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**ORISSA HIGH COURT : CUTTACK**

**W.P.(C) No. 22097 of 2025**

In the matter of an Application under Articles 226 & 227 of  
the Constitution of India, 1950

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M/s. Bharat Sanchar Nigam Limited  
Office of the Principal General Manger  
Telecom District, Door Shanchar Bhawan  
Link Road, Cuttack – 753 012  
Represented through its  
Assistant General Manager (HR & Adm.)  
Mr. Duryodhan Nayak  
Aged about 52 Year  
S/o Sri Dinabandhu Nayak,  
Door Sanchar Bhawan, Link Road  
Cuttack – 753 012.                      ...

Petitioner

*-VERSUS-*

- 1.** Additional Commissioner of CT & GST  
Territorial Range, Cuttack-I Range  
At: OSFC Tower, OMP Square  
Cuttack.
- 2.** Deputy Commissioner of Sales Tax  
Cuttack-I, West Circle,  
At: OSFC Tower, OMP Square  
Cuttack.
- 3.** Sales Tax Officer  
Cuttack-I, West Circle  
At: OSFC Tower, OMP Square  
Cuttack.



4. Additional Commissioner of CT & GST  
(Revenue & Audit)  
Baniyyakar Bhawan  
Old Secretariat Compound, Buxibazar  
Cuttack – 753 001.
5. Commissioner of Sales Tax, Odisha  
Baniyyakar Bhawan  
Old Secretariat Compound, Buxibazar  
Cuttack – 753 001. ... Opposite Parties.

***Counsel appeared for the parties:***

- For the Petitioner : M/s. Pranaya Kishore Harichandan  
and Pragyant Harichandan,  
Advocates
- For the Opposite Parties : Mr. Sunil Mishra,  
Standing Counsel  
(CT & GST Organisation)

*P R E S E N T:*

**HONOURABLE CHIEF JUSTICE  
MR. HARISH TANDON**

**AND**

**HONOURABLE JUSTICE  
MR. MURAHARI SRI RAMAN**

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**Date of Hearing : 04.09.2025 :: Date of Judgment : 04.09.2025**

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**JUDGMENT**

By way of the instant writ petition under Articles 226 & 227 of the Constitution of India, the petitioner craves to challenge the following:



- a. Demand notice dated 30<sup>th</sup> June, 2025 (Annexure-3) issued by the Sales Tax Officer, CT& GST Circle, Cuttack-I West, Cuttack;
- b. Order dated 31<sup>st</sup> May, 2025 (Annexure-2) passed in Revision Case No.DCST/CUIW/1/2024-25 by the Additional Commissioner of Sales Tax, CT & GST Territorial Range, Cuttack-I, Cuttack;
- c. Show-cause notice dated 18<sup>th</sup> March, 2025 (Annexure-1) issued by the Additional Commissioner of CT & GST, CT & GST Territorial Range, Cuttack-I, Cuttack under Section 23(4) of the Odisha Sales Tax Act, 1947 (for convenience, “the OST Act”) in connection with the assessment Order dated 4<sup>th</sup> June, 2022 passed by the Sales Tax Officer, CT & GST Circle, Cuttack-I, Cuttack under Section 12(5) of the OST Act pertaining to the assessment year 1996-97 (1<sup>st</sup> December, 1996 to 31<sup>st</sup> March, 1997).

***Facts narrated in the writ petition:***

2. The Petitioner, Government of India Undertaking, was subjected to assessment pertaining to Assessment Year 1996-97 (1<sup>st</sup> December, 1996 to 31<sup>st</sup> March, 1997) under Section 12(5) of the OST Act by the Sales Tax Officer *vide* order dated 2<sup>nd</sup> July, 2002. The appeal directed against said assessment order culminated in confirmation and



thereafter by order dated 30<sup>th</sup> September, 2003 said appellate order got affirmed in second appeal by the Odisha Sales Tax Tribunal *vide* order dated 4<sup>th</sup> November, 2019. In further proceeding thereafter under Section 24 of the OST Act, this Court, while disposing of the revision petition, being STREV No.19 of 2020, *vide* Order dated 22<sup>nd</sup> December, 2021 set aside the order in second appeal; and remitted the matter for fresh assessment.

- 2.1. Consequent upon such order of remit, the Sales Tax Officer passed fresh assessment order on 4<sup>th</sup> June, 2022 reducing the demand to 'nil', which led to claim of refund of Rs.20 lakhs.
- 2.2. The Additional Commissioner of CT & GST, Territorial Range, Cuttack-I, Cuttack initiated revision proceeding by issue of show-cause notice on 18<sup>th</sup> March, 2025 invoking provisions of Section 23(4)(a) of the OST Act contemplating to revise such assessment order leading to claim for refund of tax paid.
- 2.3. In connection with said show-cause notice, by a detailed Order dated 31<sup>st</sup> May, 2025 passed in Revision Case No.DCST/CUIW/1/2024-25 by the Additional Commissioner, the assessment order has been revised and in consequence thereof, the Sales Tax Officer, CT & GST Circle, Cuttack-I West, Cuttack raising a demand



comprising tax and surcharge besides penalty to the tune of Rs.20,80,000/-, directed the petitioner to deposit.

***Hearing:***

**3.** The matter in writ petition came up for hearing on 04.09.2025 under the heading “Fresh Admission”. Serious objection as to entertainment of writ petition has been raised by the Standing Counsel for the CT and GST Organisation.

3.1. Heard Mr. Pranaya Kishore Harichandan, learned counsel appearing for the petitioner and Mr. Sunil Mishra, learned Standing Counsel appearing for the CT & GST Organisation on the question of entertainment of writ petition.

***Submissions:***

**4.** Mr. Pranaya Kishore Harichandan, learned counsel appearing for the petitioner laid much emphasis on the satisfaction of twin conditions as envisaged under Rule 80 of the Odisha Sales Tax Rules, 1947 (for short, “OST Rules”) for initiation of proceeding for revision under Section 23(4)(a) of the Odisha Sales Tax Act, 1947 (“OST Act”, for short). He vociferously submitted that the Additional Commissioner lacks jurisdiction, therefore, in invoking power under Section 23(4)(a) of the OST Act.



