2023 LiveLaw (SC) 70

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
S. RAVINDRA BHAT; J., DIPANKAR DATTA; J.
CIVIL APPEAL NO.5393 OF 2010; 1st February, 2023

M/S GODREJ SARA LEE LTD.
versus
THE EXCISE AND TAXATION OFFICER-CUM-ASSESSING AUTHORITY & ORS.

Constitution of India, 1950; Article 226 - Dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper - Mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable" - Where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available. *(Para 4-8)*

Tax Administration - Unless the discipline of adhering to decisions made by the higher authorities is maintained, there would be utter chaos in administration of tax laws apart from undue harassment to assesses. *(Para 34)*

For Appellant(s) Mr. V. Lakshmikumaran, Adv. Mr. Rajiv Tyagi, AOR Mr. Rohit Gupta, Adv. Ms. Apeksha Mehta, Adv. Ms. Falguni Gupta, Adv. Mr. P. Mundra, Adv.

For Respondent(s) Mr. Kamal Mohan Gupta, AOR

J U D G M E N T

DIPANKAR DATTA, J.

This appeal, by special leave, registers a challenge to an order dated 12th October, 2009 passed by the High Court of Punjab and Haryana at Chandigarh (hereafter 'the High Court', for short) dismissing Civil Writ Petition No.9191 of 2009 presented by the appellant and relegating it to the remedy of an appeal under section 33 of the Haryana Value Added Tax Act, 2003 (hereafter 'the VAT Act', for short).

2. Two questions emerge for decision on this appeal. First, whether the High Court was justified in declining interference on the ground of availability of an alternative remedy of appeal to the appellant under section 33 of the VAT Act, which it had not pursued. Should the answer to the first question be in the negative, we would next be required to decide whether to remit the writ petition to the High Court for hearing it on merits or to examine the correctness or otherwise of the orders impugned before the High Court.

3. It appears on a perusal of the order under challenge in this appeal that the appellant had questioned the jurisdiction of the Deputy Excise and Taxation Commissioner (ST)-cum-Revisional Authority, Kurukshetra (hereafter 'the Revisional Authority', for short) to reopen proceedings, in exercise of *suo motu* revisional power conferred by section 34 of the VAT Act, and to pass final orders holding that the two assessment orders, both dated 28th February, 2007 passed by the ETO-cum-Assessing Authority, Kurukshetra (hereafter 'the Assessing Authority', for short) for the assessment years 2003-04 and 2004-05 suffered from illegality and impropriety as delineated therein, viz. that the Assessing Authority erred in levying tax on mosquito repellant (a product manufactured by the

appellant) @ 4% instead of 10%. Keeping in view the objection raised by counsel for the respondents that without exhausting the remedy of appeal provided by section 33 of the VAT Act *"it would not be permissible to entertain this petition*" and upon consideration of the decision of this Court reported in **(1975) 2 SCC 436** ***(Titagarh Paper Mills vs. Orissa State Electricity Board & Anr.)*** based on which it was contended on their behalf that where any right or liberty arises under a particular Act then the remedy available under that Act has to be availed, the High Court was of the opinion that there can be no presumption that the appellate authority would not be able to grant relief sought in the writ petition; hence, the writ petition was dismissed and the appellants were relegated to the appellate remedy.

4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in **1958 SCR 595** ***(State of Uttar Pradesh vs. Mohd. Nooh)*** had the occasion to observe as follows:

"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (*Halsbury's Laws of England*, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. ***"

6. At the end of the last century, this Court in paragraph 15 of the its decision reported in **(1998) 8 SCC 1** ***(Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others)*** carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision reported in **2021 SCC OnLine SC 884** ***(Assistant Commissioner of State Tax vs. M/s. Commercial Steel Limited)*** has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in **(1977) 2 SCC 724** ***(State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.)*** and **(2000) 10 SCC 482** ***(Union of India vs. State of Haryana)***. What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available.

9. Now, reverting to the facts of this appeal, we find that the appellant had claimed before the High Court that the *suo motu* revisional power could not have been exercised by the Revisional Authority in view of the existing facts and circumstances leading to the only conclusion that the assessment orders were legally correct and that the final orders impugned in the writ petition were passed upon assuming a jurisdiction which the Revisional Authority did not possess. In fine, the orders impugned were passed wholly

without jurisdiction. Since a jurisdictional issue was raised by the appellant in the writ petition questioning the very competence of the Revisional Authority to exercise *suo motu* power, being a pure question of law, we are of the considered view that the plea raised in the writ petition did deserve a consideration on merits and the appellant's writ petition ought not to have been thrown out at the threshold.

