State Of Gujarat & Anr. Etc. Etc vs Patel Ranjibhai Dhanbhai & Ors. Etc. Etc on 1 May, 1979

Equivalent citations: 1979 AIR 1098, 1979 SCR (3) 788, AIR 1979 SUPREME COURT 1098, 1979 TAX. L. R. 1809, (1979) SCR 788 (SC), 1979 STI 71, (1979) 44 S T C 137, 1979 UJ (SC) 509, 1979 SCC (TAX) 219, 1979 UPTC 1461, 44 STC 137, 1979 (3) SCC 347, (1979) 2 SCJ 253

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Bench: Ranjit Singh Sarkaria, Y.V. Chandrachud, N.L. Untwalia, P.S. Kailasam, E.S. Venkataramiah

PETITIONER:
STATE OF GUJARAT & ANR. ETC. ETC.

Vs.

RESPONDENT:
PATEL RANJIBHAI DHANBHAI & ORS. ETC. ETC.

DATE OF JUDGMENT01/05/1979

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
CHANDRACHUD, Y.V. ((CJ)
UNTWALIA, N.L.
KAILASAM, P.S.
VENKATARAMIAH, E.S. (J)

CITATION:
1979 AIR 1098 1979 SCR (3) 788
1979 SCC (3) 347

ACT:
Bombay Sales tax Act 1959-Ss. 33(b) and 35(1)-Bombay Sales Tax Act, 1953-S. 14(b) validity of-If offend Art. 14 of the Constitution-Procedure under s. 33(b) if more onerous than the procedure under s. 35.

HEADNOTE:
Section 33(6) of the Bombay Sales Tax Act 1959 provides that if the Commissioner of Sales Tax has reason to believe

that a dealer is liable to pay tax but has failed to apply for registration within the time as required by s. 22, the Commissioner shall assess to the best of his judgment the amount of tax due from the dealer in respect of such period and any period subsequent thereto. Section 35(1) provides that if the Commissioner has reason to believe that any turnover chargeable to tax has escaped assessment he may proceed to assess or re-assess the amount of tax due, as the case may be.

Section 14(6) of the Bombay Sales Tax Act, 1953 provides that if the Collector is satisfied that any dealer has been liable to pay the tax in respect of any period he shall assess to the best of his judgment the amount of tax from the dealer. Section 15 of the 1953 Act provides that if the Collector is satisfied that any turnover has escaped assessment he may proceed to assess or re-assess the amount of tax.

In C.A. 287/72 the Sales Tax Officer after issuing notices under s. 14(6) of 1953 Act to the erstwhile partners of the assessee firm after its dissolution to show cause why they should not be assessed to tax and why a penalty should not be imposed on them for not getting themselves registered under the Act made a best judgment assessment under s. 33(6) of the 1959 Act and imposed a penalty. In C.A. Nos. 289/72 and 290/72 the Sales Tax Officer made a best judgment assessment and imposed penalty under s. 36(2) on account of the assessees' failure to get their respective firms registered as dealers under the Act.

Relying mainly on the judgment of this Court in Anandji Hari Das & Co. v. S. P. Kasture & Ors. (A.I.R. 1968 S.C. 565) and Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur (A.I.R. 1964 S.C. 766), the High Court held that the provisions of ss. 33(6) and 35 of the 1959 Act overlap each other and that s. 33(6) offends Art. 14 of the Constitution and as such is void because all cases of escapement of assessment by a dealer can be dealt with at the sweet will of the assessing authority under either of these provisions, that the procedure provided in s. 33(6) was more onerous than the one provided in s. 35 inasmuch as, unlike the latter section, no period of limitation had been provided for taking action under s. 33(6), that no guidelines had been provided and that the choice of one procedure in preference to the other is left to the arbitrary whim of the assessing authority.

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In the second batch of cases the assessees were unregistered dealers who were assessed under s. 14(6) of the 1953 Act. Following the decision of a Division Bench of the Bombay High Court which held that s. 14(6) of the 1953 Act was violative of Art. 14 of the Constitution and therefore void, the Sales tax Tribunal directed the orders passed by the assessing authorities be set aside.