4.1. He further raised an issue that though alternative remedy is provided for under Section 23(4)(c) of the OST Act, since the Additional Commissioner has initiated proceeding under the delegated power of the Commissioner, the appeal envisaged under the said clause before the Commissioner would be a futile exercise. Therefore, he contended that this Court is competent to entertain the writ jurisdiction to address the issue raised herein.

5. Mr. Sunil Mishra, learned Standing Counsel appearing for the CT and GST Organisation vehemently opposed entertainment of writ petition against the order passed in *suo motu* Revision. Referring to provisions contained in Section 3 of the OST Act, 1947 and Rule 3 of the OST Rules, 1947 he sought to advance argument that as the Additional Commissioner of Sales Tax, enumerated as one of the authorities to assist the Commissioner, being delegated to exercise power of *suo motu* revision by the Commissioner in exercise of power under Section 17 of the OST Act, having invoked the jurisdiction aptly under Section 23(4)(a), by entertaining the writ petition challenging his order would tantamount to rendering the alternative remedy provided under Section 23(4)(c) of the OST Act otiose or redundant.

5.1. Having thus urged, he argued that when alternative remedy is provided under the statute, the petitioner need



not be permitted to agitate the issue regarding twin conditions laid down in Rule 80 of the OST Rules in the instant writ petition. Such an issue can very well be dealt with by the appellate authority along with the factual disputes involved in the present matter.

5.2. Hence, he submitted that exercising extraordinary jurisdiction by this Court under Articles 226 and 227 of the Constitution of India would be to allow the petitioner to circumvent the remedy so available under the OST Act.

***Relevant statutory provisions:***

6. Provisions of Section 23(4) of the OST Act are reproduced hereunder:

*“(a) Subject to such rules as may be made and for reasons to be recorded in writing, **the Commissioner may, upon application by a dealer or person or on his own motion revise any order made under this Act or the Rules made thereunder by any person** other than the Tribunal, **appointed under sub-section (3) of Section 3 to assist him:***

*Provided that the Commissioner shall not entertain any such application for revision if the dealer or the person filing the same having a remedy by way of appeal under sub-section (1), or sub-section (3) did not avail of such remedy or the application is not filed within the prescribed period.*



*Explanation.—*

*Any provision contained elsewhere in this Act which provides for determination of any specific matter shall not debar the Commissioner from determining such matter in exercise of the powers conferred upon him under this sub-section.*

- (b) If the Commissioner proposes to reject an application for revision under the foregoing provision he shall record the reasons for such rejection.*
- (c) Any dealer or person, as the case may be, the State Government aggrieved by any order passed by the Commissioner on his own motion may, within sixty days from the date of receipt of such order, prefer an appeal—*
  - (i) if the order was passed by the Commissioner, to the High Court; and*
  - (ii) if the order was passed by any authority subordinate to the Commissioner, to the Commissioner.*
- (cc) All orders passed under this sub-section shall, subject to orders passed in an appeal, if any, be final.*
- (d) Notwithstanding anything contained in Section 17 , the Commissioner shall not, except with the prior approval of the State Government delegate his powers under this sub-section to any other person appointed under sub-section (3) of Section 3 to assist him.”*

6.1. Rules 79 and 80 of the OST Rules stood thus:





*“79. Application to Commissioner for revision.—*

*The application to the Commissioner for revision of an order passed by an Assistant Sales Tax Officer or a Sales Tax Officer, or an Assistant Commissioner, or a Deputy Commissioner or a Joint Commissioner as the case may be, may be filed by the dealer within thirty days from the date of receipt by him of such order:*

*Provided that no such application shall be entertained by the Commissioner in respect of any order against which the applicant has a right of appeal under sub-section (1) or sub-section (3) of Section 23:*

*Provided further that the Commissioner may admit an application for revision received after the said period if it is shown to his satisfaction that the appellant had reasonable cause for not preferring the application in time.*

*80. Revision by the Commissioner suo motu.—*

***The Commissioner may on his own motion at any time within three years from the date of passing of any order by the Sales Tax Officer or Assistant Commissioner or within two years from the date of passing of any order by the Additional Commissioner, Special Additional Commissioner or Joint Commissioner or Deputy Commissioner, as the case may be, call for records of the proceedings in which such order was passed and if he considers that any order passed therein is erroneous in so far as it is prejudicial to the interest of the revenue he may after giving the dealer an opportunity of being heard and after making or***



*causing to be made such enquiry as he deems necessary revise any such order:*

*Provided that the Commissioner shall not revise any order under this rule—*

- (1) where an appeal against the order is pending before the appellate authority under Section 23, or*
- (2) where time-limit for filing an appeal under Section 23 has not expired.”*

6.2. Section 17 of the OST Act:

*“Delegation of Commissioner’s functions.—*

*Subject to such conditions and restrictions as the State Government may, by general or special order, impose, the Commissioner may, by order in writing, delegate any of his powers and duties under this Act or the rules made thereunder, to any person appointed under Section 3 to assist him.”*

6.3. Section 3 of the OST Act stood thus:

*“3. Taxing Authority.—*

- (1) The State Government may appoint any person to be the Commissioner of Sales Tax, Orissa, and he shall exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act.*
- (2) \*\*\**
- (3) The State Government may appoint such other persons under any prescribed designation including*



*an Additional Commissioner and a Deputy Commissioner to assist the Commissioner and they shall exercise such powers and perform such duties as may be conferred or imposed by or under the provisions of this Act within such local area as may be assigned to them by the Commissioner.”*

6.4. Relevant portion of Rule 2 and Rule 3 of the OST Rules is reproduced hereunder:

*“2. Definitions.—*

*In these Rules unless there is anything repugnant in the subject or context—*

- (e) ‘Commissioner’ means the Commissioner of Sales Tax and includes any officer to whom the Commissioner of Sales Tax may delegate under Section 17 his powers and duties under the Act.*

*3. Sales Tax Authorities.—*

- (1) The authorities to be appointed for assisting the Commissioner shall be of the following designations, namely:*

