

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 3229 of 2020

with

W.P.(T) No. 3246 of 2020

State of Jharkhand, through the Deputy Commissioner of Commercial Taxes (now known as Deputy Commissioner, State Taxes), West Circle, Ranchi namely, Sri Gouri Shankar Kapardar, aged about 58 years, son of late Purn Chandra Kapardar, resident of Muharmtoli, Booty More, having the office near Civil Court Campus, Kutchery, Ranchi, P.O. – G.P.O., P.S. Kotwali, District Ranchi. ... **Petitioner** (in both the writ petitions)

Versus

M/s. Ram Kripal Singh Construction Pvt. Ltd., a company registered under the Companies Act, 1956, having its Head Office at 702, 7th Floor, Panchwati Plaza, Kutchery Road, Ranchi, P.O. – G.P.O., P.S. Kotwali, District Ranchi. ... **Respondent** (in both the writ petitions)

CORAM: **Hon'ble Mr. Justice Rongon Mukhopadhyay,**
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. Mrinal Kanti Roy, Govt. Advocate-III.
For the Respondent : Mr. Sumeet Gadodia, Advocate,
Mrs. Shilpi Sandil Gadodia, Advocate,
Mr. Ranjeet Kushwaha, Advocate

CAV on 04.12.2023

Delivered on 15 .01.2024

J U D G M E N T

Per Deepak Roshan, J: Heard learned counsel for the parties.

2. Both the writ petitions involve identical question of facts and law and the same were tagged together to be heard simultaneously.

3. W.P.(T) No. 3229 of 2020 pertains to Assessment Year 2014-15 and W.P.(T) No. 3246 of 2020 pertains to Assessment Year 2013-14. Instant writ applications have been filed by Petitioner-State of Jharkhand primarily assailing the order dated 28.02.2020 passed by the Commercial Taxes Tribunal in Revision Case No. RN 31 of 2019 and Revision Case No. RN 30

of 2019; wherein the learned Tribunal has allowed the revision applications filed by Respondent No.1-M/s Ram Kripal Singh Construction Pvt. Ltd., and in consequence thereof, has quashed and set aside the orders both dated 25.04.2019 passed in C.C (S) Case No. 301(A) of 2019 and C.C.(S) Case No. 301 of 2019 passed by the Additional Commissioner of Commercial Taxes, Jharkhand, Ranchi.

4. The brief facts of both the cases as detailed in both the writ applications are identical to each other and learned State Counsel, during arguments, referred to the facts of W.P.(T) No. 3246 of 2020; thus, the said case is treated as lead case and the facts thereof are being noted herein-below in brief.

5. Respondent No.1- M/s Ram Kripal Singh Construction Pvt. Ltd. is primarily engaged in the business of carrying out works contract in the State of Jharkhand and other States and is duly registered under the provisions of the Jharkhand Value Added Tax Act, 2005 (hereinafter referred to be referred as 'JVAT Act, 2005').

6. For the Assessment Year 2013-14, an assessment order dated 04.01.2017 was passed by the Assessing Officer i.e., Deputy Commissioner of Commercial Taxes, West Circle, Ranchi and, pursuant to the assessment order, an excess Demand Notice was issued dated 04.01.2017, wherein a sum of Rs. 1,41,73,237/- was determined to be refundable to Respondent No.1.

7. Similarly, for the Assessment Year 2014-15, assessment order dated 10.01.2017 was passed by Deputy Commissioner of Commercial Taxes, West Circle, Ranchi and even in the said year, an excess Demand Notice dated 16.01.2017 was issued to Respondent No.1 showing payment of excess tax of a sum of Rs. 6,71,54,829/-.

8. In view of the admitted fact that during Assessment Years 2013-14 and 2014-15, excess tax payment was determined for an amount of Rs. 1,41,73,237/- and Rs. 6,71,54,829/- respectively, Respondent No.1, in respect of both the years, on 27.05.2017, filed statutory applications for refund under Section 52 of JVAT Act, 2005 read with Rule 19 of JVAT Rules, 2006 before the Joint Commissioner of Commercial Taxes (Administration), Ranchi Division, Ranchi (hereinafter referred to as 'J.C.C.T. (Administration)).

9. In terms of Section 52 read with Section 53, such application for refund is required to be processed by the department concerned within a period of six months and any delay in processing the application for refund attracts statutory interest payable @ 6% per annum beyond the period of six months' delay in processing the application for refund.

10. Pursuant to refund applications filed by Respondent No.1, Deputy Commissioner of Commercial Taxes, West Circle, Ranchi (for short 'D.C.C.T.')

verified the said application for refund and vide its Letter No. 1044 dated 07.12.2018, forwarded both the applications for refund to J.C.C.T. (Administration) for its consideration, along with comment that refund should be granted.

