether his satisfaction is justified or not would be decided by him on the cause being shown by the petitioner, and if on the cause being shown the Sales Tax. Officer is satisfied that the dealer is not liable to tax or that he has not willfully failed to apply for registration, the proceedings which are sought to be instituted against him will come to an end. We are, however, not concerned with the result of the proceedings. What we are concerned with is whether the notice which is at present issued by the Sales Tax Officer to the petitioner is competent or not. Even on the authority referred to by the learned advocate such a notice would be competent if the dealer was liable to registration and knowing that he was a dealer and liable to registration, had willfully failed to apply for registration. The ease which the learned advocate has cited does not support his contention that a notice under Sub-section (1) of Section 10 is obligatory in every case where action under Sub-section (5) of Section 11 is intended to be taken against an unregistered dealer.

21. Mr. Deo has then invited our attention to the case in Ghanshyamdas v. Regional Asst. Commr. of Sales Tax. That was a case of a registered dealer who had not submitted his returns for certain periods and notices under Sub-section (4) of Section 11 were issued by the Sales Tax Department against him for periods which were beyond three years from the date of the notice. It was contended on behalf of the assessee that u/s 11-A of the Act it was not competent for the Sales Tax Authorities to assess him in respect of the escaped assessment for a period beyond, three years of the notice issued to him. It was argued on behalf of the Department that Section 11-A had no application to an assessment which was proposed to be made under Sub-section (4) of Section 11. Their Lordships of the Supreme Court were mainly concerned in that ease with the true construction of the provisions of Section 11-A. In view of the contentions raised before them, they examined the scheme of the Act and the provisions of Sections 10 and 11, with reference to registered and unregistered dealers. With reference to an unregistered dealer, they pointed out that there was no statutory obligation cast on him to submit any return and his case was really a case of evasion from his obligation to get himself registered under the Act. Section 10(1) enabled the Commissioner to issue a notice to him to furnish a, return in the prescribed manner, and where that was done, the first three sub-sections of Section 11 had also to be followed in the matter of his assessment. Their Lordships then observed (p. 986) :

But Sub-section (5) of Section 11 introduces a stringent provision to prevent evasion of tax. Under that sub-section if upon information the Commissioner is satisfied that any such dealer, who is liable to pay tax under the Act in respect of any period, has willfully failed to apply for registration, he shall at any time within three calendar years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed in the manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and of subsequent periods. He may also direct the dealer to pay, by way of penalty, in addition to the amount of tax so assessee a sum not exceeding 1 1/2 times that amount. So in the case of a dealer liable to pay tax, but who has failed to register himself under the Act, the Commissioner may issue a notice to him under Rule 22 and assess him u/s 11; and in the case of evasion, on subsequent information, the Commissioner can assess him within three calendar years from the expiry of the period in respect of which he was liable to pay tax and for subsequent years and also impose a penalty on him. It is clear from this provision that in the case of such a dealer the assessment can be made only within three calendar years from the expiry of the period in respect whereof he has been liable to pay tax under the Act. If the contention of learned Counsel for the respondent should prevail, in the case of a registered dealer there would be no limitation in the matter of assessment, whereas in the case of a dealer who evaded law, he would have the benefit of the three years'' limitation." (Italics are ours).

22. Mr. Deo has relied on the observations quoted above for his submission that these observations support his argument that a notice under Sub-section (1) of Section 10 is obligatory in the ease of an unregistered dealer before the provisions of Sub-section (5) of Section 11 are resorted to against him. The portion of the observations particularly relied upon in this connection by the learned advocate is the portion italicized by us. The notice under Rule 22 in the above observations is the notice under Sub-section (1) of Section 10, and the submission of the learned advocate is that in view of these observations the Commissioner his to issue such notice, then proceed to assess him u/s 11, and only on subsequent information the Commissioner can assess him under Sub-section (5) for the period for which he was liable to pay tax and during which he had willfully failed to apply for registration. In our opinion, these observations do not mean what the learned advocate wants to say that in every case a notice under Sub-section (1) of Section 10 is necessary, and it is only on the information gathered, in the proceedings of assessment held in pursuance of the return submitted in compliance with the said notice that the provision of Sub-section (5). of Section 11 can be resorted to.

23. We may refer to the observations of Raghubar Dayal J. in the same decision dealing with the provisions of Sections 10 and 11 of the Act. It may be pointed out that although the judgment of Raghubar Dayal J. is a dissenting judgment, the dissent is not with reference to the interpretation of the scope of Section 11(5) with which we are concerned in the present case. His Lordship points out that the

procedure for assessment of tax is the same, both for the registered dealer and the ordinary dealer, in case both of them furnish the returns of the turnover as required by the provisions of Sub-section (1) of Section 10 and also comply, if required, with the provisions of Sub-section (2) of Section 11. Different procedure is required to be followed if the two types of dealers do not file returns or, after "filing returns, do not respond to the notice issued under Sub-section (2) of Section 11, The Act does not provide for the Sales Tax Officer''s taking steps for the assessment of the tax on the ground of the unregistered dealer''s not complying with either notice, i.e. when the unregistered dealer does not submit a return, or after submitting a return which is not accepted, does not respond to the notice under Sub-section (2) of Section 11. His Lordship then observed (p. 992) :

The Sales Tax Officer can, however, proceed against such a dealer under Sub-section (5) of Section 11 and will probably do so as the conduct of the unregistered dealer would tend to confirm the information which led him to issue notice u/s 10(1); but his action will be not on the ground that the dealer had made default in furnishing the return or had failed to comply with the notice issued under Sub-section (2) of Section 11 but will be on the ground that according to his information the dealer had been liable to pay tax under the Act in respect of that period and had, nevertheless, willfully failed to apply for registration.

24. Mr. Deo has relied on the part of the observations quoted above where it is said that the procedure under Sub-section (5) of Section 11 will be adopted by the Sates Tax Officer because the conduct of the unregistered dealer in not submitting the return in compliance with the notice issued to him under Sub-section (1) of Section 10 would confirm the information of the Commissioner which led him to issue such notice, and has contended that that would indicate that a notice under Sub-section (1) of Section 10 is obligatory before the provision of Sub-section (5) of Section 11 is invoked against the unregistered dealer. We are, however, afraid that the said observation does not give any such indication because later on his Lordship has observed: (p. 992):

...If such a dealer had been one to whom a notice under Sub-section (1) of Section 10 had been issued and had failed, without any sufficient cause, to comply with the requirements of that notice, he could also be ordered to pay, by way of penalty, a sum not exceeding one-fourth the amount of the tax which is assessee on him u/s 11, in view of the provisions of Sub-section (3) of Section 10.

It does not appear from this observation that his Lordship considers that in every case where the provision of Sub-section (5) of Section 11 is applied, a prior notice under Sub-section (1) of Section 10 is obligatory. It may be that even when the provision of Sub-section (5) of Section 11 is intended to be applied, the Commissioner may as a first step give a notice under Sub-section (i) of Section 10, and if that notice is not complied with, apart from the consequences to which the dealer may be subjected under the provisions of Sub-section (5) of Section 11, lie will

be liable to a further penalty under Sub-section (3) of Section 10 for failure to comply with that notice. That does not however mean that it is obligatory to give a notice under Sub-section (1) of Section 10 as a first step in every case. In our view, therefore, the observations in the Supreme Court case on which reliance is sought to be placed by Mr. Deo do not help him in support of his submission. On the other hand, some of the observations in this case appear to indicate the contrary. Thus, for instance, in the majority judgment in this case it has been observed that a case of an unregistered dealer is a case of evasion from his obligation to get himself registered under the Act. In the judgment of Raghubar Dayal J., his Lordship points out that the action under Sub-section (5) of Section 11 is not on the ground that the dealer had made default in furnishing the return or had failed to comply with the notice issued under Sub-section (2) of Section 11. but will be on the ground that the dealer was liable to pay tax under the Act but had nevertheless willfully failed to apply for registration. It would, therefore, appear to us that the invoking of the powers under Sub-section (5) of Section 11 is not dependent on a prior notice for submission of the return issued to an unregistered dealer under Sub-section (1) of Section 10; its dependence is entirely on the fulfilment of the conditions which are specified in the section itself, namely, that there must be satisfaction of the Commissioner on the information which is in his possession that the dealer was liable to pay tax for a certain period and that during that period he had willfully failed to apply for registration. If these conditions are satisfied, the power under Sub-section (5) of Section 11 would be invoked against the unregistered dealer and exercised in the manner stated in the said sub-section, namely, in the manner prescribed by Rule 32 of the Rules made under the Act. There is nothing in the rule which would indicate that a notice for submitting the returns is required either prior or subsequent to the application of the procedure prescribed. What Rule 32 requires to be done is that a notice in Form XII specifying the default and calling upon the unregistered dealer to show cause within such time as is prescribed in the notice why he should not be assessee and a penalty should not be imposed upon him, should be served on the dealer. A reference to Form XII in which the notice is required to be issued would show that the notice will give intimation to the dealer that he being a dealer liable to pay tax under the Act in respect of the periods mentioned had willfully failed to apply for registration and will call upon him to show cause on or before a certain date why he should not be assessee and a penalty should not be imposed on him. The notice will further direct him to attend in person or by a proper representative before the Sales Tax Officer and produce or cause to be produced the books of accounts and the documents specified in the notice and such other evidence on which he may choose to rely in support of the cause required to be shown by the dealer. It would thus appear that, the conditions subject to which the jurisdiction under Sub-section (5) of Section 11 can be invoked against an unregistered dealer have no reference to a notice under Sub-section (1) of Section 10 being required to be issued to him as a condition precedent to the invoking1 of the said jurisdiction. The procedure prescribed for the exercise of the