*(a) Additional Commissioner of Sales Tax;*

*\*\*\**

- (3) The authorities specified in clauses (a), \*\*\* shall be under the administrative control of the Commissioner of Sales Tax.”*

6.5. Power under Section 23(4)(a) of the OST Act as delegated on the Additional Commissioner:



*“Office of the Commissioner of Commercial Taxes, Odisha  
Order*

*Dated Cuttack, the 18<sup>th</sup> May, 1963*

*No.12358-CT.— In exercise of the powers conferred by Section 17 read with clause (d) of sub-section (4) of Section 23 of the Odisha Sales Tax Act, 1947 (Odisha Act 14 of 1947), I, S.M.H. Burney, I.A.S., Commissioner of Sales Tax, Odisha, with the prior approval of the State Government do hereby delegate the powers exercisable by me under clause (a) of sub-section (4) of Section 23 of the said Act and Rule 79 of the Odisha Sales Tax Rules, 1947, to the Additional Commissioner of Sales Tax and direct that the powers and duties under the said provisions shall be exercised and discharged by him.*

*S.M.H. Burney  
Commissioner of Sales Tax, Odisha.”*

**Discussions:**

7. It emanates from conjoint reading of the provisions referred to hereinabove that the Additional Commissioner is delegated with the power of revision to invoke Section 23(4)(a) of the OST Act which includes “on his own motion”. If the order in Revision is passed exercising power under Section 23(4)(a) by the authority subordinate to the Commissioner, an appeal lies to the Commissioner. The Additional Commissioner of Sales Tax (now called, Additional Commissioner of State Tax, on introduction of the Odisha Goods and Services Tax Act, 2017) is one of the authorities enumerated in Rule 3(1) of the OST Rules to assist the Commissioner, and



such authority functions under administrative control of the Commissioner as per Rule 3(3). Thus, there is no ambiguity that the exercise of power under Section 23(4)(a) by the Additional Commissioner leaves no manner of scope for the Commissioner to exercise such power again. The expression “the Commissioner shall not ... delegate his power” employed in clause (d) of sub-section (4) of Section 23 clinches that a forum is made available to the aggrieved party to avail alternative remedy of appeal under the statute. Nothing is demonstrated by Sri Pranaya Kishore Harichandan, learned Advocate for the petitioner that the Commissioner has delegated power under Section 23(4)(c)(ii) with “the prior approval of the State Government”. Hence, this Court repels the contention of the learned counsel for the petitioner that it would be futile to approach the Commissioner in appeal, as the order in revision being passed by the Additional Commissioner, as delegatee, is an order of the Commissioner himself.

- 8.** It may be significant to take note of *non-obstante clause*— “notwithstanding anything contained in Section 17”— contained in clause (d) of sub-section (4) of Section 23.

8.1. In *Aswini Kumar Ghose Vrs. Arabinda Bose*, AIR 1952 SC 369, it has been laid down,



*“The enacting part of a statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously.\*\*\*”*

8.2. In *State of West Bengal Vrs. Union of India*, AIR 1963 SC 1241 = (1964) 1 SCR 371, it is observed as under:

*“The Court must ascertain the intention of the legislature by directing its attention **not merely to the clauses to be construed, but to the entire statute**; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs.”*

8.3. In *Madhav Rao Jivaji Rao Scindia Vrs. Union of India*, (1971) 1 SCC 85, it has been observed that the *non-obstante* clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but “for that reason alone we must determine the scope” of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. A search has, therefore, to be made with a view to determining which provision answers the description and which does not.

8.4. In *Union of India Vrs. Maj. I.C. Lala*, AIR 1973 SC 2204 = (1973) 3 SCR 818, the Supreme Court of India held,



*“The words “notwithstanding anything contained in the Code of Criminal Procedure’ found at the beginning of Section 5A(1) merely carve out a limited exemption from the provisions of the Code of Criminal Procedure in so far as they limit the class of persons who are competent to investigate into offences mentioned in the section and to arrest without a warrant. It does not mean that the whole of the Code of Criminal Procedure, including Schedule thereof, is made inapplicable. Under Section 5 of the Code of Criminal Procedure all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions therein contained.”*

- 8.5. In *Union of India Vrs. G.M. Kokil*, AIR 1984 SC 1022, it has been laid down as follows:

*“It is well-known that a non-obstante clause is a legislative device which is usually employed **to give overriding effect to certain provision over some contrary provision** that may be found either in the same enactment or some other enactment, that is to say, **to avoid the operation and effect of all contrary provisions.**”*

- 8.6. In *Chandavarkar Sita Ratna Rao Vrs. Ashalata S. Guram*, (1986) 4 SCC 447 the Supreme Court of India held as follows:

*“A clause beginning with the expression ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract’ is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of*





conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. **It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment.** See in this connection the observations of this Court in *The South India Corporation (P.) Ltd. Vrs. The Secretary, Board of Revenue, Trivandrum & Anr.*, AIR 1964 SC 207 at 215 = (1964) 4 SCR 280.”

- 8.7. In *R.S. Raghunath Vrs. State of Karnataka and another*, (1992) 1 SCC 335, a three-Judge Bench of Hon’ble Supreme Court of India referring to *Aswini Kumar Ghose Vrs. Arabinda Bose*, AIR 1952 SC 369, *Dominion of India Vrs. Shrinbai A. Irani*, AIR 1954 SC 596 = 1955 SCR 206, *Union of India Vrs. G.M. Kokil*, 1984 (Supp.) SCC 196, *Chandravarkar Sita Ratna Rao Vrs. Ashalata S. Guram*, (1986) 4 SCC 447, observed thus:

“The non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non-obstante clause need not necessarily and always be co- extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such





*cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.”*

8.8. In *A.G. Varadarajulu Vrs. State of Tamil Nadu*, (1998) 4 SCC 231, it has been held:

*“It is well settled that while dealing with a non-obstante clause under which the legislature wants to give overriding effect to a section, **the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision.** Such intention of the legislature in this behalf is to be gathered from the enacting part of the section.”*