11. However, J.C.C.T. (Administration), pursuant to the communication made by Assessing Authority, instead of granting refund to Respondent No.1, directed the Assessing Authority, vide its Letter No. 944 dated 12.12.2018, to initiate review proceedings against the original Assessment Orders, being order dated 04.01.2017 for the Assessment Year 2013-14 and order dated 10.01.2017 for the Assessment Year 2014-15. Said review proceedings were directed to be initiated under Section 81 of the JVAT Act,

2005 read with Rule 54(3) of JVAT Rules, 2006 after obtaining due sanction from the Commissioner of Commercial Taxes, Jharkhand, Ranchi, as was mandated under Rule 54 of JVAT Rules. Accordingly, D.C.C.T., West Circle, Ranchi applied for sanction before the Commissioner of Commercial Taxes, Jharkhand, Ranchi for initiation of review proceedings, which was duly accorded by the Commissioner of Commercial Taxes vide its common order contained in Memo No. 66 dated 07.01.2019, wherein permission was granted to D.C.C.T. i.e. original Adjudicating Authority to initiate review of the original assessment orders.

12. After obtaining due sanction from the Commissioner of Commercial Taxes, the D.C.C.T., West Circle, Ranchi initiated review proceedings and issued notices to Respondent No.1 attaching the grounds on which review proceedings were initiated for review of the original assessment orders of both the financial years.

13. Respondent-assessee appeared before the D.C.C.T., West Circle, Ranchi i.e. the Adjudicating Authority and filed its detailed reply questioning the very initiation of the review proceedings.

14. The Adjudicating Authority, pursuant to reply filed by Respondent-assessee, after verification of the records including the issues on which review proceedings were initiated, came to a conclusion that in view of limited scope of review jurisdiction, original assessment orders dated 04.01.2017 and 10.01.2017 cannot be reviewed and, accordingly, review proceedings were dropped vide order dated 13.03.2019.

15. Despite dropping the review proceedings, D.C.C.T. West Circle, Ranchi submitted a letter/application dated 18.03.2019/19.03.2019 under Section 80 of the JVAT Act before Additional Commissioner of Commercial

Taxes for revision of the original assessment orders dated 04.01.2017 and 10.01.2017 for the Assessment Years 2013-14 and 2014-15 respectively.

16. Said letter/application was considered by Additional Commissioner of Commercial Taxes as Revision Application and one single Revision application being Revision Case No. C.C.(S) 301 of 2019 was registered by Additional Commissioner of Commercial Taxes and, accordingly, on 19.03.2019 itself, notices were issued to Respondent-assessee intimating the date of hearing in the revision petition, on 25.03.2019.

17. On 25.03.2019, Respondent No.1-assessee appeared before the court of Additional Commissioner of Commercial Taxes in aforesaid C.C.(S) Case No. 301 of 2019 pertaining to two assessment years 2013-14 and 2014-15 and filed application stating, inter alia, that Respondent-assessee has not received copy of the revision application filed by D.C.C.T. and, accordingly, prayed for supply of copy of the revision application in order to enable the Respondent-assessee to file its detailed reply in the said revision application. On the said date, even an Interlocutory application was filed before Additional Commissioner of Commercial Taxes raising the issue of maintainability of the revision application filed by D.C.C.T., West Circle, Ranchi. The objections were raised on the following grounds:-

- (i) *Two separate assessment orders cannot be challenged by filing single revision application by D.C.C.T.*
- (ii) *Revision application has been filed by way of 'Forum shopping' especially when, in respect of the same subject matter, review proceedings were initiated against Respondent-assessee and without even communicating the order in the review proceedings, suo-motu revision petition has been filed.*
- (iii) *Jurisdiction of the Additional Commissioner of Commercial Taxes to entertain a revision application under Section 80(4) of the JVAT Act was challenged on the ground that, earlier, the Commissioner of Commercial Taxes itself granted sanction for initiation of review proceedings on the same set of grounds and, thus, its delegatee i.e. Additional Commissioner of Commercial Taxes, on the same set of grounds, cannot entertain a suo motu revision petition, which is barred by principles of 'nemo judex causa sua' i.e., 'no man shall be a Judge of his own cause'.*

(iv) *It was further contended in the Interlocutory application that if the Commissioner of Commercial Taxes and/or its delegatee i.e. Additional Commissioner of Commercial Taxes hear the revision application, the same would amount to a legal bias, as the said authority itself earlier granted permission for review to the Adjudicating Authority on the same set of grounds on which the order is sought to be revised in suo motu revision application.*

18. On 25.03.2019, Additional Commissioner, Commercial Taxes, despite such specific objections being raised regarding the very maintainability of revision application, only verbally directed the D.C.C.T., West Circle, Ranchi to communicate the order passed in review proceedings to Respondent No.1 and also to supply copy of the documents and/or the application for revision, which was submitted in the form of letter, to Respondent No.1 and fixed the next date of hearing on 01.04.2019.