10. Reliance placed by the High Court on the decision in ***Titagarh Paper Mills*** (supra), in our view, was completely misplaced. The respondent Electricity Board had levied coal surcharge on the appellant company in terms of an agreement. Such agreement contained an arbitration agreement in clause 23. Instead of pursuing its remedy in arbitration, the appellant company unsuccessfully invoked the writ jurisdiction. This Court was approached whereupon it was held that in view of the issues raised, there was no reason why the appellant company should not pursue its remedy in arbitration, having solemnly accepted clause 23 of the agreement, and instead invoke the extraordinary jurisdiction of the high court under Article 226 of the Constitution to determine questions which really form the subject matter of the arbitration agreement. This decision could not have been of any relevance having regard to the issue presented for resolution before the High Court by the appellant, particularly when the disputes *inter se* were not referable to arbitration.

11. We have reasons to believe, considering the nature of objection raised by the respondents as recorded by the High Court in the impugned order, that the High Court had mistakenly referred to ***Titagarh Paper Mills*** (supra) while intending to rely on a different decision of this Court on an appeal preferred by the same party, reported in **(1983) 2 SCC 433 *(Titaghur Paper Mills Co. Ltd. vs. State of Orissa)***. While upholding the impugned order of dismissal of the writ petition, where an order passed by the Sales Tax Officer was under challenge, this Court in ***Titaghur Paper Mills Co. Ltd.*** (supra) held that the challenge being confined to the regularity of proceedings before the Sales Tax Officer and there being no suggestion that the concerned officer had no jurisdiction to make an assessment, the decision in ***Mohd. Nooh*** (supra) was clearly distinguishable since in that case there was total lack of jurisdiction. This Court also held that under the scheme of the relevant Act, there was a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of and that since the authority of the concerned officer to make an assessment was not in question, recourse ought to be taken by initiating proceedings thereunder. As noted above, the very jurisdiction of the Revisional Authority having been questioned in the writ petition, the impugned order of the High Court dismissing the writ petition without examining the merits of the challenge cannot be sustained even if the High Court were to rely on ***Titaghur Paper Mills Co. Ltd.*** (supra) to support such order.

12. The High Court by dismissing the writ petition committed a manifest error of law for which the order under challenge is unsustainable. The same is, accordingly, set aside.

13. Moving on to decide the second question, ordering a remand is an available option for us. However, having regard to the lapse of time (almost a life term of fourteen years) since the orders impugned in the writ petition were made, we feel that it would not be in the best interests of justice to remit the matter to the High Court. Since prior to reserving judgment on this appeal we had heard the parties on the merits of the jurisdictional issue that the appellant had raised before the High Court, it is time to rule on the jurisdiction of the Revisional Authority.

14. The appellant is engaged in the business of manufacturing, marketing and sales of household insecticide products in various forms, viz. mosquito coils, mats, refills, aerosols,

baits and chalks under the popular brand name “Good Knight” and “Hit” from, *inter alia*, its sales office at Kurukshetra, and is an ‘assessee’ under the VAT Act.

15. In terms of section 7 of the VAT Act, the taxable goods have been classified under Schedules A, B and C. It is found from Schedule C (as originally enacted) that pesticides, weedicides and insecticides were included in Entry 1 and taxable @ 4%.

16. Returns were filed by the appellant for the Assessment Years 2003-04 and 2004-05 declaring its gross turnover from manufacturing and sales of insecticides and pesticides, besides other consumer goods. Such returns were duly accepted. However, in view of an amendment in Entry 67 of Schedule C introduced by a notification dated 30th June, 2005, notices were issued by the Assessing Authority as to why tax liability @ 10% instead of 4% should not be imposed. Upon hearing the representative of the appellant, orders dated 28th February, 2007 and 28th March, 2008 were passed by the Assessing Authority for the Assessment Years 2003-04 and 2004-05, respectively, accepting the classification of goods and the rate of tax as stated by the appellant in its returns, i.e. 4%.

