Kamala Mills Ltd vs State Of Bombay on 23 April, 1965

Equivalent citations: 1965 AIR 1942, 1966 SCR (1) 64, AIR 1965 SUPREME COURT 1942

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.N. Wanchoo, J.C. Shah, Raghubar Dayal, S.M. Sikri, R.S. Bachawat, V. Ramaswami

PETITIONER:
KAMALA MILLS LTD.

Vs.

RESPONDENT:
STATE OF BOMBAY

DATE OF JUDGMENT:
23/04/1965

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
SHAH, J.C.
DAYAL, RAGHUBAR
SIKRI, S.M.
BACHAWAT, R.S.
RAMASWAMI, V.

CITATION:
1965 AIR 1942 1966 SCR (1) 64
CITATOR INFO :

R	1966 SC 893	(18)
MV	1966 SC1089	(43,46,47,48,51)
R	1966 SC1412	(5,15)
R	1966 SC1738	(4,6,7)
RF	1967 SC 1	(56)
E	1968 SC 271	(12)
E	1969 SC 78	(19,21,26,30,32,35)
RF	1975 SC2238	(22)
R	1977 SC 955	(15,16,23)

ACT:
Bombay Sales Tax Act, 1946 (5 of 1946), s. 20-Suits to challenge assessments made under Act and rules made thereunder barred-'Outside' sales wrongly assessed as

'inside' sales--Suit to recover tax wrongly charged whether lies,.

HEADNOTE:

The appellant, a public limited company manufacturing and selling textiles was a 'dealer' under the Bombay Sales Tax Act 1946. For the period 26th January 1950, to 31st March 1951, it was assessed to sales tax oncertain sales which were treated by the Sales Tax Authorities as 'inside'sales but which according to the decision of the Supreme Court in theBengal Immunity Co. Ltd. v. State of Bihar and Ors. [1955] 2 S.C.R.603, delivered on 6th September 1955, were 'outside' sales non-taxable under the Act. After the above decision the appellant discovered that it had been illegally subjected to tax in respect of the said 'outside' sales. The period for remedies under the Act having expired, it filed a suit for the recovery of sales-tax illegally collected from it in respect of the 'outside' sales. On behalf of the respondent State the plea taken in defence was that the suit was barred by s. 20 of the Act. Accepting the plea, the trial court dismissed the suit. The High Court, in appeal, took the same view, whereupon, with certificate, the appellant came to this Court.

The questions, arising out of the arguments on behalf of the appellant, which fell for determination were : (1) whether an assessment in violation of a statutory provision could claim the status of an assessment made under the Act, within the meaning of s. 20; (2) whether the decision by the appropriate authority as to the nature of the transaction was a decision on a collateral fact, the finding on which alone conferred jurisdiction on the authority to levy the tax, or was it a decision on a question of fact which had to be determined by the authority itself as one of the issues before it ? (3) Whether s. 20 was valid if construed as being a complete bar to a suit such as filed by the appellant.

HELD :(i) Section 20 protects "assessment made under the Act, or the rules made thereunder" by appropriate authorities. In Firm and Illuri Subbaya Chetty and Sons this Court, interpreting a similar provision in s. 18A of the Madras General Sales Tax Act observed that the ex-pression "any assessment made under this Act" was wide enough to cover all assessments made by the appropriate authorities under the Act whether the said assessments were correct or not. There can be little doubt. that the clause "an assessment made" cannot mean on assessment properly and correctly made. [72 B-D]

In its plaint the appellant was undoubtedly calling into question the assessment order made against it and such a challenge was plainly prohibited by s. 20. [72C]

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Firm and Illuri Subbaya Chetty and Sons v. The State of Andhra Pradesh, [1964] 1 S.C.R. 752, relied on.

(ii)If the relevant provisions which confer jurisdiction on the appropriate authorities to levy assessment on the dealers in respect of transactions to which the charging section applies are examined, it is impossible to escape the conclusion that all questions pertaining to the liability of the dealers to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not a return is correct; whether or not transactions which are not mentioned in the return, but about which the appropriate authority has knowledge, fan within the mischief of the charging section-, what is the true or real extent of the transactions which are assessable; all these and other allied questions have to be determined by the appropriate authorities themselves, and so it is impossible to accept the argument on behalf of the appellant that the finding of the appropriate authority that a particular transaction is taxable under the provisions of the Act, is a finding on a collateral fact which gives the appropriate authority jurisdiction to take a further step and make the actual order of assessment. The whole activity of assessment beginning with the filing of the return and ending with the order of assessment falls within the jurisdiction of the appropriate authority and no part of it can be said to constitute a collateral activity not specifically and expressly included in the jurisdiction of the appropriate authority as such. [75 D-H]

If the appropriate authority while exercising its jurisdiction and powers under the relevant provisions of the Act, holds erroneously that a transaction which is an outside sale is not an outside sale and proceed,-, to levy sales-tax on it cannot be said that the decision of the appropriate authority is without jurisdiction. [78B]

The Provincial Government of Madras (Now Andhra Pradesh) v. J. S. Basappa, 15 S.T.C. 144 and Bharat Kala Bhandar Ltd. v. Municipal Committee, Dhamangaon, C.A. No. 600 of 1964 decided March 26. 1965, distinguished.

Smt. Ujjam Bai v. State of Uttar Pradesh. [1963] 1 S.C.R. 776, relied on.

State Trading Corporation of India Ltd. v. State of Mysore, [1963] 3 S.C.R. 792, Secretary of State, represented by the Collector of South Arcot v. Mask and Co.L.R. 67 I.A. '222' Raleigh Investment. Co. Ltd. v. Governor-General inCouncil, L.R. 74 I.A. 50 Pyx Granite Co. Ltd. v. Ministryof Housing

JUDGMENT:

Yiewsley and West Dryton Urban District Council, [1957] 2 Q.B. 136, referred to.