It was contended on behalf of the State Governments

that s. 33(6) is a special provision confined to an unregistered dealer, who is guilty of committing a two-fold violation of the law enacted in that provision, that the special provision excludes the application of the general provision in s. 35(1) and the case of unregistered dealer who escapes assessment on account of his failure to get himself registered, that the case of Anandji Hari Das & Co. was distinguishable because that was a case of a registered dealer while the cases on hand were cases of unregistered dealers and that the procedure provided in s. 33(6) is not more onerous than the one prescribed under s. 35.

Allowing the appeals,

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HELD : 1. Section 33(6) of the 1959 Act and s. 14(6) of the 1953 Act do not violate Art. 14 of the Constitution and are valid. [801C]

2. Section 33(6) is, in terms, restricted in its application to the case of an unregistered dealer whose modus operandi to evade tax involves ab initio disregard of the law. It does not apply to a registered dealer who has escaped assessment or has been under-assessed or assessed at a lower rate or has been wrongly allowed any deductions or has concealed any material particulars relating to sales or purchases or has knowingly furnished incorrect returns. The case of such a registered dealer will fall under s. 35 and not under s. 33(6). Section 33(6) is a special provision confined to a particular class of tax-evaders, namely, unregistered dealers; while s. 35 is a general provision to deal with cases of escaped assessment or under-assessment. Generalia specialibus non derogant is a cardinal principle of interpretation. It means that the general provisions must always yield to the special provisions. Construed in accordance with this fundamental principle the special class of unregistered dealers covered by s. 33(6) must be taken to have been excluded from the purview of the general provisions in s. 35. Thus considered, it is clear that in the case of an unregistered dealer who evades tax by committing the double default specified in s. 33(6), action can be taken only under that section and not under s. 35.

[799 D-F]

3. Putting the unregistered dealer who, though liable to pay tax, fails to get himself registered and does not pay any tax in a separate class to be dealt with under s. 33(6) differently from other dealers falling under s. 35, rests on intelligible differentia having a rational nexus with the object of preventing tax evasion. Though no limitation has been prescribed for taking action under s. 33(6) against an unregistered dealer falling thereunder there is rational basis for not putting any restriction as to the length of time within which action can be taken under s. 33(6). The reason is that tax evasion by the unregistered dealers in this class because of the clandestine modus operandi adopted by them, and wholesale disregard of the law, is more

contumacious in character, more sinister in its effect both on the law-abiding tax-payers and the collection of public revenue, and more difficult to detect than tax-evasion by a registered dealer. When a dealer applies for and obtains a registration certificate under
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the Act, he thereby admits his liability to pay tax. In his case the Sales-tax Authorities have basic information in pursuance of which they can, by the exercise of due vigilance, check and detect any tax-evasion by him within reasonable time. This reasonable time is the period of limitation fixed by the Legislature in s. 35. But the case of a tax-evading unregistered dealer is different. In his case, the Authorities have on their record no basic information such as the registration record which would supply them a `lead' to work upon. For lack of information and the secretive nature of the modus operandi, tax-evading activities of an unregistered dealer may go on undetected for years on end. That is why for taking action under s. 33(6) against a tax-evading unregistered dealer, the Legislature has not fixed any period of limitation.

[800D; 799 G-H]

4. The procedure provided in s. 33(6) cannot be said to be more onerous than the one specified in s. 35. The requirement as to issue of a notice to the defaulter and giving an opportunity of being heard, is a common feature of both the sections. Although under s. 33(6) the assessment is made on best judgment basis, it cannot be made arbitrarily or capriciously. It has to be made after taking into account all relevant material gathered by the Taxation Officer or produced before him by the assessee in response to the notice. If an assessment under s. 33(6) is made upon inadequate materials, but on honest and fair guess-work, then it will be but due to the deliberate default of the assessee in supplying the necessary information. The differential mode of assessment under s. 33(6) is thus founded upon rational criteria. [800E-G]