17. Subsequently, the Revisional Authority calledfor the assessment records of the appellant for the Assessment Years 2003-04 and 2004-05 for revision of the assessment on classifying the household insecticide products of the appellant as mosquito repellants and taxable at the higher rate of tax, i.e. 10%, instead of 4%. Initially, show-cause notices seeking to revise the assessments made for the Assessment Years 2003-04 and 2004-05 were issued, and such exercise was followed up by identically worded final orders, both dated 2nd March, 2009.

18. Several legal questions including validity of certain notifications were raised by the appellant before the High Court in its writ petition. Apart from the question as to whether mosquito repellants are goods classifiable as insecticides, pesticides, weedicides, etc., one other question which the appellant sought to raise was whether an amendment in the schedule of classification/rates of tax could be applied to completed assessments for the assessment years prior to the amendment coming into effect. However, before us, the only limited question which the appellant raised was, whether the orders of the Revisional Authority, both dated 2nd March, 2009, seeking to revise the orders of the Assessing Authority dated 28th February, 2007 and 28th March, 2008 pertaining to the Assessment Years 2003-04 and 2004-05, have been issued in exercise of jurisdiction conferred by law.

19. For facility of understanding, it would be convenient at this stage to reproduce the material part from the revisional order passed in respect of the Assessment Year 2004-05, below:

“I, xxxxxxx, Dy. Excise & Taxation Commissioner-cumRevisional Authority, Kurukshetra called for the assessment record of M/s Godrej Sara Lee Ltd., Pipli holding TIN xxxxxxx for the assessment year 2004-05. Shri xxxxxxx, ETO-cum-Assessing Authority Kurukshetra passed this assessment order on 28.3.2008. On examination of the assessment record, I was prima facie of the view that the said assessment order suffered from the following illegalities and impropriates (sic, improprieties):

The assessing authority erred in levying tax on Mosquito Repellant @ 4% Instead of 10%

Accordingly, a show cause notice was issued for 2.3.2009. On 2.3.2009 Shri Ajay Goel, Advocate of the firm appeared along with application for adjournment on the plea that due to closing month of March, 2009 the dealer is unable to get the case decided. The application for adjournment is rejected as the dealer has not to produce any account books or is not to prepare any documents only law point is involved in the case. The dealer has sold mosquito repellant and deposited tax @ 4%. The Hon'ble Supreme Court of India in the case of M/s Sonic Electrochem and another vs. STO and other (1998) 12PHT-215 (SC) held that Jet Mat Mosquito Repellant is not

pesticides/insecticides. Therefore, these goods are general goods and liable to tax at general rate of tax. Hence, a notice was issued to the dealer to explain as to why tax should not be levied at general rate of tax on the sale of mosquito repellants. The counsel of the firm has not offered any arguments on the issue. In view of the decision of the Hon'ble Apex Court in the case of M/s Sonic Electrochem and another vs. STO and other (1998) 12PHT-215 (SC), it is unarguable clear that mosquito repellant mats being unscheduled goods are taxable at general rate of tax. Confusion was also cleared with the amendment to entry 67 vide notification dated 1.7.2005.

In view of the above facts, it is clear that assessing authority while framing assessment has erred in levying tax @ 4% on mosquito repellants. Hence the assessment order dated 28.3.2008 is revised u/s 34 of the Act ibid as under:

TTO @ 10%	Rs.5,28,89,282	Rs.52,88,928
(Mosquito Repellants)		
		Tax already assessed
		By the AA in original
		Order Rs.21,15,571
		Due Rs.31,73,357

Issue Tax Demand Notice Challan for Rs.31,73,357 along with a copy of the order to the dealer."

