IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No.3311of 2022
With
W.P.(T) 3528 of 2022

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M/s. Rungta Mines Limited, (a company registered under the Companies Act, 1956), having its office at Rungta House, Chaibasa, P.O. and P.S. Chaibasa, District West Singhbhum, through its Authorized Signatory, namely, Sakaldev Kumar, aged about 59 years, son of late Ayodhya Kumar, resident of E-2, Panchwati Nagar, Sonari, P.O and Sonari, District East Singhbhum (Jharkhand), PIN 831011. ….**PETITIONER**

-VERSUS-

1. The State of Jharkhand, through its Commissioner, Commercial Taxes Department, having its office at Commissionerate Building, Utpad Bhawan, Kanke Road, P.O. Ranchi University, P.S. Gonda, District Ranchi (Jharkhand), PIN 834008.
2. The Joint Commissioner of Commercial Taxes (Administration), Jamshedpur Division, Jamshedpur, having its office at Sakchi, P.O. and P.S. Sakchi, Town Jamshedpur, District East Singhbhum (Jharkhand).
3. Deputy Commissioner of Commercial Taxes, Chaibasa Circle, P.O. and P.S. Chaibasa, District West Singhbhum (Jharkhand)**. …..RESPONDENTS**

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CORAM: **HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Sumeet Gadodia, Advocate
Mrs. Shilpi Sandil Gadodia, Advocate
Mr. Ranjeet Kushwaha, Adavocate

For the Respondent-State: Mr. Rajiv Ranjan, Advocate General,
Mr. Ashok Yadav, Sr. S.C.-1,

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CAV On.04.07.2023 **Pronounced on.09.08.2023**

J U D G M E N T

1. Both these writ applications have been preferred by common Assessee-M/s. Rungta Mines Limited raising common question of law and were heard analogous with the consent of the parties and are being disposed of by this common Judgment.

2. The petitioner is primarily engaged in the business of manufacturing of Sponge Iron, M.S. Billets and TMT Bar and Writ Petition being W.P.(T) No. 3311/2022 pertaining to Assessment Year 2014-15 has been filed challenging re-assessment order dated 08.03.2022 passed by the Assessing Authority-Deputy

Commissioner of Commercial Taxes, Chaibasa Circle, wherein pursuant to an audit objection raised by the office of the Accountant General, Jharkhand, re-assessment order was passed in exercise of the power under Section 42(3) of the Jharkhand Valued Added Tax Act, 2005 (for short 'JVAT Act').

3. In writ Petition being W.P.(T) No. 3528 of 2022, Assessment Year involved is 2015-16 and in the said writ application also, pursuant to a similar audit objection raised by the office of the Accountant General, Jharkhand, re-assessment order dated 08.03.2022 has been passed by the Assessing Authority i.e., Deputy Commissioner of Commercial Taxes, Chaibasa Circle, Chaibasa which has been assailed by the writ petitioner.

4. The primary contention of the Petitioner is that re-assessment orders have been passed beyond the statutory period of limitation prescribed under the JVAT Act and Section 42(3) of the JVAT Act is only a provision which provides the circumstances under which re-assessment proceedings can be initiated, and it has been further contended that only enabling provision for carrying out re-assessment proceedings under the Act is contained under Section 40 read with Section 40(4) of the JVAT Act, which prescribes the period of limitation of five years and since the re-assessment orders have been passed beyond the statutory period, the same is without jurisdiction.

5. Since the facts involved in both the writ applications are identical, it would suffice to enumerate herein the brief facts pertaining to W.P.(T) No. 3311 of 2022 for the Assessment Year 2014-15. The Assessee, being a manufacturing unit of Sponge Iron, M.S. Billets/Ingots and TMT Bars, filed its statutory returns including statutory audit report in Form JVAT 409, wherein it declared its turnover of Rs. 351,52,40,458.23 and has shown a loss of Rs. 12,78,61,699.32 incurred by it on manufacture and sale of M.S. Ingots. The original assessment order was passed by the Assessing Officer i.e. Deputy Commissioner of Commercial Taxes, Chaibasa Circle, wherein turnover of the Petitioner was accepted and no dispute pertaining to loss suffered by the Petitioner was raised, and, admitted tax liability pursuant to said original assessment order dated 10.01.2017 was duly discharged by the Petitioner.

6. However, subsequently, an audit objection was raised vide Audit Objection No. 87/2019-20 by the office of the Accountant General, wherein by placing reliance upon Rule 25(4) of JVAT Rules 2006, it was suggested that since

Petitioner-unit sold M.S. Billets/Ingots below its cost price by selling it **at** a loss of Rs. 12.78 crores, the same was liable to be taxed @ 5% , as Rule 25(4) of JVAT Rules provides, inter alia, that if a dealer sells goods less than its cost price, differential amount i.e. loss amount would be leviable to tax at applicable rate.

7. Subsequent to aforesaid objection, Notice bearing No. 456 dated 19.06.2020 in statutory Form JVAT 302 was issued to the Petitioner initiating proceeding for reassessment. Said Notice was issued in exercise of power under Section 40(1) read with 42(3) of the JVAT Act. Petitioner appeared and filed its reply to the aforesaid Notice and raised a preliminary objection regarding very initiation of the re-assessment proceeding by placing reliance upon Section 40(1) read with Section 40(4) of the JVAT Act and contended that in view of limitation prescribed under the Act, the very initiation of re-assessment proceeding is *void ab initio*. Petitioner further contended that Rule 25(4) of JVAT Rules, 2006 would not apply in the case of Petitioner as the Petitioner is a manufacturing dealer and the said Rule applies only to a trading dealer. Petitioner further contended that, even otherwise, if Petitioner sold the goods at a price as reflected in its invoices, the State Government is incompetent to levy tax on the cost price of the goods of the Petitioner as it can only levy tax on actual sale consideration received by Petitioner, even though Petitioner suffered loss at the time of sale of goods.

However, Assessing Authority, vide its order dated 08.03.2022, passed re-assessment order levying tax on the amount of Rs. 12.78 crores @ 5%. Said order was passed under Section 42(3) of the JVAT Act read with Section 35(7) of the Act. So far as W.P.(T) No. 3528 of 2022 is concerned, in the said case, original assessment order was passed for the Assessment Year 2015-16 on 31.03.2019 and the notice pursuant to audit objection was issued on 19.05.2020 and re-assessment order was passed on 08.03.2022.

8. Mr. Sumeet Gadodia, learned counsel for the Petitioner, apart from arguing the jurisdictional issue of limitation, also requested us to examine the question of very leviability of tax on the amount of loss suffered by Petitioner by invoking Rule 25(4) of JVAT Rules, 2006, but we restricted him to confine the challenge in the writ application to the jurisdictional issue of limitation, as re-assessment order was under challenge and we thought it appropriate to only decide the jurisdictional question of limitation and to relegate the Petitioner back to avail alternative remedy of appeal in the event it does not succeed on jurisdictional issue.

Accordingly, arguments were confined to jurisdictional issue of limitation by both the parties.