(iii)If it appears that a statute creates a special right or liability ind provides for the determination of the right or liability to be dealt with by tribunals specially constituted in that behalf and it further

lays down that all questions about the said right and liability shall be deter- mined by the Tribunals so constituted, it becomes pertinent to -enquire whether remedies normally associated with actions in civil courts are Prescribed by the said statute or not. Such an enquiry would have relevance in the present case in construing the terms of s. 20 as well as in considering the question of the constitutionality of s. 20. If the court was satisfied that the Act provided no remedy to make a claim for the recovery of illegally collected tax and yet s. 20 prohibited such a claim being made before an ordinary civil court, the court might hesitate to construe s. 20 as creating an absolute bar, or if such a construction was not reasonably possible the court might seriously examine the question about the constitutionality of such express exclusion of the civil court's jurisdiction having regard to the provisions of Arts. 19 and 31 of the Constitution. [82 C-F; 83 C-D] Sales Tax Officer, Banaras & Ors. v. Kanhaiya Lal Mukund lal Saraf, [1959] S.C.R. 1350 and Commissioner for Motor Transport V. Antill Ranger & Co. Pty. Ltd. State of New South Wales and Ors. v. Edmund T. Lennon Pty. Ltd. [1956] 3 All E.R. 106, referred to.

(iv)From an examination of the relevant provisions of the Act it was clear that the appellant could have either appealed or applied for revision and prayed for condonation of delay on the ground that the mistake which was responsible for the recovery of the tax illegally levied was discovered on the 6th of September 1955, because such a plea would have been perfectly competent under s. 22B. In other Words if the appellant had pursued a remedy available to it under s. 21 or s. 22 read with s. 22B, its case would have been considered by the appropriate authority and the validity of the grounds set up by it for the refund of the tax in question would have been legally examined. Therefore it could not be said that even for the claim which the appellant sought to make in the present suit, there was no alternative remedy prescribed by the Act. [85 A-C] The above conclusion served a double purpose. It made it easier to construe the wide words used in s. 20 and hold that they constituted an absolute bar against institution of the present suit and it also helped the respondent to repel the plea of the appellant that s. 20 if so widely construed was unconstitutional. The conclusion therefore followed that s. 20 had to be construed in the same manner as s. 18A of the Madras General Sales Tax Act was construed by this Court in Firm and Illuri Subbaya Chetty and Sons and even on this wide construction the section was constitutionally valid. [85 D-E]

(v)Although the suit filed by the appellant in so far as it related to the recovery of tax illegally collected was barred by s. 20, it was not barred in so far as it challenged the validity of s. 20, itself. In terms s. 20 is confined to cases when the validity of assessment orders made under the Act is challenged. It cannot take in a challenge to the validity of the section itself. But this finding could be of no material assistance to the appellant because even if it succeeded on this point it still had to face the plea of the respondent that on merits the suit was barred. [85H] & CIVIL APPELLATE JURISDICTION : Civil Appeal No. 481 of 1963. Appeal from the judgment and order, dated August 7, 1961 of the Bombay High Court in Appeal No. 51 of 1960. A. V. Viswanatha Sastri and 1. N. Shroff, for the appellant.

S. V. Gupte, Solicitor-General, S. G. Patwardhan and R. H. Dhebar, for the respondent.

S. Venkatakrishnan, for intervener No. 1.

Naunit Lal, for intervener No. 2.

P.Govinda Menon and V. A. Seyid Muhammed, for intervener No. 3.

6 7 R. Ganapathy Iyer and B. R. G. K. Achar, for intervener No.4.

N. Krishna swamy Reddy, Advocate-General, Madras, V. Ramaswami and A. V. Ranagam, for intervener No. 5. M. S. Gupta, for intervener No. 6.

G. C. Kasliwal, Advocate-General, Rajasthan, K. K. Jain and R. N. Cachthey, for intervener No. 7.

C. B. Agarwala and 0. P. Rana, for intervener No. 8. B. SEN, S. C. Base and P. K. Chakravarti for P. K. Bose for intervener No. 9.

B. V. Subramaniam, Advocate-General, Andhra Pradesh and B. R. G. K. Achar, for intervener No. 10.

The Judgment of the Court was delivered by Gajendragadkar, C.J. The principal point of law which arises in this appeal is whether the Bombay High Court was right in holding that the suit filed by the appellant, Kamla Mills Ltd. against the respondent, the State of Bombay, was incompetent. The appellant is a Limited Company and owns a textile mill at Bombay. It carries on business of manufacture and sale of textile cloth. During the period 26th January, 1950 to 31st March, 1951, the appellant was registered as a "Dealer" under the provisions of the Bombay Sales Tax Act, 1946 (No. V of 1946) (hereinafter called 'the Act'). The appellant's case is that during the said period, it sold goods inside and outside the then State of Bombay. The total value of goods sold by the appellant outside the State of Bombay was Rs. 40,20,623-12-0 and Rs. 1,08,946-14-0. On the said sales of Rs. 40,20,623-12-0 General Sales Tax of Rs. 61,885-12-0 was levied, where on the sales of Rs. 1,08,946-14-0 Special Sales Tax of Rs. 3,301-8-0 was levied. The total Sales Tax thus levied against the appellant in respect of the outside sales during the relevant period was Rs. 65,187-4-0.

On December 20, 1956, the appellant instituted the present suit (No. 402 of 1956) on the Original Side of the Bombay High Court, and claimed to recover the said amount from the respondent on the ground that it had been illegally levied against it. According to the appellant, the illegality of the impugned assessment, levy, imposition and collection was discovered by it soon after this Court pronounced its judgment in The Bengal Immunity Co., Ltd. v. The State of Bihar & Others, (1) on the 6th September, (1)[1955] 2 S.C.R. 603.

1955. The appellant's case further was that s. 20 of the Act did not bar the institution of the present suit; and, in the alternative, if it was held that it created a bar, the said section was ultra vires the Constitution of India and void.

The claim thus made by the appellant was resisted by the respondent on several grounds. One of the pleas raised by the respondent was that the Court had no jurisdiction to entertain the suit. It was urged by the respondent that s. 20 of the Act created a bar against the institution of the present suit,

and the suit should, therefore, be dismissed on that preliminary ground. The respondent also contended that the plea raised by the appellant that the said section was ultra vires the Constitution was without any substance. On the merits, the respondent pleaded that the appellant was not justified in claiming a refund of the amount of tax recovered from it for the sale transactions in question. On these pleadings, the learned trial Judge framed nine issues. Issue No. 2 was in regard to the jurisdiction of the Court to entertain the suit. This issue was tried by the learned trial Judge as 3a preliminary issue. He held that s. 20 of the Act was a bar to the institution of the present suit, and on that view, he upheld the Plea raised by the respondent. In the result, the appellant's suit was dismissed.