8.9. In *Vishin N. Kanchandani Vrs. Vidya Lachmandas Khanchandani*, AIR 2000 SC 2747, the Supreme Court held that,

*“There is no doubt that by non-obstante clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. **The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind.**”*



8.10. In *ICICI Bank Ltd. Vrs. SIDCO Leathers Ltd.*, (2006) Supp.1 SCR 528, it has been held as follows:

*“Section 529-A of the Companies Act no doubt contains a non-obstante clause but in construing the provisions thereof, it is necessary to determine the purport and object for which the same was enacted. \*\*\* The non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. \*\*\* **A non-obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same.**”*

8.11. The Supreme Court of India in the case of *Central Bank of India Vrs. State of Kerala*, (2009) 4 SCC 94, observed that,

*“A non-obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. **While interpreting non obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non-obstante clause is used.** This rule of interpretation has been applied in several decisions.”*

8.12. A *non-obstante* clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the *non-obstante* clause. It is equivalent to say that in spite of the provisions or the Act mentioned in the *non-obstante* clause, the provision following it will have its full



operation or the provisions embraced in the *non-obstante* clause will not be an impediment for the operation of the enactment or the provision in which the non-obstante clause occurs. [See, “Principles of Statutory Interpretation”, 9th Edition by Justice G.P. Singh Chapter V, Synopsis IV at pages 318 & 319].

8.13. When two or more laws or provisions operate in the same field and each contains a *non-obstante* clause stating that its provision will override those of any other provisions or law, stimulating and intricate problems of interpretation arise. In resolving such problems of interpretation, no settled principles can be applied except to refer to the object and purpose of each of the two provisions, containing a *non-obstante* clause. Two provisions in the same Act each containing a *non-obstante* clause, requires a harmonious interpretation of the two seemingly conflicting provisions in the same Act. In this difficult exercise, there are involved proper consideration of giving effect to the object and purpose of two provisions and the language employed in each. [See, *Shri Swaran Singh Vrs. Shri Kasturi Lal*, (1977) 1 SCC 750].

8.14. In view of the *non-obstante* clause contained in clause (d) of sub-section (4) of Section 23 of the OST Act, it is *ex facie* that no second or further revision lies before the Commissioner, if the Additional Commissioner once



exercises his delegated power under Section 23(4)(a) of the OST Act.

8.15. Illustratively, this Court ventures to take note of other provisions where the Commissioner is empowered under the Act to exercise jurisdiction, but delegated such power to the authorities enumerated under Rule 3 read with Section 3 to assist him. Section 9(6) empowers the Commissioner to cancel the registration certificate, but such power has been delegated to the authority who grants the registration certificate and a revision under Section 23(4)(a) lies to challenge the order of cancellation of registration certificate before the Commissioner or his delegatee. Similarly, Section 12 dealing with “Assessment of tax” is required to be invoked by the Commissioner. But under delegated power a Sales Tax Officer/Deputy Commissioner/Joint Commissioner undertakes such assessment. Appeal under Section 23(1) lies before the authorities specified under Rule 47. Therefore, acceding to the contention of Sri Pranaya Kishore Harichandan, learned Advocate the petitioner would render the exercise of power by the authorities to assist the Commissioner nugatory. Such a construction, at no stretch of imagination, be construed to be legislative intent.

**9.** Now coming back to the context of the present case, with respect to delegation of power by the Commissioner to



the Assistant Commissioner *vide* Notification No.I-ST-76/73—14171 dated 03.08.1963 with respect to Section 23(4)(a), the Hon'ble Supreme Court of India has been made it explicit in *OCL India Ltd. Vrs. State of Odisha*, (2003) 2 SCC 101 that,

“8. *A perusal of clause (a) of sub-section (4) aforequoted, shows that the Commissioner is conferred with the power to revise any order made under the Act or the Rules made thereunder by any person other than the Tribunal appointed under sub-section (3) of Section 3 of the Act to assist him, either on an application made by a dealer or any person or suo motu. The proviso thereto bars the exercise of revisional power on the application of a dealer or any person where remedy of appeal under sub-section (1) and sub-section (3) of Section 23 has not been availed of or where the revision was not filed within the prescribed period of limitation.*

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10. *A plain reading of this Rule discloses that the Commissioner can exercise the revisional jurisdiction suo motu within the period specified— in the case of an order passed by the Sales Tax Officer, within three years from the date of passing of the order and in the case of an order passed by the Additional Commissioner, Special Additional Commissioner or Assistant Commissioner, as the case may be, within two years from the date of passing of the order. The revisional jurisdiction can be exercised if the Commissioner, after calling for the records of the proceedings in which the order sought to be revised*



*was passed, considers that the order is erroneous insofar as it is prejudicial to the interest of the Revenue. Where these jurisdictional facts are present to invoke the revisional power, the Commissioner has to provide the dealer or a person affected thereby an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, may revise any such order. There are two situations in which an order in question cannot be revised and they are: (1) where an appeal against the order is pending before the Appellate Authority under Section 23, or (2) where the time-limit for filing an appeal under Section 23 has not expired. The same conditions will govern the exercise of the revisional power by the delegatee of the Commissioner under Notification No. I-ST-76/73—14171 dated 03.08.1963. The notification, insofar as it is relevant for our purpose, says that with the prior approval of the State Government, the Commissioner has delegated his power and duties under the Act and the Rules framed thereunder as specified in the Schedule annexed thereto to the Assistant Commissioner of Sales Tax and directed that the said powers and duties shall be exercised and discharged by the said Assistant Commissioner within their respective jurisdiction.*

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13. *Thus, it is clear that the power conferred on the Assistant Commissioner was under clause (a) of sub-section (4) of Section 23 of the Act read with Rule 80 of the Rules. The Commissioner has revisional power to call for the records and revise the orders not only of the Sales Tax Officer but also of*