9. Learned counsel for the Petitioner, while advancing his arguments on the question of limitation being a jurisdictional question, submitted that writ petition against a re-assessment order is maintainable even though there is an alternative remedy of appeal. In this regard, he has placed reliance upon a decision of the Hon'ble Apex Court in the case of ***State of Punjab & Ors. Vs. Bhatinda District Cooperative Milk Producers Union Ltd., reported in (2007) 11 SCC 363 (Para-23)***. Further, while placing reliance upon the order passed by Commercial Taxes Tribunal, Jharkhand it was contended that Tribunal while interpreting Section 40 read with Section 42(3) of the JVAT Act in respect of other Assessees have already held that Section 42(3) does not prescribe any period of limitation,

Learned counsel contended before us that since the highest authority under JVAT Act i.e. Commercial Taxes Tribunal has already interpreted Section 40 read with Section 42 of JVAT Act and has held that there is no period of limitation prescribed for initiation of re-assessment proceeding pursuant to audit objection, an alternative remedy of appeal/revision available to the Petitioner would be an exercise in futility as officials of Commercial Taxes Department would be bound by the decision of the Tribunal. On the basis of the above, by placing reliance upon the decisions of Hon'ble Supreme Court in the case of ***Onkarlal Nandlal Vs. State of Rajastha, reported in (1985) 4 SCC 404; and Lakshmi Ratan Engineering Works Vs. Assistant Commissioner, Sales Tax, Kanpur &Anr., reported in (1968) 1 SCR 505,*** it has been contended that the writ application ought be entertained by this Hon'ble Court.

10. Learned counsel for the petitioner further invited our attention to Article 265 of the Constitution of India and submitted that the constitutional embargo enshrined under Article 265 of the Constitution of India is both on levy and collection of tax without authority of law and the State is not permitted to extract any tax without following procedure laid down by law. It was submitted that JVAT Act contains a complete mechanism and lays down detailed procedure under which re-assessment proceeding can be initiated against an Assessee including the period of limitation. It was submitted that not only levy of tax but its collection should be in accordance with law and Section 42(3) of the JVAT Act is to be read with Section 40 of the said Act which is the only enabling provision for

initiation of re-assessment proceeding and, thus, the period of limitation of five years from the end of tax period, as prescribed under Section 40(4) of the JVAT Act, would be applicable even in respect of re-assessment proceeding which has been initiated pursuant to audit objection. Reference in this regard has been made to the decision of the Hon'ble Supreme Court in the case of ***Mafatlal Industries Ltd. & Ors. Vs. Union of India and ors. reported in (1997) 5 SCC 536 (Para-160)***.

11. Learned counsel brought to our notice the scheme of the JVAT Act which includes charging section, section pertaining to assessment, audit assessment, scrutiny assessment, re-assessment, etc. including provision of limitation under Section 40(4) of the Act, wherein it has been provided that no order of assessment/re-assessment can be passed after expiry of five years from the end of the tax period for which the proceedings relate. It has been submitted that instant proceedings relate to Assessment Year 2014-15 and 2015-16 and five years from the end of tax period for the Financial Year 2014-15 expired on 31st March, 2020 and for the Assessment Year 2015-16 the same expired on 31st March, 2021, but re-assessment orders have been passed on 08.03.2022, which is clearly beyond the period of limitation prescribed under the Act.

By placing extensive reliance upon the provisions of Section 42 of the JVAT Act, it was submitted that Section 42(1) and Section 42(2) contained 'non-obstante clause' extending the period of limitation prescribed under the Act for proceeding to assess and/or re-assess the tax payable by the dealer under certain circumstances/grounds. It has been submitted that there is no such non-obstante clause under Section 42(3) of the JVAT Act.

12. It has been brought to our notice that Section 42(1) of the JVAT Act enables the Assessing Authority to proceed to re-assess the tax payable by a dealer if pursuant to the Judgment or order passed by any Court or Tribunal which has become final, the prescribed authority is of the opinion that earlier order passed by it in respect of any dealer is erroneous or prejudicial to the interest of revenue being not in accordance with the ratio of a judgment delivered by any Court or Tribunal in a subsequent proceeding. It was submitted that Section 42(1) provided for an additional ground for initiation of re-assessment proceeding over and above the grounds on which re-assessment proceedings could have been initiated under Section 40(1) of JVAT Act and specifically provided, inter alia, that the period of

limitation as contained under the Act i.e., under Section 40(4) would stand extended for passing of the re-assessment order up to a period of three years from the date of Judgment or Order.

Reliance was further placed upon the provisions of Section 42(2) and it was contended that Section 42(2) also contains 'non-obstante clause' extending the period of limitation by two years for passing of assessment/ re-assessment order which was required to be passed by the prescribed authority for giving effect to an order passed by a Court or Tribunal in appeal/revision in respect of the Assessee itself.

13. It was further submitted that similarly Section 42(3), which was inserted by Act 22 of 2011, lays down additional ground for initiation of reassessment proceeding where an objection or observation relating to either in fact or in law has been made by the Comptroller and Auditor General of India in respect of assessment/re-assessment order of an Assessee. Referring Section 42(3) of the Act it was vehemently contended that although additional ground for initiation of reassessment proceeding against a dealer was inserted vide Section 42(3), but said Section did not contain any non-obstante clause extending the period of limitation for reassessment as prescribed under Section 40(4) of the JVAT Act. On the strength of the above, it has been submitted that where the Legislature, while providing for additional ground for initiation of reassessment proceeding, thought it appropriate to extend the period of limitation on availability of such ground, the same was specifically inserted by non-obstante clause, but the Legislature, in its wisdom, had not thought it fit to insert a non-obstante clause under Section 42(3) of the Act. Under the said circumstances, Section 42(3) lays down additional grounds for initiation of re-assessment proceeding, but said re-assessment proceeding has to be completed within the time scheduled in the enabling provision for re-assessment under the Act i.e., Section 40(1) read with Section 40(4), which prescribes the period of limitation of five years.

14. It was submitted that it is trite law that if two different terminologies are used in the same Section, it intends to convey different meaning and, thus, in absence of 'Notwithstanding' clause contained under Section 42(3) of the JVAT Act, the period of limitation for completion of re-assessment proceeding would be governed by Section 40(4) of the JVAT Act. Reliance in this regard was placed on two decisions of the Hon'ble Supreme Court in the case of ***Sher Singh vs. State of***

Haryana reported in ***(2015) 3 SCC 724, [Para 13(2)]; and G.K. Choksi & Company Vs. Commissioner of Income Tax, reported*** in ***(2008) 1 SCC 246 [Para 16].*** Reliance was also placed on the principle of *noscitur a sociis* and it was contended that while interpreting Section 42 of the JVAT Act, said principle is required to be applied. Petitioner relied upon a decision of the Hon'ble Supreme Court in the case of ***Maharashtra University vs. PrakashMandal, reported in (2010) 3 SCC 786 [paras 27 & 28]*** in support of the said proposition.

15. Per contra, learned Advocate General, Mr. Rajiv Ranjan, appearing for the State of Jharkhand, assisted by Mr. Ashok Kumar Yadav, Sr. S.C.-1, submitted that on a plain reading of Section 42(3), it would be evident that said Section is an independent Section enabling initiation of re-assessment proceeding pursuant to an objection or observation raised by Comptroller and Auditor General of India either in facts or in law. It was fervently submitted that said Section uses the word 'shall' which mandates the prescribed authority to proceed to re-assess the dealer pursuant to objection or observation being made by the Comptroller and Auditor General of India. While placing reliance upon Section 40(1) of JVAT Act, it was submitted that under the said provision, the prescribed authority 'upon information or otherwise' has to form 'reason to believe' for proceeding for re-assessment of a dealer, whereas, under Section 42(3), requirement of recording 'reason to believe' has been dispensed with and it is mandatory for the Assessing Authority to proceed to re-assess a dealer.