The appellant challenged the correctness of the said decision by preferring an appeal before a Division Bench of the said High Court under Clause 15 of the Letters Patent. The Division Bench agreed with the view taken by the learned trial Judge and dismissed the appeal preferred by the appellant. The appellant then applied for and obtained a certificate from the said High Court and it is with the said certificate that it has come to this Court in appeal. When this appeal was argued before a Division Bench of this Court on March 23, 1964, Mr. Purshottam for the appellant contended that in addition to the point which had been decided by the High Court, he wanted to urge that s. 20 of the Act was invalid. The case which was thus presented by Mr. Purshottam was that on a fair and reasonable construction, it should be held that s. 20 does not create a bar against the institution of the present suit. If, however, it was construed to create a bar, it was constitutionally invalid. It appears that though this alternative plea bad been taken by the appellant in its plaint, no issue was framed in respect of it and naturally, the point has not been considered either by the learned trial. Judge_ or by the Division Bench which heard the Letters Patent Appeal. Even so, the Division Bench of this Court which heard the appeal, allowed Mr. Purshottam to raise his alternative contention, and so, the appeal was ordered to be placed before a Constitution Bench. The appeal then came on for hearing before the Constitution Bench on April 10, 1964. After it was argued for sonic time the Court decided to issue notices to the Advocates-General of different States, because it was felt that the question about the constitutionality of s. 20 of the Act which the appellant wanted to raise was of considerable importance and different States may be interested in presenting their case before this Court, for a provision similar to that of the impugned section would be found in Sales Tax statutes passed by many State legislatures. That is why this Court directed that notices should be served on the Advocates-General of all States and the matter should be placed for hearing before a Special Bench. That is how this matter has been placed before a Special Bench for final disposal. For the appellant, Mr. Viswanatha Sastri has urged two points before us. He argues that on a fair construction of s. 20, it should' be held that the present suit is outside the mischief of the said section. In the alternative, he contends that if s. 20 creates a statutory bar against the institution of a suit like the Present, it should be held ultra vires the Constitution.

Before dealing with the points raised in this appeal, it would be necessary to refer to one fact which is not in dispute. The Act was passed in 1946 and it came into force on March 8, 1946. At that time, the word as defined by s. 2(g) of the Act would have taken in all sales whether they were inside sales or outside sales. After the Constitution was adopted on January 26, 1950, Art. 286 came into force and it protected certain sales specified by it from the purview of State taxation. It may theoretically be true, that as soon as Art. 286 became effective, the expression "sale" as defined by the Act was

automatically constitutionally controlled by the limitations prescribed by it. To make this position clear, however, Bombay Ordinance If of 1952 was passed and by s. 3, it added s. 30 to the Act. In effect, s. 30 introduced in the Act the relevant provisions prescribed by Art. 286 of the Constitution, so as to bring the operation of the Act expressly in conformity with the said constitutional provision. Section 3 further made it clear that the addition made by it by introducing s. 30 in the Act shall be made and shall always be deemed to have been made in the said Act as so continued in force, with effect from the 26th January, 1950.

It is well-known that the controversy in regard to the interpretation of Art. 286 began with the decision of this Court in the State of Bombay v. United Motors(1), and ended with the subsequent decision, of this Court in the case of Bengal Immunity Co.(2) In order to alleviate the economic crisis which was likely to result in view of the subsequent decision of this Court, the President promulgated the Sales Tax Validation Ordinance, 1956 on January 30, 1956, the provisions of which were later incorporated in the Sales Tax Validation Act, 1956. This Act validated sales tax collected by different States from 1st April, 1951 to 6th September, 1955 in accordance with the principles laid down by this Court in United Motors' case. The sales-tax similarly collected between 26th January 1950 to 31st March, 1951 was also sought to be validated by the Sales Tax Continuance Order, 1950. If we had reached the stage of considering the merits about the validity of the recovery of tax in the present case, it would have become necessary for us to consider the effect of this Continuance Order. Mr. Sastri contends that notwithstanding the Continuance Order, the recovery of the tax is illegal and that is the main foundation .of his argument before us. The present dispute between the parties, according to Mr. Sastri, is thus essentially similar to other disputes between assessees and the respective States where through mistake, tax was collected or paid in regard to transactions which were relates to the construction of s. 20. Let us read the said section :

> We will now revert to the main points of law raised before us for our decision. The first question which must be considered relates to the construction of s. 20. Let us read the said section "20. Save as is provided in s. 23, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any person appointed under s. 3 to assist him shall be called into question in any Civil Court, and save as it provided in sections 21 and 22, no appeal or application for revision shall lie against any such assessment or order".

Mr. Sastri contends that s. 20 can have no application to the present suit, because the order of assessment which the appellant seeks to challenge in the present proceedings has been made by the relevant Sales-tax authorities without jurisdiction. He concedes that even though an order of assessment made under the Act may be passed on a wrong conclusion of fact, it cannot be challenged by a suit having regard to the provisions of s. 20. In other words, an erroneous order of assessment made under the Act would be (1) [1953] S.C.R. 1069.

(2) [1955] 2 S.C.R. 693.

entitled to the protection of S. 20; but the said protection cannot be claimed by an order which is passed without jurisdiction. According to Mr. Sastri, the impugned assessment contravenes the

provisions of Art. 286 and as such, is invalid. What the assessment order purported to tax was an outside sale and it was beyond the competence of the authority to make the said order. Indeed, it was beyond the competence of the State Legislature to levy a tax in respect of an outside sale; and so, on the ultimate analysis, the impugned assessment is without jurisdiction and it cannot, therefore, be said to be an assessment made under the Act within the meaning of S. 20.