said jurisdiction also gives no indication that the said jurisdiction has to be invoked only after the stage of the issuance of a notice under Sub-section (1) of Section 10 has passed. In our opinion, therefore, the first contention urged by Mr. Deo in the present petition cannot be sustained and must, therefore, fail.

25. The next point urged by the learned advocate relates to the period for which the notice under Sub-section (5) of Section 11 can be issued by the Sales Tax Officer. The rival contentions in this connection are that according to the petitioner, the period for which such notice can be issued cannot be for such period or periods of assessment as are prior to three calendar years from the date of the issue of such notice. On the other hand, the contention of the Department is that the entire period for which the unregistered dealer was liable to pay tax and for which he had willfully failed to apply for registration can be covered by the notice within three calendar years from the end of such period. In the present case, the notices which are respectively dated November 12, 1962 and November 26, 1962 are in respect of the period from January 1, 1959 to December 31, 1959 and the third notice which is dated December 10, 1962 is for the entire period from June 1, 1950 to December 31, 1959, According'' to Mr. Deo, the period of assessment which comes within three calendar years from any one of the three notices is the last quarter of the year 1959. AH other periods which are prior to the said last quarter of 1959 are beyond the period of three years from the dates of the notice and the Sales Tax Officer had no authority to issue any notice for the said periods. According to the learned Assistant Government Pleader who appears for the Department, the entire period from June 1, 1950 to December 31, 1959 was the period during which the petitioner was liable to pay tax and had willfully failed to apply for registration and the notices which have been issued by the Sales Tax Officer which are within three calendar years from December 31, 1959 are good, valid and proper for the entire period from June 1, 1950 to December 31, 1959. "Which of these rival contentions is right will depend upon the proper construction of the expression "the period during which the unregistered dealer was liable to pay tax and had nevertheless willfully failed to apply for registration" which occurs in Sub-section (5) of Section 11.

26. Liability to pay tax under a taxing statute is entirely governed by the statute which is a complete code in itself. A taxing statute provides for the incidence of tax or the attraction of tax liability; it makes provision for the assessment of the tax liability or the ascertainment or quantification of the tax liability which is attracted; and it also makes provision for the recovery and payment of the said tax liability. Every one of these matters is governed by the provisions of the Act itself and the liability of a person to pay tax has got to be determined with reference to the provisions which are to be found in the taxing statute. In the statute before us, the incidence or the attraction of tax liability is provided by Section 4; the assessment or the ascertainment and the quantification is dealt with by Sections 11 and 11-A; the payment and recovery of the tax is provided by Section 12; and the refunds are dealt with in Section 13 of the Act. Section 4 which deals with the incidence of tax states in

the first place who are the persons who are subject to tax; in the second place, the point of time when the tax liability is attracted, and in the third place, the duration to which the liability continues. Under that section it is provided that all dealers whose turnover exceeds the limits specified in the section will be liable to pay tax in accordance with the provisions of the Act. Attraction of the tax, therefore, is dependent on the turnover exceeding- the specified limits and the liability to pay tax which has been attracted is to be governed in accordance with the provisions of the Act which will necessarily include the provisions as to assessment and payment. Under the said section all dealers whose turnover exceeded the specified limits during the year preceding the commencement of the Act became liable to pay tax from the commencement of the Act. In the case of others, the tax liability is attracted from a date expiring two months after the month up to the end of which their turnover ''calculated from the commencement of the year or from the commencement of the business in case the dealer was in business for less than 12 months exceeds the specified limits. The year for the purpose of this calculation of the turnover is the financial year beginning on April 1, or at the option of the dealer, his accounting year. The liability to pay tax which is attracted in the manner provided continues until the expiry of a period of three consecutive years during which the turnover of the dealer has not exceeded the specified limits and ceases at the expiry of such three years unless a further period for its continuation has been prescribed by the Rules under the Act. The provisions of this section relate to the attraction, of the tax liability. The liability to pay tax so attracted is however in accordance with the provisions of the Act. These provisions, as we have already stated, have reference to the provisions relating to assessment. u/s 8 of the Act, a dealer who is liable to pay tax under the Act has to put in an application to get himself registered and possess a registration certificate. Failure to perform this obligation is made penal u/s 24. Section 9 provides for the publication of the list of the registered dealers. As observed by the Supreme Court in Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax the provisions of Sections 8 and. 9 are conceived in the interest of revenue, to facilitate collection of taxes and to prevent the evasion thereof. Tinder Sub-section (1) of Section 10, a registered dealer is required to furnish such returns by such dates and to such authority as may be prescribed. "Prescribed" means prescribed under the rules made under the Act, and the relevant rules in this connection are Rules 19 and 20 in Part V of the Rules made under the Act. Rule 19 provides that a registered, dealer will furnish to the appropriate Sales Tax Officer quarterly returns in Form TV within one calendar month from the expiry of the quarter to which the return relates. That is the normal period for which assessment returns are required to be filed by the registered dealer in Form IV. Tinder Rule 20 the Commissioner is authorised to fix a monthly return for any registered dealer for reasons to be recorded by him. For such dealer the return period for the returns to be submitted by him in form IV will be a period of one month. Under Sub-section (1) of Section 10 the Commissioner is also entitled to serve a notice on an unregistered dealer requiring him to furnish a return or

returns. The rule which prescribes the, manner in which returns can be requisitioned from an unregistered dealer is Rule 22 and it provides that the Commissioner may by a notice given in Form VI require an unregistered dealer to furnish to the appropriate Sales Tax Officer, within two calendar months from the date of the service of the notice a return or returns in Form IV in respect of the said period or periods as may be specified in the notice and thereupon such dealer shall comply with the notice. Section 10 again, as observed by the Supreme Court in Central Potteries Ltd. v. State of Maharashtra, is a procedural section and the liability of an assessee or a dealer to pay tax or the jurisdiction of the Sales Tax Officer to assess the dealer to tax, is not dependent upon the said section.

27. We then come to Section 11 which is the assessment section under the Act. Under Sub-section (1) of that section assessment is made on the returns which are filed by the registered dealers under the statutory obligation imposed upon them by Sub-section (1) of Section 10, and by the unregistered dealers under Sub-section (1) of Section 10 on their being called upon to furnish such returns by the Commissioner, if the said returns are found to be satisfactory. Under Sub-section (2) of Section 11, if the Commissioner is not satisfied by the returns submitted by the registered or unregistered dealers he is empowered to call upon them by a notice to appear before him in person or by a proper representative or to produce evidence or to produce accounts etc. The notice which is required to be given under Sub-section (2) of Section 11 is provided in Rule 31 of the Rules and is required to be in Form XI. Sub-section (3) of Section 11 authorises the appropriate Sales Tax Authority to make assessment on the basis of the returns furnished and on the basis of the further evidence produced in compliance with the notice given under Sub-section (2) of Section 11. Sub-section (4) provides for the best judgment assessment in the case of a registered dealer. The manner prescribed for making this best judgment assessment is dealt with in Rule 32 which requires a notice in Form XII to be issued by the Sales Tax Officer to the registered dealer, who has failed to submit returns in respect of any period by the prescribed date. That notice intimates the registered dealer that having failed to furnish, returns for certain specified periods he has rendered himself liable to'' best judgment assessment and requires him to show cause why he should not be assessee and a penalty should not be imposed upon him. Sub-section (5) of Section 11 contains a provision for best judgment assessment of an unregistered dealer and the manner in which this best judgment assessment is to be made is again dealt with by Rule 32 which provides for a notice in Form XII to be issued to the unregistered dealer. This notice intimates him of the default, namely, that having been a dealer liable to pay tax in respect of certain periods he had willfully failed to apply for registration and calls upon him to show cause why he should not be assessee, and why a. penalty should not be imposed upon him.