19. On 01.04.2019, Respondent-assessee submitted its detailed reply to *suo motu* revision application and sought time for detailed arguments in the matter, but on the said date itself, Judgment was reserved by the Additional Commissioner.

20. Thereafter, on 25.04.2019, Additional Commissioner, Commercial Taxes passed order in respect of revision petition filed by D.C.C.T. West Circle, Ranchi and although only one revision application was filed for Assessment Years 2013-14 and 2014-15, Additional Commissioner, in its order, numbered the revision application pertaining to the period 2013-14 as Revision Case No. C.C.(S) 301 of 2019; and the purported revision petition for Assessment Year 2014-15 was numbered as Revision Case No. C.C.(S) 301(A) of 2019.

21. The Additional Commissioner of Commercial Taxes, in its order, recorded that it has perused the assessment records and from perusal of the assessment records, it was of the opinion that assessment orders were prejudicial to the interest of revenue; and, by recording the aforesaid ground, Additional Commissioner held that assessment proceedings require further detailed consideration by the Adjudicating Authority and, accordingly, set aside the original assessment orders and remanded the matters back to D.C.C.T., West Circle, Ranchi for re-consideration of the issues involved and for passing of the orders afresh.

22. Respondent No.1-assessee, being aggrieved by aforesaid order passed by Additional Commissioner, Commercial Taxes, preferred statutory

revision applications before Commercial Taxes Tribunal, Jharkhand, Ranchi, which were registered as Revision Case No. RN 30 of 2019 (for Assessment Year 2013-14) and Revision Case No. RN 31 of 2019 (for Assessment Year 2014-15).

23. The learned Tribunal, Jharkhand, vide its impugned Judgment and order dated 28.02.2020 passed in aforesaid revision petitions, has allowed the revision applications; and in consequence thereof, the order dated 25.04.2019 passed by Additional Commissioner in Revision Case Nos. C.C.(S) 301 of 2019 and C.C.(S) 301(A) of 2019, was set aside restoring the original assessment orders dated 04.01.2017 and 10.01.2017 for the Assessment Years 2013-14 and 2014-15 respectively.

24. Being aggrieved by the orders passed by Commercial Taxes Tribunal, Jharkhand, the State of Jharkhand, through the Deputy Commissioner of Commercial Taxes, West Circle, Ranchi preferred the present writ applications being W.P.(T) No. 3229 of 2020 and W.P.(T) No. 3246 of 2020, under Article 226 of the Constitution of India.

25. Mr. Mrinal Kanti Roy, learned Govt. Advocate-III, appearing for the State of Jharkhand has assailed the orders passed by Commercial Taxes Tribunal, Jharkhand by contending, inter alia, that orders passed by Commercial Taxes Tribunal are without due application of mind and without considering statutory provisions under the JVAT Act, 2005.

26. It has been contended that Petitioner-D.C.C.T., West Circle, Ranchi, initially initiated review proceedings under Section 81 of the JVAT Act against the original assessment orders, but rightly vide order dated 13.03.2019, dropped the said review proceedings as the scope of review jurisdiction was only limited to clerical correction or error appearing in the case records, whereas, the documents on record which were utilized for passing assessment orders, required re-consideration of various issues, and, it is for the said reason that D.C.C.T. preferred revision application before Additional Commissioner of Commercial Taxes, Jharkhand.

It has been submitted that J.C.C.T. (Administration), Ranchi Division, Ranchi, being the superior officer of the D.C.C.T. West Circle, vide its letter no. 944 dated 12.12.2018, while considering the refund applications of Respondent No.1, made certain observations regarding correctness and propriety of the original assessment orders and directed for

re-consideration of the original assessment orders, which led to initiation of review proceedings by D.C.C.T., but since the scope of review proceeding by D.C.C.T. was limited, after dropping the review proceedings, revision application was preferred before Additional Commissioner of Commercial Taxes, Jharkhand and there was no illegality in the same.

27. Further, while referring to Section 2(ix) of the JVAT Act, 2005, it has been contended that the term 'Commissioner' defined under the JVAT Act means the Commissioner of Commercial Taxes or Additional Commissioner of Commercial Taxes and, accordingly, in terms of Section 80(4) of the JVAT Act, revision application filed by D.C.C.T. before Additional Commissioner of Commercial Taxes was maintainable and could have been entertained by the said authority, which has been rightly entertained and, accordingly, order was passed vide order dated 25.04.2019 for passing de novo assessment orders in accordance with law.

