1972 *Present :* Deheragoda, J.

DHARMAWARDENA, Appellant, *and* THE GOVERNMENT AGENT, PUTTALAM, Respondent

S. C. 909/70—M. C. Puttalam, 8745

Heavy Oil Motor Vehicles Taxation Ordinance—Sections 2 (1) and 4 (1)—Tax due under the Ordinance—Recovery of it—Incompetence of Magistrate to question defaulter's liability.

A Government Agent issued to a Magistrate a certificate in terms of section 4 (1) of the Heavy Oil Motor Vehicles Taxation Ordinance for the recovery from the appellant of a sum of money as tax due from him for the period 1st October 1963 to 31st December 1965 in respect of a motor vehicle. It was submitted before the Magistrate that the vehicle was a land vehicle and was, therefore, exempted from taxation by virtue of the proviso to section 2 (1) of the Ordinance.

Held, that it was not competent to the Magistrate, at the stage of execution proceedings, to question the liability of the defaulter.

APPEAL from an order of the Magistrate's Court, Puttalam.

M. S. M. Nazeem, for the accused-appellant.

D. P. S. Gunasekera, Counsel for State, for the Attorney-General.

Cur. adv. vult.

July 4, 1972. DEHERAGODA, J.—

This appeal arises from the issue of a certificate by the Government Agent of the Administrative District of Puttalam to the Magistrate under section 4 (1) of the Heavy Oil Motor Vehicles Taxation Ordinance in respect of motor vehicle No. 25 Sri 1497 for the period 1.10.63 to 31.12.65 for the recovery from the appellant of a sum of Rs. 4,075·36 as tax due from him under that Ordinance.

The certificate complies with the provisions of the section including a statement to the effect that the notice required by subsection (2) of that section has been duly served on the appellant and a period of seven days has elapsed since the date of service of that notice.

Upon receipt of this certificate the learned Magistrate had ordered summons to be issued on the appellant. The appellant appeared before the learned Magistrate and took up the position that the certificate was not valid and that it was bad in law. The main ground which learned

counsel who appeared for the appellant before the learned Magistrate urged for the invalidity of the certificate is that the appellant was not a defaulter for the reason that the vehicle in question was a land vehicle within the meaning of section 2 of the Heavy Oil Motor Vehicles Taxation Ordinance, that it had been so registered at the Office of the Registrar of Motor Vehicles, and that it was so licensed for the years 1963 to 1966. He further submitted that it had been used as a land vehicle during that period. Proviso (*b*) to section 2 (1) of the Ordinance exempts from taxation under the Ordinance any vehicle in respect of which the Government Agent is satisfied that the vehicle is registered as a land vehicle and that it is used exclusively for agricultural purposes. It had been admitted that the appellant was the registered owner of the vehicle, that a notice had been served on the appellant, and that seven days had elapsed since the service of that notice. He had also admitted that the particulars contained in the certificate were correct. The sole ground therefore upon which the appellant resisted the payment was that the vehicle was registered as a land vehicle and that it was exclusively used for agricultural purposes during the relevant period. He had sought to place before the learned Magistrate proof of these two facts and the learned Magistrate has held that he has no power to reagitate the correctness of the tax or the liability of the defaulter in view of the decisions reported in *Abdulally v. Assistant Government Agent, Jaffna* [1] (68 N.L.R. 168), and in the case of *The Attorney-General v. Jayasinghe* [2] reported in 71 N.L.R. 285. He has therefore disallowed the appellant's application inviting the Court to inquire into the correctness of the Government Agent's decision, and ordered distress warrant to be issued for the recovery of the amount stated in the certificate.

Learned counsel for the appellant cited a number of cases in support of the view that an opportunity should be given to the appellant to show that he was not a defaulter within the meaning of the Heavy Oil Motor Vehicles Taxation Ordinance, because the vehicle in respect of which the certificate had been issued was a land vehicle and that it was exclusively used for agricultural purposes during the period for which the tax was sought to be recovered. The cases cited by learned counsel relate to the recovery of the amount of an award made by an arbitrator under the Co-operative Societies Ordinance under rules made thereunder, the recovery of tax due ler the Income Tax Ordinance, and the enforcement of an order of eviction under the Paddy Lands Act. The provisions of enactments which have been interpreted in these cases are materially different from the provision in the Heavy Oil Motor Vehicles Taxation Ordinance and are therefore of no assistance in the interpretation of

[1] *(1964) 68 N. L. R. 168.* [2] *(1968) 71 N. L. R. 285*

this provision of that Ordinance. He argues that wherever the Court has refused to give an opportunity to an aggrieved person to challenge the statement in a certificate filed in Court, such decision has been based on the existence of salutary provisions in those enactments to grant a hearing before a certificate could be issued, and that the provisions of the Heavy Oil Motor Vehicles Taxation Ordinance do not provide an opportunity of being heard to a person who is sought to be taxed under that Ordinance. I do not agree. The proviso to section 2 (1) of the Ordinance requires the Government Agent to satisfy himself as to whether a vehicle is registered as a land vehicle and whether it has been used exclusively for agricultural purposes if an exemption is claimed in respect of that vehicle under that section. Section 4 (2) requires the Government Agent, before he issues his certificate to the Magistrate, to serve a notice on the defaulter calling upon him to pay the amount of the unpaid tax within a period of seven days from the service of such notice. This provision is obviously meant to enable the person upon whom the notice has been served, if he is resisting payment, to make representations to the Government Agent that he is not a defaulter within the meaning of the Act. If the Government Agent is satisfied that the vehicle is a land vehicle which has been used exclusively for agricultural purposes, he would at that stage decide not to issue a certificate to the Magistrate. If, however, he is not so satisfied he would, after the lapse of the stipulated seven days, file a certificate in the Magistrate's Court. The duty of satisfying himself has been imposed by the Legislature on the Government Agent and it is not, in my view, competent to the Magistrate to consider that question at the stage he is called upon to direct the amount to be recovered as though it were a fine imposed by him on the defaulter. Section 4 only requires him to be satisfied that the seven days' notice required by subsection (2) has been duly served on the defaulter and that a period of seven days has elapsed since the date of the service of that notice. If the case of the appellant is that the Government Agent has not acted *bona fide* in purporting to be satisfied that the vehicle was not a land vehicle or that it was not used exclusively for agricultural purposes, or that he was influenced by extraneous circumstances in arriving at his decision, then other remedies would have been available to him at that time.

Learned Counsel for State brings to my notice that the appellant has invited the interference of this Court by coming before this Court by way of appeal when he has no right of appeal ; and as he has no right of appeal, the appeal should be dismissed.

I have considered this appeal on its merits with a view to granting relief, acting in revision, if a case had been made out by the appellant for such relief. For the reasons I have given, I am in entire agreement with the learned Magistrate, and I dismiss this appeal accordingly.

Appeal dismissed.