Mr. Sastri did not dispute the fact that the argument thus presented by him would be equally applicable to cases of assessment made erroneously in respect of transactions which are otherwise statutorily exempted from the operation of the Act. If a Sales Tax statute exempts certain transactions from the purview of its charging section, and the appropriate authority makes an order of assessment in respect of such an exempted transaction,, the assessment would be beyond its jurisdiction and can be impeached by a suit; s. 20 will not protect such an assessment. No doubt, Mr. Sastri emphasised the fact that the constitutional pro- hibition against an assessment in respect of outside sales stood on a much higher pedestal than the prohibition by a statutory provision in a Sales Tax Act. The first prohibition is a constitutional prohibition and its breach would entitle a citizen to claim the protection of Art. 265 and Art. 31(1); but, on principle, according to Mr. Sastri, a transaction which is exempted from assessment either by virtue of Art. 286 or by virtue of any specific statutory provision, cannot be validly assessed, and an assessment made in respect of it cannot claim the status of an assessment made under the Act within the meaning of s. 20. A suit would, therefore, be competent to challenge such an invalid assessment. That, in brief, is Mr. Sastri's argument on the construction of s. 20.

In dealing with this question, it is necessary to remember that the normal rule prescribed by S. 9 of the Code of Civil Procedure is that the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. There is no doubt that a claim for the refund of sales tax allegation to have been paid by the appellants through mistake is a claim of a civil nature and normally it should be triable by the ordinary courts of competent jurisdiction as provided by S. 9 of the Code; but this section itself lays down that the jurisdiction of the civil courts to try suits of a civil nature can be excluded either expressly or impliedly; and so, the point raised for our decision in the present appeal is whether on a fair and reasonable construction of s. 20, It can be said that the Jurisdiction of the civil court is barred either expressly or impliedly.

Section 20 protects "assessment made under the Act or the rules made thereunder" by appropriate authorities. There can be little doubt that the clause "an assessment made"

> cannot mean the assessment properly or correctly made. The said clause takes in all assessments made or purported to have been made under the Act. In its plaint, the appellant is undoubtedly calling into question the assessment order made against it, and such a challenge to the assessment order is plainly prohibited by s. 20. An order of assessment, though erroneous, and though based on an incorrect finding of fact, is, nevertheless, an order of assessment within the meaning of s. 20; and s. 20, in terms, provides that it will not be called in question in any civil court.

> This question has been recently considered by this Court in Firm and Illuri Subbayya Chetty & Sons v. The State of Andhra Pradesh(1). Dealing with s. 18A of the Madras General Sales Tax Act (Act 9 of 1939), which corresponds to s. 20 with which we are concerned in the present appeal, this Court observed that the expression "any assessment made under this Act" is wide enough to cover all assessments made by the appropriate authorities under this Act whether the said assessments are correct or not. It is the activity of the assessing officer acting as such officer which is intended to be protected and as soon as it is shown that exercising his jurisdiction and authority under this Act, an assessing officer has made an order of assessment, that clearly falls within the scope of s. 18A. It was also observed that whether or not an assessment has been made under this Act, will not depend on the correctness or accuracy of the order passed by the assessing authority. This position is not seriously disputed by Mr. Sastri before us. He, however, contends that if the impugned order has been passed without jurisdiction, it cannot fall within the purview of s. 20 of the Act. In other words, the contention is that when the appropriate authority purported to levy the tax on the appellant in respect of the transactions in question, it was attempting to assess outside sale,; and since the said assessment contravened Art. 286, it was invalid and the order was without jurisdiction and as such, a nullity. How can an order passed by the appropriate (1) [1964] 1 S.C .R. 752.

authority without jurisdiction claim the protection of s. 20, asks Mr. Sastri.

In deciding the validity of this contention, it is necessary to examine the scope of the jurisdiction conferred on the appropriate authorities by the relevant provisions of the Act. Jurisdiction is either territorial, or pecuniary, or in respect of the subject matter. There is no difficulty about the assessing authorities' territorial and pecuniary jurisdiction in the present case. What is the nature of the Jurisdiction conferred on the appropriate authority in respect of the subject-matter of sales tax ? Has the appropriate authority been given power to examine the nature of the transaction and decide whether it is liable to tax or not ? Or, can the appropriate authority proceed to exercise its power of imposing a tax only in cases where the transaction in question is assessable to such tax ? In other words, is the decision about the character of the transaction the decision on a collateral fact, the finding on which alone confers jurisdiction on the tribunal to levy the tax, or is it the decision on a question of fact which is left to be determined by the appropriate authority itself ? If the jurisdiction conferred on the appropriate authority falls under the first category, then its finding that a particular transaction is taxable under the relevant provi- sions of the Act, would be a finding on a collateral question of fact' and it may be permissible to a party aggrieved by the said finding to contend that the tax levied on the basis of an erroneous decision about the nature of the transaction is without jurisdiction. If, however, the appropriate authority has been given jurisdiction to determine the nature of the transaction and proceed to levy a tax in accordance with its decision on the first issue, then the decision on the first issue cannot be said to be a decision on a collateral issue, and even if the said issue is erroneously determined by the appropriate authority, the tax levied by it in accordance with its decision cannot be said to be without jurisdiction.

It is observed in Halsbury(1) : "The jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition Precedent or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the inferior tribunal has to try, and the determination whether it exists or not is logically and temporally prior to the determination of tile actual question which the inferior tribunal has to try. The inferior tribunal must itself decide as to the collateral fact : when, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether it will (1) Halsbury's Laws of England, 3rd Edn. Vol. 11, p. 59. 7 4 act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not. There may be tribunals which, by virtue of legislation constituting them, have the power to determine finally the preliminary facts on which the further exercise of their jurisdiction depends; but, subject to that, an inferior tribunal cannot, by a wrong decision with regard to a collateral fact, give itself a jurisdiction which it would not otherwise possess". It would be noticed that Mr. Sastri's argument that the impugned order of assessment is without jurisdiction and as such, does not fall within S. 20, proceeds on the assumption that the finding of the appropriate authority that the transactions in question were taxable under the relevant provisions of the Act, is a finding on a fact which is collateral. The question is : is this assumption well- founded ? In our opinion, the answer to this question must be in the negative.