28. It has been submitted that the learned Tribunal has committed grave error in setting aside the order passed by Additional Commissioner of Commercial Taxes, as said order was merely a remand order remanding the matters back to Adjudicating Authority for re-assessment. It was further submitted that even if, for the sake of argument, it is presumed that Additional Commissioner, Commercial Taxes lacks jurisdiction and power to entertain the revision application, the Tribunal ought to have remanded the matter back to Commissioner of Commercial Taxes in the interest of state revenue, but the Tribunal has not remanded the matters back and has given its seal of finality to the original assessment orders, which is clearly prejudicial to the interest of revenue.

29. Per contra, Mr. Sumeet Gadodia, assisted by Ranjeet Kushwaha, Advocate has opposed the writ applications filed by State of Jharkhand and has supported the orders passed by Commercial Taxes Tribunal by contending, inter alia, that the orders passed by the learned Tribunal are reasoned and speaking orders after due examination of the relevant records of the case and statutory provisions as contained under the JVAT Act and Rules; and the same are not liable to be interfered by this Hon'ble Court in exercise of the powers of judicial review.

30. It has been submitted that this Court, while exercising the power of judicial review, would not sit in appeal against the order of Commercial

Taxes Tribunal and only if the order, on bare reading of it, is found to be perverse, or not in accordance with law, this Hon'ble Court would exercise its jurisdiction to interfere with the said order. Merely because two views are possible and Commercial Taxes Tribunal has adopted one view, is not a ground for interfering with the orders passed by Commercial Taxes Tribunal.

31. It has been further contended that Petitioner-D.C.C.T., West Circle, Ranchi has indulged itself in 'Forum shopping' in as much as, earlier, pursuant to direction given by J.C.C.T. (Administration) vide letter no. 944 dated 12.12.2018, D.C.C.T. initiated review proceedings under Section 81 of the JVAT Act, 2005 read with Rule 54(3) of the JVAT Rules, 2006. It has been submitted that in terms of Rule 54 of the JVAT Rules, D.C.C.T., in order to seek review of its order and/or its predecessor in interest, beyond the period of one year from the date of passing of the order, has to seek approval/sanction from Commissioner of Commercial Taxes and, accordingly, D.C.C.T. applied for sanction of review on the same set of grounds on which, subsequently, revision application was filed by it before Commissioner of Commercial Taxes. The Commissioner of Commercial Taxes, vide its order contained in Memo No. 66 dated 07.01.2019, accorded sanction for review of the assessment orders on the same set of grounds on which review application was filed. However, D.C.C.T. itself dropped the review proceedings vide order dated 13.03.2019 and, on the same set of grounds, filed revision application before Additional Commissioner of Commercial Taxes seeking suo motu revision of the original assessment orders, which was not maintainable and would amount to 'Forum shopping' by the said authority.

32. It has been further submitted that Additional Commissioner, being a delegate of the Commissioner of Commercial Taxes, could not have exercised its power of *suo motu* revision, especially when the Commissioner of Commercial Taxes, on the same set of grounds, granted permission for initiation of review proceedings to D.C.C.T., West Circle, Ranchi and the D.C.C.T., on the same set of grounds, held that review proceedings are not maintainable.

It has been vehemently contended that hearing of the revision application by the same said authority, which had earlier granted sanction for initiation of review proceedings, would be barred by the principles of *nemo*

judex causa sua’ i.e., ‘no man shall be a judge for his own cause’. Reliance in this regard has been placed to the decision of this Hon’ble Court in the case of *‘M/s. Ram Mineral Company Vs. Union of India & Ors.*, reported in **2014 SCC OnLine Jhar 2816**.

33. It has been further vehemently contended that Writ Petitioner-D.C.C.T., in a very casual manner, in a form of a letter, filed suo motu revision petition before Additional Commissioner, Commercial Taxes. It has been submitted that along with the said letter, neither assessment orders nor assessment records were annexed and even one revision petition was filed challenging two separate assessment orders pertaining to Assessment Years 2013-14 and 2014-15. It has been further submitted that not only that the revision application was filed in a casual manner, but said revision application was dealt with by Additional Commissioner in undue haste and without following any procedure known to law.

34. It has been further submitted that Additional Commissioner, Commercial Taxes, in its order dated 25.04.2019, wherein it has set aside the original assessment orders, has recorded that it has perused the records of assessment proceedings and, on being satisfied, it is of the opinion that assessment orders are prejudicial to the interest of revenue.

It has been specifically contended that no records, whatsoever, was available with Additional Commissioner, Commercial Taxes, and, without any records either called for and/or produced by D.C.C.T., West Circle, it has been wrongly recorded in the order that records have been perused. Reference has been invited to the finding of fact recorded by Commercial Taxes Tribunal in Paras 26, 27, 28 and 31 of the impugned Judgment, wherein, Commercial Taxes Tribunal has specifically recorded that Additional Commissioner, Commercial Taxes, Jharkhand committed grave error by mentioning in its order that it has perused the records of review proceedings including assessment orders, which were not available on record before it.