5. The ratio of Anandji Haridas is not applicable to the facts of the present cases. The former was dealing with a registered dealer whereas the instant case is concerned with unregistered dealers. Upon a proper construction of the two provisions, such unregistered dealers can be proceeded against under s. 33(6) of the 1959 Act or s. 14(6) of the 1953 Act and not under s. 35 or s. 15 of the respective Acts. There is no over-lapping between these two because s. 35 cannot be applied to the case of an unregistered dealer falling within the purview of the special provisions in s. 33(6). This was clear from s. 35(2) as it stood at the time material to these cases. [800H]

Anandji Hari Das & Co. v. S. P. Kasture & Ors. A.I.R. 1968 S.C. 565 and Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur, A.I.R. 1964 S.C. 766 distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 287- 290 of 1972.

From the Judgment and Order dated 8-7-70 of the Gujarat High Court in S.C.A. Nos. 191/68, 1378/68, 1643/69 and 8/70.

AND CIVIL APPEAL NOS. 2450-2451/72 (Appeals by Special Leave from the Order/Judgment dated 19-4-72 of the Maharashtra Sales Tax Tribunal in Revision Application Nos. 111 and 112/65.

AND CIVIL APPEAL NO. 2529 OF 1972 From the Judgment and Order dated 13-3-1972 of the Gujarat High Court in Special Civil Application No. 1959/71.

AND CIVIL APPEAL NO. 303 OF 1974 Appeal by Special Leave from the Judgment and Order dated 4-7-1973 of the Gujarat High Court in Sales Tax Reference No. 10/71.

R. M. Mehta (287-90, 2529 and 303), M. C. Bhandare (2450-51) V. S. Desai (2450-51) and M. N. Shroff for the Appellants in all the matters.

I. N. Shroff for the Respondents in C.A. 287-90/72. R. P. Bhatt and B. R. Agarwala for the Respondents 2450-51/72.

J. Ramamurthi and Miss R. Vaigai for Respondent No. 1 in C.A. 2529/72.

M. N. Shroff for the Intervener in C.A. 2450-51/72. The Judgment of the Court was delivered by SARKARIA, J.-This judgment will dispose of two batches of appeals. The first batch includes Civil Appeals 287 to 290 and 2529 of 1972 and Civil Appeal 303 of 1974 preferred by the State of Gujarat/Sales Tax Officer on the basis of a certificate granted by the High Court. Of this batch, Civil Appeals 287 to 290 of 1972 are directed against a common judgment, dated July 8, 1970, of the High Court of Gujarat :

> while Civil Appeal 303 of 1974 is preferred against a judgment, dated July 4, 1973, of the Gujarat High Court, which follows its earlier decision in Patel Ranjibhai Dhanbhai & Ors. v. A. S. Tambe, Sales Tax Officer, Anand.
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> The Second batch comprises of Civil Appeals 2450 and 2451 of 1972 and Civil Appeals 1260 and 1213 of 1975. They have been preferred by the State of Maharashtra after obtaining special leave under Article 136 of the Constitution. Of these, the first two are directed against an Order dated April 19, 1972, of the Maharashtra Sales Tax Tribunal which, in turn, is based on a judgment, dated October 11/12, 1971, of the Bombay High Court in S.C.A. No. 444 of 1968 (B. M. Jain v. State of Maharashtra), and the other two are directed against a judgment dated October 11/12, 1971 of the

High Court of Bombay.

The common question posed for our decision in all these appeals is, whether any of the provisions in Sections 33(6) and 35 of the Bombay Sales Tax Act, 1959 (hereinafter referred to as 1959 Act) which are in pari materia with Sections 14(6) and 15, respectively, of the Bombay Sales Tax Act, 1953 (hereinafter called the 1953 Act), offend Article 14 of the Constitution and, as such, are void. The High Courts/Tribunal in the concerned appeals have answered this question in affirmative, so far as Section 33(6) of 1959 Act/14(6) of 1953 Act is concerned.