20. The assessment order dated 28th March, 2008 of the Assessing Authority under section 15 of the VAT Act pertaining to Assessment Year 2004-05, which was sought to be revised by the Revisional Authority, had taken into consideration the decision of this Court reported in **(1998) 6 SCC 397 *(Sonic Electrochem vs. S.T.O.)***. The appellant therein having sold 'Jet Mat', a mosquito repellent, it was ruled by this Court that the same was liable to tax @ 10%. Considering such decision, a notice was issued to the appellant to explain as to why tax should not be levied @ 10% on the sale of 'Godrej Mat'. Put to notice, it was *inter alia* argued on behalf of the appellant before the Assessing Authority that the Haryana Tax Tribunal (hereafter 'the Tribunal', for short), constituted under section 57 of the VAT Act, by its order dated 21st November, 2001 had the occasion to dismiss a petition filed by the department seeking review of an earlier order dated 22nd March, 2000. The Assessing Authority extracted the relevant part of the order 21st November, 2001 of the Tribunal passed on the review petition in its order dated 28th March, 2008, reading as follows:

"The only limited question to be addressed is whether the ratio of the judgment of the Hon'ble Apex Court delivered in the above mentioned case of M/s Sonic Electrochem and others is applicable in the present case? This judgment of the Hon'ble Supreme Court is clearly distinguishable from the facts of the present case as the said judgment was delivered in special circumstances were there was specific an entry 129 dealing with mosquito repellants and hence the Court held that judgment would be covered under entry 129. However, there is no such corresponding entry in the Haryana General Sales Tax Act and therefore the issue would be whether mosquito repellant would fall within the entry dealing with insecticide etc. or not? The Hon'ble Madras High Court, the Tribunal in the case of Transelektra Domestic Products Pvt. Ltd., and others vs. Commercial Tax Officer, Porur Assessment Circle Madras and others has clearly held that mosquito repellants containing 4% Alethrin' was an insecticide and relying on the judgment of the Hon'ble Madras High Court, the Tribunal in the case of M/s Balsara Hygiene Products Ltd. Kundli (Sonepat) vs State of Haryana has also held that Mosquito Repellants is an insecticide and hence liable to concessional rate of tax. The same view has been taken by the Hon'ble Tribunal in the impugned order and I do not find any infirmity in this order. It has not been contested that Jet Mats does contain 'Allethrin' which is an insecticide. Hence, in these circumstances, the present review petition is dismissed."

Being bound by the decision of the Tribunal, the Assessing Authority formed an opinion and returned a finding that he had no other alternative but to vacate the notice issued by him proposing to levy tax @ 10% instead of 4% and proceeded to do so.

21. Appearing in support of the appeal, Mr. V. Lakshmikumaran, learned counsel, contended that the Assessing Authority having passed the order dated 28th March, 2008 taking into consideration the decision of the Tribunal, which in turn distinguished the decision in ***Sonic Electrochem*** (supra), and such decision having attained finality, the Revisional Authority could not have assumed a jurisdiction to *suo motu* issue the impugned show-cause notices as well as the final revisional orders under section 34 of the VAT Act holding that mosquito repellent mats being unscheduled goods, are taxable at the general rate of tax. According to him, the Revisional Authority was as much bound by the order of the Tribunal as the Assessing Authority was having regard to the similarity of issues involved and it was not open to such authority to take a view different from the one expressed by the Tribunal.

22. Our attention was drawn by Mr. Lakshmikumaran to the decision of this Court reported in **1992 SUPP (1) SCC 443** ***(Union of India and Ors. Vs. Kamlakshi Finance Corporation Ltd.)*** in support of the proposition that in disposing of quasi-judicial issues before them, the Revenue Officers are bound by the decisions of the appellate authorities and that the principle of judicial discipline requires that the orders of the higher appellate authorities are followed unreservedly by the subordinate authorities.

23. Mr. Lakshmikumaran, accordingly, prayed that upon the revisional orders being set aside, the orders of the Assessing Authority be restored.

24. *Per contra*, Mr. Alok Sangwan, learned counsel appearing for the respondents, contended that the Revisional Authority did not exceed its jurisdiction in exercising *suo motu* powers under section 34 of the VAT Act. By referring to notifications issued at or about the relevant time amending Schedule C and the decision in ***Sonic Electrochem*** (supra), he sought to argue on the merits of the determination made by the Revisional Authority and how she was right in her findings that the mosquito repellants manufactured by the appellant were liable to be taxed @ 10% in terms of the decision in ***Sonic Electrochem*** (supra), and not 4% as assessed by the Assessing Authority in the orders under revision. He also submitted that the orders of the Revisional Authority do not merit interference, and the appeal ought to be dismissed.