35. It has been further submitted that not only that Additional Commissioner, Commercial Taxes has passed the order dated 25.04.2019 in utter disregard to the statutory provisions contained under Section 80(4) of JVAT Act, but even the said order has been passed in a hasty manner without granting any effective opportunity of hearing to Respondent-assessee. By

referring to following dates, it has been submitted that entire revision application was disposed of by Additional Commissioner within a period of 14 days itself and from the dates itself it would be evident that Additional Commissioner, who was scheduled to retire from service on 30th April, 2019, in a hasty manner, actuated with bias, has passed the order dated 25.04.2019 without granting any effective opportunity of hearing to Respondent No.1. Mr. Gadodia referred few important dates which are as under:-

- 18.03.2019** : Alleged common revision application bearing C.C.(S) 301 of 2019 was filed by D.C.C.T., West Circle, Ranchi for the assessment years 2013-14 and 2014-15.
- 19.03.2019** Common Notice bearing no. 1126 dated 19.03.2019 was issued by the A.C.C.T. fixing date of hearing of Revision application on 25.03.2019 without even furnishing copy of the revision application to Respondent No.1.
- 25.03.2019** Respondent No.1 appeared and filed application requesting for copy of revision application along with relied upon documents and prayed for 30 days' time for filing its reply.
- 25.03.2019** Respondent No.1 further filed interlocutory application raising preliminary objection regarding maintainability of revision application.
Despite time being sought for 30 days for filing reply to the revision application, only 6 days' time was given and next date was fixed on 01.04.2019.
- 01.04.2019** On 01.04.2019, Respondent No.1 submitted its detailed reply and further sought time for detailed arguments in the matter. However, on the said date itself, arguments were concluded and Judgment was reserved.

36. By placing reliance upon the Judgment of this Court in the case of '*Om Metals Ltd. Vs. Union of India & Ors*, reported in (2017) SCC OnLine Jhar 2680, it has been contended that the order passed by Additional Commissioner was a non-speaking order and without application of mind and the same has been rightly set aside by Commercial Taxes Tribunal.

37. It has been further contended that review proceedings and/or revision proceedings, which were initiated by Petitioner-D.C.C.T. were merely on the dictate of the superior authority-J.C.C.T. (Administration), when refund applications of Respondent No.1 were being considered; and, initiation of said proceedings on the external dictate was itself void ab initio and not maintainable in the eye of law. By referring to *Para 44* of the Judgment passed by this Court in the case of *Rungta Mines Ltd. Vs. State of Jharkhand, reported in 2023 SCC OnLine Jhar 1188 : (2023) 118 GSTR 87*, it has been contended that assessment orders create a valid statutory right in favour of Respondent No.1, especially when the assessment orders were

followed by excess Demand Notices conferring refund upon Respondent No.1 and initiation of revision proceedings is to be strictly in accordance with the statutory provisions of law, and, it has been rightly held by Commercial Taxes Tribunal that the very initiation of revision proceedings by Writ Petitioner-D.C.C.T., West Circle, Ranchi before Additional Commissioner of Commercial Taxes was not maintainable and, accordingly, no interference was required in the orders passed by Commercial Taxes Tribunal.

38. We have heard learned counsels for the rival parties and have examined in detail the original assessment orders, revision petition filed by Writ Petitioner-D.C.C.T., order passed by Additional Commissioner and orders passed by Commercial Taxes Tribunal, Jharkhand, Ranchi.

39. From the facts of the case, it transpires that original assessment orders pertaining to the period 2013-14 and 2014-15 were passed by Assessing Authority on 04.01.2017 and 10.01.2017 respectively. An examination of original assessment orders, which has been placed extensively by the counsel of Respondent-assessee before us, it would transpire that original Adjudicating Authority i.e. predecessor in interest of the Writ Petitioner-D.C.C.T. has examined the books of account in detail, respective ledgers, share account, etc. including expenses relating to execution of works contract, at the time of passing of the assessment orders. A perusal of the assessment orders would reveal that original assessment orders have been passed by examining each and every expenses incurred relating to works contract, like labour, services and other like charges statutorily qualified for deduction from gross turnover for determining the taxable value of transfer of property in goods in accordance with the Judgment of Hon'ble Supreme Court in the case of *Gannon and Daunkerley & Co. Vs. State of Rajasthan, reported in (1993) 1 SCC 364*.