FIRST BATCH The facts in the Writ Petition (S.C.A. No. 191 of 1968), from which C.A. 287/72 has arisen, are that writ petitioners 1, 4 and 6 (respondents herein) were running business in partnership under the name of `The Laxmi Vijay Saw Mill' from November 2, 1955 to October 31, 1959. From November 1, 1959, writ petitioners 1 to 7 together with one Patel Muljibhai Bemjibhai, formed another partnership and executed a deed to that effect on February 1, 1960. This partnership was dissolved on November 10, 1964. On November 13, 1964, the Sales Tax Officer, Anand, was informed about this dissolution.

On November 11, 1965, the Sales Tax Officer issued notices in Form No. 13 under Section 14 of the 1953 Act, requiring the erstwhile partners to show-cause why they should not be assessed under sub-section (6) of Section 14 of the said Act, and why a penalty on account of their failure to get their firm registered, when they were liable to pay tax, be not imposed. These notices covered the period from April 1, 1955 to December 31, 1959. In reply to the notices, the respondents contended that since the old partnership formed in 1955 and the new partnership formed on November 1, 1959, had both been dissolved, the proposed action was illegal, there being no machinery under the 1953 Act to assess a dissolved firm. A further objection was raised that the assessment proposed was time-barred.

At this stage, the respondents moved the High Court by a petition (S.C.A. 191/68) under Article 226 of the Constitution, alleging that the turn-over of the business during the relevant period, never exceeded the limit of Rs. 900/- in the past and, therefore, the question of their incurring liability to get the firm registered as a dealer and to files sales-tax returns under the 1959 Act, did not arise.

During the pendency of this writ petition, on September 9, 1968, the Sales Tax Officer assessed the writ-petitioners under Section 33(6) of the 1959 Act on `best judgment' basis, and an amount of Rs. 9,771.45 was determined as tax arrears and a further amount of Rs. 10,000/- was imposed as penalty. A notice making demand of both these amounts was also issued on September 12, 1959. Facts of C.A. 289/72.

The writ petitioner, respondent herein, is carrying on the business of manufacturing and selling wooden boxes, bamboos, timber etc. under the name of M/s. Manilal Ranchoddas at Kalol. On June 1, 1965, he was served with a notice under Section 33(6) of the 1959 Act, by the Sales Tax Officer to show cause why he should not be assessed on best Judgment basis for the period from January 1, 1960 to June 31, 1964 and further with penalty on account of his failure to get himself registered.

Thereafter, on August 7, 1965, the Sales Tax Officer completed the `best-Judgment' assessment. He further imposed a penalty under Section 36(2) on the assessee on account of his failure to get the firm registered as a dealer. The assessee's appeal was partly allowed by the Assessment Commissioner of Sales Tax on November 10, 1967, only so far as the question of penalty was concerned. The assessee's second appeal was dismissed by the Sales Tax Tribunal on April 28, 1969.

Facts of C.A. 290/72.

The facts in writ petition (S.C.A. 8/70) giving rise to Civil Appeal 290 of 1972, are that the petitioner did not get itself registered as a dealer under the 1959 Act. The business of the petitioner consisted of taking catering contracts from the Railway Administration. The Sales Tax Officer served a notice in Form No. 27 under Section 33 on March 25, 1969, requiring the writ petitioner to show cause why action be not taken against him under Section 33(6) of the 1959 Act, as applicable in the State of Gujarat, for assessing the petitioner on `best-Judgment' basis for the period from March 1, 1960 to February 28, 1969.

The respondent herein sent a reply to this notice denying his liability to get himself registered as a dealer. While the matter was still pending before the Sales Tax Officer, the respondent moved the High Court by a petition under Article 226 of the Constitution, impugning the action proposed to be taken or actually taken against him under the provisions of Sections 33(6) and 36(2) of the 1959 Act.