It was submitted that in view of such mandatory provision inserted by the Legislature, deliberately, no period of limitation has been prescribed under Section 42(3) which is an independent enabling provision of re-assessment inserted under the Act. It was submitted that the Comptroller and Auditor General of India is a Constitutional authority recognized under Articles 148 and 149 of the Constitution of India and under Article 149, the Comptroller and Auditor General of India is required to perform such duties and exercise such power in relation to the account of the Union and of the State or any other Authority, or Body as may be prescribed, by any law made by the Parliament. It was further submitted that the Comptroller and Auditor General of India (Duties, Power and Conditions of Services) Act, 1971 gives wide power upon the said authority to audit the account of State Government and while auditing the account of the State Government, if it finds that any tax has been short levied and/or not levied, or incorrectly levied

upon an Assessee, it is its duty to indicate the same by raising observation/objection. It was submitted that keeping in view the aforesaid fact, the Legislature, in its wisdom, inserted Section 42(3) under the JVAT Act providing, inter alia, that if an objection/observation is received by the Comptroller and Auditor General of India, the Assessing Authority shall proceed for re-assessment of the dealer and there would be no requirement of recording the satisfaction of 'reason to believe'. It was submitted that it is in the aforesaid background, no limitation was prescribed under Section 42(3).

16. It was further submitted that under Section 42(3) of the JVAT Act, re-assessment proceeding can be initiated in respect of a dealer whose assessment or re-assessment or scrutiny assessment has already been completed. Accordingly, it was contended that said Section even provides for re-assessment to be undertaken of an order of re-assessment already passed in respect of an Assessee and, thus, Section 40(4) cannot be applied interpolating the period of limitation prescribed under the said Section.

While referring to Section 42(1) and 42(2), it was submitted that said Section also provides for initiation of re-assessment proceeding where, pursuant to an order passed by a Court or Tribunal, an earlier order passed in respect of a dealer is found to be erroneous or prejudicial to the interest of revenue or where an order is required to be passed for giving effect to an order in appeal or revision passed by any Court or Tribunal. It was submitted that it is true that under the said Section, 'non-obstante clause' has been inserted extending the period of limitation for carrying out assessment or re-assessment proceeding on happening of the events prescribed under the said Section, but, merely because 'non-obstante clause' has been provided in sub-section (1) or (2) of Section 42 extending the period of limitation, would not lead to an inference that non providing of such non-obstante clause under Section 42(3) would mean that Section 42(3) is to be read with Section 40(4). It was submitted that there is no intendment in a taxing statute and if the language of the statute is plain and clear, there is no scope of intendment and the Court would not supply any *casus omissus* to the said provision.

By placing reliance upon the decision of the Hon'ble Supreme Court in the case of ***State of Jharkhand vs. Shivam Coke, reported in (2011) 8 SCC 656,*** it was contended that where the Statute does not provide period of limitation,

provisions of Limitation Act cannot be read into it and proceedings are required to be conducted in a reasonable period of time which would depend upon the facts and circumstances of each case.

17. Learned Advocate General also raised the issue of maintainability of the writ applications by stating, inter alia, that Petitioner has alternative remedy of preferring an appeal against the orders of re-assessment under Section 79 of the JVAT Act before the Appellate Authority and, in view of existence of alternative remedy of appeal, writ petitions should not be entertained by this Court. Reliance was placed upon a decision of the Hon'ble Apex Court in the case of ***Assistant Commissioner of State Tax & Ors. Vs. Commercial Steel Limited, reported in (2021) SCC OnLine SC 884 (Para-11)*** in support of the said contention.

18. Lastly, it was submitted that even if, for the sake of arguments, it is presumed that Section 42(3), which provides for initiation of re-assessment proceedings, is to be read with Section 40(4) of the JVAT Act and re-assessment proceedings are required to be carried out within the limitation period of five years, then also, in the instant case, period of limitation stood extended in view of various orders passed by the Hon'ble Apex Court in *Suo Motu* Writ Petition No. 3 of 2020. It was submitted that re-assessment order for the Financial Year 2014-15 could have been passed up to 31st March, 2020 and for the Financial Year 2015-16 up to 31st March, 2021, but in view of exclusion of the period of limitation pursuant to the orders passed by the Hon'ble Apex Court in *Suo Motu* Writ Petition No. 3 of 2020, from the period 15.03.2020 to 28.03.2022, the period of limitation would stand excluded and re-assessment order would be deemed to have been passed within the statutory period.

19. Mr. Sumeet Gadodia, Advocate, while advancing the rejoinder arguments, vehemently opposed to the plea of extension/exclusion of the period of limitation from 15.03.2020 to 28.03.2022 in view of the order passed by the Hon'ble Apex Court in *Suo Motu* Writ Petition No.3 of 2020. It was submitted that said plea was never raised by the Respondents either while passing the re-assessment order or while filing Counter Affidavit, but, for the first time, said plea has been raised during oral arguments. The orders passed by Hon'ble Apex Court in *Suo Motu* Writ Petition No. 3 of 2020, being orders dated 23.03.2020, 08.03.2021, 27.04.2021, 23.09.2021 and the order dated 10th January, 2022 has been referred by the counsel for the Petitioner and it was submitted that extension granted by the

Hon'ble Supreme Court applies only to quasi-judicial and judicial matters relating to petitions/applications/suits/appeals/all other proceedings and would not apply to original adjudication proceeding.

Reliance has also been placed upon a Circular dated 20th July, 2021 issued by Government of India, Ministry of Finance, through Central Board of Indirect Taxes and Customs (for short 'CBIC'), wherein CBIC in exercise of power under Section 168A of the Central Goods and Services Tax Act, 2017 have issued guidelines regarding applicability of the orders passed by the Hon'ble Apex Court to original adjudication proceedings. It was submitted that CBIC has clearly clarified in its Circular that said orders of the Hon'ble Apex Court are not applicable to original adjudication proceedings. Reference in this regard was also made to Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to contend, inter alia, that the Parliament, in view of COVID 19 pandemic, provided relaxation by carrying out amendment in Central Taxing Statutes including Goods and Services Tax Act, Income Tax Act, etc. extending the period of limitation for completion of assessment/re-assessment proceedings, etc. It was submitted that there was no occasion for the Parliament to pass the Relaxation and Amendment Act, 2020, which was notified on 29th September, 2020, if the order of Hon'ble Apex Court itself has an effect of extending the period of limitation pertaining to adjudication proceedings also.

Reliance was also placed upon similar amendment carried out by the State of Jharkhand vide Jharkhand Value Added Tax (Amendment) Act, 2020 notified on 19th November, 2020. By virtue of the said amendment, State of Jharkhand amended the provisions of Section 40(4) and Section 42(1) and 42(2) of the JVAT Act, wherein specifically, for the Assessment Year 2014-15, the period of limitation was extended for a period of six months i.e., up to 31st August, 2020.

Similarly, amendments were made under Section 42(1) and 42(2), wherein period of limitation in view of non-obstante clause, which was expiring on 31st March, 2020, was extended up to 31st August 2020. By placing reliance upon the aforesaid Notification dated 19th November, 2020 it was contended that the State of Jharkhand is estopped under law to contend contrary to its own statute. Reliance in this regard was placed upon the decision of the Hon'ble Apex Court in the case of ***Augustan Textile Colours Limited vs. Director of Industries & Ors, reported in (2022) 6 SCC 626 (Para-31)*** and in the case of ***ITC Bhadrachalam***

Paperboards & Ors vs. Mandal Revenue Officer & Ors. reported in (1996) 6 SCC 634 (Para-30).

20. Petitioner further relied upon decision of the Hon'ble Apex Court in the case of ***S. Kashi vs. State through the Inspector of Police Samaynallur Police Station, Madurai District, reported in 2020 SCC OnLine SC 529*** to contend inter alia that in the said Judgment, Hon'ble Supreme Court, while interpreting *suo-motu* orders of extension of limitation, has clearly held that said orders were issued keeping in view the plight of litigants across the country due to widespread of COVID 19 virus.

