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ORISSA HIGH COURT : CUTTACK

W.P.(C) No. 12443 of 2025

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

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M/s. Indian Oil Adani Ventures Limited
(Formerly known as IOT Infrastructure and
Energy Services Limited)
a Company, having its Registered Office
At Plot No. 457, Khata No.45, IFFCO Square
Tarinigada, Bijaychandrapur
Paradip, District: Jagatsinghpur
and
bearing TIN 21021303619
Represented through
Authorised Signatory
Shri Sameer Kulaspurkar
Aged about 42 years
Son of Shri Suresh Madhukar Kulaspurkar
R/o 102, Maa Laxmi Avenue
Sector-36, Panvel
Navi Mumbai – 410 209. ...

Petitioner

-VERSUS-

- 1.** State of Odisha
Represented through
Secretary, Ministry of Finance
Bhubaneshwar.
- 2.** Joint Commissioner of Sales Tax
CT and GST Circle, Jagatsinghpur
Having Office at CT and GST Circle
Jagatsinghpur, Paradeep, Odisha.



3. Sales Tax Officer
Jagatsinghpur Circle, Paradeep
Having Office at
the Office of the Deputy Commissioner
of Commercial Taxes, Jagatsinghpur Circle
Paradeep, Trade Centre Building
Near Hanuman Mandir, Pin: 754 142.
4. Commissioner of Commercial Taxes and GST
Finance Department, Government of Odisha
Having Office at Baniykar Bhawan
Old Secretariat Campus, Cantonment Road
Buxibazar, Cuttack
Odisha – 753 001. ... Opposite Parties.

Counsel appeared for the parties:

- For the Petitioner : Mr. V. Sridharan,
Senior Advocate
along with
M/s. Ishwar Mohanty,
Rahul Tangri, Deepro Sen,
Vasudev A, Advocates
- For the Opposite Parties : Mr. Sunil Mishra,
Standing Counsel
(CT & GST Organisation)

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 25.08.2025 :: Date of Judgment : 13.11.2025



JUDGMENT

MURAHARI SRI RAMAN, J.—

By way of filing writ application under the provisions of Articles 226 and 227 of the Constitution of India, the petitioner craves to question the legality, propriety and jurisdiction of the Joint Commissioner of Sales Tax, CT and GST Circle, Paradeep in framing assessment for the tax periods from 01.04.2010 to 31.03.2013 under Section 42 of the Odisha Value Added Tax Act, 2004, *vide* Order dated 21.03.2025 purported to have been passed in pursuance of Order dated 19.10.2023 of the Joint Commissioner of Sales Tax (Appeal), Territorial Range, Cuttack-II, Cuttack in Appeal No.AA/03/OVAT/CUII/2022-23.

Facts emanate from the writ petition:

- 2.** A Tax Audit in terms of Section 41 of the Odisha Value Added Tax Act, 2004 (for short, “OVAT Act”) read with Rule 41 of the Odisha Value Added Tax Rules, 2005 (for brevity, “OVAT Rules”) for the tax periods 01.04.2010 to 31.03.2013 was undertaken with respect to M/s. IOT Infrastructure and Energy Services Limited¹, in pursuance of which Audit Visit Report in Form VAT-303

¹ The name of originally incorporated “IOT INFRASTRUCTURE AND ENERGY SERVICES LIMITED” has been changed from “INDIAN OIL TANKING LIMITED” to “INDIAN OIL ADANI VENTURES LIMITED” *vide* Certificate of Incorporation pursuant to change of name dated 09.03.2023 issued in terms of Rule 29 of the Companies (Incorporation) Rules, 2014, by the Government of India, Ministry of Corporate Affairs.



(AVR”, for short) as prescribed under Rule 45 was prepared on 31.03.2016 by the Deputy Commissioner of Sales Tax, Jagatsinghpur Circle, Paradeep. No assessment proceeding was initiated under Section 42 of the OVAT Act pursuant thereto.

