

# Nilamdeen N. M V. The Government Agent, Matara

185/1965

**Present: Sri Skanda Rajah, J.**

**N. M. NILAMDEEN, Appellant, and THE GOVERNMENT AGENT, MATARA, Respondent**

**S. C. 995/65—M. C. Matara, 19548**

*Heavy Oil Motor Vehicles Taxation Ordinance—Section 4—Recovery of unpaid tax— Incapacity of Magistrate to impose a term of imprisonment.*

In proceedings for the recovery of unpaid tax under section 4 of the Heavy Oil Motor Vehicles Taxation Ordinance, the Magistrate has no power to impose a term of imprisonment in default of payment of the amount mentioned in the certificate.

**APPEAL** against an order of the Magistrate's Court, Matara.

*S. H. Mohamed*, for Defaulter-Appellant.

*D. S. Wijesinghe*, Crown Counsel, for the Attorney-General.

December 21, 1965. **SRI SKANDA RAJAH, J.—**

Under section 4 (1) of the Heavy Oil Motor Vehicles Taxation Ordinance, when a certificate, as in this case, is received by the Magistrate from the Government Agent, the Magistrate has to direct that the amount be recovered as though it were a fine imposed by him on the registered owner of that vehicle. Section 4 also provides for the seizure and sale of the motor vehicle in question in the event of the amount given in the certificate not being paid. The Magistrate is not empowered in a case of this nature to pass a default sentence. I would follow the case of *Pieris v. Chairman, Village Committee* [1 (1960) 62 N. L. R. 546.] where a similar provision in

the Village Committees Ordinance was the subject of decision. In that case it was held that the Magistrate had no power to impose a term of imprisonment in default of payment of a certified amount.

Therefore, I set aside the order of imprisonment passed on the accused who had defaulted in paying a large part of the amount mentioned in the certificate. The Magistrate will take steps to recover this amount as provided in the Ordinance.

*Order of imprisonment set aside.*