21. Lastly, reliance was placed upon a decision in the case of ***State of Punjab & Ors. Vs. Bhatinda District Cooperative Milk Producers Union Ltd., reported in (2007) 11 SCC 363 (Para 15 and 24)***, and it was submitted that even if, for the sake of arguments, it is presumed that no period of limitation has been prescribed under Section 42(3), then also, power is to be exercised within a reasonable period of time which is to be ascertained from the scheme of the Act. It was submitted that under the scheme of the Act, particularly Section 35(8), period of limitation has been prescribed for three years for completion of assessment. Further, for completion of audit assessment and assessment of dealers who failed to get themselves registered as prescribed under Sections 37 and 38 of the Act, the period of limitation has been prescribed as five years under Section 39 of the Act. Further, Section 40(4) prescribes limitation of five years for carrying out assessment and re-assessment proceedings and, thus, it was contended that under the scheme of the Act, maximum period of limitation prescribed is five years from the original tax period and, thus, under the scheme of the Act also, even if it is presumed that Section 42(3) did not prescribe any period of limitation, the limitation should be read to be five years from the end of the original tax period.

22. Having heard learned counsel for the rival parties and after going through the documents available on record following issues arise for determination in the instant case, namely:-

> ***(i) Whether Writ Petition is maintainable in view of availability of alternative remedy?***
>
> ***(ii) Whether Section 42(3) of the JVAT Act merely enumerates additional circumstances/grounds on which an Assessee can be subjected to re-***

assessment, and, re-assessment proceeding is to be guided by substantive provision of re-assessment contained under Section 40 of the JVAT Act?'

(iii) Whether if Section 42(3) is held as not prescribing any period of limitation for carrying out re-assessment proceedings, said re-assessment proceeding is required to be carried out within the reasonable time and what should be the reasonable time under the scheme of the JVAT Act?

(iv) Whether suo-motu extension orders extending the period of limitation passed by Hon'ble Supreme Court would apply to original adjudication proceedings?

In order to properly appreciate and answer the aforesaid issues and the contours of Sections 40 and 42 of JVAT Act we think it appropriate to reproduce the said Sections hereinbelow***: -***

> ***"40.*** *Turnover escaping Assessment.__*
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> ***(1)*** *Where after a dealer is assessed under Section 35 or Section 36 for any year or part thereof, and the Prescribed Authority, upon information or otherwise has reason to believe that the whole or any part of the turnover of the dealer in respect of any period has—*
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> ***(a)*** *escaped assessment; or*
>
> ***(b)*** *been under assessed; or*
>
> ***(c)*** *been assessed at a rate lower than the rate on which it is assessable;*
>
> ***(d)*** *been wrongly allowed any deduction therefrom; or*
>
> ***(e)*** *been wrongly allowed any credit therein;*
>
> *the prescribed authority may, serve or cause to serve a notice on the dealer and after giving the dealer reasonable opportunity of being heard and making such inquiries as he considers necessary, proceed to assess to the best 5of his judgment, the amount of tax due from the dealer in respect of such turnover, and the provisions of this Act shall so far as may be, apply accordingly.*
>
> *Provided, for Clause (a), where the prescribed authority has reasons to believe that the dealer has concealed, omitted or failed to disclose willfully, the particulars of such turnover or has furnished incorrect particulars of his such turnover and thereby return figures are below the real amount, the prescribed authority shall proceed to assess or reassess the amount of tax due from the dealer in respect of such turnover and the provisions of this Act, shall so far as may apply accordingly and for this purpose the dealer shall pay by way of penalty a sum equal to thrice the amount of additional tax assessed.*
>
> ***(2)*** *If the prescribed authority in the course of any proceeding or upon any information, which has come into his possession before assessment or otherwise, under this Act, and is satisfied that any registered dealer or a dealer to whom the registration certificate has been suspended under sub-section (7) or Section 25—*

(a) has concealed any sales or purchases or any particulars thereof, with a view to reduce the amount of tax payable by him under this Act, or

(b) has furnished incorrect statement of his turnover or incorrect particulars of his sales or purchases in the return furnished under sub-section (1) of Section 29; or otherwise,

The prescribed authorities shall, after giving such a dealer an opportunity of being heard, by an order in writing direct that he shall, in addition to any tax payable which is or may be assessed under Section 35 or 36 or 38, pay by way of penalty a sum equal to thrice the amount of tax on the concealed turnover or on concealed or incorrect particulars of suppression or concealment or for furnishing incorrect particulars; on the amount of tax payable under the Act or on the suppressed turnover or on concealed turnover or for furnishing incorrect particulars.

The interest shall be payable before the completion of the assessment and for determining the amount of interest payable, the prescribed authority shall quantify the amount of tax payable provisionally under this Act.

(3) *Any penalty imposed or interest levied under this section shall be without, prejudice to any action which is or may be taken under Section 84 of this Act.*

(4) *No order of assessment and reassessment shall be made under sub-section (1) after the expiry of five years from the end of the year in respect of which or part of which the tax is assessable."*

Xxx xxx xxx

"42. *Power of Reassessment in certain cases.—*

(1) *Where any order passed by the prescribed authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of any judgment or order of any Court or Tribunal, which has become final, then notwithstanding anything contained in this Act, the prescribed authority may proceed to reassess the tax payable by the dealer in accordance with such judgment or order, at anytime within a period of three years from the date of the Judgment or order.*

(2) *Where any Court or Tribunal passes an order in appeal or revision, to the effect that any tax assessed under this Act or the Central Sales Tax Act, 1956 should have been assessed under the provision of a law other than that under which it was assessed, then in consequence of such order or to give effect to any finding or direction contained in such order such turnover and part thereof, may be assessed or reassessed, as the case may be, to a tax at any time within two years from the date of such order, notwithstanding any limitation period which would otherwise be applicable to, the assessment or reassessment made.*

(3) Whether an objection or observation relating to either in fact or in law, has been made by the Comptroller and Auditor-General of India, in

respect to an assessment or re-assessment made or on scrutiny of any return filed u/s 33 of this Act; the prescribed authority shall proceed to re-assess the dealer with respect to whose assessment or re-assessment or scrutiny, as the case may be, the objection or the observation has been made.

Provided that no such order shall be passed without serving upon the dealer concerned a notice requiring him to file, within one month of the date of the service of such notice, a reply to such objection or the observation as raised by the Comptroller and Auditor-General."

23. **Issue No.(i)**:- It is trite law that existence of alternative remedy is not an absolute bar to the maintainability of writ petition under Article 226 of the Constitution of India. There are circumstances under which writ petition can be entertained namely; breach of fundamental right; violation of principles of natural justice; and excess of jurisdiction or a challenge to vires of a statute or delegated legislation. In the present case, writ petitioner has raised the issue of limitation which is a jurisdictional question and, thus, writ petition is maintainable. The Hon'ble Apex Court in the case of ***State of Punjab & Ors.*** (supra), has held as under:-

"*24. Question of limitation being a jurisdictional question, the writ petition was maintainable."*

24. Apart from the jurisdictional question being raised in the writ petition, further argument was advance on behalf of the Petitioner that alternative remedy of appeal and/or revision would be an exercise in futility as the highest statutory authority i.e., Commercial Taxes Tribunal, in respect of other Assessees, has already held that Section 42(3) of JVAT Act does not prescribe any period of limitation and, thus, it was contended that filing of appeal would be an empty formality. It was brought to our notice that order passed by Commercial Taxes Tribunal on the aforesaid issue has been challenged in other writ petition filed by the assesse, which is pending consideration before this Hon'ble Court. In the case of ***Onkarlal Nandlal (supra),*** Hon'ble Apex Court has entertained a Special Leave Petition under Article 136 of the Constitution of India challenging assessment orders where the question arose of construction of certain provisions of Rajasthan Sales Tax Act, 1954. In the said Judgment, Hon'ble Supreme Court noted that the High Court, in other case, has already taken a view against the assesse and it would be a futile exercise to drive the assesse to the procedure of appeal and revision and then a writ to the High Court. Under the said circumstances, Hon'ble

Apex Court granted Special Leave in the aforesaid case of ***Onkarlal Nandlal (supra).***

25. Similarly, in the case of ***Lakshmi Ratan Engineering Works (supra),*** Hon'ble Apex Court, under similar circumstances as that of the case of ***Onkarlal Nandlal*** (supra) granted Special Leave under Article 136 of the Constitution of India by observing, inter alia, as under:-

> *"13. ……. It would have been futile in this case for the assessee to have gone to the court of revision which was bound by the ruling of the Allahabad High, Court reported in Swastika Tannery of Jaimau v Commissioner of Sales Tax U.P. Lucknow and it would have been equally futile to have gone to the High Court on a reference. The matter was more easily disposed of by giving special leave in this Court and we therefore felt that this was one of those extraordinary cases in which the ends of justice would be better served, by avoiding a circuity of action and by dealing with this matter in this Court directly."*[Emphasis supplied].