By a common judgment, dated July 8, 1970, the Gujarat High Court held that the provisions of Sections 33(6) and 35 overlap each other, because all cases of escapement of assessment by a dealer can be dealt with at the sweetwill of the assessing authority under either of these provisions; that a dealer who is subjected to the procedure provided in Section 33(6) will find it more onerous than the one in Section 35 inasmuch as unlike the latter Section, no period of limitation has been provided for taking action under Section 33(6). No guidelines have been provided and the choice of one procedure in preference to the other, is left to the arbitrary whim of the assessing authority. On this reasoning, the High Court held that Section 33(6) offends Article 14 of the Constitution and as such is void. In reaching this conclusion, the High Court relied mainly upon this Court's decision in Anandji Hari Das & Co. v. S. P. Kasture & Ors.(1) It also drew support from this Court's decision in Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur(2).

Facts in C.A. 2529 of 1972.

This appeal is directed against a judgment, dated March 13, 1972, of the Gujarat High Court, whereby it, following its earlier decision, dated July 8, 1970, in writ petition 1378 of 1968, quashed the assessment of the respondents herein, for the period, January 1, 1960 to April 5, 1964 on the ground that Section 33(6) under which it was made, was violative of the equality clause contained in Article 14 of the Constitution, and as such, void.

SECOND BATCH :

Facts in C. As. 2450-2451 of 1972.

In these two cases, the respondent was assessed as an unregistered dealer under Section 14(6) of the Bombay Sales Tax Act, 1953, for the period from 1.11.52 to 31.3.54 and from 1.4.54 to 24.4.56.

In Revision, the Maharashtra Sales Tax Tribunal, following the decision, dated October 12, 1971, of the Bombay High Court in S.C.A. No. 444 of 1968 (Bhikamchand Moolchand Jain v. A. G. Saudagar & Anr.) held that Section 14(6) is ultra vires the Constitution, and directed that the orders passed by the assessing authorities be set aside and if the applicant had paid anything in compliance with those orders, the same may be refunded. In Balmokand Jain's case, a Division Bench of the Bombay High Court, feeling itself bound by the ratio of this Court's decision in Anandji's case (ibid), held that Section 14(6) of the Bombay Act of 1953 was violative of Article 14 of the Constitution, and therefore void.

Facts in C. As. 1206 and 1213 of 1975.

These appeals by special leave arise out of a writ petition S.C.A. 444 of 1968 and Misc. Petition 330 of 1971, filed in the High Court of Bombay, which were disposed of by that Court by its judgments, dated 11/12 October, 1971 and October 12, 1971, respectively. The writ petitioner/respondent herein was not at any time material to the case, registered as a dealer either under the 1953 Act or under the 1959 Act. The relevant periods of assessment are, April 1, 1956 to December 31, 1959, the period being covered by the 1953 Act, and January 1, 1960 to September 30, 1967, being the period covered by the 1959 Act. On September 19, 1967, a notice under Section 14(6) of the 1953 Act was served on the respondent. On November 22, 1967, another notice under Section 33(6) of the 1959 Act was served on him. Thereafter on November 22, 1967, an order was made, against him in respect of the first period, levying a tax in the sum of Rs. 13,696.65 and a penalty under Section 14(7) in the sum of Rs. 4,500/-. On January 30, 1968, another assessment order was made which was in respect of the second period levying tax in the sum of Rs. 17,887/- and a penalty under Section 36(2) (a) in the sum of Rs. 300/- and under Section 36(2) (c) in the sum of Rs. 500/-.

In his writ petition, the respondent challenged the validity of these two assessment orders, on the ground that Section 14(6) and Section 33(6) of the aforesaid Acts of 1953 and 1959 being violative of Article 14 of the Constitution, were void. Following the ratio of this Court's decision in Anandji's case, the High Court, accepted the respondent's contention and quashed the impugned assessments.