28. Section 11-A of the. Act provides for the assessment of turnover which has escaped assessment. That section provides that if the appropriate Sales Tax

Authority is satisfied in consequence of any information which has come into its possession that any turnover'' of a dealer during any period has been under assessee or has escaped assessment or has been assessee at a lower rate etc., it may within three calendar years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard and after making such inquiry as it considers necessary, proceed in such manner as may be prescribed to re-assess or assess as the case may be, the tax payable on such turnover. The prescribed manner is again provided by Rule 32 which requires a notice in Form XII to be issued to the dealer, calling upon him to show cause why he should not be assessee or re-assessed as the case may be. The notice in Form XII will show that the intimation which is conveyed to the dealer is that his turnover for a certain period or periods has been under-assessed or has escaped assessment etc. and requires him to show cause why he should not be assessee or re-assessed as the case may be. The provisions of Sections 10 and 11 of the Act and the rules made under the Act will show that the assessment of the tax liability under the Act is made normally in terms of quarters of a year. In other words, the normal unit of the period of assessment under the Act is a period of a quarter and the liability of a dealer or a registered dealer to pay tax is ascertained and quantified in terms of periods of quarters. The provision for the payment and recovery of the tax, as we have already mentioned, is made in Section 12 and the provision for refund is contained in Section 13, but for the purposes of the question before us it is not necessary to consider those provisions.

29. Now, what we have got to consider in the present ease is what upon a proper construction is the meaning of the expression "period for which a dealer has been liable to pay tax" as contained in Sub-section (5) of Section 11. That Sub-section reads as follows:

If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless willfully failed to apply for registration, the Commissioner shall, at any time within three calendar years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods; and the Commissioner may direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessee a sum not exceeding one and a half times that amount.

The three calendar years within which the Commissioner must proceed under this sub-section are the three calendar years from the expiry of the period in respect of which the dealer had been liable to pay tax and had nevertheless willfully failed to apply for registration, and the controversy is as to what is this period for which the dealer had been liable to pay tax and had nevertheless willfully failed to apply for

registration. Mr. Deo''s contention is that the period in respect of which the dealer has been liable to pay tax lander the Act is not necessarily the period during which the tax liability was attracted by his turnover; it is the period in respect of which he was liable to pay tax in accordance with the provisions of the Act. The liability to pay tax is net dependent merely on the attraction of the tax liability. The liability comes in when the liability is ascertained and quantified in the manner provided in the Act. The period in respect of which the dealer was liable to pay tax will, therefore, depend upon the period in respect of which the dealer was liable 10 be assessee to tax, because if there is no assessment, there is no liability to pay. In order, therefore, to understand the proper meaning of the expression "the period in respect of which the dealer was liable to pay tax under the provisions of the Act", reference must necessarily be made to the period of assessment for which a dealer is liable to be assessee. Units of periods of assessment are units of one or more quarters. The periods for which the dealer is liable to pay tax, therefore, will be periods of a quarter or Quarter''s in respect of which the turnover of the dealer is liable to be assessee. The three calendar years'' period mentioned in. Sub-section (5) within which action can be taken are three years from the expiry of the quarter or quarters which are sought to be assessee. According to the learned advocate, therefore, the Sales Tax Authorities, under Sub-section (5), can only proceed to make assessment under that sub-section in respect of such quarter or quarters as are within three calendar years of the notice issued under the said section. Mr. Hajarnavis, the learned Assistant Government Pleader, has on the other hand contended that the liability to pay tax under the Act arises u/s 4 and is not dependent upon the provisions as to assessment. The process of assessment is merely the process of collection of the liability which has been already incurred and which is all the while there. Section 4, according to him, does not merely attract the tax or brings in the incidence of tax; it also brings in the liability to pay tax. The expression, therefore, in Sub-section (5) of Section 11 must be given the meaning that it covers the entire period for which the tar liability has been incurred and during which the dealer has willfully failed to apply for registration.

30. In our opinion, the argument advanced by Mr. Hajarnavis does not appear to be sound. It is no doubt true that a tax liability is brought, into existence u/s 4 but that section in terms provides that the liability to pay tax will be in accordance with the provisions of the Act, which, according to us, has a necessary reference to the parts of the Act dealing with the assessment, payment and recovery. The mere attraction of the tax liability, therefore, is not sufficient to make the dealer liable to pay the tax, unless certain other provisions of the Act are also followed. As we have already pointed out earlier, under a taxing statute there are three stages; the incidence of the tax, the assessment of the tax, and the, payment or recovery of the tax. The incidence of the tax brings into existence the tax liability. The liability to pay tax so incurred is on the assessment of the tax. If there is no assessment, there is no liability to pay tax. The period, therefore, for which the dealer is liable to pay tax will

depend upon the period for which he is liable to be assessee in respect of the tax liability incurred. If for some reason or the other, the tax liability cannot be assessee under the provisions prescribed for the assessment of the tax under the Act, that liability ceases to exist. It seems to us, therefore, that in considering the expression "the period for which the dealer has been liable to pay tax" in Sub-section (5) of Section 11, recourse must, necessarily be had to the periods of assessment in respect of the tax. There is no doubt whatsoever that under the Act the unit of assessment is a quarter: see, for instance, Ghanshyamdas v. Regional Asst. Commr. of Sales Tax, The expiry of the three years'' period, therefore, must have reference to the periods of assessment in respect of which the dealer was liable to be assessee in respect of his tax liability. That the period or periods for which the dealer under the Act is liable to be assessee are a quarter or quarters during which the turnover of the dealer has attracted the tax u/s 4 is clear from the provisions made in the rules relating to the assessment under the Act. In our opinion, therefore, the period for which a dealer has been liable to pay tax under the Act as mentioned in Sub-section (5) of Section 11 is the period of a quarter or quarters in respect of which he was liable to be assessee in respect of his turnover and since a period of three calendar years is mentioned in Sub-section (5) of Section 11 as the period of limitation within which action under the Sub-section must be taken from the expiry of such period or periods, it is only for the period or periods of a quarter or quarters which are within three years from the date of the notice issued under this sub-section that the provisions of this sub-section can be invoked.

31. The view that we are taking- has the support of the decision of the former Nagpur High Court in Firm Sheonarayan Matadin v. Sales Tax Officer (1956) 7 S.T.C. 623. It has been held in that case that unless the period for which the assessment has to be made ends within three years from the date when the Commissioner issues the notice, it cannot be made the subject of assessment under Sub-section (5) of Section 11. The observations of the Supreme Court in Ghanshyamdas v. Regional Asst. Commr. of Sales tax also give support to the said view. In that ease, their Lordships of the Supreme Court were principally concerned with Section 11-A of the Act. A dealer who was registered u/s 8 of the Act and who was obliged to furnish quarterly returns of his turnover had, for his accounting1 year 1949-50 which was from October 22, 1949 to November 9, 1950 submitted a return of his turnover for only one quarter of the said year on October 5, 1950 and made a default in respect of the other quarters. On August 13,1954 the Assistant Commissioner of Sales Tax, Nagpur, issued a notice to him in Form XI under Sub-sections (1) and (2) of Section 11 of the Act in respect of the turnover of the dealer for the said period. The dealer thereafter filed his returns for the three quarters in respect of which he had made a default but in the assessment proceedings contended that since the notice which was given to him on August 13, 1954) was beyond three years of the quarters for which he had failed to submit returns, the Assistant Commissioner could not assess his escaped turnover for the said quarters. For the year 1950-51 the dealer had not

submitted returns for any of the quarters. On October 15, 1954 a notice was served on him under Sub-section (4) of Section 11. The dealer contended that since the notice was issued beyond the period of three years from the periods for which his turnover had escaped assessment, the proceedings were barred u/s 11-A of the Act. The contentions of the dealer did not prevail before the Sales Tax Authorities. The dealer however applied to the High Court under Article 226 of the Constitution for quashing the proceedings on the ground that they were illegal and without, jurisdiction. The contention on behalf of the dealer was that his was a case of escaped assessment which came u/s 11-A, and since there was a period of three years'' limitation under the said section within which action in respect of the escaped assessment could be taken, the proceedings against him instituted by the Sales Tax Authorities were incompetent. The question before be Supreme Court was with regard to the proper scope of Section 11-A. and what their Lordships had to consider was whether that section could apply only to a case where there was a final assessment, or it could also apply to eases where there was no assessment at all. Another question which their Lordships had to consider was as to when the assessment proceedings could be said have commenced in respect of a registered dealer and when do they terminate. Their Lordships held that the expression "escaped assessment" in Section 11-A of the Act included that of a turnover which had not been assessee at all, because for one reason oi1 other no assessment proceedings were initiated and, therefore, no assessment was made in respect thereof. They also held that so far" as the registered denier was concerned, the assessment proceedings against him could be said to have commenced when a return is made or when a notice is issued to him either u/s 10(5) or Section 11(2). The statutory obligation of the registered dealer to make a return within the prescribed time does not proprio vigore initiate the assessment proceedings before the Commissioner, but the proceedings will commence after the return is submitted and will continue till a final order of assessment is made in regard to the said return. In dealing with these questions which were raised before them, their Lordships had. to consider the scheme of the Act and the provisions with regard to assessment relating to dealers, both registered and unregistered. In dealing with the case of an ''unregistered dealer with reference to the provisions of Section 11(5), their Lordships observed:

It is clear from this provision that in the case of such a dealer the assessment can be made only within three calendar years from the expiry of the period in respect whereof he has been liable to pay tax under the Act.