*the Assistant Commissioner, Additional Commissioner and Special Additional Commissioner; the power that was delegated to the Assistant Commissioner was confined to the orders passed by the Sales Tax Officers. In the result the Commissioner retained his power to revise the orders passed by the Assistant Commissioner, Additional Commissioner and Special Additional Commissioner. However, in regard to the orders passed by the Sales Tax Officer, after the delegation, the Assistant Commissioner was competent to revise and, in fact, he did exercise the power to revise the order of the Sales Tax Officer, after issuing a show-cause notice dated 13.12.1995. If that be so, the power of the Commissioner (the delegator) under the aforequoted provisions has been exhausted by the Assistant Commissioner and the Commissioner cannot, in law, exercise the delegated power over again.*

- 14. It is no doubt true that the Commissioner is not denuded of the statutory power of revision after delegation, but that, in view of the said notification, only means that he can resume that power or cancel the delegation of revisional power to the Assistant Commissioner. That, by no stretch of imagination, can be construed to mean that once the orders have been examined under the revisional power by the Assistant Commissioner (the delegatee), the same orders can again be subjected to the revisional jurisdiction by the Commissioner.”**





9.1. Whereas in the above referred case, the power of revision has been delegated to the Assistant Commissioner by virtue of Notification No.14171-CT, dated 03.08.1963, in the instant case, power under the same provision, *i.e.*, Section 23(4)(a) of the OST Act has been delegated to Additional Commissioner *vide* Notification No.12358-CT, dated 18.05.1963. However, both the authorities, namely the Assistant Commissioner and the Additional Commissioner, are enumerated under Section 3 read with Rule 3 to assist the Commissioner. Thus, apparently the Additional Commissioner having passed the order in the capacity of delegated authority to invoke power of revision, the Commissioner cannot invoke the same power again. Therefore, the appeal against the order passed in revision by the Additional Commissioner would lay before the Commissioner under Section 23(4)(c)(ii) of the OST Act.

9.2. In *J.C. Budharaja Vrs. State of Odisha*, (2000) 118 STC 140 = 1999 SCC OnLine Ori 298, it has been observed as follows:

*“These two appeals under Section 23(4)(c)(i) of the Orissa Sales Tax Act, 1947 (in short, “the Act”) involve the question whether the Commissioner of Sales Tax (in short, “the Commissioner”) can revise an order passed by the Assistant Commissioner of Sales Tax in exercise of powers of revision under Rule 80 of the Orissa Sales Tax Rules, 1947 (in*



short, “the Rules”). As this question has to be answered in the background of section 23(4)(c)(i) of the Act and Rule 80 of the Rules, detailed reference to the factual aspects would be unnecessary.

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5. Main plank of learned counsel for Revenue’s argument to distinguish Orient Paper Mills’ case [1988] 70 STC 333 (Orissa), is that the power under Rule 80 has not been delegated, and in any event the delegator still retains the original power.
6. With reference to the notification delegating power, it is stated by the learned counsel for petitioner that Section 23(4)(a) deals with both suo motu power of revision and also the power to revise any order made under the Act or Rule made thereunder by any person other than the Tribunal appointed under sub-section (3) of Section 3 to assist the Commissioner upon an application by a dealer or person. Therefore, power of revision as available under Section 23(4)(a) has been delegated. \*\*\*

It is to be noted that Rule 79 deals with application to Commissioner for revision. **Undisputedly the power of revision available to the Commissioner under Section 23(4)(a) read with Rule 79 has been delegated. Commissioner by the impugned notices purported to exercise power under Rule 90. The question is whether he can do it after the revisional order is passed by the Assistant Commissioner as delegated by the Commissioner on an application filed by any person or dealer.** This Court in Orient Paper Mills case (1988) 70 STC 333, observed as follows:



*'It is not difficult to consider the first aspect in view of the delegation of power by the Commissioner in favour of the Special Additional Commissioner under Notification No. 5118 dated 10th February, 1971 by which the Special Additional Commissioner exercised the power of revision of the Commissioner under section 23(4)(a) and (d) of the Act. So the orders dated 24th May, 1978 passed by the Special Additional Commissioner in annexure 6 series were in fact deemed to be orders passed by the Commissioner himself in exercise of power of revision. Therefore, in purported exercise of power under Rule 80, the Commissioner could not revise the orders which by legal fiction were deemed to have been passed by himself. As a concept of law, it is unthinkable that a quasi-judicial authority having delegated his quasi-judicial function to a subordinate or co-ordinate authority shall again revise the order passed by that authority.*

*An identical question arose for consideration before the Gujarat High Court in a case reported in (1982) 50 STC 322 (Ashwin Industries Vrs. Deputy Commissioner of Sales Tax, Baroda). According to Section 67(1) of the Gujarat Sales Tax Act, the Commissioner has power of revision of any order passed by any officer appointed to assist him on his own motion. According to Section 27(2) of the aforesaid Act, Deputy Commissioners, Assistant Commissioners and Sales Tax Officers were appointed to assist the Commissioner. According to sub-section (5) thereof, the Commissioner is authorised to delegate powers in favour of a Deputy Commissioner and after such delegation the Deputy Commissioner is authorised to perform all functions*



of the Commissioner delegated to him. According to sub-section (7) thereof, the State Government can delegate functions of the Commissioner to Additional Commissioners. In view of the aforesaid provisions, it was held that suo motu power of revision delegated to the Additional Commissioner or the Deputy Commissioner can be exercised by them and their orders passed in revision cannot further be revised by the Commissioner. The second aspect does not also present any difficulty. As would appear from Section 29(2)(s)(ii), framing of rules is permissible according to law to lay down the procedure for appeals and revisions. In the guise of framing rules substantive law giving a fresh quasi-judicial power of revision unconnected with procedure could not be introduced to the Rules. Rule 80 is a substantive quasi-judicial power given to the Commissioner to be exercised in general on his own motion to correct errors prejudicial to the interest of the Revenue. **Such a general, substantive and all pervasive quasi-judicial function could be contemplated in the statute but not under the Rules framed thereunder, particularly when the rule-making power does not authorise for framing of such a rule.**

Rule 80 is, therefore, an excessive delegation of substantive quasi-judicial power in favour of the Commissioner which ex facie seems unsupportable. But this Court exercising its power as a court of appeal under section 23(4)(c)(i) cannot quash Rule 80 being itself a creature of the statute. This Rule could only be quashed in an appropriate proceeding under Article 226 of the Constitution.'