25. At the hearing, we made it clear that the issue as to whether the impugned orders of the Revisional Authority were sustainable on merits would not be examined unless the Court was persuaded by Mr. Sangwan to accept that the Revisional Authority did have the authority, competence and jurisdiction to issue the impugned show-cause notices and pass the consequential final revisional orders impugned in the writ petition enhancing the liability of the appellant to tax @ 10% instead of 4%.

26. Since section 34 of the VAT Act appears to have been the source of power exercised by the Revisional Authority, we shall first notice its contents as it stood on the date of the impugned orders, i.e. 2nd March, 2009. Prior to its amendment with effect from 20th March, 2009, section 34 read as follows:

"Section 34. Revision. : - (1) The Commissioner may, on his own motion, call for the record of any case pending before, or disposed of by, any taxing authority for the purposes of satisfying himself as to the legality or to the propriety of any proceeding or of any order made therein which is prejudicial to the interests of the State and may, after giving the persons concerned a reasonable opportunity of being heard, pass such order in relation thereto, as he may think fit:

Provided that no order passed by a taxing authority shall be revised on an issue, which on appeal or in any other proceeding from such order is pending before, or has been settled by, an appellate authority or the High Court or the Supreme Court, as the case may be:

Provided further that no order shall be revised after the expiry of a period of three years from the date of the supply of the copy of such order to the assessee except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court."

(2) The State Government may, by notification in the Official Gazette, confer on any officer not below the rank of Deputy Excise and Taxation Commissioner, the powers of the Commissioner under sub-section (1) to be exercised subject to such exceptions, conditions and restrictions as may be specified in the notification and where an officer on whom such power have been conferred passes an order under this section, such order shall be deemed to have been passed by the Commissioner under sub-section (1)."

27. To the extent relevant for the present decision, *suo motu* power of revision could be exercised by the Revisional Authority for the purposes of satisfying himself as to the legality or propriety of any order made in any proceeding which is prejudicial to the interests of the State. The first proviso, however, imposed a restriction on exercise of such *suo motu* power, if an issue had been settled, *inter alia*, by an appellate authority. Thus, the *sine qua non* for exercise of power under section 34 is the satisfaction of the Revisional Authority that an order has been made by a taxing authority in any proceeding prejudicial to the interests of the State, the legality or propriety of which appears to him to be *prima facie* vulnerable. Nevertheless, such power cannot be exercised if the issue involved is pending before or has been settled by an appellate authority. It cannot be disputed that the Tribunal is comprehended within the meaning of 'appellate authority' as defined in section 2(b) of the VAT Act.

28. These being the contours of section 34, as it then stood, it needs to be seen how far the Revisional Authority was justified in drawing power from such provision and exercising it.

29. A bare perusal of the impugned revisional orders reveals that the decision in ***Sonic Electrochem*** (supra) formed the plinth for the satisfaction that the orders of assessment are liable to be revised. The decision in ***Sonic Electrochem*** (supra) was rendered upon consideration of the Gujarat Sales Tax Act, 1969 (hereafter 'the Sales Tax Act', for short). The short question that arose for a decision was, whether 'Jet Mat' produced by the appellant therein would come within Entry 129 of Schedule II Part A of the Sales Tax Act, issued under section 49 thereof. Entry 129, at the relevant point of time, read thus:

Sl. No.	Description of goods	Rate of sales tax	Rate of purchase tax
129	Mosquito repellents	Twelve paise in the rupee	Twelve Paise in the

30. Having regard to the specific entry, i.e. Entry 129, dealing with mosquito repellents, this Court overruled the contention of the appellant therein that 'Jet Mat' would not come within the ambit of Entry 129 since one of its constituents happens to be an insecticide. It was also held that the product manufactured by the appellant therein, viz. 'Jet Mat', which was commercially known as "Mosquito Repellent Mat" is a mosquito repellant notwithstanding the fact that it not only repels mosquitoes but is also capable of killing mosquitoes. For the reasons assigned in the decision, it was held that 'Jet Mat' is not an insecticide which would be entitled for partial exemption under Entry 98 of the Sales Tax Act.

31. It is, therefore, clear that because of the specific entry dealing with mosquito repellents, this Court held 'Jet Mat' to be covered under Entry 129.