In this connection, the relevant scheme of the Act by which necessary powers have been conferred on the appropriate authorities, falls to be considered. Section 3(1) provides that for carrying out the purposes of this Act, the Provincial Government may appoint any person to be Commissioner of Sales Tax, and such other persons to assist him as the Provincial Government thinks fit. Section 3(2) then lays down that persons appointed under sub-s. (1) shall exercise such powers as may be conferred and perform such duties as may be imposed on them by or under this Act. Section 4 deals with the appointment of a Tribunal and provides for its constitution. Section 5 is the charging section. Section 8 requires the registration of dealers, the expression "dealer" having been defined by S. 2(c). Section 10 imposes an obligation on the dealers to make returns. Section 11 deals with the assessment of tax, sub- s. (1) (a) provides that the amount of tax due from a registered dealer shall, in the case of first assessment, be assessed in respect of such period not exceeding twelve months as the Commissioner may determine. Sub-sections (2), (3) and (4) of S. 11 contain provisions in regard to the procedure which has to be followed by the Commissioner in determining the question about the liability of a dealer to pay assessment. The Commissioner has to take evidence, has to bear the dealer, can require further evidence to be led by the dealer on specific points and then reach his conclusion on the question as to whether the dealer is liable to be assessed, and if yes, to what extent ? In passing his order of assessment, the Commissioner acts on the evidence led before him. Sub-s. (5) empowers the Commissioner to levy assessment to the best of his judgment in cases failing under it. It also authorises him to impose a penalty as therein specified. Section 11A deals with turnover which has escaped assessment, and it confers authority on the Commissioner to pass an appropriate order of assessment in respect of the said category of cases. When the Commissioner makes an order of assessment in exercise of the powers conferred on him, a right is given to the assessee to prefer an appeal and a revision under sections 21 and 22 respectively.

It would thus be seen that the appropriate authorities have been given power in express terms to examine the returns submitted by the dealers and to deal with the questions as to whether the

transactions entered into by the dealers are liable to be assessed under the relevant provisions of the Act or not. In our opinion, it is plain that the very object of constituting appropriate authorities under the Act is to create a hierarchy of special tribunals to deal with the problem of levying assessment of sales tax as contemplated by the Act. If we examine the relevant provisions which confer jurisdiction on the appropriate authorities to levy assessment on the dealers in respect of transactions to which the charging section applies, it is impossible to escape the conclusion that all questions pertaining to the liability of the dealers to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not a return is correct; whether or not transactions which are not mentioned in the return, but about which the appropriate authority has knowledge, fall within the mischief of the charging section; what is the true and real extent of the transactions which are assessable; all these and other allied questions have to be- determined by the appropriate authorities themselves; and so, we find it impossible to accept Mr. Sastri's argument that the finding of the appropriate authority that a particular transaction is taxable under the provisions of the Act', is a finding on a collateral fact which gives the appropriate authority jurisdiction to take a further step and make the actual order of assessment. The whole activity of assessment beginning with the filing of the return and ending with an order of assessment, falls within the jurisdiction of the appropriate authority and no part of it can be said to constitute a collateral activity not specifically and expressly included in the jurisdiction of the appropriate authority as such. We are, therefore, satisfied that Mr. Sastri is not right when he contends that the finding of the appropriate authority that a particular transaction is taxable under the charging section of the Act, is a finding on a collateral fact and CI/65-6 7 6 it is only if the said finding is correct that the appropriate authority can validly exercise its jurisdiction to levy a sales tax in respect of the transactions in question. In fact, what we have said about the jurisdiction of the appropriate authorities exercising their powers under the Act, would be equally true about the appropriate authorities functioning either under Sale-,-tax Acts. or under the Income-tax Act.

This question was incidentally considered by a Special Bench of this Court in Smt. Ujjam Bai v. State of Uttar Pradesh(1). In that case, the petitioner, Ujjam Bai, challenged the validity of -the sales tax levied on her on the ground that the notification issued on December 14, 1957, had exempted 'bides', like those which the petitioner's firm produced, from payment of sales tax. According to the petitioner, the appropriate authority had plainly misconstrued the notification when it held that the bidis produced ,by the petitioner's firm were not entitled to claim the protection of the said notification. The petitioner had moved this Court under Art. 32 of the Constitution. Broadly stated, the majority decision was that though the notification may have been misconstrued by the appropriate authority when it rejected the petitioner's contention that the said bidis fell within the purview of the notification, and so, were exempt from payment of tax, no relief could be granted to the petitioner under Art. 32 on the sole ground that the impugned order of assessment was based on a misconstruction of the notification in question. The Act under which the notification was issued was valid; the validity of the ,notification itself was not impeached; and so, the narrow ground .which the Court had to consider was if the appropriate authority misconstrued the notification and imposed a tax on a commodity .Which in fact fell within its protection, could the validity of suck ,an order be impeached under Art. 32 of the Constitution on the ground that it contravened the fundamental right of the petitioner under Art. 19(1) (g) ? The two answers given in accordance with

the majority opinion were against the petitioner; and so, the majority decision can be said to have rejected the petitioner's argument that a question of jurisdiction was involved in the misconstruction of the notification in question. It would thus appear that according to the majority view, the question about the tax- ability of a particular transaction falls within the jurisdiction of the appropriate authorities exercising their powers under the taxing Act, and their decision in. respect of it cannot be treated as a decision on a collateral fact the finding on which determines the jurisdiction of the said authorities.

(1) [1963]1 S.C.R. 778.

It is true that the separate concurring judgments delivered by learned Judges who spoke for the majority view indicate that their approach to the several problems posed by the two questions referred to the, Special Bench, was not uniform and they emphasised different aspects in somewhat different ways; but in regard to that aspect of the matter with which we are concerned in the present appeal there appears to be unanimity amongst them. Indeed, even the minority judgment which radically dissented from the majority view in regard to the scope and effect of the powers of this Court tinder Art. 32 and the extent of the fundamental right conferred on the citizen to move this Court by the said Article, does not appear to have differed from the majority view on this point.

Whilst we are referring to the decision of this Court in Ujjam Bai's(1) case, we would hasten to add that we are not dealing with the scope and effect of our powers under Art. 32, or with the powers of the High Courts under Art. 226. Our object in referring to the majority decision in Ujjam Bai's(1) case is merely to show that the tenor of the opinion expressed by the learned Judges in the said case is in support of the view that a finding recorded by a taxing authority as to the taxability of any given transaction cannot be said to be a finding on a collateral fact, but is a finding on a fact the decision of which is entrusted to the jurisdiction of such authority.