Learned counsel for the appellants submits that the Gujarat High Court was in error in holding that the provisions of Sections 33(6) and 35 of the Act of 1959 overlap each other, that it overlooked the fact that upon its very language, Section 33(6) is a special provision confined to an unregistered dealer who is guilty of committing the two-fold violation of law indicated in that provision; that the special provision by inevitable implication excludes the application of the general provision in Section

35(1) to the case of an unregistered dealer who escapes assessment on account of his failure to get himself registered and failure to file a return. Counsel has further submitted that Anandji Haridas is distinguishable inasmuch as that was a case of a registered dealer. While all the instant cases out of which these appeals have arisen, are of unregistered dealers of the category specified in Section 33(6). It is submitted that putting unregistered dealers who escape assessment by the modus operandi mentioned in Section 33(6), in a separate class to be dealt with, under that provision, rests on rational criteria having a direct nexus with the object of preventing tax evasion. According to Mr. Bhandare, the procedure provided in Section 33(6) is not more onerous than the one prescribed for taking action under Section 35. Tax-evasion, proceeds the argument, by the modus operandi of the kind stated in Section 33(6), is of a more sinister kind and may go on for years an end without detection. That is why, says the counsel, no limitation is provided for taking action under Section 33 (6).

On the other hand, learned counsel for the respondents have substantially reiterated the same reasons in support of the judgments under appeal, which have been given by the High Courts.

Before dealing with these contentions, it is necessary to notice the material provisions of the 1959 Act and the 1953 Act. Subsection (5) of Section 2 of 1959 Act defines an `unauthorised dealer' to mean "a registered dealer who holds an Authorisation." `Authorisation' means an "authorisation granted under Section 24." `Dealer' under sub-section (6) of the same Section is defined to mean "any person who carries on the business of selling or buying goods in the pre- Reorganisation State of Bombay, excluding the transferred territories, whether for commission, remuneration or otherwise and includes a State Government which carries on such business and any society, club or association which sells goods to or buys goods from its members". Then, there is an `Exception' appended to this definition which excludes an agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally, from the definition.

The definition of `Dealer' in Section 2(6) of the 1953 Act is substantially the same.

Sub-section (i) of Section 22 of the 1959 Act requires that no dealer shall, while being liable to pay tax, carry on business as a dealer unless he possesses a valid certificate of registration under this Act. Sub-section (2) obligates every dealer who is liable to pay tax to apply for a certificate of registration in the prescribed manner to the prescribed authority within the prescribed time.

Sections 33(6) and 35 of the 1959 Act read as follows :

"S. 33(6). If the Commissioner has reason to believe that a dealer is liable to pay tax in respect of any period, but has failed to apply for registration within time as re-

quired by Section 22, the Commissioner shall, after giving him a reasonable opportunity of being heard, assess, to the best of his judgment the amount of tax, if any, due from the dealer in respect of such period; and any period subsequent thereto."

"S. 35(1). If the Commissioner has reason to believe that any turnover of sales or turnover of purchases of any goods chargeable to tax under this Act has in respect of any year escaped assessment, or has been under-assessed or assessed at a lower rate, or that any deductions have been wrongly made, then the Commissioner may,

(a) where such turnover has escaped assessment or has been under-assessed or assessed at a lower rate by reason of the fact that the provisions of sub-section (1) of section 2 of the Bombay Sales Tax (Validating Provisions) Act, 1957 were not then enacted, at any time within eight years,

(b) where he has reason to believe that the dealer has concealed such sales or purchases or any material particular relating thereto, or has knowingly furnished incorrect returns, at any time within eight years, and

(c) in any other case, at any time within five years of the end of the year, serve on the dealer liable to pay tax in respect of such turnover, a notice containing all or any of the requisitions which may be included in a notice under sub-section (3) of section 33 and may proceed to assess or re-assess the amount of the tax due from such dealer; and accordingly, the other provision of this Act shall apply as if the notice were a notice served under that sub-section :

Provided that the amount of tax shall be assessed at the rates at which it would have been assessed had there been no under-assessment or escapement, but after making deductions, if any, permitted from time to time by or under this Act :

Provided further that, where in respect of such turnover an order has already been passed in appeal or revision under this Act, the Commissioner shall make a report to the appropriate appellate or revising authority under this Act, which shall thereupon after giving the dealer concerned a reasonable opportunity of being heard pass such order as it deems fit.