Having regard to the view which they took of the provisions of Section 11(5), they observed:

If the contention of learned Counsel for the respondent should prevail, in the case of a registered dealer there would be no limitation in the matter of assessment, whereas in the case of a dealer who evaded law, he would have the benefit of the

three years'' limitation.

32. These observations occur in the context of the contention which was raised before their Lordships with regard to the action contemplated against the dealer under Sub-section (4) of Section 11. In that case, the argument advanced on behalf of the Department, was that there was no limitation for the action under Sub-section (4) of Section 11 for the best judgment assessment against a registered dealer who had failed to submit a return. Their Lordships pointed out that even when the stringent provision of Sub-section (5) of Section 11 provides a period of three years'' limitation for action to be taken against an unregistered dealer, it could not have been intended that in the case of a registered dealer, there should be no period of limitation at all. These observations clearly show that the period in respect of which the unregistered dealer was liable to pay tax was the period of three years in respect of which he was liable to be assessee. The observations in the judgment of Raghubar Dayal J. in the said case also are to the same effect. His Lordship observed:

Under the provisions of Sub-section (5) of Section 11, he (i.e. the Commissioner), after giving the dealer reasonable opportunity of being heard, can proceed to assess the tax to the best of his judgment within three calendar years from the expiry of the period in respect of the turnover of which he was liable to be assessee to tax.

There could be no doubt whatsoever that the period in respect of which the dealer was liable to be assessee to tax was the period of a quarter or quarters for which assessment could be made under the Act. The said decision also points out that for the purposes of assessment, the unit of assessment is a quarter. In our opinion, therefore, the view that we are taking is in accordance with the view taken by the former Nagpur High Court and also in accordance with the observations of the Supreme Court in Ghanshyamdas v. Regional Asst. Commr. of Sales Tax.

33. Mr. Hajarnavis has invited our attention to a contrary view taken by the Madhya Pradesh High Court in the following cases: (1) Battulal v. Commr. of Sales Tax (1962) 13 S.T.C. 893. Patel & Co. v. commr. of Sales Tax (1963) 15 S.T.C. 18 Ghanshyamdas v. Sales Tax Officer (1963) 15 S.T.C. 128. The view taken, by that Court is that the word "period" in Sub-section (5) of Section 11 of the C.P. and Berar Sales Tax Act, 1947, means the whole period during which a dealer has been liable to pay tax under the Act but has nevertheless willfully failed to apply for registration, and that it is not to be construed as meaning a quarter for which under Rule 19 every registered dealer is required to furnish a return. With great respect to the learned Judges, we are unable to agree with the view taken by them in the said cases. With respect, we may point out that the said decision overlooks the fact that u/s 4 the dealer''s liability is to pay the tax in accordance with the provisions of the Act which necessarily include the provisions relating- to assessment, The expression "the period for which the dealer has been liable to pay tax under the Act" cannot, therefore, be always

coincident with the period for which the tax has been attracted by his turnover. We may also point out with great respect that we do not agree with them that no fixed periods for the purpose of assessment are fixed under the Act. As has been observed by the Supreme Court in Ghunshyamdas''s case, the unit of assessment under the Act is a quarter and that is the normal period fixed for the purposes of assessment though in exceptional cases a period of one month, can also be fixed under Rule 20 as the return period for ''assessment.

34. In Battulal v. Commr. of Sales Tax the learned Judges who decided that case observed that the view that they were taking was fortified by a decision of. the Supreme Court is State of Orissa v. Chakobhai Ghelabhai & Co. (1960) 11 S.T.C. 716 With respect again, we are unable to agree with the learned Judges. In the case before the Supreme Court, a notice under Sub-section (5) of Section 12 of the Orissa. Act was issued in Form VI which corresponds to the notice in Form XIT under the Act with which we. are concerned. That form like Form XII of the notice under our Act was a compendious form meant for notices for several purposes. There was a foot-note appended to the form requiring the authority issuing the notice to score out the unnecessary words. One of the complaints urged against the notice was that the unnecessary words not having been scored, the notice was bad in law. That contention was negatived on the ground that since the respondent had no difficulty in understanding what that notice was, the mere circumstance that unnecessary words were not scored did not make the notice bad in law. The next complaint raised against the notice was that the notice was issued for several" quarters and an assessment was made for each quarter separately. Thus, in respect of four quarters which were included in the notice, the assessment was made on July 4, 1951, and for the other eight quarters on August 29, 1951. Their Lordships held that the said objection against the validity of the notice was also not maintainable, because the notice which Section 12(5) of that Act required to be given tallied of a period and this period might consist of more than one quarter. One notice, therefore, for several quarters would be quite, in order though the returns in response- to the said notice had to be furnished separately and had also to be assessee separately for each quarter. We are unable to see how the observations of the Supreme Court in that case, namely, that "Section 12(5) talks of a period, and the period may consist of more than one quarter", would help in arriving at The proper interpretation of the expression with which we are concerned. The period for which the dealer has been liable to pay tax under the Act may undoubtedly consist of one or more quarters. But the authority of the Sales Tax Officer to make a best judgment assessment against him u/s 11(5) is only in respect of that period consisting of one or more quarters which is within three years of the notice which he can issue under the said provision. We would, therefore, prefer to follow the view taken by the Nagpur High Court in Firm Sheonarayan Matadin v. Sales Tax Office which, it may be pointed out, has been subsequently followed by this Court also in Ramkrishna Ramnath v. Sales Tax Officer (1959) 11 S.T.C. 811. In the view that we are taking, therefore, the notices

issued by the Sales Tax Officers in the present case will be incompetent except for the last quarter of the year 1959.

35. We now come to the third and the last contention which has been urged by Mr. Deo, in this petition, namely, that having regard to the nature of the transactions between, the. petitioner and its customers of the type described by the respondents themselves in. their affidavit, such transactions do not amount to sales under the Act and if the extended definition of "sale" given in Explanation (I) to that definition seeks to include transactions of this nature, the said Explanation is beyond the legislative competence of the Legislature in a legislation enacted under entry 48 of the Provincial Legislative List in the Government of India Act, 1935, or under entry 54 of the State List under the Constitution of India, Now, before proceeding to deal with this question, it may be stated that in the petition the petitioner had alleged that the dealings of the petitioner were only financial dealings and there was no sale whatever involved in the said dealings of any articles or goods between the petitioner and the persons with whom it dealt. It was also alleged in the petition that in the transactions with which the petitioner was concerned relating to financing- of the purchase of the motor vehicles, there was no sale of any vehicle by the petitioner to the customers. There was in fact a sale direct from the manufacturers of the vehicles to the customers and the arrangement which the customers had with the petitioner was only in the nature of a financing arrangement. This position was controverted in the reply submitted by the respondents and they averred that there was in fact a sale from the dealer of the manufacturer to the petitioner and the subsequent transaction between the petitioner and its customer was in respect of the vehicles which had been sold to the petitioner by the dealer on hire-purchase agreement. In the reply, the respondents gave the nature of the transactions and the mode in which the transactions were brought about and contended that these were transactions of hire-purchase between the petitioner and its customers.