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8. ***It is an accepted position in law that to “delegate” to another is not to denude yourself.*** As was observed by Wills, J. in *Huth Vrs. Clarke* (1890) 25 QBD 391, “In my opinion the word, in its general sense and as generally used, does not imply, or point to, a giving up of authority, but rather the conferring of authority upon some one else”. As observed by Lord Coleridge, C.J. 25 Q.B. 304, the word “delegation” implies that powers are committed to another person or body which are as a rule, always subject to resumption by the power delegating. The person delegating does not denude himself. (Per Wharton’s Law Lexicon, 1976 Reprint Edition at page 316). ***Delegation implies also the power to withdraw delegation.*** As indicated in Wharton’s Law Lexicon, delegation is a sending away; a putting into commission; the assignment of a debt to another; the entrusting another with a general power to act for the good of those who depute him. ***The word “delegate” means little more than an agent. An agent exercises no power on his own but only the powers of his principal.*** The observation in *Huth’s case* (1890) 25 QBD 391 was referred to in *Roop Chand Vrs. State of Punjab* AIR 1963 SC 1503. ***In general, a delegation of power does not imply parting with authority. The delegating body will retain not only power to revoke the grant, but also power to act concurrently on matters within the area of delegated authority except in so far as it may already have become bound by an act of its delegate.*** [See *Battelley Vrs. Finsbury Borough Council*, (1958) 56 LCR 165].





9. *In Corpus Juris Secundum, Volume 26, “delegate” has been described as follows:*

*‘As a noun, a person sent and empowered to act for another, one deputed to represent another in a more popular but less accurate sense, a regularly selected member of a regular party convention.*

*As a verb, in its general sense and as generally used, the term does not imply, or point to, a giving up of authority, but rather the conferring authority upon some one else.*

*At common law, it is the transfer of authority by one person to another, the act of making or commissioning a delegate.*

*Expression ‘delegation of authority or power’ is a term which like the word ‘delegate’ does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself.’*

*In Collins Cobuild English Dictionary the word “delegate” has been stated to be “a person who is chosen to vote or make decisions on behalf of a group of other people. If you delegate duties, responsibilities, or power to some one, you give them those duties, those responsibilities, or that power so that they can act on your behalf. If you are delegated to do something you are given the duty of acting on some one else’s behalf by making decisions, voting, or doing some particular work.’*

*In Black’s Law Dictionary, 6th Edition, the word “delegate” has been stated to mean a person who is*



*appointed, authorised, delegated or commis sioned to act in the stead of another. Transfer of authority from one to another. A person to whom affairs are committed by another. “Delegation” according to said dictionary means, instructing another with a general power to act for the good of those who depute him; transfer of authority by one person to another.*

*According to Venkataramaiya’s Law Lexicon, “delegation” as the word generally used does not imply a parting with powers by the person who grants the delegation, but points rather to a conferring of an authority to do things which otherwise the person would have to do himself. In State of Orissa Vrs. Commissioner of Land Records and Settlement, Cuttack AIR 1998 SC 3067, it was held that when the delegatee personifies his principal and his orders are to be treated as orders of his principal, all other powers attributable to the personality which he personifies, will be exercisable by him. While considering the scope of Section 15 of Orissa Survey and Settlement Act, 1958 it was observed that Commissioner has statutory powers of revision. Powers of revision of Board of Revenue under Sections 6-B, 15, 25 and 32 of the said Act were delegated to Commissioner. He could exercise power of review conferred on the Board by Section 7 of Orissa Board of Revenue Act, 1951. Order passed by Commissioner as delegate of Board of Revenue cannot be revised by Board under Section 15 of 1958 Act or reviewed under Section 7 of 1951 Act.*

10. ***There is no quarrel over the proposition that a delegator retains power, and is not denuded of***





***the power by such delegation. The Commissioner admittedly does not intend to exercise power delegated, i.e., the power of hearing revision applications under Section 23(4)(a) read with Rule 79. That power has already been exercised by the delegatee. The Commissioner intends to exercise the power of revision under Rule 80. Exercise of power under Rule 80 is not same as exercised by him under Rule 79. It is to be noted here that the Legislature in its wisdom put a seal of finality on all orders passed under sub-section (4) of Section 23 of the Act.***

11. *Under clause (c) of sub-section (4) of Section 23 the dealer or person, as the case may be, the State Government aggrieved by any order passed by the Commissioner on his own motion may, within sixty days from the date of receipt of such order, prefer an appeal. If the order is passed by the Commissioner, the appeal is to be filed before the High Court, and if the order is passed by any authority subordinate to the Commissioner, to the Commissioner. It is, however, to be noted that the right of appeal has been conferred in respect of an order passed by the Commissioner on his own motion. The expression "Commissioner" as defined in the Rules means the Commissioner of Sales Tax and includes any officer to whom the Commissioner of Sales Tax may delegate under Section 17 his powers and duties under the Act, as provided in Rule 2(e).*

*Further, under Section 23(4)(d) notwithstanding anything contained in Section 17, the Commissioner shall not, except with the prior approval of the State*



*Government, delegate his powers under this sub-section to any other person appointed under sub-section (3) of Section 3 to assist him. Under sub-section (3) of Section 3, the State Government may appoint such other persons under any prescribed designation including an Additional Commissioner and a Deputy Commissioner to assist the Commissioner and they shall exercise such powers and perform such duties as may be conferred or imposed by or under the provisions of the Act within such local area, as may be assigned to them by the Commissioner.*

- 12. From notification dated August 3, 1963 referred to above, it is quite clear that with regard to exercise of power of revision under Section 23(4)(a), the Commissioner delegated his function to the Assistant Commissioner, and in exercise of such power latter disposed of the matter by the order which is now sought to be revised. The scheme of Section 23 in fact does not provide for a second revision. Section 23(4)(cc) attaches finality to the first order passed in revision as indicated above. It has been submitted that the power delegated was sought to be exercised, because the delegator does not denude his original power. This submission has no force because the Commissioner has not initiated the proceeding for hearing the matter afresh in terms of power conferred under Rule 79. The Commissioner could not have done this after disposal of the matter finally by the delegated authority, and the order has assumed finality. Even if the Commissioner would have initiated the proceeding for hearing the matter afresh, it would have amounted to an attempt to review of his own*