40. The assessment orders passed were also in terms of Section 9(4)(c) of the JVAT Act read with Rule 22(1)(d) of the JAVAT Rules; and, pursuant to aforesaid assessment orders, refund has accrued to Respondent-assessee for the Assessment Year 2013-14 for a sum of Rs. 1,41,73,237/- and for the Assessment Year 2014-15 for a sum of Rs. 6,71,54,829/-. The assessee, thereafter, pursuant to issuance of excess Demand Notices, applied for refund, which was required to be processed in terms of Section 52(1) of

JVAT Act read with Rule 19(1)(d) and 19(2) of JVAT Rules, which, for the sake of ready reference are quoted herein-below:-

“52. *Refund.—(1) Subject to other provisions of this Act and the Rules made thereunder, the prescribed authority shall, refund to a dealer the amount of tax, penalty and interest, if any paid by such dealer in excess of the amount due from him.”*

Rule 19(1)(d) of JVAT Rules:

“19. *Refund and Provisional Refund.—(1) For the purposes of Section 52 and 53, the following shall be the prescribed authority:--*

(a) xxx xxx xxx

(d) *The Joint Commissioner of Commercial Taxes (Administration), if the amount to be refunded exceeds, Rs. 1,00,000/-.”*

(2) (a) *The claim for refund under Section 52 of the Act, shall be made by a VAT dealer in Form JVAT 206, within ninety days from the date of receipt of excess demand notice.*

Provided the Joint Commissioner of Commercial Taxes (Administration of the concerned division, on application, may condone the delay for filing the claim of refund.”

41. Further, Rule 19(6) prescribes that refund shall be made within 60 days after filing of refund application. However, in the present case, after a lapse of more than 12 months from the date of refund application by the assessee, although favourable recommendations were made by the Writ Petitioner-D.C.C.T. for granting refund statutorily due to the assessee, the prescribed refunding authority i.e. J.C.C.T. (Administration) (Respondent No.4), without citing any reason, vide its letter no. 944 dated 12.12.2018, directed for review of the assessment orders under Section 81 of the JVAT Act, read with Rule 54(3) of JVAT Rules, by merely recording, inter alia, that certain issues incidental to non-taxable purchases/expenses were not considered at the time of original assessment orders.

42. It would be profitable at this stage to quote provisions of Section 81 of the JVAT Act and Rule 54 of JVAT Rules, which read as under:-

“81. *Review.-- Subject to such rules as may be made by the State Government under this Act any authority appointed under Section 4 or the Tribunal may review any order passed by it, if such review is, in the opinion of the said authority or Tribunal, as the case may be, necessary on account of a mistake which is apparent from the record;*

Provided that no such review, if it has the effect of enhancing the tax or penalty or both, or of reducing a refund shall be made unless the said authority or the Tribunal, as the case may be, has given the dealer, or the person concerned, a reasonable opportunity of being heard.”

Rule-54:-

“54. *Review.—(1) When any authority appointed under Section 4 reviews under Section 81 any order passed under the Act, it shall record reasons for doing so.*

(2) *Save with the previous sanction of the Commissioner or an authority specially authorized by him in this behalf no authority appointed under Section 4, other than the Commissioner, shall review any such order except before the expiry of twelve months from the date of passing of the order which is sought to be reviewed.*

(3) *Save with the previous sanction of the Commissioner or an authority specifically authorized by him in this behalf no authority appointed under Section 4, other than the Commissioner, shall review any order, which has been passed by any of its predecessors in office.*

(4) *Provided that no such review, if it has the effect of enhancing the tax or penalty or both, or of reducing a refund shall be made unless the prescribed authority gives a reasonable opportunity of being heard and for this purpose a notice in JVAT 302 shall be issued.”*

43. A bare perusal of the aforesaid provision of the Act and relevant rules would reveal that an authority appointed under JVAT Act may review its order, if in the opinion of the said authority, the order is necessary to be reviewed on account of a mistake which is apparent from the records of the case. Rules 54(2) and 54(3) specifically provide that proceeding for initiation of review beyond the period of one year or by the successor in interest of the officer who has passed the original order, shall not be initiated with the previous sanction of the Commissioner or the authority specially authorized by him in this behalf.

44. It is, subsequent to the direction issued by J.C.C.T. (Administration) vide Letter No. 944 dated 12.12.2018, D.C.C.T. filed application seeking permission from the Commissioner of Commercial Taxes for review of the assessment orders for the periods 2013-14 and 2014-15 under Section 81 of JVAT Act. The Commissioner of Commercial Taxes, vide its common order contained in Letter No. 66 dated 07.01.2019 (Annexure R-5) granted permission for initiation of review proceedings and further directed that review proceedings be completed within one month after granting due opportunity of hearing to the assessee.

45. It is pursuant thereto that review proceedings were initiated by Writ Petitioner-D.C.C.T. vide Notice dated 08.01.2019 for both the aforesaid years and, in the said Notice, Respondent-assessee was directed to explain as to why certain deductions towards non-taxable charges/expenses in terms of Section 9(4)(c) of JVAT Act be not added back in the taxable turnover of the assessee.