32. As the Tribunal in its order dated 21st November, 2001 found, there was no such corresponding entry in the VAT Act. Bearing in mind the same as well as on consideration of a decision of the Madras High Court and other decisions, the Tribunal had proceeded to hold that mosquito repellents containing 4% 'Alethrin' was an insecticide and hence, liable to concessional rate of tax.

33. While deciding the present appeal, we are primarily concerned with the issue of assumption of jurisdiction by the Revisional Authority on the face of the unchallenged order of the Tribunal dated 21st November, 2001, and not with the merits of the decision either given by the Tribunal or by the Revisional Authority. What stares at the face of the respondents is that the aforesaid decision of the Tribunal, quoted in the order of the Assessing Authority, has attained finality. Once the issue stands finally concluded, the decision binds the State, a *fortiori,* the Revisional Authority. The decision of the Tribunal may not be acceptable to the Revisional Authority, but that cannot furnish any ground to such authority to perceive that it is either not bound by the same or that it need not be followed. The first proviso, in such a case, gets activated and would operate as a bar to the exercise of powers by the Revisional Authority.

34. In our view, the Revisional Authority might have been justified in exercising *suo motu* power to revise the order of the Assessing Authority had the decision of the Tribunal been set aside or its operation stayed by a competent Court. So long it is not disputed that the Tribunal's decision, having regard to the framework of classification of products/tax liability then existing, continues to remain operative and such framework too continues to remain operative when the impugned revisional orders were made, the Revisional Authority was left with no other choice but to follow the decision of the Tribunal without any reservation. Unless the discipline of adhering to decisions made by the higher authorities is maintained, there would be utter chaos in administration of tax laws apart from undue harassment to assesses. We share the view expressed in ***Kamlakshi Finance Corporation Ltd.*** (supra).

35. In the midst of hearing, we had enquired from Mr. Sangwan whether there has been any decision of any other competent Tribunal or High Court taking a view different from the one taken by the Tribunal in its order dated 21st November, 2001, which was considered by the Assessing Authority. Fairly, he answered in the negative. If only Mr. Sangwan could have invited our attention to any such decision, which were acceptable to us, the issue decided by the Tribunal could have been reopened on the ground that it is a debatable issue and interference with the final orders passed by the Revisional Authority may not have been resorted to, leaving the appellant to pursue the appellate remedy under the VAT Act.

36. There is also substance in the contention of Mr. Lakshmikumaran that s*uo motu* power of revision, on the terms of section 34, could have been exercised only if the orders sought to be revised suffered from any illegality or impropriety.

37. A decision may be questioned as suffering from an illegality if its maker fails to understand the law that regulates his decision making power correctly or if he fails to give effect to any law that holds the field and binds the parties. On the other hand, having regard to the purpose section 34 seeks to serve, to take exception to a decision on the ground of lack of propriety of any proceedings or order passed in such proceedings, it essentially ought to relate to a procedural impropriety. It is incumbent for the accuser to show that the decision maker has failed to observe the standard procedures applicable in case of exercise of his power. Additionally, to impeach an order on the ground of moral impropriety, it has to be shown that the weight of facts together with the applicable law

overwhelmingly points to one course of action but the decision has surprisingly gone the other way, giving reason to suspect misbehaviour or misconduct in the sphere of activity of the decision maker warranting a revision.

38. There is nothing on record to justify either illegality or (procedural/moral) impropriety in the proceedings before the Assessing Authority or the orders passed by him, as such. As noted above, the Assessing Authority was bound by the order of the Tribunal and elected to follow it having no other option. Such decision of the Tribunal was even binding on the Revisional Authority. In such circumstances, to brand the orders of the Assessing Authority as suffering from illegality and impropriety appears to us to be not only unjustified but also demonstrates thorough lack of understanding of the principle regulating exercise of *suo motu* revisional power by a quasi-judicial authority apart from being in breach of the principle of judicial discipline, while confronted with orders passed by a superior Tribunal/Court. We are inclined to the view that it is not the Assessing Authority's orders but those passed by the Revisional Authority, which suffer from a patent illegality.

39. For the foregoing reasons, we have no other option but to invalidate the impugned final revisional orders dated 2nd March, 2009 for the Assessment Years 2003-04 and 2004-05. It is ordered accordingly.

40. The interim order dated 18th January, 2010 is made absolute.

41. The appeal stands allowed. However, the parties are left to bear their own costs.