*order because the delegated authority had exercised power of revision by the delegator, i.e., the Commissioner. This position has been elaborately dealt with by this Court in J.K. Corp. Limited Vrs. Sales Tax Officer, Koraput-II Circle, Rayagada, (1999) 115 STC 681 = 1998 (II) OLR 546.”*

9.3. Taking cue from the above exposition of law, it is abundantly manifest that the Additional Commissioner having passed order in *suo motu* revision under Section 23(4)(a) read with Rule 80, the Commissioner could not re-initiate the proceeding invoking said provision. In view of clause (d) to sub-section (4) of Section 23, it is untrammelled position that the Commissioner is restrained from delegating the power of appeal envisaged under item (ii) of clause (c) of sub-section (4) of Section 23 to subordinate authorities enumerated under Rule 3 read with Section 3, but for certain condition. Therefore, necessary corollary would be that the Commissioner has the jurisdiction to be appellate authority against the order of revision passed by any other person appointed under Section 3(3) of the OST Act read with Rule 3 of the OST Rules.

9.4. The petitioner, though is aware of the above legal position, has filed the present writ petition with a view to drag on the proceedings on the one hand and to postpone the payment of tax for a considerable period.



**10.** Since the Commissioner has delegated the power of revision under Section 23(4)(a) of the OST Act, whether the Additional Commissioner has seemingly exercised his power of revision as delegated coupled with the question whether twin conditions as envisaged under Rule 80 of the OST Rules are satisfied, are the domain of the appellate authority vested with power under Section 23(4)(c) of the OST Act. In addition thereto, any other ground(s) that may also be urged by the petitioner, if it so desires. As is revealed from the averments contained in the writ petition, the petitioner has sought to raise factual dispute touching liability as to whether “fixed monthly charges/rentals” could be comprehended within the fold of Article 366(29A) of the Constitution of India read with Section 2(g) of the OST Act.

*10.1.* Delving into merit of the matter at this stage would be preposterous. From the arguments advanced by learned counsel for the sides it seems that the emphasis is laid on irregular assumption of jurisdiction, as no dispute is raised that the Additional Commissioner lacks jurisdiction being delegate of the Commissioner to exercise power under Section 23(4)(a) of the OST Act.

*10.2.* In *Arun Kumar Vrs. Union of India*, (2007) 1 SCC 732 the concept of ‘jurisdictional fact’ has been discussed in the following terms:



“74. A ‘jurisdictional fact’ is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. **A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a Court, a Tribunal or an Authority. It is the fact upon which an administrative agency’s power to act depends. If the jurisdictional fact does not exist, the Court, Authority or Officer cannot act. If a Court or Authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari.** The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In Halsbury’s Laws of England, it has been stated:

‘Where the jurisdiction of a Tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior Tribunal, a challenge is made to its jurisdiction, the Tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive.’

76. **The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a Court of limited jurisdiction.”**

10.3. In *Carona Ltd. Vrs. Parvathy Swaminathan and Sons* (2007) 8 SCC 559, it has been reiterated as follows:



“27. Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a ‘jurisdictional fact’. **If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act.** It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate court or an inferior tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.

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29. **But there is distinction between ‘jurisdictional fact’ and ‘adjudicatory fact’ which cannot be ignored. An ‘adjudicatory fact’ is a ‘fact in issue’ and can be determined by a Court, Tribunal or Authority on ‘merits’, on the basis of evidence adduced by the parties.** It is no doubt true that it is very difficult to distinguish ‘jurisdictional fact’ and ‘fact in issue’ or ‘adjudicatory fact’. Nonetheless the difference between the two cannot be overlooked.”

10.4. Aforesaid dicta of the Hon’ble Supreme Court of India clarifies the position that where an adjudicatory process is involved on merits, then the only remedy open to an aggrieved is to go through the procedure provided under the enactment. Nonetheless, where there is absence of jurisdictional fact, the Authority cannot wrongly assume





existence of jurisdictional fact and proceed to decide a matter and in such eventuality, the order can be questioned by a writ of *certiorari*.

10.5. By 'jurisdiction' it is meant the extent of the power which is conferred upon the Court by its constitution to try a proceeding; its exercise cannot be enlarged because what the learned Judge calls an extraordinary situation 'requires' the Court to exercise it. See, *Raja Soap Factory Vrs. SP Shantharaj*, AIR 1965 SC 1449. Thus, 'jurisdiction' means authority to decide. Whenever a judicial or *quasi* judicial Tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for *certiorari* but are binding until reversed on appeal. Where a *quasi* judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion whether it is wrong in law or in fact. The question, whether a Tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature, and it is determinable 'at the commencement, not at the conclusion of the inquiry'. Thus, a Tribunal empowered to determine claims for compensation for loss of office has jurisdiction to determine all questions



of law and fact relating to the measure of compensation and the tenure of the office, and it does not exceed its jurisdiction by determining any of those questions incorrectly but it has no jurisdiction to entertain a claim for reinstatement or damage for wrongful dismissal, and it will exceed its jurisdiction if it makes an order in such terms, for it has no legal power to give any decision whatsoever on those matters. A Tribunal may lack jurisdiction if it is improperly constituted, or if it fails to observe certain essential preliminaries to the inquiry. But it does not exceed its jurisdiction by basing its decision upon an incorrect determination of any question that it is empowered or required to, has jurisdiction to determine. The strength of this theory of jurisdiction lies in its logical consistency. But there are other cases where Parliament when it empowers an inferior Tribunal to enquire into certain facts intended to demarcate two areas of enquiry, the Tribunal's findings within one area being conclusive and within the other area impeachable. 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 Tribunal has to try and the determination whether it exists or not is logically prior to the determination of the actual question which the Tribunal has to try. The 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 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. The characteristic attribute of a judicial act or decision is that it binds, whether it be right or wrong. An error of law or fact committed by a judicial or quasi judicial body cannot, in general, be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. These principles govern not only the findings of inferior Courts *stricto sensu* but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction; and provided that they keep within those limits, their decisions must be accepted as valid unless set aside on appeal. Even the doctrine of *res judicata* has been applied to such decisions. Aforesaid observations may be



found in *Ujjam Bai Vrs. State of Uttar Pradesh*, AIR 1962 SC 1621.