Mr. Sastri has no doubt referred us to the subsequent decision of this Court in The State Trading Corporation of India, Ltd. v. State of Mysore (2) in which it appears to have been held that the taxing officer cannot give himself jurisdiction to tax an interState sale by erroneously determining the character of the sale transaction. The decision on the question about the character of he sale transaction seems to have been treated as a decision on a Collateral fact. With respect, we may point out that the majority decision in Ujjam Bai's(1) case on which this conclusion is founded does not support that view . We ought, however, to add that in the case of State Trading Corporation of India, Ltd. (2 as in the earlier case of Ujjam Bali(1), this Court was dealing with a petition filed under Art. 32; and as we have already indicated, we are not called upon to consider the extent of our jurisdiction under Art. 32 when such questions are brought before us by citizens for relief on the ground that their fundamental rights have been contravened by assessment orders. At this stage, we are only dealing with the question as to whether Mr. Sastri is right (1) [1963] 1 S.C. R. 778.

(2) [1963] 3.S.C.R. 792.

in contending that an erroneous conclusion of the appropriate authority on the question about the character of the sale transactions on which the appellant has been taxed, can be said to be without

jurisdiction. In other words, if the appropriate authority, while exercising its jurisdiction and powers under the relevant provisions of the Act, holds erroneously that a transaction,. which is an outside sale, is not an outside sale and proceeds to levy sales-tax on it, can it be said that the decision of the appropriate authority is without jurisdiction? In our opinion, this question cannot be answered in favour of Mr. Sastri's contention. Whether or not such a conclusion can be challenged under Art. 226 or under Art. 32 of the Constitution, and if yes, under what circumstances, are matters with which we are not concerned in the present proceedings. For the purpose of construing s. 20, we are not prepared to hold that an assessment based on an erroneous finding about the character of the transaction, is an assessment without jurisdiction and as such, is outside the purview of s. 20 of the-Act. We would like to repeat that it is only this narrow question we are considering in the present appeal.

Reverting then to s. 20, it seems to us plain that the words used in this section are so wide that even erroneous orders of assessment made would be entitled to claim its protection against the institution of a civil suit. Several decisions have been cited before us where similar questions have been considered. We may usefully refer to some of them. In Secretariat- of State, represented by the Collector of South Arcot v. Mask and Company(1) the Privy Council had occasion to consider the effect of the provision contained in s. 188 of the Sea Customs Act (VIII of 1878). The said provision was that every. order passed in appeal under the said section shall, subject to the power of revision conferred by s. 19 1, be final. Mask & Co. had instituted a suit in which it sought to recover duty collected from it under protest on the around that it was illegally recovered. The trial Court had rejected the claim on the ground that the suit was barred under s. 188. On appeal, the High Court of Madras took a different view and held that the suit was competent. The Privy Council reversed. the conclusion of the High Court and confirmed the view, taken by the trial Judge. It would be noticed that the relevant words on which the controversy between the parties as to the competency of the suit in that case had to be resolved, were no as emphatic as they are in s. 20, and yet, the Privy Council upheld the plea that the suit was barred. It is true that in the course (1)67 I.A. 222.

of the discussion, the Privy Council has observed that "it is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well-settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure" (p. 236). In the present case, we are not called upon to consider the merits of these observations or their scope and effect.

In Raleigh Investment Company Ltd. v. Governer-General in Council(1), section 67 of the Indian Income-Tax Act (XI of 1922) which barred a suit, fell to be considered. The Privy Council held that the said provision barred a suit where the plaintiff sought to challenge an assessment order made by the appropriate tax authorities under the provisions of the said Act. In construing the effect of the words "no suit shall be brought in any civil court to set aside or modify any assessment made under this Act", the Privy Council thought it necessary to enquire whether the Act contained machinery which enabled an assessee effectively to raise in the courts the question whether a particular provision of the Income Tax Act bearing on the assessment made is or is not ultra vires. "The

presence of such machinery", observed the Privy Council, "though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to enquire into the same subject- matter. The absence of such machinery would greatly assist the appellant on the question of construction and, indeed, it may be added that, if there were no such machinery, and if the section affected to preclude the High Court in its ordinary civil jurisdiction from considering a point of ultra vires, there would be a serious question whether the opening part of the section, so far as it debarred the question of ultra vires being debated, fell within the competence of the legislature". In other words, these observations indicate that the Privy Council took the view that where an appropriate authority is exercising its jurisdiction to levy a tax in respect of any transaction, it would be competent to such an authority to consider the validity of the taxing provisions themselves. We do not think it is necessary for us to examine this aspect of the matter in the present appeal, because the validity of the charging section is not impeached in the present proceed- ings. It is true that Mr. Sastri has challenged the validity of S. 20, but the said section has no bearing on the assessment made, and (1)74 LA.. 50, at pp. 62-63.

so, that plea has no relevance to the point which the Privy Council was considering in the observation. to which we have just referred.

On the question of construction, Mr. Sastri has relied on two decisions of this Court to which it is necessary to refer before we part with this topic. In The Provincial Government of Madras (Now Andhra Pradesh) v. .J. S. Basappa(1), it was held by this Court that the finality attached to orders passed in appeal by s. II (4) of the Madras General Sales Tax Act (IX of 1939) was a finality for the purposes of the said Act and did not make valid an action which was not warranted by the Act, as for example, the levy of tax on a commodity which was not taxed at all or was exempt. We ought to add that this decision was based on the fact that the said Act at the relevant time did not contain s. 18A which came into force on May 15, 1951; ind it was s. 18A which was construed by this Court in Firm and Illuri Subaya Chetty Mr. Sastri has also referred to the majority decision in the case of Bharat Kala Bhandar Ltd. v. Municipal Committee, Dhamangaon(3). In that case, according to the majority decision, s. 84 (3) of the Central Provinces Municipalities Act, 1922 which deals with "bar of other proceedings did not make incompetent the suit with which the Court was dealing. The said section provides that :

> "No objection shall be taken to any valuation, assessment, levy, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act".