36. At the hearing of the petition, Mr. Deo stated when a preliminary objection was raised on behalf of the respondents, that the petition involved disputed questions of fact, that he would accept that there were amongst the transactions which the petitioner carried on with its customers transactions of the type mentioned by the respondents in their affidavit and that he would confine his submissions with respect to the transactions of that type only. His argument was that the transactions of the type which were described by the respondents and which undoubtedly form a large part of the transactions which the petitioner carried on with its customers were not sales which could be taxed under the Act. Now, the type of transactions described by the respondents which the petitioner accepts as the correct description of some of the transactions entered into by it with its customers is as follows: A person intending to purchase a motor vehicle approaches the dealer of the manufacturer and selects a vehicle and fixes up its price. Then he approaches the petitioner Company with a guarantor and gives a proposal for the hire-purchase of the motor vehicle from the petitioner Company. The Company on accepting this

proposal of hire-purchase enters into an agreement for hire-purchase of this vehicle. Then the Company informs the dealer about the agreement to accept a certain sum of money on their behalf and send the bill to it and deliver the vehicle to the customer. The customer, after taking delivery, passes a receipt to the Company of his having received the vehicle in good condition, complete with all tools and accessories. The customer then applies to the Regional Transport Authority u/s 24 of the Motor Vehicles Act. The dealer of the manufacturer prepares the bill in the name of the Company and the delivery of the vehicle to the ultimate customer is then effected on the instructions of the Company. The Company accepts the proposal from the customer for selling the vehicle to him on hire-purchase basis and even after the payment of the agreed amount, the property in the goods passes only on the option exercised by the intending customer. In the hire purchase agreement the Company describes itself as the owner of the vehicle during the period commencing from the purchase of the vehicle till the property in the vehicle is finally passed by this Company to the ultimate customer as a result of the fulfilment of all the conditions in the agreement. A form of the agreement of hire-purchase typical of this type of transaction has been annexed to the petition at Annexure B. A proposal form regarding the hire-purchase, of the motor vehicle from the petitioner Company is also produced along with the petition as Annexure C. A form of the receipt to be passed by the customer for his having received the vehicle from the dealer is given at Annexure E.

37. Actual documents relating to a transaction of this type have been subsequently filed by Mr. Deo and were handed over to us at the time of hearing. It will be desirable to give some of the relevant clauses of the agreement entered into by the petitioner with its customers, because it is necessary to consider what is the exact nature of this transaction. In this agreement the petitioner Company is described as the owners of the vehicle and the customer as the hirer. The first clause states that the owners being the owners of the vehicle agree to let and the hirer agrees to hire the vehicle from the date of the agreement subject to the terms and conditions contained in the agreement, tinder Clause II, on the execution of the agreement, the hirer is required to pay to the owners a sum of Re. 1 in consideration of the option to purchase given to the hirer by Clause IV of the agreement, and it is provided that the said sum shall become the absolute property of the owners. Under Clause III, the hirer has to pay on the execution of the agreement a certain sum of money as an initial payment by way of hire which, though it varies with every transaction, is at least about 25 per cent of the price of the vehicle and he also agrees to pay punctually by monthly instalments further sums of money as specified in the agreement. Under Clause IV it is provided that if the hirer duly performs and observes all the terms and conditions of the agreement to be performed and observed by him and pays in the manner provided to the owners monthly sums by way of rent amounting together with the initial payment made by him to a total sum which is the price of the vehicle and also pays to the owners all arrears of money

which may become payable by the hirer under the agreement, the hiring would come to an end and the vehicle will, at the option of the hirer, become his property and the owners will assign and make over all their right, title and interest in the same to the hirer, but until such payments as aforesaid have been made the vehicle shall remain the property of the owners. Clause V of the agreement provides that in the event of the hiring under the contract being for any reason whatsoever terminated by either party during the specified number of months, the hirer will pay to the owners a certain sum in addition to certain other sums payable by him under the contract or in law. It is however stated by Mr. Deo that in the actual contracts entered into by the Company with its customers, this clause has been deleted. Clause VI deals with the guarantee of the guarantor.

38. Amongst the conditions which are stated in this agreement, the first condition states that the hirer would be at liberty at any time during the continuance of we agreement to terminate the hiring by returning'' the vehicle to the owners, free of all expenses to the owners, but that would be without prejudice to any claims which the owners may have against the hirer under the agreement. What is necessary to consider is what is the exact nature of the transaction. Mr. Deo has contended that the transaction is a contract of hiring and is not a sale. His contention is that under the terms of the agreement there is no contract to sell and there is no passing of the property from the petitioner to the customer in pursuance of the agreement. The essential feature of the agreement which makes it a contract of hiring and not a sale is the option which has been given to the customer to return the goods. Under condition No. 4 of the contract it is provided that even after the payments in terms of the agreement are made by the hirer to the petitioner, the vehicle will become the property of the hirer at his option. Condition No. 1 of the contract provides that during the continuance of the agreement it will be open to the customer to terminate the hiring by returning the vehicle to the owners, and condition No. 5 states that if the hiring is determined by the owners or by the hirer in the manner provided in condition No. 1, all hire up to the date of such determination shall be paid by the hirer to the owners which would mean that there is no liability in respect of the subsequent period. Mr. Deo has, therefore, contended, that these features of the agreement take it out of the category of sales. It has been well settled, he argues, that a hire-purchase agreement giving an option to buy or not to buy to the hirer is not a sale. According to the learned advocate, therefore, the transactions of the type described by the respondents between the petitioner and its customers cannot be sales, so as to come within the definition of sale under the Act even under Explanation (I) to that definition, because, according to him, the term "hire-purchase" in that Explanation must exclude out of its ambit transactions which are not sales and can only cover instances of instalment buying though designated by the name "hire-purchase". His alternative argument is that if the term "hire-purchase" contained in the Explanation to the definition of "sale" is intended to cover pure contracts of hire-purchase of the type with which we are concerned, the

Explanation will be beyond the competence of the State Legislature, because under the relevant entries in the Provincial Legislative List at the material time when the legislation was passed, or even at the present stage, the State Legislature has no power to levy tax on transactions which are other than Bales. In support of his submission that the State Legislature cannot, by extending the definition of "sale", include within its ambit transactions which are not sales within the meaning of the Act, Mr. Deo has relied upon the decisions of the Supreme Court in Sales Tax Officer v. Budh Prakash Jai Prakash (1954) 5 S.T.C. 193 and State of Madras v. Cannon Dunkerley & Co. (1958) 9 S.T.C. 353

39. In Sales Tax Officer v. Budh Prakash Jai Prakash, the question before the Supreme Court was whether forward contracts which were treated as sales could be taxed under the Sales Tax Act. It was held that it would be proper to interpret the expression "sale of goods" in Entry 48 in List II of the Seventh Schedule to the Government of India Act, 19:J5, in the sense in which it was used in legislation both in England and India and to hold that, it authorises the imposition of a tax only when there is a completed sale involving transfer of title. It was observed that a liability to be assessee to sales tax can arise only if there is a completed sale under which price is paid or is payable and not when there is only an agreement to sell, which can only result in a claim for damages. The power conferred under Entry 48 to impose a tax on the sale of goods can, therefore, be exercised only when there is a sale under which there is a transfer of property in the goods, and not when there is a mere agreement to sell. It was further observed that the State Legislature cannot by enlarging the definition of "sale" as including forward contracts, arrogate to itself a power which is not conferred upon it by the Constitution Act, and the definition of "sale" in Section 2(71) of the IT.P. Sales Tax Act was, to that extent, ultra vires the Legislature.

40. In State of Madras v. Gannon Dunkerley & Co., the question before the Supreme Court was whether the definition of sale in the Madras General Sales Tax Act, in so far as it sought to impose a tax oh the supply of materials in execution, of works contract treating it as a sale of goods by the contractor, was constitutional, and it was held that the expression "sale of goods" in Entry 48 in List II of Schedule VJI of the'' Government of India Act, 1935, cannot be construed in its popular sense but must be interpreted in its legal sense and should be given the same meaning which it has in the Sale of Goods Act. It is a nomen juris, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement.

41. In view of these decisions Mr. Deo has contended that in the transactions of the type with which we are concerned, there is no agreement to sell a vehicle and there is no passing of property pursuant to that agreement and, therefore, there is no sale. The position on the analysis of the terms of the agreement, he says, is this that the petitioner has hired the vehicle to the customer with an offer to him that if at the

end of the hiring contract lie wishes to buy it, he may buy it or he may not. There is no agreement on the part of the customer to buy the vehicle and consequently there is no agreement to sell between the parties in the present ease and there is no passing of property in pursuance of that agreement. The property under the agreement in question passes to the buyer only when he exercises the option and not before that. Until then, Mr. Deo says, the contract is a contract of hiring, pure and simple, and such a contract cannot be assessee.