10.6. In *Commissioner of Income Tax, Chandigarh Vrs. Pearl Mech. Engg. & Foundry Works (P) Ltd.*, (2004) 4 SCC 597 following is the observation of the Hon'ble Supreme Court of India:

*“\*\*\* The word ‘jurisdiction’ implies the Court or Tribunal with judicial power to hear and determine a cause, and such Tribunal cannot exist except by authority of law. Jurisdiction always emanates directly and immediately from the law; it is a power which nobody on whom the law has not conferred it can exercise. In other words, ‘jurisdiction’ has reference to the power of the Court or Tribunal over the subject-matter, over the res or property in contest, and to the authority of the Court to render the judgment or decree it assumes to make. \*\*\*”*

10.7. This Court in *B.P. Enterprises Vrs. State of Odisha*, (2008) 18 VST 405 (Ori) made the following observation with regard to irregular or erroneous or illegal orders:

*“11. In Deepak Agro Foods Vrs. State of Rajasthan, (2008) 16 VST 454 (SC), a similar issue has been examined by the apex court and it has been held that assessment orders are not in the nature of judicial proceeding. Irregular assessment orders are curable but assessment orders passed without jurisdiction are null and void. The Supreme Court observed as under:*

*‘All irregular or erroneous or even illegal orders cannot be held to be null and void, as there is a fine*



*distinction between orders which are null and void and orders which are irregular, wrong or illegal. Where an authority makes an order which lacks inherent jurisdiction, such an order would be without jurisdiction, null and void ab initio, as the defect of jurisdiction of such authority goes to the root of the matter and strikes at his very authority to pass any order and such a defect cannot be cured even by consent of the parties. \*\*\**

*However, exercise of jurisdiction in a wrongful manner cannot result in a nullity<sup>4</sup> it is an illegality capable of being cured in duly constituted legal proceedings. Proceedings for assessment under a fiscal statute are not in the nature of judicial proceedings, like proceedings in a suit, inasmuch as the Assessing Officer does not adjudicate on a lis between an assessee and the State, and, therefore, the law on the issue laid down under the civil law may not stricto sensu apply to assessment proceedings.'*

*\*\*\**

- 18. Therefore, the law emerges that in case the authority is found to lack inherent/patent jurisdiction, the order becomes a nullity. However, in case there has been any illegality in following the procedure prescribed by law, the order remains merely illegal and would be curable.*

*\*\*\**

- 24. Before parting with the case, we would like to point out that everyday we are facing the assessment orders, in respect of the TIN dealers, passed by the assessing authority, circle, though such assessment*



*orders are in violation of the statutory provisions as can be passed only by assessing authority, range. Even if the dealer does not take any objection in this regard, it becomes the duty of the assessing authority himself to keep the jurisdictional issue in mind.”*

10.8. In *Central Potteries Ltd. Vrs. State of Maharashtra*, (1962) 13 STC 472 (SC) = (1963) 1 SCR 166 = AIR 1966 SC 932 it has been laid down that,

*“In this connection it should be remembered that there is a fundamental distinction between want of jurisdiction and irregular assumption of jurisdiction, and that whereas an order passed by an authority with respect to a matter over which it has no jurisdiction is a nullity and is open to collateral attack, an order passed by an authority which has jurisdiction over the matter, but has assumed it otherwise than in the mode prescribed by law, is not a nullity. It may be liable to be questioned in those very proceedings, but subject to that it is good, and not open to collateral attack.”*

10.9. Lack of jurisdiction strikes at the very root of the action/act and want of jurisdiction might vitiate proceedings rendering the orders passed and exercise thereof, a nullity. But a mere error in exercise of jurisdiction would not vitiate the legality and validity of the proceedings and the said order was valid unless set aside in the manner known to law by laying a challenge, subject to law of limitation. *Vide, Budhia Swain Vrs. Gopinath Dev*, (1999) 4 SCC 396 = (1999) 2 SCR 1189.





10.10. Aforesaid discussion takes this Court to consider the fact that in the matter at hand the revisional authority, Additional Commissioner, having invoked power under Section 23(4)(a) issued show cause notice and in pursuance thereof, he has passed detailed order in revision, against which alternative remedy of appeal is provided for. This Court, therefore, taking aid of enunciation of law as referred to *supra*, desists from exercising discretionary extraordinary jurisdiction conferred under Articles 226 and 227 of the Constitution of India.

10.11. This Court makes it clear that it has not expressed any view on the merit of the matter including jurisdictional issue so far as conditions spelt out under Rule 80 of the OST Rules as agitated by the counsel for the petitioner. The factual matrix as discussed hereinabove is for the purpose of deciding as to whether writ petition would be appropriate remedy in the present fact-situation of the case.

**11.** As the nuance of provisions contained in Section 23(4)(a) of the OST Act has already been judicially noticed by the Hon'ble Supreme Court of India as also this Court in the cases referred *supra*, at this juncture, therefore, observed that it is not a fit case for delving into such aspect again. Therefore, it is apposite to relegate the



petitioner to avail alternative remedy as available under the OST Act, if it is so advised.

11.1. In the event the petitioner prefers appeal against order dated 31<sup>st</sup> May, 2025 passed by the Additional Commissioner of State Tax under Section 23(4)(c) of the OST Act before the Commissioner, it is open for the petitioner to raise all the pleas that are available to it.

**12.** In the result, the writ petition is disposed of with the above observation(s) and the pending Interlocutory Application(s), if any, shall also stand disposed of accordingly, but in the circumstances there shall be no order as to costs.

**(HARISH TANDON)**  
**CHIEF JUSTICE**

**(MURAHARI SRI RAMAN)**  
**JUDGE**