According to the majority view, the bar created by this provision did not amount to the exclusion of the jurisdiction of the civil court to entertain a claim for refund of the tax alleged to be illegally recovered, because there were no words in the said provision which could be construed as excluding civil court's jurisdiction either expressly or impliedly. The minority view, however, held that a suit for refund was barred.

We do not think Mr. Sastri can successfully advance his case before us by relying on these two decisions. After-all, as the Privy Council observed in the case of Mask & Co.(4), the determination of

the question as to whether S. 20 bars the present suit, must rest on the terms of s. 20 themselves, because that is the provision (1) 15 S.T.C. 144.

(3) C. A. No. 600 of 1964. Decided March 26, 1965 (2) [1964] 1 S.C.R. 752.

(4) 67 I. A. 222.

under consideration "and decisions on other statutory provisions are not of material assistance, except in so far as general principles of construction are laid down" (p.

237). Besides, in regard to these two decisions, we may, with respect, point out that they do not purport to lay down a general rule that the jurisdiction of a civil court cannot be excluded unless it is specifically provided that a suit in a civil court would not lie. In fact, as the decision of the Privy Council in the case of Mask & Co.(1 shows, the jurisdiction of a civil court can be excluded even without such an express provision. In every case, the question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose. We would also like to make it clear that we do not think it is necessary in the present case to consider whether the majority opinion in the case of Bharat Kala Bhandar Ltd.(2) was justified in casting a doubt on certain observations made by the Privy Council in Raleigh Investment Co.'s(3) case, or on the validity or the propriety of the conclusion in respect of the effect of s. 67 of the Income-tax Act. Mr. Sastri has also invited our attention to the decision of the House of Lords in Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government and Others(4). In that case, the House of Lords repelled the preliminary objection raised by the respondents that the court had no jurisdiction to grant the declarations asked for, since by the combined effect of sections 15 and 17 of the Town and Country Planning Act, 1947, the decision of the Minister on an application to determine whether permission was required was made final and the only method of determining such a question was that provided by S. 17(1); and that the wide discretion conferred by s. 14 on the Minister to impose conditions disentitled the company from coming to the court for a declaration that the conditions were invalid. In coming to the conclusion that the jurisdiction of the civil court was not excluded, the House of Lord,, noticed that there was nothing in s. 17 or in the Act which excluded the jurisdiction of the court to grant declarations; s. 17 merely provided an alternative method of having the question determined by the Minister. "It is a principle no,, by any means to be whittled down", said Viscount Simonds, "that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words. That is, as McNair J.

(1) 67 I.A. 222.

(2) C.A. No. 600 of 1964. Decided March 26,1965. (3) 74 I.A. 50.

(4) [1960] A.C. 260 at p. 286.

called it in Francis v. Yiewsley and West Drayton Urban District Council(1), a 'fundamental rule' from which I would not for my part sanction any departure". Approaching the task of construing s. 17 from this point of view, his Lordship came to the conclusion that there was nothing in s. 17 which excluded the jurisdiction of the civil court to entertain the claim in question. We do not see how this decision can afford any assistance to the appellant. There is one more aspect of the matter which must be con- sidered before we finally determine the question as to whether s. 20 excludes the jurisdiction of the civil court in entertaining the present suit. Whenever it is urged before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the Court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. In cases where the exclusion of the civil courts' jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If it appears that a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the tribunal-, so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed by the said statute or not. The relevance of this enquiry was accepted by the Privy Council in dealing with s. 67 of the Income Tax Act in Raleigh Investment Co.'s(2) case and that is the test which is usually applied by all civil courts.

In the present case, the appellant wants relief of refund of tax which is alleged to have been illegally recovered from it by the respondent, and the ground on which the said relief is claimed is that at the time when the tax was recovered, the appellant was under a mistake of fact and law. According to the appellant, even the respondent might have been laboring under the same mistake of fact, and law, because the true constitutional and legal position in regard to the jurisdiction and authority of different States to (1) [1957] 2 Q.B. 136, 148.

(2) 74 I.A. 50.

recover sales tax in respect of outside sales was not correctly appreciated until this Court pronounced its decision in The Bengal Immunity Co.'s(1) case. That being so, can it be said that the Act provides an appropriate remedy for recovering a tax alleged to have been illegally levied and collected, where the party asking- for the said relief pleads a mistake of fact and law? It would be noticed that this inquiry may have some relevance in construing the terms of S. 20, and it would be both relevant and material in considering the question of the constitutionality of s. 20. That is the two-fold purpose which such an inquiry would serve in the present case. If we are satisfied that the Act provides for no remedy to make a claim for the recovery of illegally collected tax and yet s. 20 prohibits such a claim being made before an ordinary civil court, the Court may hesitate to construe S. 20 as creating an absolute bar, or if such a construction is not reasonably possible, the Court may seriously examine the question about the constitutionality of such express exclusion of the civil court's jurisdiction having regard to the provisions of Arts. 19 and 31 of the Constitution. It is with

this two-fold object that this aspect of the matter must now be examined.

Before proceeding to examine this matter, we ought to refer to the decision of this Court in the Sales Tax Officer, Banaras & Others v. Kanhaiya Lal Mukundlal Saraf. (2) In that case, this Court has held that the term "mistake" in s. 72 of the Indian Contract Act comprises within its scope a mistake of law as well as a mistake of fact and that, tinder that section a party is entitled to recover money paid by mistake or under coercion, and if it is established that the payment, even though it be of a tax, has been made by the party labouring under a mistake of law, the Party receiving the money is bound to repay or return it though it might have been paid voluntarily, subject, however, to questions of estopped, waiver, limitation or the like. Basin- himself on this decision, Mr. Sastri contends that since the Act does not provide for adequate remedy to recover illegally collected tax from the respondent, we should either put a narrow construction on s. 20 so as to permit institution of a suit like the present, or, in the alternative, should strike it down as constitutionally invalid. If a citizen is deprived of his property illegally by recovering from him unauthorisedly an amount of tax where no such tax is recoverable from him, he ought to have a proper and appropriate remedy to ventilate his grievance against the State. Normally, such a remedy (1) [1955] 2 S.C.R. 603.