42. Another case to which he has made a reference for the proposition urged by him is Damodar Valley Corporation v. State of Bihar (1961) 12 S.T.C. 102. In that ease, the appellant who was the Damodar Valley Corporation had entered into an agreement with two engineering contractors for the construction of a dam. Under the agreement, the Corporation agreed to make available to the contractors such equipment as was necessary and suitable for that construction, but the contractors were to be charged the actual price paid by the appellant for the equipment and machinery thus made available, inclusive of freight and customs duty, if any, as also the cost of transport, but excluding sales tax. The machineries were to remain the property of the appellant until the full price thereof had been realised from the contractors. The appellant agreed to take over from the contractors some of the machineries after completion of the work at their "residual value" which was to be calculated in a certain manner; but that was not an unconditional term. The Corporation was bound to take them over only if it was satisfied that their "residual life" was not less than the standard life fixed by the parties. Under the agreement, the contractors were made responsible for maintaining the equipments in good running condition and could not remove the equipments from site until the full cost thereof had been recovered from them and their removal was not likely to impede the satisfactory prosecution of the work. The contractors had to replenish their stock of spare parts of machineries made available to them by the appellant and when spare parts were supplied to the contractors by the appellant, the contractors were liable for the actual price of those parts inclusive of freight, insurance and customs duty. The question be-fore the Court was whether the transaction between the parties was a mere contract of hiring or a sale within the meaning of Section 2(g) of the Bihar Sales -Tax Act. On the terms of the contract, it was held by the Supreme Court that it was a contract of sale and not a contract of hiring. But in deciding that question the Court considered the essential features of a hire-purchase agreement and observed (p. 113) :

...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 the title to the thing shall not pass until all the instalments have been paid. There may be other variations of a contract of hire-purchase depending upon the terms agreed between the parties. When rights in third parties have been created by acts of parties or by operation of law, the question, which does not arise here, may arise as to what exactly were the rights and obligations of the parties to the original contract. 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.

Mr. Deo says relying upon this case that the Supreme Court has held that if there is a right reserved to the hirer to return the goods at any time during the subsistence of the contract, then clearly it is not a contract of sale. In the present case, he says that there is a right reserved to the hirer to return the goods during the subsistence of the contract under condition No. 1. According to the dictum of the Supreme Court, therefore, there is no contract of sale in the present case. He has further referred us to a case decided by the Madhya Pradesh High Court in Indian Finances Private Ltd. v. Sales Tax Officer (1964) 15 S.T.C. 254 where the hire-purchase agreement was almost identical in terms. The Court held that it was not a contract of sale and could not come within the definition of sale. In that view it held that the Explanation to the definition of "sale" contained in the Madhya Pradesh General Sales Tax Act which is identical in terms with the Explanation given in our Act, swept into the category of sales transactions which were not sale transactions under the Sale of Goods Act, 1930, and thus was ultra vires of the State Legislature.

43. Now, there is no doubt that a contract purely of hiring can never come within the definition of sale. A hire-purchase agreement however,, as observed by the Supreme Court, takes a variety of forms having a very wide range, and what its exact legal nature is-whether it is a sale or a contract of hiring with a mere option of purchase on fulfilment of certain conditions-will depend upon what that agreement in substance is. It seems to us that the proper test to determine as to what the true nature of the transaction is, is to look at the substance of the transaction, the intention of the parties in entering into that transaction, and what it is really intended by them to be. An option to purchase given to the buyer may no doubt be indicative that no sale may have been intended by the parties. The mere circumstance that sun option to the buyer has been given may not necessarily

involve the conclusion that it is not a sale, nor intended to be a sale. What has got to be considered, in our opinion, is to consider the terms of the contract including the option which may have been given to the buyer under the terms of the contract and consider what is the real nature of the transaction. Examining the terms of the contract before us and the circumstances under which it was admittedly entered into between the parties, we find that a customer who entered into the contract with the petitioner was a person who was in need of a motor vehicle and wanted to buy it. He-had applied to the dealer of the manufacturer, had complied with the formality of giving a guarantee to the dealer, and when his turn came to get the vehicle from the dealer, had gone and selected the vehicle from the dealer. He had not sufficient funds to pay the price of the vehicle to the dealer of the manufacturer and had, therefore, to enter into the present agreement with the petitioner. In order to enter into the present agreement, he agreed that the vehicle which he had selected and wanted to buy from the dealer of the manufacturer should be bought in the first instance by the petitioner and sold to him under a hire-purchase agreement. It was in these circumstances that the contract between the parties has come into existence. The real agreement between the parties is that the petitioner has agreed to sell the vehicle and the customer has agreed to buy it. The payments which the customer is agreeing to pay to the petitioner under this agreement also indicate that they are paid not only by way of hire but also by way of part payment of the price of the vehicle. The part payment of about 25 percent, of the price of the vehicle is paid by the initial instalment. The further payment is made in monthly instalments and the quantum of the payment fixed is such that he has to make up the total price of the vehicle within a period of a few months. It is no doubt true that for the character which the transaction has been given by the parties, these payments are spoken of as hire under the agreement. There is however no doubt that they are meant to be part payments in respect of the price of the, vehicle. The customer gets the vehicle directly from the dealer but he passes a receipt to the petitioner as having received it from it under the hire-purchase agreement. That is no doubt done because under the transaction settled between the parties, the property in the first place passes from the dealer of the manufacturer to the petitioner. The customer possesses the vehicle, maintains it, keeps it in repairs, has it registered in his own name with the Transport Authorities as owner thereof, and at the end of the period of the instalments on a nominal payment, exercises his option and becomes the full owner of the property. Having regard to these terms of the agreement, it seems to us that the option to purchase which is mentioned in the agreement between the parties is not so much to emphasise the bailment character of the transaction as to emphasise the character of the transaction as a sale, By the said option which is given only to the buyer either to take delivery or not to take it, the seller is precluded from withdrawing his offer to sell the vehicle. Secondly, having regard to the terms of the contract, it would be reasonable to hold that the option not to buy is hardly likely to be exercised by the customer except in very exceptional circumstances where for things beyond his control, he may not be in a

position to pay the entire amounts of the stipulated instalments. It- appears to us that it is only in order to safeguard the interests of the petitioner in these exceptional circumstances where the customer may find himself unable to buy the vehicle that the option to buy and liberty to return the vehicle to the petitioner have been included in the agreement. On the examination of the type of the contract that is before us, we do not find any difficulty in coming to the conclusion that it is not a contract of bailment but one in which the element of sale forms an integral part of the contract. This element of sale has been brought in right from the inception of the contract by the option given to the buyer to buy the vehicle. It is a contract in effect'' for buying the vehicle which completely fructifies at the end of the term of the agreement.

44. It is no doubt true that the State Legislature cannot by extending the definition of sale include within its ambit transactions which are not sales. It cannot however be denied that transactions which are in substance sales or which contain to a predominant extent an element of sale in them can come within the expression "sale of goods" in the legislative entries in the State List. What under entry 48 in the Provincial Legislative List in the Government of India Act, 1935, or entry 54 in the State List in the Constitution the State Legislature can tax are transactions which are in substance sales. It is true that for a transaction to be a transaction of sale, there must be an agreement to sell and passing of property in pursuance of that agreement. We do not find it possible to hold that in every case where an option to buy is reserved to the buyer, there can be no agreement to sell and no passing of the property in pursuance of the agreement As we have already pointed out earlier, it must depend upon what the purpose of the option is. Even in spite of such an option in a contract of hire-purchase, the contract may still possess the element of sale in it which may enable the State Legislature to treat it as a sale and tax it under the entry of sale of goods.

45. The view that we are taking does not appear to be unsupported by authority. In Commercial Credit Corporation v. Dy. Comml. Tax Officer (1958) 9 S.T.C. 599 the Madras High Court was concerned with a transaction of a similar nature. After having examined the terms of the transaction in the light of the circumstances under which it was entered into, it was held that the transactions constituted sales rendering them liable to sales tax. It was also held that the transactions, though of hire-purchase, could, having regard to their main intent and purpose, be treated as sales at the moment the agreements were entered into, though of course they would be subject to adjustment by the elimination of such portion of the turnover where no sale resulted. The learned Judges quoted the observations of Goddard J. in Korflex Ld. v. Poole [1933] 2 K.B. 251 which were to the effect that hire-purchase was a very modern development in commercial life, and that commercial men were inventing new methods of business and using documents which were perhaps unfamiliar at the time when they were first brought into use but which were invented to meet the requirements of a particular time or peculiar circumstances

and the law had to be moulded and developed to meet the commercial developments which are taking place. Goddard J. (as he then was) observed in the said case (p. 264) :

Now it does not seem to me by any means to follow that the doctrines which were applied to ordinary simple bailment''s in bygone days apply to this modern class of bailment which has in it, not only the element of bailment but also the element of sale.

This and other authorities establish that a ''hire-purchase'' is a complex contract transcending a mere bailment and conferring on the hirer a legal estate. In the words of a modern writer, the interest of a hirer is sui generis and cannot be fitted into the general classification of jurisprudence.