26. In view of the aforesaid ratio laid down by Hon'ble Apex Court and in view of undisputed fact that in respect of other Assessees, Commercial Taxes Tribunal has already taken a view that Section 42(3) does not prescribe any period of limitation, in our opinion, it would have been a futile exercise on the part of the writ petitioner to first approach the Appellate and/or Revisional Authority on the jurisdictional issue of limitation.

27. In view of cumulative facts and circumstances, we hold that writ petition is maintainable, firstly, as Petitioner has raised the jurisdictional issue of limitation and, secondly, it would have been a futile exercise relegating the Petitioner to avail the remedy of appeal and revision.

28. **Issue Nos. (ii) and (iii)**:- The broad issue to be adjudicated in the instant writ application is *"Whether Section 42(3) is in itself the substantive provision provided under the JVAT Act for initiation of re-assessment proceeding or it merely enumerates additional circumstances/grounds under which re-assessment proceeding can be initiated under the substantive provision of re-assessment contained under Section 40 of the JVAT Act."*

29. Article 265 of the Constitution of India provides, inter alia, that there shall be no levy and collection of tax without any authority of law. Like any taxing statute, the scheme of JVAT Act also contains provisions pertaining to charge of tax; secondly, provisions relating to computation of tax resulting into demand of tax; and, thirdly, provisions for recovery of tax so computed. The Hon'ble Apex

Court, in the case of ***Mafatlal Industries*** (supra), vide Para 160, has held as under:-

> ***"160.*** *The constitutional embargo is on both the levy and collection of tax without authority of law. It has been repeatedly asserted by the Courts that every taxing law has three parts. First is charge, the second is computation which results in a demand of tax and the third is recovery of the tax so computed. The Constitution has enjoined that there must be a valid levy. The word 'levy' has also been understood in a broad sense in various cases to include not only the imposition of the charge but also the whole process upto raising of the demand. The Constitution guarantees that not only the levy should be lawful but also collection of tax must also be done with the authority of law. The State is not permitted to exact any tax from a citizen without the authority of law and without following the procedure laid down by law. This guarantee has to be strictly enforced not only in the matter of levy but also in the matter of collection. It was pointed out by this Court in the case of Municipal Council, Khurai and Another v. Kamal Kumar & Anr. Others, [1965] 2 SCR 653 that Article 265 of the Constitution clearly implies that the procedure to impose a liability upon the taxpayer has to be strictly complied with. Where it is not complied with, the liability to pay a tax cannot be said to be according to law. In that case, a validly passed municipal law was sought to be enforced, but the objections of the taxpayer were not dealt with by the Municipal Council as a whole but by a sub-committee. The Court held that this was erroneous. The phrase 'levy and collection' indicates that all the steps in making a man liable to pay a tax and exaction of tax from him must be in accordance with law. There must be a valid statute which will be properly followed. All steps must be taken according to statutory provisions. Recovery of tax must also be according to law. No one can be subjected to levy or tax or deprived of his money by the State without authority of law." (Emphasis supplied).*

30. The Hon'ble Supreme Court, in the said Judgment, has clearly laid down that the phrase "levy and collection" indicates that all the steps in making a man liable to pay a tax and exaction of tax from him must be in accordance with law. All steps must be taken according to statutory provisions and no one can be subjected to levy and collection of tax without authority of law.

31. Completion of assessment of an Assessee confers valuable right upon the said assessee and the said assessment proceeding can be subjected to re-assessment strictly in accordance with the statutory provisions contained under the Act.

32. It is in the aforesaid backdrop of enunciation of law, we have examined various provisions of JVAT Act, 2005 and like any other taxing statute, JVAT Act also contains provisions for computation and demand of tax. Section 33 of the Act provides for 'Scrutiny of Returns', which enables the Assessing Authority to verify the correctness of calculation etc. in respect of the return filed by the

Assessee. Section 35 contains therein provisions for 'Assessment and Self-assessment'; and Section 35(8) of the said provisions provides, inter alia, that no assessment would be made after expiry of three years from the end of tax period for which tax is assessable. Section 37 deals with 'Audit Assessment' and Section 38 deals with 'Assessment of Dealer who fails to get himself Registered'. Section 39 provides, inter alia, that 'No Assessment after five years' shall be made under Sections 37 and 38 of the Act. Section 40 of JVAT Act, which we have quoted hereinabove, deals with the provision of 'Turnover escaping assessment' and, admittedly, Section 40(4) provides, inter alia, that no assessment or re-assessment shall be made after expiry of five years of the tax period for which tax is assessable. Section 41 of the Act provides for 'Exclusion of period for Assessment' where assessment or re-assessment proceedings have been stayed under the orders of competent court. Section 42, which we have quoted hereinabove, gives power of 're-assessment in certain cases'.

33. Thus, under the scheme of the Act, there is provision for assessment, self-assessment, audit assessment, assessment of dealers not registered, and, specific provisions have also been incorporated for carrying out re-assessment proceedings under Section 40(1) of the JVAT Act.

34. Section 40(1) of JVAT Act, which contains provision for re-assessment, lays down following conditions/circumstances under which a dealer can be subjected to re-assessment proceeding namely;--

(i) Dealer is already assessed under Section 35 or 36 of the Act;

(ii) The prescribed authority has received information or otherwise; and

(iii) The prescribed authority has reasons to believe that whole or part of the turnover of a dealer has--

(a) escaped assessment; or

(b) been under-assessed; or

(c) been assessed at lower rate;

(d) been wrongly allowed deduction therefrom; or

(e) been wrongly allowed credit therein.

35. Thus, under Section 40(1), the prescribed authority, upon information or otherwise received has to record his reasons to believe for initiating re-assessment proceeding if turnover of a dealer for any period has—

(a) escaped assessment;

(b) been under-assessed;

(c) been assessed at lower rate;

(d) been wrongly allowed deduction therefrom; or

(e) been wrongly allowed credit therein.

36. Thus, under Section 40(1), Assessing Authority can initiate re-assessment proceeding only after recording 'reasons to believe' of the circumstances enumerated therein for carrying out re-assessment proceeding.

37. Section 40(1) read with Section 42 of JVAT Act would reveal that Section 42 prescribes additional grounds/circumstances in which re-assessment proceeding can be initiated by the prescribed authority.