(2) [1959] S.C.R. 1350.

would be in the form of a suit brought before an ordinary civil court; it may even be a proceeding before a specially appointed tribunal tinder the provisions of a tax statute; and it can also be an appropriate proceeding either under Art. 226, or under Art. 32 of the Constitution. In support of this contention, Mr. Sastri has referred to the decision of the Privy Council in Commissioner for Motor Transport v. Authority Ranger- & Co. Pty., Ltd. State of New South wales and Other v. edmund T. Lennon Pty, Ltd.(1). In that case, s. 3 of the State Transport Co-ordination (Barring of Claim and Remedies) Act, 1954 had provided, inter- alia, that every cause of action against Her Majesty or the State of New South Wales for the recovery of any sums collected in relation to the operation of any public motor vehicle in the course of or for the purposes of inter-State trade before, the commencement of this Act which were collected pursuant to the relevant provisions of the principal Act, shall be extinguished. When a claim made for the refund of tax illegally recovered was resisted on the ground that it was incompetent in view of s. 3, it was held that the denial of the right to recover money paid in satisfaction of chrges which were -illegal by virtue of s. 92 of the Commonwealth of Australia Constitution offended equally against s. 92. In other words, where the impugned statutory provision purported to extinguish absolutely a cause of action, it was struck down as unconstitutional. Let us, therefore, examine the question as to whether the Act with which we are concerned in the present appeal, provides for. a remedy to claim a refund of tax alleagd to have been illegally recovered. Section 13 of the Act expressly provide-, for refunds. It lays down that the Commissioner shall, in the prescribed manner, refund to a registered dealer applying in this behalf any amount of tax paid by such dealer in excess of the amount due from him under this Act. The proviso to this section prescribe period of limitation of twenty-four months from the date on which the order of assessment was passed or within twelve months of the final order passed on appeal, revision, or reference in respect of the order of assessment, whichever period is later. Then, we have s. 21 which provides for the remedy of an appeal; and S. 22 which provides for a revisional remedy. It is significant that though s. 21(1) prescribes a period of sixty days for appeal and s. 22

prescribes a period of four months for revision, under s. 22B the prescribed authority is given power to extend the period of limitation if it is satisfied that the party apply-

(1)[1956] 3 All. E.R, 106, ing for such extension had sufficient cause for not preferring the appeal or making the application within such period. Section, 23A provides for rectification of mistake. It is thus clear that the appellant could have either appealed or applied for revision and prayed for condonation of delay on the ground that the, mistake which was responsible for the recovery of the tax illegally levied, was discovered on the 6th September, 1955, becausesuch a plea would have been perfectly competent tinder S. 22B. In other words, if the appellant had pursued a remedy available, to it under s. 21 or s. 22 read with s. 22B, its case would have been considered by the appropriate authority and the validity of the grounds set up by it for the refund of the tax in question would have been legally examined. Therefore, it cannot be said that even for the claim which the appellant seeks to make in the present suit, there is no alternative remedy prescribed by the Act. This conclusion serves a double purpose. It makes it easier to construe the wide words used in s. 20 and hold that they constitute an absolute bar against the institution of the present suit, and it also helps the respondent to repel the plea of the appellant that S. 20 if it is so widely construed, is unconstitutional. Our conclusion, therefore, is that s. 20 should be construed in the same manner in which s. 18A of the Madras General Sales-Tax Act was construed by this Court in Firm and Illuri Subbayya Chetty & Sons(1) and that even on this wide construction, the said section is constitutionally valid.

This conclusion, however, does not finally dispose of the appeal. Though the appellant's suit may be incompetent in so far as the appellant seeks for a decree for refund, it still remains to be considered whether its suit can be said to be incompetent in so far as it seeks to challenge the validity of s. 20 itself. It would be recalled that the alternative claim made by the appellant in its plaint was that s. 20 on which a plea of bar is raised by the respondent, is invalid. The High Court has not considered this aspect of the matter; but since the appellant has been allowed to raise the point about the validity of section 20, we must deal with it.

This point presents no difficulty whatever. The bar created by s. 20 cannot obviously be pleaded where the validity of s. 20 itself is challenged. That can of course be done by a separate suit. In terms, S. 20 is confined to cages where the validity of assessment orders made tinder the Act is challenged. 'Me said provision cannot take in a challenge to the validity of s. 20 itself, (1)[1964] 1 S.C.R. 752.

and so, we must hold that technically, the appellant's suit is competent in so far as it seeks to challenge the validity of s. 20. This finding, however, is of no material assistance to the appellant, because even after it succeeds on this point, it has still to face the plea of the respondent that on the merits, the suit is barred; and on that plea, the appellant must fail, because s. 20 is a bar to the appellant's claim that the amount in question which is alleged to have been illegally recovered from it should be refunded to it. That is a matter which falls directly within the mischief of s, 20.

What then is the ultimate position in this case? The Act Linder which tax was recovered from the appellant is valid and so is the charging section valid; the appropriate authorities dealt -with the

matter in regard to the taxability of the impugned transactions in accordance with the provisions of the Act and in consequence, tax in question was recovered on the basis that the said transactions were taxable under the Act. The appellant contends that the transactions were outside sales and they did not and could not fall under the charging sect-ion because of Art. 286, and it argues that the tax was levied because both the appellant and the appropriate authorities committed a mistake of fact as well as law in dealing with the question. Assuming that such a mistake was committed, the conclusion that the transactions in question fell within the purview of the charging section cannot be said to be without jurisdiction or a nullity and the assessment based even on such an erroneous conclusion would claim the protection of s. 20. If, after discovering the mistake the appellant had moved the appropriate authorities under the relevant provisions of the Act, its claim for refund would have been considered on the merits. Having failed to take recourse to the said remedy, it may have been open to the appellant to move the High Court under Art. 226. Whether or not in such a case, the jurisdiction of the High Court could have been effectively invoked, is a matter on which we propose to express no opinion. As we have pointed out during the course of this judgment, we are not dealing with the scope and effect of the High Courts jurisdiction under Art. 226 as well as the scope and effect of this Court's jurisdiction under Art. 32 viv-a-vis such claims for refund of tax alleged to have been illegally recovered. In the result, the appeal fails and is dismissed with costs. Appeal dismissed.