(2) Nothing in sub-section (1) shall apply to any proceeding (including any notice issued) under section 33 or 57 or 62.

(3) Nothing in section 57 or 62 shall affect a proceeding under this section."

The corresponding provisions of the Act of 1953 run as under :-

"S. 14(6). If upon information which has come into his possession, the Collector is satisfied that any dealer has been liable to pay the tax in respect of any period, but has failed to apply for registration, the Collector shall, after giving the dealer reasonable opportunity of being heard, assess to the best of his judgment the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods."

"S. 15. If in consequence of any information which has come into his possession the Collector is satisfied that any turnover in respect of sales or purchase of any goods chargeable to the tax has escaped assessment in any year or has been under assessed or assessed at a lower rate or any deductions have been wrongly made therefrom, the Collector may, in any case where he has reason to believe that the dealer has concealed the particulars of such sales or purchases or has knowingly furnished incorrect returns, at any time within five years, and in any other case, at any time within three years, of the end of that year, serve on the dealer liable to pay the tax in respect of such turnover a notice containing all or any of the requirements which may be included in a notice under sub-section (3) of section 14 and may proceed to assess or re-assess the amount of the tax due from such dealer and the provisions of this Act shall apply accordingly as if the notice were a notice served under that sub-section Provided that the amount of the tax shall be assessed after making the deductions permitted from time to time under the Bombay Sales Tax Act, 1946, the Bombay Sales Tax (No. 2) Ordinance, 1952, and this Act, as the case may be, at the rates at which it would have been assessed had the turnover not escaped assessment or full assessment, as the case may be :

Provided further that where in respect of such turnover or deduction, as the case may be, an order has already been passed under section 30 or section 31, the Collector shall make a report to the appropriate appellate or revising authority, as the case may be, which shall thereupon after giving the dealer concerned a reasonable opportunity of being heard, pass such order as it deems fit."

An analysis of Section 33(6) of the 1959 Act (corresponding to Section 14(6) of the 1953 Act) will show that it applies to that particular class of dealers, liable to pay tax, who -

(i) fail to apply for registration as required by law (vide Section 22); and

(ii) who fail to pay the tax in respect of any period.

Thus, Section 33(6) is, in terms, restricted in its application to the case of an unregistered dealer whose modus operandi to evade tax involves ab initio disregard of the law. It does not apply to registered dealer who has escaped assessment or has been under-assessed or assessed at a lower rate or has been wrongly allowed any deduction or has concealed any material particulars relating to sales or purchases or has knowingly furnished incorrect returns. The case of such a registered dealer will fall under Section 35 and not under Section 33(6). Section 33(6) is a special provision confined

to a particular class of tax-evaders, namely, unregistered dealers; while Section 35 is a general provision to deal with cases of escaped assessment or under assessment. Generalia specialibus non derogant is a cardinal principle of interpretation. It means that the general provisions must always yield to the special provisions. Construed in accordance with this fundamental principle the special class of unregistered dealers covered by Section 33 (6) must be taken to have been excluded from the purview of the general provisions in Section 35. Thus considered, it is clear that the case of an unregistered dealer who evades tax by committing the double default specified in Section 33(6), action can be taken only under that Section and not under Section 35.