38. Section 42(1) specifically provides that the prescribed authority may initiate re-assessment proceeding if in the light of any Judgment or order passed by any Court or Tribunal, which has become final, the authority is of opinion that the assessment order passed in respect of a dealer for any period is erroneous or prejudicial to the interest of revenue. This enabling provision, which has been inserted under Section 42(1), contains a non-obstante clause which extends the period of limitation up to three years from the date of Judgment and order of any Court or Tribunal. Analysis of the said provision would clearly reveal the intention of the Legislature wherein the Legislature enabled the prescribed authority to correct an erroneous or prejudicial assessment order passed by it in the light of any Judgment or order of any Court or Tribunal rendered subsequently. Since this specific enabling provision was inserted as an additional ground for initiation of re-assessment proceeding, the Legislature, deliberately in its wisdom, inserted a non-obstante clause in Section 42(1) of the Act extending the period of limitation of five years prescribed under Section 40(4) for re-assessment by a further period of three years from the date of Judgment or order.

39. Thus, even if in a case where the period of limitation has already expired for initiation of re-assessment proceeding under Section 40(4) of the Act and thereafter Judgment is delivered by any Court or Tribunal, which pronounces any law; and if the prescribed authority is of the opinion that it has made any assessment earlier which is contrary to the said law declared by the Judgment and order by any Court or Tribunal, the prescribed authority, *de hors* the period of limitation prescribed, can initiate re-assessment proceeding under Section 40(1)

read with Section 42(1) of the Act within three years from the date of Judgment or order.

40. Similarly, Section 42(2) of the Act also contains a non-obstante clause which extends the period of limitation up to two years from the date of the order passed by a Court or Tribunal in an appeal or revision when a remand assessment or re-assessment proceeding is required to be undertaken to give effect to the finding or direction of the order of the Court or Tribunal. Thus, Section 42(2) specifically contemplates that if an order of assessment or re-assessment is required to be passed to give effect to the order of higher Court of Tribunal in appeal or revision in respect of the Assessee itself, the said order can be passed within two years from the date of the order irrespective of the fact that period of limitation for passing assessment or re-assessment order has expired.

41. It is evident that Section 42(1) and 42(2) of the Act contains non-obstante clause and the said clause appears to have been deliberately inserted by the Legislature wherein additional ground for opening of assessment has been laid down which is contingent upon happening of an event, as laid down in the aforesaid Section.

However, interestingly, while inserting provisions of Section 42(3), the Legislature, in its wisdom, has not prescribed any non-obstante clause extending the period of limitation for carrying out re-assessment proceeding. A careful reading of Section 42(3) would reveal that Section 42(3) provides, inter alia, that where an objection or observation relating either in facts or in law is raised by the Comptroller and Auditor General of India, the prescribed authority shall proceed to re-assess the dealer. In order to appreciate the contours of Section 42(3), reference may be made to Section 40(1) which contained provisions for initiation of re-assessment proceeding by the prescribed authority upon ‘receiving information or otherwise’ after recording ‘reasons to believe’.

42. Hon’ble Supreme Court, in its Judgment rendered in the case of ***Larsen and Toubro Limited,*** reported in *(2017) 12 SCC 780,* while interpreting similar provisions under Section 19 of the Bihar Finance Act, 1981, has held as under:-

> *“31. The contention whether finding the information from the very facts that were already available on record amounts to information for the purpose of Section 19 of the State Act, it would be sufficient to refer to a judgment of this Court in Anandji Haridas & Co. (P) Ltd. v. S.P. Kasture wherein it was held that a fact which was already there in records does not by its mere availability that a fact which was already there in records does not by its mere availability become*

> *an item of "information" till the time it has been brought to the notice of assessing authority. Hence, the audit objections were well within the parameters of being construed as "information" for the purpose of Section 19 of the State Act.*
>
> *32. The expression "information" means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or after bearing on the assessment. We are of the clear view that on the basis of information received and if the assessing officer is satisfied that reasonable ground exists to believe, then in that case the power of the assessing authority extends to reopening of assessment, if for any reason, the whole or any part of the turnover of the business of the dealer has escaped assessment or has been under-assessed and the assessment in such a case would be valid even if the materials, on the basis of which the earlier assessing authority passed the order and the successor assessing authority proceeded, were same. The question still is as to whether in the present case, the assessing authority was satisfied or not."*

43. Thus, even earlier, prior to insertion of Section 42(3), the Assessing Authority, could have treated audit objection as an information and could have initiated re-assessment proceeding. However, Section 42(3) provides that when information is received by way of observation/objection from the Comptroller and Auditor General of India, the Assessing Authority has to proceed to re-assess the dealer. Thus, what is dispensed with under Section 42(3) is recording of reasons to believe by the Assessing Authority for initiation of re-assessment proceeding.

44. Learned Advocate General vehemently argued that Section 42(3) mandates the Assessing Authority to proceed with re-assessment pursuant to receipt of audit objection and the Assessing Authority is not required to be satisfied with the audit objection and it is compulsory upon the said authority to proceed for re-assessment. It is in that background, it has been submitted by learned Advocate General that the Legislature, deliberately, has not provided any period of limitation under Section 42(3) and said Section is an independent Section enabling the Assessing Authority for proceeding with the re-assessment proceedings pursuant to audit objection.

45. Learned Advocate General, by placing reliance upon Articles 148 and 149 of the Constitution of India, fervidly submitted that since the Comptroller and Auditor General of India is a constitutional authority and is entitled to audit the accounts of State Government, an objection/ observation made by the said authority has to be given due weightage and, it is for the said reason that by law it has been made mandatory by the Legislature to proceed for re-assessment and it is in the said background, the Legislature, in its wisdom, inserted Section 42(3).

46. We have carefully examined the submissions of learned Advocate General and we have also examined the provision of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Services) Act, 1971. We are not in agreement with the proposition of law advanced by learned Advocate General, as the Comptroller and Auditor General of India, under the Act of 1971, essentially performs administrative or executive functions and it cannot be attributed with power of judicial supervision over the quasi-judicial authority. Hon'ble Supreme Court, in the case of ***Indian Eastern Newspaper Society, New Dehi Vs. Commissioner, reported in (1979) 4 SCC 248,*** has held as under:-

> ***"11.*** *Whether it is the internal audit party of the Income Tax Department or an audit party of the Comptroller and Auditor- General, they perform essentially administrative or executive functions and cannot be attributed the powers of judicial supervision over the quasi-judicial acts of income tax authorities. Nor does section 16 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 envisage such a power for the attainment of the objectives incorporated therein."(Emphasis supplied).*
>
> ***"12.*** *But although an audit party does not possess the power to so pronounce on the law, it nevertheless may draw the attention of the Income Tax officer to it. Law is one thing, and its communication another. If the distinction between the source of the law and the communicator of the law is carefully maintained, the confusion which often results in applying section 147(b) may be avoided. While the law may be enacted or laid down only by a person or body with authority in that behalf, the knowledge or awareness of the law may be communicated by anyone. No authority is required for the purpose."*

47. Further, in the Judgment rendered by Hon'ble Apex Court, in the case of ***Larsen and Toubro (supra),*** Hon'ble Apex Court**,** after examining almost all earlier Judgments, although held that an audit objection would be well within the parameters of being construed as information, but at the same time, it was held that merely because audit objection has been raised, the same would not authorize the Assessing Authority to proceed with re-assessment and the Assessing Authority has to record his satisfaction on the audit objection. In the said Judgment, Hon'ble Supreme Court noticed that the Assessing Authority was not agreeing with the audit observation, but, despite the same, proceeded to issue Notice on the ground of direction issued by Audit Party and not on its personal satisfaction and it was clearly held by Hon'ble Apex Court that same was not permissible under law; and the very initiation of re-assessment proceeding was declared as without jurisdiction. Relevant extract of the Judgment is quoted herein-under:-

