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M/S. OCL INDIA LTD.
v.
STATE OF ORISSA AND ORS.

DECEMBER 17, 2002

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[SYED SHAH MOHAMMED QUADRI AND ARIJIT PASAYAT, JJ.]

Orissa Sales Tax Act, 1947/Orissa Sales Tax Rules, 1947:

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S.23(4)(a)/r.80—Revisional power of Commissioner—Delegated under Notification No.1-ST-76/73 14271 dated 3-8-1993 to and exercised by Assistant Commissioner—However, the proceedings were dropped—Later Commissioner exercising the revisional power u/s. 23(4)(a) and r.80, again issued show cause notice to assessee to enhance the turnover determined by Sales Tax Officer—Held, in regard to the orders passed by the Sales Tax Officer, after the delegation, the Assistant Commissioner was competent to revise and, in fact, he did exercise the power to revise the order of the Sales Tax Officer—Thus, the power of the Commissioner has been exhausted by the Assistant Commissioner and the Commissioner cannot exercise the delegated power over again—Administrative Law—Delegation of power.

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State of Orissa v. Commissioner of Land Records and Settlement, Cuttack, [1998] 7 SCC 162, relied on.

J.C. Budharaja v. State of Orissa and Ors., 118 STC 140 approved.

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Commissioner of Sales Tax v. Halari Store, 107 STC 579 and State of Orissa v. Krishna Stores, 104 STC 594, distinguished.

Orient Paper Mills v. State of Orissa, (1988) 70 STC 333, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8534 of 2002.

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From the Judgment and Order dated 22.7.2002 of the Orissa High Court in OJC No. 930/98.

V.A. Bobde, Ashok Parija, K.K. Lahiri, Gaurav Kejriwal and Mrs. Sumita Mukherjee for the Appellant.

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D.A. Dave and Mrs. Kirti Mishra for the Respondent.

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The following Order of the Court was delivered :

Leave is granted.

The short question that arises for consideration in this appeal, which arises from the judgment of a Division Bench of the High Court of Orissa in O.J.C. No. 930 of 1998, dated July 22, 2002, is:

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“Whether after the Assistant Commissioner, as a delegatee of the power of the Commissioner Sales Tax, under Section 23(4)(a) of the Orissa Sales Tax Act, 1947 read with rule 80 of the Orissa Sales Tax Rules, 1947, has exercised revisional jurisdiction in respect of an order of the Sales Tax Officer, the Commissioner can exercise the power under the said provision to revise the same order over again?”

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The facts that gave rise to this appeal may be briefly noted here.

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The appellant-assessee, a company registered under the Companies Act, 1956, is a manufacturer of cement and refractory products. It is a registered dealer under the Orissa Sales Tax Act, 1947 (for short, ‘the Act’). For the Assessment Year 1986-87, the Sales Tax Officer passed an order of assessment under the Central Sales Tax Act on October 20, 1987. On December 13, 1995, the Assistant Commissioner, in exercise of the delegated power, issued a show cause notice to the assessee to revise the order passed by the Sales Tax officer. However, by order dated January 3, 1996, he dropped the proceedings. While so, on January 2, 1998, the Commissioner, purporting to exercise the revisional power under Section 23(4)(a) of the Act and Rule 80 of the Rules, issued notice to show cause as to why the turnover determined by the Sales Tax officer for the Assessment Year 1986-87 should not be enhanced. Challenging the validity of the said notice, the appellant filed O.J.C. No. 930/98 before a Division Bench of the High Court of Orissa. The High Court dismissed the writ petition on July 22, 2002 which is under challenge in this appeal.

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Mr. Bobde, the learned senior counsel for the appellant, has contended that once the Commissioner has delegated his revisional power and the Assistant Commissioner-delegatee has exercised the said power and decided the matter, it was not open for the Commissioner to exercise the very same power and, therefore, the High Court has erred in not quashing the impugned

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A show cause notice issued by him, Mr. Dave, the learned senior counsel appearing for the Revenue, has submitted that though the Commissioner has delegated power, he was not denuded of the statutory power so he could have still exercised the power under the said provisions.

B Under Section 23(4)(a) of the Act, the Commissioner of Sales Tax has power, either *suo motu* or on an application by a dealer or a person, to revise any orders made under the Act or rule made thereunder by any person other than the Tribunal appointed under sub-section (3) of Section 3 of the Act. That power was delegated by the Commissioner in favour of the Assistant Commissioner, vide Notification No. I-ST-76/73 14171, dated August 3, 1963.

C We may notice here Section 23(4)(a) of the Act which is in the following terms:

“Section 23—Appeals and revisions.

(1) to (3).....