46. It is an admitted fact that Respondent No.1 duly appeared before the Assessing Authority in said review proceedings and filed detailed reply

submitting explanation in respect of all the issues regarding deduction of non-taxable charges/expenses for arriving at the taxable value of works contract and prayed for dropping of the review proceedings.

47. Review proceedings were dropped by Assessing Authority vide order dated 13.03.2019, but, interestingly, the Assessing Authority filed a letter before Additional Commissioner of Commercial Taxes requesting the said authority to initiate suo motu revision proceedings against original assessment orders for the years 2013-14 and 2014-15. Copy of the Memo and/or Letter by which request was made for initiation of suo motu revision proceedings has not been annexed by writ petitioner, but it is pursuant thereto, Additional Commissioner, Commercial Taxes initiated suo motu revision proceedings under Section 80(4) of the JVAT Act.

48. Section 80(4) of the JVAT Act, for the sake of ready reference, is quoted herein-under:-

*“80.Revision. (1) xxx xxx xxx
(4) Notwithstanding anything contained in sub-section (2), the Commissioner may, on his own motion, or on application call for and examine the records of any proceeding in which any order has been passed by any other authority appointed under Section 4, for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining the record and making or causing to be made such inquiry as he may deem necessary, pass such order as he thinks proper.*

Provided the Commissioner, on application for revision of any order of assessment of penalty of both passed by the prescribed authority under this Act, may direct such dealer/person to deposit a sum not exceeding 10% of the tax assessed of the penalty imposed of both.”

49. A bare perusal of Section 80(4) of JVAT Act would reveal that Commissioner may, on its own motion, or on an application, call for and examine the record of any proceeding for the purpose of satisfying himself as to the legality and propriety of any such order.

50. Thus, Section 80(4) of JVAT Act authorizes the Commissioner either *suo-motu* or on application, to call for and examine the records of any proceeding and, thus, in our opinion, even if a letter was filed by D.C.C.T. for initiation of *suo motu* revision proceeding, the Commissioner, on its own motion, could have treated the said letter as *suo-motu* revision proceeding and proceeded to examine the legality and propriety of any order which, in its opinion, was prejudicial to the interest of revenue.

51. However, the question which arises for consideration in the present set of writ applications is *‘whether the Commissioner and/or Additional*

Commissioner could have initiated suo motu revision proceeding on the same set of grounds on which, earlier, the said authority itself granted sanction for initiation of review proceedings by the adjudicating authority’.

As already mentioned above, the Commissioner of Commercial Taxes granted sanction vide order dated 07.01.2019 to the adjudicating authority to initiate review proceedings against original assessment orders. The adjudicating authority initiated review proceedings against original assessment orders and after initiating review proceedings, on examination of the detailed documents, etc., itself held that the case is not reviewable as there is no error apparent from the records of the case.

Under said circumstances, the question, thus, arises as to whether said authority, who itself dropped the review proceedings on the same set of facts, could have approached the Commissioner of Commercial Taxes for initiation of *suo motu* revision proceedings on the same set of facts. In our opinion, it is not a proper course of action to be adopted in approaching the Commissioner of Commercial Taxes for initiation of *suo motu* revision proceeding, on its own motion, on the same set of facts in respect of which Commissioner of Commercial Taxes itself granted sanction for initiation of review proceedings.

52. Under the scheme of JVAT Act, there is statutory provision for appeal and statutory provision of revision before Commercial Taxes Tribunal and, if the department was not satisfied with the original adjudication order and/or the order by which review proceeding was dropped, it was open for the department including Commissioner to direct the competent authority to prefer statutory Appeal and/or statutory Revision before the competent authority in terms of Section 79 and 80(1) of the JVAT Act. However, in our opinion, it was not open for the Revenue particularly, Additional Commissioner, Commercial Taxes to initiate *suo-motu* revision proceeding, that too, on the mere filing of a letter by writ petitioner-DCCT.

53. That apart, from bare perusal of Section 80(4) of the JVAT Act, it would transpire that the Commissioner may, on its own motion, “call for and examine the records of any proceeding in which any order has been passed.” In the present case, from the records of the proceeding of Additional Commissioner, it transpires that although Additional Commissioner has recorded in its order that he has perused the records of the assessment

proceedings, but there is no such evidence to that effect available in the records.