> *"34. From a perusal of the last paragraph of the aforementioned report of the audit party, it is clear that the assessing officer was of the opinion that as the goods had not been transferred to the appellant Company but had been consumed, so it does not come under the purview of taxation. In other words, the assessing officer was not satisfied on the basis of information given by the audit party that any of the turnover of the appellant Company had escaped assessment so as to invoke Section 19 of the State Act. From the above, it also appears that the assessing officer had to issue notice on the ground of direction issued by the audit party and not on his personal satisfaction which is not permissible under law.*
>
> *35. In view of the above discussion, we are of the considered view that the order dated 27.02.2006 passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur is without jurisdiction and the High Court was not right in dismissing the petition filed by the appellant Company." (Emphasis supplied).*

48. It is trite law that a quasi-judicial authority cannot abdicate its jurisdiction on the dictate of an external authority and proceed to pass order on such external dictate. In the present case, it has been argued by learned Advocate General that Section 42(3) mandates the assessing authority to initiate re-assessment proceeding on the dictate of the Audit Party which, on the face of discussions held above, would amount to abdication of jurisdiction of the assessing authority being a quasi-judicial body to external dictates, which would be contrary to the ratio laid down by the Judgment of Hon'ble Apex Court in the case of *Indian Eastern Newspaper Society, New Dehi (supra)* and in the case of *Larsen and Toubro (supra).*

49. It is in the aforesaid backdrop; we are required to examine as to whether Section 42(3) is an independent provision conferring power of re-assessment or is merely as additional ground conferred under the Act upon the assessing authority for carrying out re-assessment proceedings.

50. It is settled law that a statutory term is recognized by its associated word and its colour and content are to be derived from their context. Hon'ble Supreme Court in the case of ***Maharashtra University (supra), vide Para 27 and 28,*** has held as under:-

> *"27. The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context". It may be regarded as an instance of ellipsis, or*

> *reliance on implication. This principle is presumed to apply unless there is some contrary indication.*
> *28. This ejusdem generis principle is a facet of the principle of noscitur a `sociis. The Latin maxim noscitur a sociis contemplates that a statutory term is recognised by its associated words. The Latin word "sociis" means "society". Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context."*

51. A holistic reading of Section 42 would reveal that said provision contains three different situations/circumstances under which re-assessment proceeding can be initiated. So far as Section 42(1) and 42(2) is concerned, the Legislature has deliberately inserted the non-obstante clause extending the period of limitation but the Legislature has not extended the period of limitation pursuant to audit objection under Section 42(3). This, in our opinion, has been deliberately omitted by the Legislature as it was conscious that re-assessment proceeding would have been otherwise initiated under Section 40(1) on 'information being received by the Audit Party', but the only further requirement was to record 'reasons to believe'. What has been dispensed with in Section 42(3) is the requirement of recording 'reasons to believe' only. It is under the said circumstances, non-obstante clause was not inserted in Section 42(3) extending the period of limitation from the date of receipt of audit objection, and, thus, the period of limitation would be governed by Section 40(1) read with 40(4) of the JVAT Act.

52. If two different terminologies are used in same Section, it intends to convey different meaning and, thus, in absence of 'non-obstante clause' contained under Section 42(3) of JVAT Act, the period of limitation for completion of re-assessment proceeding would be governed by Section 40(4) of the JVAT Act.

53. We are further not consciously deliberating on the issue of Section 42(3), which mandates the assessing authority to initiate re-assessment proceeding pursuant to receipt of audit objection being contrary to the very basic structure of exercise of power of quasi-judicial authority, as vires of Section 42(3) is not under challenge before us.

54. At this stage, we may further record the arguments advanced by learned Advocate General by referring to Section 42(3) of the Act wherein it was argued that Section 42(3) enables initiation of re-assessment proceeding not only of completed assessment proceeding, but also of completed re-assessment proceeding. It has been argued that Section 42(3) even enables the assessing

authority to initiate fresh re-assessment proceeding pursuant to audit objection in case of an Assessee against which earlier re-assessment order has already been passed.

In our opinion, said argument of learned Advocate General is again in the teeth of the scheme of JVAT Act, as, under the JVAT Act, there is no provision for initiation of re-assessment proceeding against a re-assessment order and only remedy, thereafter, is to prefer appeal or revision. If the assessing authority is allowed to initiate repeated re-assessment proceeding against an Assessee merely on the dictate of Audit Party, there would be no finality of assessment and the Assessee would be having domical sword hanging over in it in perpetuity, which is not the scheme of the Act.

55. Learned Advocate General has further argued that since Section 42(3) does not prescribe any period of limitation, re-assessment proceeding can be initiated at any time. However, it was submitted that in view of the Judgment in the case of ***Shivam Coke (supra),*** re-assessment proceeding has to be initiated within a reasonable period of time and what would be reasonable period of time would depend upon the facts and circumstances of the case. Since we have already declared that Section 42(3) is to be read with Section 40(4) of JVAT Act and limitation period for carrying out re-assessment proceeding is five years, we are not deliberating further over the said issue. However, it would be appropriate to also refer to the Judgment rendered by Hon'ble Supreme Court in the case of ***State of Punjab & Ors. Vs. Bhatinda District Cooperative Milk Producers Union Ltd. (supra),*** wherein Hon'ble Supreme Court, while examining the provisions contained under the Punjab General Sales Tax Act conferring power of *suo-motu* revision upon the Commissioner, held that although said Section prescribed no period of limitation but the same would not mean that *suo-motu* power can be exercised at any time. Hon'ble Supreme Court, in the said Judgment, held that if no period of limitation is prescribed, statutory authority must exercise jurisdiction within reasonable time and the reasonable period would depend upon the nature of the statute, liabilities and other relevant factors. In the said Judgment, Hon'ble Supreme Court, while examining the scheme of Punjab General Sales Tax Act, held that revisional power should ordinarily be exercised within a period of three years and, in any event, the same should not exceed the period of five years. Said finding was given by Hon'ble Apex Court by considering various provisions of the

Punjab Act which contains provision of limitation varying from three years to five years from the end of the tax period. Likewise, under the scheme of JVAT Act also, provisions of limitation for carrying out assessment, audit assessment, scrutiny assessment, re-assessment proceedings, etc. have been prescribed to be three years to five years. It is for the said reason also, in our opinion, while incorporating provision of Section 42(3), the Legislature, in its wisdom, had not sought to extend the period of limitation by inserting non-obstante clause.

56. **Issue No. (iv)** :- The next question to be adjudicated is *"Whether in view of suo-motu extension of limitation orders passed by Hon'ble Apex Court, the period of limitation for initiating re-assessment proceedings also stood extended or not?"*. Learned Advocate General has referred to various *suo-moto* orders passed by Hon'ble Apex Court, including orders dated 23.03.2020, 08.03.2021, 27.04.2021, 23.09.2021 and the order dated 10.01.2022. Learned Advocate General emphasized on the order dated 10.01.2022 passed by Hon'ble Apex Court and contended that the period from 15.03.2020 to 28.02.2022 would stand excluded for the purpose of limitation prescribed under any general or special law in respect of all judicial and quasi-judicial proceedings and re-assessment proceedings being quasi-judicial proceedings, the period of limitation would stand extended for passing of the re-assessment orders.