It is true that no limitation has been prescribed for taking action under Section 33(6) against an unregistered dealer falling thereunder. But, there is rational basis for not putting any restriction as to the length of time within which action can be taken under Section 33(6). The reason is that tax evasion by the unregistered dealers in this class because of the clandestine modus operandi adopted by them, and wholesale disregard of the law, is more contumacious in character, more sinister in its effect both on the law- abiding tax-payers and the collection of public revenue, and more difficult to detect than tax-evasion by a registered dealer. When a dealer applies for and obtains a registration certificate under the Act, he thereby admits his liability to pay tax. In his case, the Sales-tax Authorities, have basic information, in pursuance of which, they can, by the exercise of due vigilance, check and detect any tax-evasion by him within a reasonable time. This reasonable time is the period of limitation fixed by the Legislature, in its wisdom, in Section 35. But the case of a tax-evading unregistered dealer is different. In his case, the Authorities have on their record no such basic information such as the registration record which would supply them a `lead' to work upon. For lack of information, or want of adequate staff, resources and time at the disposal of the Department, and the secretive nature of the modus operandi, tax-evading activities of an unregistered dealer may go on undetected for years on end. That is why for taking action under Section 33(6) against a tax-evading unregistered dealer, the Legislature has not fixed any period of limitation. Thus, putting the unregistered dealer who, though liable to pay tax, fails to get himself registered and does not pay any tax, in a separate class, to be dealt with under Section 33(6), differently from other dealers falling under Section 35, rests on intelligible differentia having a rational nexus with the object of preventing tax- evasion.

The question of limitation apart, it cannot be said that the procedure provided in Section 33(6) is more onerous than the one specified in Section 35. The requirement as to issue of a notice to the defaulter and giving of an opportunity of being heard, is a common feature of both the sections. It is true that under Section 33(6), the assessment is made on `best-judgment basis'. Nevertheless, it cannot be made arbitrarily or capriciously. It has to be made after taking into account all relevant material gathered by the Taxation officer or produced before him by the assessee in response to the notice. If an assessment under Section 33(6) is made upon inadequate materials, but on honest and fair guess-work, then it will be but due to the deliberate default of the assessee in supplying the necessary information. The differential mode of assessment under Section 33(6) is thus founded upon rational criteria.

The ratio of Anandji Haridas is not applicable to the facts of the present cases. Therein, this Court was dealing with the case of a registered dealer under the C.P. and Berar Sales Tax Act 1947. It was

in that context that this Court, by a majority of 3 to 2, held that Section 11(4) (a) of that Act was violative of Article 14 of the Constitution. Here we are concerned with the cases of unregistered dealers under the Bombay Act. In our opinion, upon a proper construction of the two provisions, in juxtaposition to each other, such unregistered dealers can be proceeded against under Section 33(6) of the Bombay Act of 1959 or Section 14(6) of the Bombay Act of 1953, as the case may be, and not under Section 35/ Section 15 of the said Acts. There is no overlapping between these two, because Section 35 cannot be applied to the case of an unregistered dealer falling within the purview of the special provision in Section 33(6). This was clear from sub-section (2) of Section 35, as it stood at the time material to these cases.

For the foregoing reasons, we are of opinion that Section 33(6) of the 1959 Act and Section 14(6) of the 1953 Act do not violate Article 14 of the Constitution, and are valid.

We may mention in passing that the question raised with regard to the constitutional validity of the aforesaid provisions has become largely academic because mostly the impugned notices or assessments were within the period of limitation prescribed for taking action under Section 35 of the 1959 Act. In such cases, the question of subjecting the respondents to a more onerous procedure than the one envisaged in Section 35 in the matter of limitation, does not arise.

In the result, we allow these appeals, set aside the judgment of the High Courts/Maharashtra Sales Tax Tribunal and send the cases back to the High Court or the Tribunal concerned, with these directions:

> In matters in which assessment orders have been passed, it will be open to the respondents to file or refile appeals against the assessment orders or if the respondents have withdrawn any appeal filed by them, they will be at liberty to file fresh appeals. In that case, if there is delay in filing or refiling the appeals, the delay will hopefully be condoned as it is attributed to these proceedings. The matters remitted to the High Court will be further remitted to the Sales-tax Officer, for disposal.
>
> Civil Appeals Nos. 2450-2451/72 (Maharashtra appeals) will go back to the Sales Tax Tribunal, for decision or merits.
>
> As already stated above, Civil Appeals Nos. 1213, 1206/75, 1023-1031/73, 2529/72 and 303/74 will also be governed by this judgment in Civil Appeals 287-290 of 1972. In all these cases, the parties are left to pay and bear their own costs in this Court.

P.B.R. Appeals allowed.