54. That apart, Commercial Taxes Tribunal, in its judgment, vide paras- 26, 27, 28 and 31, specifically held that Additional Commissioner, Commercial Taxes, Jharkhand, Ranchi committed grave error by mentioning, inter-alia, that it has perused the records of the assessment proceedings, which were not available on record before him. For the sake of ready reference, relevant paragraphs of the judgment of Tribunal are quoted herein under:-

“26. In Revision Case no. RN 31 of 2019, it has been emphasized by the learned Counsel for the Petitioner at Para 42 that the learned Additional Commissioner of Commercial Taxes, Jharkhand has passed the Revisional Order without even summoning for Lower Court Records and copies of lower court records were not produced before the Revisional Court at the time of hearing of the Revision Application. Even copy of the assessment order was not annexed along with the Revision Application and the said assessment order was only brought on record by the petitioner at the stage of filing of reply before the Additional Commissioner of Commercial Taxes, Jharkhand.

27. It has also been asserted by the learned Counsel for the Petitioner at Para 42 that one of primary contention of the respondent no. 4 was that certain claim for deduction from the taxable turnover of the petitioner was allowed without there being any adequate documents on record in that regard in the assessment order. In view of said contention raised by Respondent no. 4 it was absolutely necessary for the learned Additional Commissioner of Commercial Taxes, Jharkhand to summon Lower Court records to further verify the said facts and also to give opportunity to the petitioner in that regard. However, no opportunity whatsoever was given to the petitioner in that regard nor the lower court records were summoned and merely on surmises and conjectures and on mere asking of the Assessing Authority, original assessment order has been set aside.

28. However, neither any counter affidavit was filed on behalf of the State rebutting the assertion of the Petitioner made in above Para 42 and 43 of the Revision nor any contrary evidence was produced on behalf of the State regarding to the point raised on behalf of the Petitioner.

31. Therefore it is evident that learned Additional Commissioner of Commercial Taxes, Jharkhand, Ranchi committed grave error by mentioning to have perused the record of Review Petition which was not available on record before him.”

55. At this stage, it is pertinent to indicate that the jurisdictional fact of assuming jurisdiction under Section 80(4) of the JVAT Act by Commissioner of Commercial Taxes is calling for records of proceeding pertaining to any order and, thereafter, satisfying itself that said order requires interference by the said authority.

In the instant case, aforesaid jurisdictional fact itself is absent and the Additional Commissioner, merely on the strength of a letter written by DCCT, initiated *suo motu* revision proceedings without even calling for

records of the case and without even examining the orders in question. Thus, we are satisfied that finding given by the learned Tribunal that Commissioner has acted beyond the power conferred to it under Section 80(4) of the JVAT Act is in accordance with law and requires no interference by this Court.

56. It may be noted here that no Counter Affidavit was filed before Commercial Taxes Tribunal controverting the contention that Additional Commissioner has not called for the records of the original assessment proceedings while passing *suo motu* revisional order.

57. That apart, from the facts narrated hereinabove, it would transpire that Additional Commissioner has not only acted in utter defiance of the provisions of Section 80(4) of the JVAT Act, but has also acted in undue haste in disposing of the revision applications. Relevant dates pertaining to initiation of *suo-motu* revision proceedings have already been quoted by us earlier in the preceding paragraphs of this judgment, but, for the sake of ready reference, the same are quoted herein under again:-

18.03.2019 : *Alleged common revision application bearing C.C.(S) 301 of 2019 was filed by D.C.C.T., West Circle, Ranchi for the assessment years 2013-14 and 2014-15.*

19.03.2019 *Common Notice bearing no. 1126 dated 19.03.2019 was issued by the A.C.C.T. fixing date of hearing of Revision application on 25.03.2019 without even furnishing copy of the revision application to Respondent No.1.*

25.03.2019 *Respondent No.1 appeared and filed application requesting for copy of revision application along with relied upon documents and prayed for 30 days' time for filing its reply.*

25.03.2019 *Respondent No.1 further filed interlocutory application raising preliminary objection regarding maintainability of revision application.*

Despite time being sought for 30 days for filing reply to the revision application, only 6 days' time was given and next date was fixed on 01.04.2019.

01.04.2019 *On 01.04.2019, Respondent No.1 submitted its detailed reply and further sought time for detailed arguments in the matter. However, on the said date itself, arguments were concluded and Judgment was reserved.*

58. From the above dates itself, it would be evident that Additional Commissioner of Commercial Taxes has acted in undue haste in disposing of the revision applications. It is trite law that if an authority acts in undue haste, malice in law is to be presumed and his action is deemed to be *mala fide*.

59. In view of the aforesaid facts and circumstances of the case, we are of the firm opinion that orders passed by Additional Commissioner, Commercial Taxes dated 25.04.2019 suffer from various illegalities and infirmities and the same have been rightly set aside by the Commercial Taxes Tribunal, Ranchi, vide its order dated 28.02.2020.

60. Having regard to the aforesaid discussions, we find no merit in the aforesaid writ applications and the writ applications are accordingly dismissed. Pending I.As., if any, stands disposed of. There shall be no order as to cost.

(Rongon Mukhopadhyay, J)

(Deepak Roshan, J)