Per contra, as already referred above, Mr. Sumeet Gadodia, Counsel for the Petitioner has invited our attention to the *suo-motu* orders and has submitted that the same would not exclude the period of limitation for completion of re-assessment proceedings. In this context, reliance was placed upon Circular No. 157/13/2021-GST issued by CBIC dated 20.07.2021. We have carefully gone through the said Circular and we deem it appropriate to quote relevant extract of the said Circular as under:-

> *"3. Accordingly, legal opinion was solicited regarding applicability of the order of the Hon'ble Supreme Court to the limitations of time lines under GST Law. The matter has been examined on the basis of the legal opinion received in the matter. The following is observed as per the legal opinion:-*
>
> *(i) The extension granted by Hon'ble Supreme Court order applies only to quasi-judicial and judicial matters relating to petitions/applications/suits/appeals/all other proceedings. All other proceedings should be understood in the nature of the earlier used expressions but can be quasi-judicial proceedings. Hon'ble Supreme Court has stepped into to grant extensions only with reference to judicial and quasi-judicial proceedings in the nature of appeals/ suits/petitions etc. and has not extended it to every action or proceeding under the CGST Act.*

> *(ii) For the purpose of counting the period(s) of limitation for filing of appeals before any appellate authority under the GST Law, the limitation stands extended till further orders as ordered by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) 3 of 2020 vide order dated 27th April, 2021. Thus, as on date, the Orders of the Hon'ble Supreme Court apply to appeals, reviews, revisions etc., and not to original adjudication.*
>
> *(iii) Various Orders and extensions passed by the Hon'ble Supreme Court would apply only to acts and actions which are in nature of judicial, including quasi-judicial exercise of power and discretion. Even under this category, Hon'ble Supreme Court applies only to a lis which needs to be pursued within a time frame fixed by the respective statutes.*
>
> *(iv) Wherever proceedings are pending, judicial or quasi-judicial which requires to be heard and disposed off, cannot come to a standstill by virtue of these extension orders. Those cases need to be adjudicated or disposed off either physically or through the virtual mode based on the prevailing policies and practices besides instructions if any.*
>
> *(v) The following actions such as scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrest in accordance with GST law would not be covered by the judgment of the Hon'ble Supreme Court.*
>
> *(vi) As regards issuance of show cause notice, granting time for replies and passing orders, the present Orders of the Hon'ble Supreme Court may not cover them even though they are quasi-judicial proceedings as the same has only been made applicable to matters relating to petitions/applications/suits, etc."*

57. A bare perusal of the said Circular would reveal that CBIC, in exercise of its power under Section 168A of CGST Act, has issued the said guidelines which was deliberated in 43rd meeting of the GST Council and in the said guidelines, it was clearly noted that the orders of Hon'ble Supreme Court only apply to quasi-judicial and judicial matters relating to petitions/ applications/suits/appeals/all other proceedings and not to original adjudication proceedings. In fact, the Parliament has enacted the 'Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and, under the said Act, provisions were incorporated extending the period of limitation specifically for passing of adjudication orders.

Similarly, Jharkhand Value Added Tax (Amendment) Act, 2020 was also enacted by the State of Jharkhand and in the said JVAT Amendment Act, 2020, specifically for the Assessment Year 2014-15 (in dispute), the period prescribed under Section 40(4) for completion of the assessment or re-assessment proceedings, which was expiring on 31st March, 2020, was extended till 31st August, 2020. Even amendments were carried out, and, under Section 42(1) and 42(2) of the Act and the period of limitation which was expiring on 31st March, 2020 was extended up to 31st August, 2020. This is an Act promulgated by the

State Legislature relating to the JVAT Act itself and Respondent-State is estopped in law to contend contrary to its own Statute. Thus, by virtue of the said Amendment Act, 2020, the period of limitation was extended up to 31st August, 2020 for the Assessment Year 2014-15, but, admittedly, re-assessment order was passed on 08.03.2022 i.e., much beyond the extended period of limitation under the Amended Act. It is profitable, at this stage, to refer to the Judgment of Hon'ble Apex Court in the case of ***'S. Kasi'*** *(supra),* wherein Hon'ble Apex Court was considering the issue as to whether in view of the *suo-motu* orders passed by it, the period of submission of charge-sheet, as prescribed under Section 167(2) of Cr.P.C., would also stand extended disentitling the accused for grant of default bail. In the said Judgment, Hon'ble Apex Court has noticed the reasons for passing of the order of extending the period of limitation and, vide Para-16, as under:-

> *"16. The reason for passing the aforesaid order for extending the period of limitation w.e.f. 15.03.2020 for filing petitions/ applications/suits/appeals/all other proceedings are indicated in the order itself. Two reasons, which are decipherable from the order of this Court dated 23.03.2020 for passing the order are:-*
>
> *(i) The situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that are being faced by the litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed.*
>
> *(ii) To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court."*

After recording the aforesaid, Hon'ble Apex Court, vide Para 17 of its Judgment, has held as under:-

> *"17. The limitation for filing petitions/applications/suits/appeals/ all other proceedings was extended to obviate lawyers/litigants to come physically to file such proceedings in respective Courts/Tribunals. The order was passed to protect the litigants/lawyers whose petitions/applications/suits/appeals/all other proceedings would become time barred they being not able to physically come to file such proceedings. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/applications/suits/ appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. The order dated 23.03.2020 cannot be read to mean that it ever intended to extend the period of filing charge sheet by police as contemplated under Section 167(2) of the Code of Criminal Procedure. The Investigating Officer could have submitted/filed the charge sheet before the (Incharge) Magistrate. Therefore, even during the lockdown and as has been*

> *done in so many cases the charge-sheet could have been filed/submitted before the Magistrate (Incharge) and the Investigating Officer was not precluded from filing/submitting the charge-sheet even within the stipulated period before the Magistrate (Incharge).”*

58. A careful reading of the Judgment of Hon’ble Apex Court would leave no iota of doubt in our mind that the purpose of extending the period of limitation was for the benefit of litigants who have to take remedy in law as per the applicable statute for a right, as the law of limitation bars the remedy but not the right. Thus, in view of the ratio of the Judgment of Hon’ble Apex Court, in the case of ***‘S. Kasi’*** (supra) read with the amendments carried out by the Parliament and the State Legislature extending the period of limitation by amending Acts, we are of the opinion that the benefit of *suo-motu* extension orders of Hon’ble Apex Court would not be available to original adjudication proceedings which is to be governed by applicable Statutes including its amendments.

59. In view of the cumulative facts and circumstances mentioned hereinabove, we answer the issues framed by us in the following manners:-

60. **Issue No. (i)** :- The writ petitions having raised jurisdictional question of limitation are maintainable and, even otherwise, it would have been an exercise of futility for the Writ Petitioner to undergo the process of appeal or revision before filing of the writ petitions, as Commercial Taxes Tribunal has already adjudicated the issue in question and has held that Section 42(3) does not prescribe any period of limitation.

61. **Issue No. (ii)** :- Section 42(3) is to be read with Section 40(4) of the JVAT Act and the limitation prescribed for carrying out re-assessment proceedings would be five years.

62. **Issue No**. (iii) :- Since we have already held that Section 42(3) is to be read with provisions of Section 40(4), Issue No. (iii) does not warrant any further adjudication. However, in view of deliberations made above in preceding paragraphs and following the principles laid down by Hon’ble Apex Court in the case of ***‘Bhatinda District Cooperative Milk Producers Union Ltd.’*** (supra), we declare that in cases where no period of limitation has been prescribed under the JVAT Act, proceedings should be carried out within a reasonable period of limitation; and reasonable period of time is to be decided depending upon the scheme of the Act.

63. **Issue No**. (iv) : - The *suo-motu* orders extending the period of limitation passed by Hon'ble Apex Court is not applicable to original adjudication proceedings and re-assessment proceedings would be governed by provisions of JVAT Act read with the Amendment Act of 2020.

64. Accordingly, we allow both these writ applications filed by the Petitioner and quash and set aside the orders, both dated 08.03.2022, passed in both these Writ Petitions. Pending I.As., if any, stand disposed of.

(Rongon Mukhopadhyay, J)

(Deepak Roshan, J)

Jharkhand High Court
Dated/09 /08 / 2023
Amardeep/AFR