D (4)(a) Subject to such rules as may be made and for reasons to be recorded in writing, the Commissioner may, upon application by a dealer or person or on his own motion, revise any order made under this Act or the Rules made thereunder by any person other than the tribunal, appointed under sub-section (3) of section 3 to assist him:

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

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

G A perusal of clause (a) of sub-section 4 afore-quoted, shows that the Commissioner is conferred with the power to revise any order made under the Act or the Rules made thereunder by any person other than the Tribunal appointed under sub-section (3) of section 3 of the Act to assist him, either on an application made by a dealer or any person or *suo motu*. The proviso thereto bars the exercise of revisional power on the application of a dealer or

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any person where remedy of appeal under sub-section (1) and sub-section (3) of Section 23 has not been availed or where the revision was not filed within the prescribed period of limitation. A

Rule 79 of the Rules deals with exercise of the revisional power on the application of a dealer or any person and Rule 80 of the Rules deals with exercise of power *suo motu* by the Commissioner. Here, we are concerned with the latter Rule, which runs thus: B

“Rule 80: Revision by the Commissioner *suo motu*.—The Commissioner may on his own motion at any time within three years from the date of passing of any order by the Sales Tax Officer or within two years from the date of passing of any order by the Additional commissioner, Special Additional commissioner or Assistant Commissioner, as the case may be, call for records of the proceedings in which such order was passed and if he considers that any order passed therein is erroneous in so far as it is prejudicial to the interest of the revenue he may after giving the dealer an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary revise any such order.” C D

A plain reading of this rule disclose that the Commissioner can exercise the revisional jurisdiction *suo motu* within the period specified—in the case of an order passed by the Sales Tax Officer, within three years from the date of passing of the order and in the case of an order passed by the Additional Commissioner, Special Additional Commissioner or Assistant Commissioner, as the case may be, within two years from the date of passing of the order. The revisional jurisdiction can be exercised if the Commissioner, after calling for the records of the proceedings in which the order sought to be revised was passed, considers that the order is erroneous insofar as it is prejudicial to the interest of the Revenue. Where these jurisdictional facts are present to invoke the revisional power, the Commissioner has to provide the dealer or a person affected thereby an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, may revise any such order. There are two situations in which an order in question cannot be revised and they are; (1) where an appeal against the order is pending before the appellate authority under section 23, or (2) where time-limit for filing an appeal under section 23 has not expired. The same conditions will govern the exercise of the revisional power by the delegatee of the Commissioner under Notification No. I-ST-76/73 14171 dated the 3rd August, 1963. The notification, E F G H

- A insofar as it is relevant for our purpose, says that with the prior approval of the State Government, the Commissioner has delegated his power and duties under the Act and the Rules framed thereunder as specified in the Schedule annexed thereto to Assistant Commissioner of Sales Tax and directed that the said powers and duties shall be exercised and discharged by the said Assistant Commissioner with their respective jurisdiction.

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It will be useful to refer to the schedule here.

“SCHEDULE”

C	Sl. No.	Provisions of the Orissa Sales Tax Act, 1947, and Rules made thereunder specifying the powers and duties delegated.	Description of the powers and duties delegated
	1	2	3
D	1.	Sub-section (4)(a) of section 23 of the Orissa Sales Tax Act, 1947 read with rule 80 of the Orissa Sales Tax Rules, 1947.	Powers to revise assessment order passed by the Sales Tax Officer and Assistant Sales Tax Officer <i>suo motu</i> provided that no appeal has been filed against such orders.”
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- F It may be seen that the power that had been delegated is under clause (a) of sub-section (4) of Section 23 of the Act and Rule 80 of the Rules. In Column 3 the description of the powers and duties delegated are given as follows:-

- G “Powers to revise assessment order passed by the Sales Tax Officer and Assistant Sales Tax Officer *suo motu* provided that no appeal has been filed against such orders.”

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

Commissioner; the power that was delegated to the Assistant Commissioner was confined to the orders passed by the Sales Tax Officers. In the result the Commissioner retained his power to revise the orders passed by the Assistant Commissioner, Additional Commissioner and Special Additional Commissioner. However, in regard to the orders passed by the Sales Tax Officer, after the delegation, the Assistant Commissioner was competent to revise and, in fact he did exercise the power to revise the order of the Sales Tax Officer, after issuing a show cause notice dated December 13, 1995. If that be so, the power of the Commissioner (the delegator) under the afore-quoted provisions has been exhausted by the Assistant Commissioner and the Commissioner cannot, in law, exercise the delegated power over again.

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

The attention of the learned Judges of the High Court was invited to an earlier decision of a Division Bench of the High Court in *Orient Paper Mills v. State of Orissa*, (1988) 70 STC 333 but they got over it referring to two judgments of this Court in *Commissioner of Sales Tax v. Halari Store*, 107 STC 579 and *State of Orissa v. Krishna Stores*, (104 STC) 594. In Our view, those judgments of this Court do not deal with the point in issue, here. The Division Bench was therefore, not right in not following the said decision of the coordinate bench which was binding on it. Further, yet another judgment of a Division Bench of the Orissa High Court in *J.C. Budharaja v. State of Orissa and Ors.*, (118 STC 140) is brought to our notice. One of us Hon'ble Arijit Pasayat, CJ, (as he then was) was a party to it. In that decision the point was exhaustively dealt with to hold that the Commissioner did not have power to revise the order under the afore-mentioned provision, after the Assistant Commissioner has, in exercise of the delegated power, exercised the jurisdiction in respect of an order of the Sales Tax Officer. We find in that decision a reference to the judgment of this Court in *State of Orissa v. Commissioner of Land Records and Settlement, Cuttack*, [1998] 7 SCC 162 which virtually covers the point against the Revenue. In that case the statutory power of revision of Board of Revenue was delegated to the Commissioner. In para 25

A of the judgment, it was laid down that the Board could not revise the orders passed by a delegatee, the Commissioner.

For all these reasons, we are unable to sustain the order under challenge. It is, accordingly, set aside. The impugned notice is quashed by allowing the writ petition.

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The appeal is, accordingly, allowed. In the circumstances of the case, we make no order as to costs.

R.P.

Appeal allowed.