The learned Judges of the Madras High Court, after referring to these observations of Goddard J., said (p. 609) :

...This ''sale-element'' which started with the grant of ''the option to purchase'' at the inception of the agreement of hire-purchase was an integral part of the hire-purchase transaction, as integral and as important as the bailment element in the shape of the ''hire''. It cannot therefore be said that there was no sale at all involved in the hire-purchase so as to preclude the State Legislature from taxing the transactions.

46. Mr. Deo''s objection with regard to this decision is that according to him, the decision ignores the fact that in a hire-purchase agreement of the type with which we are concerned, there is no contract of sale. The essential thing in sale of goods, lie says, is an agreement to sell and property passing in pursuance of that agreement. In order that there should be an agreement of sale, there must be an agreement to buy, and in a contract of the nature with which we are concerned, there is no binding agreement to buy on the part of the buyer and, therefore, there could not be a legal agreement to sell. There is no property passing in pursuance of the agreement because the property remains in the petitioner all throughout during the continuance of the agreement and when it eventually passes, if at all it does, it passes not in pursuance of the agreement but on the basis of the option exercised by the buyer. It is only at that stage that the contract assumes the character of an agreement of sale. It would, therefore, be not proper and legal to say that there is an agreement to sell involved in the case of an agreement wherein the terms of the agreement leave it to the option of the buyer whether to buy the goods or not to buy the goods and where liberty is given to the buyer to return the goods to the other party to the contract at any time during the continuance of the agreement. Mr. Deo in this connection has strongly relied upon the case of Helby v. Matthews [1895] A.C. 471. He has argued that this is a leading case on the subject of hire-purchase contracts.

47. Now, in Helby v. Matthews one Brewster, under an agreement in writing dated December 23, 1892, with Helby who was the owner of a piano had obtained possession of the said piano. Subsequently on April 22, 1893, Brewster, improperly and without the consent of the appellant, pledged the piano with the respondents, who were pawnbrokers, as security for an advance. Helby, upon discovering this, demanded the piano from Matthews and others, and on their refusing to deliver it, brought an action of trover. The defence of Matthews and others was that they had received the piano from Brewster in good faith, and without notice of any claim on the part of Helby, and that Brewster having bought or agreed to buy it from him they were protected by Section 9 of the Factors Act. In view of the defence taken by the defendants, it became. necessary to consider what was the true nature of the agreement between Brewster and Helby. That agreement was in the form of a hire-purchase agreement. Helby was described as the owner and Brewster as the hire).1 in the said agreement. It was stated that the owner had agreed at the request of the hirer to let on hire to the hirer the piano which was the subject-matter of the agreement on the terms as stated in the agreement. The material terms of the agreement were that the hirer was to pay the owner on December 23, 1892, a rent or hire instalment of ten shillings six pence and ten shillings six pence on the 23rd of each succeeding month. He was to keep and preserve the said instrument from injury, damage by fire included; to keep the said instrument in the hirer''s own custody at the place of the hirer stated in the agreement, and not to remove the same or permit or suffer the same to be removed without the owner''s consent in writing. If the hirer did not duly perform this agreement, the owner was at liberty, without prejudice to his rights under the agreement, to terminate the hiring and retake possession of the piano, and for that purpose, leave and licence was given to the owner to enter any premises occupied by the hirer and to retake possession of the instrument. The hirer was at liberty to terminate the agreement and return the instrument to the owner, and in that event the hirer was to remain liable to the owner for arrears of hire up to the date of such return and on no ground was entitled to any allowance, credit, return, or set-off for payments previously made. It was then provided that the owner agreed-

A. That the hirer may terminate the hiring by delivering up to the owner the said instrument.

B. If the hirer shall punctually pay the full sum of £ 18 18s, by 10s. 6d. at the date of signing, and by 36 monthly instalments of 10s. 6d. in advance as aforesaid, the said instrument shall become the sole and absolute property of the hirer.

C. Unless and until the full sum of £ 18 18s. be paid, the said instrument shall be and continue to be the sole property of the owner.

The question before the Court was whether on the true nature of the transaction involved in this agreement it was a contract of buying or a contract of hiring, and the question depended upon whether on a true construction of the agreement

Brewster had agreed to buy the, piano. It was held at the House of Lords that there was no agreement to buy on the part of Brewster under the terms of the said agreement. Lord Herschell L.C. observed (p. 475) :

...An agreement to buy imports a legal obligation to buy. If there was no such legal obligation, there cannot, in my opinion, properly be said to have been an agreement to buy.

He then proceeded to consider the terms of the agreement and see -whether Brewster had agreed to buy under the agreement and found that the position under the agreement was that Brewster might buy or not just as he pleased. The learned Lord Chancellor on a consideration of the terms of the agreement observed (p. 475) :

...He did not agree to make thirty-six or any number of monthly payments. All that he undertook was to make the monthly payment of 10s. 6d. so long as he kept the piano. He had an option no doubt to buy it by continuing the stipulated payments for a sufficient length of time. If he had exercised that option he would have become the purchaser. I cannot see under these circumstances how he can be said either to have bought or agreed to buy the piano. The terms of the contract did not upon its execution bind him to buy, but left him free to do so or not as he pleased, and nothing happened after the contract was made to impose that obligation.

It was observed by the learned Law Lord that although from the terms of the agreement it was very likely that both parties had thought that it would probably end in a purchase, that was far from saying that it was an agreement to buy. There was no indication in the contract from which an intention to buy on the part1 of the buyer could necessarily be spelt out. The agreement was in terms just as applicable to a case where one was intending to buy as to the case where one only intended to hire and had resolved to continue the payments for a period of three years. The learned Law Lord observed: "In such a case how could it be said that he had agreed to buy when he had not only come under no obligation to buy, but had not even made up his mind to do so?" Lord Watson in his speech, after referring to the stipulations contained in the contract, observed (p. 479) :

These stipulations, in my opinion, constitute neither more nor less than a contract of hiring, terminable at the will of the hirer, coupled with this condition in his favour, that, if he shall elect to retain it until he has made thirty-six monthly payments as they fall due, the piano is then to become his property. The only obligation which is laid upon him is to pay the stipulated monthly hire so long as he chooses to keep the piano. In other words, he is at liberty to determine the contract in the usual way, by returning the thing hired to its owner. He is under no obligation to purchase the thing, or to pay a price for it. There is no purchase and no agreement for purchase, until the hirer actually exercises the option given to him.

The learned Law Lord further observed (p. 479) :

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 retract 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 to buy. So long as the agreement stood unaltered there 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.

48. Mr. Deo''s argument based on this decision is that in every contract of hire-purchase in which there is an option given to the hirer to purchase on the fulfilment of the terms of the agreement and where the terms of the agreement further entitle him to return the goods at any time during- the continuance of the contract and absolve him from any liability to make the further payments under the contract, there is no agreement to buy and no agreement to sell and, therefore, no contract of sale involved. Now, it cannot be denied that the features mentioned by Mr. Deo are features which have an important bearing on determining the true legal nature of the transaction between the parties. What is however necessary to consider is: are these features capable of conclusively determining in each case of hire-purchase the nature of the transaction? Even in Helby v. Matthews the learned Lord Chancellor started by saying that it is the substance of the transaction evidenced by the agreement that must be looked at and not mere words. The substance of the agreement no doubt roust be ascertained from a consideration of the rights and obligations of the parties to be derived from the terms of the contract itself understood in the light of the surrounding circumstances. In Helby v. Matthews they considered the terms of the agreement which was before them and gathered the substance of the agreement from the said terms having regard to the important feature which they mentioned and concluded that the transaction was a transaction of hiring with a further condition that an option was given to the hirer to become the owner of the hired article if he desired to do so. The terms of the agreement were that there was a uniform payment by way of monthly hire required to be made by the hirer to the owner so long as he possessed the hired article. lie was in a position to return it at any time but was also enabled to retain it as an owner if he continued to pay the instalments regularly for a period of 36 months. In view of these terms, their Lordships observed that there was nothing to indicate

from the contract that the parties to the contract from the very inception were intending to sell and purchase the article. In other words, the contract before the Court was such which, on a true construction of all the terms of the agreement, did not indicate that the hirer had made up his intention to buy the article which was hired. There was also no legal obligation undertaken by him to buy whereby he could have been bound. Now, that can no doubt be the case in a large number of hire-purchase agreements. Thus, for instance, if the owner of the article lets it on hire to the hirer on terms that he should pay a monthly hire as long as he wants to possess the instrument; but if at any time during- the continuance of the agreement he wants to become the owner of the article, he may, by making'' a further payment, become the owner of the article, or, for the matter of that, if he continues to pay instalments for a certain interval of time, he may have the option to become the owner of the article if he chose. In such a case obviously no intention to sell on the part of the owner or no intention on the part of the buyer to purchase could be said to have existed at the time the agreement was entered, into. Where, however, we have from the nature of the transaction, from its terms and the surrounding circumstances in which the terms have to be construed and understood that there can be no doubt whatever that the owner and the hirer were intending to sell and purchase the article which was the subject-matter of the agreement right from the time the contract was made, the mere circumstance that the contract also included for certain purposes of convenience of the parties a term as to the option of the buyer to buy or a term as to his being able to return the floods during the continuance of the agreement, these terms would not necessarily have the effect of making the agreement different from what it was really intended to be between the parties. It seems to us, therefore, that what has got to be considered is the true nature of the transaction and what that transaction in substance is. In the case of the transactions of the type which are before us there does not appear to be any doubt whatsoever that in spite of the terms of the contract which could possibly be construed as being indicative of different nature, the parties nevertheless intended to enter into an agreement of purchase and sale. The hirer under the agreement is obviously a person who wants to buy a vehicle. He applies to the dealer, selects a vehicle and pays the initial deposit. What he wants is to avail himself of what is called credit buying and it is for the purpose of having the benefit of credit buying that he enters into the transaction with the petitioner. He wants to buy a car but he has not the funds for the payment down in cash for the car. He, therefore, permits the petitioner to buy the car with its funds and then eventually pass it on to him under a hire-purchase agreement. The process in the present transaction, it appears to us, is a process of credit buying taken advantage of by the buyer. The terms of the agreement, apart from the option given to the buyer and the liberty reserved to him to return the goods, are clearly in favour of such a construction. The initial payment of about 25 per cent, of the price of the article and the heavy payments which are required to be made by way of monthly hire are all indicative of the payments being made towards the price of the vehicle and not purely for the hire of

the vehicle for the time for which the vehicle is possessed by the hirer. Having regard to these other terms of the agreement, it seems to us that the option given to the purchaser to buy the vehicle is not so much as to leave him free whether to have the article or not and is not so much to indicate that he has not made up his mind to buy when he enters into the agreement but only to bring in the element of sale, thus preventing the petitioner from refusing to sell the article to the buyer. The option again, considered from the point of view of the petitioner, is for the benefit of the petitioner as well, because it safeguards the petitioner as against the rights of the parties which may come into existence during the term of the agreement. The result of the option is that the passing of the property which is intended to pass in pursuance of the agreement is postponed to the end of the agreement. The liberty given to the buyer to return the goods during the continuance of the contract is not so much to keep him a free agent to terminate the contract of hiring whenever he wants but to provide for the exceptional cases where by reason of things beyond the control of the buyer, he is not in a position to pay the monthly instalments agreed to and thus fulfill the agreement, Having regard to the true nature of the transaction, it seems to us that it is a contract with a predominant element of sale in it from its inception which under the terms of the contract fructifies into a completed sale at the end of it. The parties to the contract have intended to buy and to sell. There is a contract therefore to sell, though the operation of the contract is to take, effect in a manner so that, it may have during its operation an element of bailment also involved in it. In our opinion, therefore, although no doubt as contended by Mr. Deo relying on the authority of Helby v. Matthews that in determining the true nature of a transaction of hire-purchase the term of option given to the hirer and the term of liberty reserved to him to return the goods during the continuance of the contract are terms which have an important bearing in determining the nature of the transaction, we do not think that they are in every case conclusive of the nature of the transaction. They are undoubtedly of great help in determining the true nature of the transaction, but it is on a consideration of the entire terms of the contract read in the light of the surrounding circumstances that the true nature of the transaction has to be determined, and it is possible that even in case where the option to purchase and the liberty to return the goods are reserved in the contract, the contract in its true nature may still be a contract of sale and not merely a contract of hiring with an option to purchase. We must see what is the purpose of introducing the terms as to the option to purchase and liberty to return the goods during the subsistence of the contract. If on a consideration of all the terms of the agreement, it is found that these terms have been intended for the benefit of a buyer who has not made up his mind to buy at the time when lie entered into the contract, to leave him free to make up his mind at any later stage and have an option of buying or not buying the article and return it to the owner at any time he liked, then of course the contract will not be an agreement of sale. If, on the other hand, it is clear that the parties to the contract have intended it to be a sale although they have introduced these terms in the working out of the contract

for their mutual benefit and convenience, the mere presence of the terms will not, in our opinion, destroy the character of the contract between the parties as an agreement to buy and to sell. What is necessary to consider is whether the transaction in substance is a transaction of sale although an element of bailment is added to it, or whether it is contract of hiring with an added offer to the hirer to buy the hired article at his option.

49. Another case which may be referred to in this connection is that reported in Instalment Supply (Private) Ltd. v. Union of India (1961) 12 S.T.C. 489. The Supreme Court in that case had to consider the true nature of a transaction of the same type which is before us in the present case. Having considered the true nature of the transaction, their Lordships observed (p. 500) :

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.

50. Mr. Deo has brought to our notice the contrary view taken in two cases, the first of which is reported in Instalment Supply Limited v. State of Delhi (1956) 7 S.T.C. 586. The transaction which was considered in that ease was similar in terms to the transaction before us. It was held by the Punjab High Court in that case relying on Helby v. Matthews and certain other English cases that having regard to the option given to the buyer there was no contract of sale. The other ease referred to by him is of the Madhya Pradesh High Court reported in Indian Finance Private Ltd. v. Sales Tax Officer. The same view is taken in that case as has been taken in Instalment Supply Limited v. State of Delhi referred to above. It appears to us that in both these cases, the learned Judges who decided them took the view that the presence of the option was always and necessarily destructive of the contract ever being an agreement to sell and to purchase. As we have already pointed out, we are unable to agree with that view. According to us, it is from the real nature of the transaction as gathered from all the terms of the contract including the terms relating to the option and the liberty reserved to the buyer to return the goods that the true nature of the transaction must be determined [illegible] and it is possible that in the several forms of credit buying- transactions which are invented in the present times to serve the needs of the buyers and the sellers, the mere existence of an option will not be sufficient to characterise the transaction as a transaction not intended to be a sale.

51. If as we have held, the transactions of the type which is before us are substantially intended to be transactions of sale and purchase and contain the elements of sale which fructify at the end of the agreement, there would be no difficulty in holding that they can be regarded as transactions of sale, so as to bring them within the definition of sale under the Act. There will also be no difficulty in treating them as transactions of sale from the inception, subject of course to adjustment in the event the sale element fails to fructify. So far as this contention is

concerned, our conclusions are, with respect, the same as have been arrived at by the Madras High Court in Commercial Credit Corporation v. Dy. Commercial Tax Officer, namely-

(i) that the transactions of hire purchase entered into by the petitioner constitute sales rendering them liable to tax on their turnover except in cases where either owing to the default on the part of the hirer in the payment of the instalments of hire, the vehicle was seized by the petitioner or in cases where the vehicle was returned by the buyer to the petitioner under the liberty reserved to him under the agreement;

(ii) that the transactions of hire-purchase of the type before us could, having regard to their main intent and purpose, be treated as sales at the moment the agreements were entered into, subject to adjustment by elimination of such turnover where no sales resulted; and

(iii) that for the purposes of computing the turnover of the petitioner, the total of the hire stipulated to be paid in instalments should be treated as the price or consideration for the sale.

52. Having regard to the conclusions to which we have arrived, we must hold that the petitioner fails on the first point urged by him, namely, that the notices issued by the Sales Tax Officers in the present case are invalid by reason of a notice under Sub-section (/) of Section 10 not having been issued prior to the issuance of the notices complained of. On the second point which he has urged, he succeeds to the extent that the notices issued against him by the Sales Tax Officers are incompetent for all periods except the last quarter of the year 1959 commencing from October 1, 1959 and ending- on December 31, 1959. On the third point which has been urged by him, he fails. Having regard to these conclusions, the petitioner will be entitled to a declaration that the impugned notices issued to him by the Sales Tax Officers, Nagpur and Wardha, are incompetent except for the last quarter of the year 1959 commencing from October 1, 1959 and ending on December 31, 1959, and a further direction not to give effect to the said notices in respect of the period which is covered by them except the said last quarter from October 1, 1959 to December 31, 1959. We order accordingly. We will also make it clear that the petition has been heard by us only in respect of the three contentions which we have-set out. All other contentions which the petitioner is entitled to urge before the Sales Tax Authorities and which are not covered by our decision, he will be at liberty to raise. Having regard to the circumstances of the case, there will be no order as to costs.