2.1. Nonetheless, a notice dated 21.07.2016 in Form VAT-307 prescribed under Rule 50 was issued for assessment of tax on the ground of escaped turnover under Section 43. On the petitioner being “assessed under Section 39 for the tax periods from 01.04.2010 to 31.03.2013 on 01.07.2016”, such proceeding under Section 43 was stated to have been initiated. Accordingly, assessment under Section 43 of the OVAT Act for the tax periods from 01.04.2010 to 31.03.2013 was framed *vide* Order dated 10.02.2017 by the Sales Tax Officer, Jagatsinghpur Circle, Paradeep, with the following prelude:

This is an order of assessment passed under Section 43 of the OVAT Act, 2004 in case of M/s. IOT Infrastructure and Energy Services Limited, plot No.486, Bijayachandrapur, Paradeep, District: Jagatsinghpur, bearing TIN 21021303619 for the tax periods from 01.04.2010 to 31.03.2013.

The dealer-company is found to have filed the returns electronically for the tax periods from 01.04.2010 to 31.03.2013 and as such the same are deemed as self-assessed under Section 39 of the OVAT Act, 2004.



*The Audit Visit Report in case of the above named dealer-company for the tax periods from 01.04.2010 to 31.03.2013 was received from the Deputy Commissioner of Sales Taxes, Jagatsinghpur Circle, Paradeep on dated 12.07.2016. Consequent upon examination of the returns filed by the dealer-company vis-a-vis the Audit Visit Report the following facts were revealed for the above tax periods. ****

- 2.2. Said assessment order was challenged before this Court in a writ petition, being W.P.(C) No.4513 of 2017, which came to be disposed of on 08.12.2022 by relegating the petitioner to avail remedy of appeal.
- 2.3. Appeal against the Order dated 10.02.2017 passed under Section 43 was filed, which came to be disposed of by the Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack ("Appellate Authority", for brevity), *vide* Order dated 19.10.2023 with the following observation:

"However, from the above discussions, it is evident that, the completion of the assessment made in the present case under Section 43 of the OVAT Act is not as per the provisions laid in law. Further, it is accordingly, held that in the absence of the completion of the assessment under Section 39, 40, 42 and 44, reassessment under Section 43 of the OVAT Act is not sustainable and cannot be initiated. Hence, this forum feels that assessment in the instant case should have been completed under Section 42 and not under Section 43 after the receipt of the Audit Visit Report by the Assessing Authority.



From the above observation of facts, it is pertinent to note that the statement given by the learned advocate and the questions raised were vital ones. Actually, the Assessing Authority has erred in completing the assessment proceeding under Section 43 instead of Section 42 of the OVAT Act, 2004.

Hence, this forum set aside the complete assessment proceedings, as the Assessing Authority has not completed the assessment proceedings under the correct section and as per the provisions of law. Further, the Assessing Authority is directed to issue Form VAT-306 notice to the appellant and to complete the proceeding under Section 42 of the OVAT Act within a period of four months and the appellant is directed to cooperate with the Assessing Authority and provide all the requisite books of accounts for completion of assessment within the prescribed time.

In the result, the appeal is allowed and the order of assessment is set aside.”

- 2.4. Such direction of the Appellate Authority gave rise to issue of a statutory notice dated 01.05.2024 in Form VAT-306 prescribed under Rule 49 of the OVAT Rules for the tax periods from 01.04.2010 to 31.03.2013 by the Joint Commissioner of Sales Tax, CT and GST Circle, Paradeep for assessment of tax under Section 42 as a result of tax audit submitted under Section 41.
- 2.5. The petitioner raised an issue whether pursuant to direction of the Appellate Authority proceeding under Section 42 of the OVAT Act could be initiated by issue of



statutory notice dated 01.05.2024 in Form VAT-306 even as assessment under Section 43 was undertaken taking into account the contents and objections of the AVR submitted purportedly under Section 41 consequent upon which assessment under Section 42 could not be made due to operation of limitation. The petitioner filed Memorandum of submission before the Assessing Authority highlighting that in the assessment under Section 43 the AVR was utilised inasmuch as the Audit Assessment under Section 42 was hit by law of limitation in view of operation of Section 41(4). The AVR being not submitted to the Assessing Authority within the time-frame under extant provisions of Section 41(4) of the OVAT Act, the proceeding under Section 42 by issue of notice dated 01.05.2024 in Form VAT-306 is not competent in view of ratio laid down in *Jindal Stainless Limited Vrs. State of Odisha, (2012) 54 VST 1 (Ori)*.

2.6. As against preliminary objection to proceed with the matter in view of ratio laid down by a Division Bench of this Court in *Kalinga Ispat Udyog Vrs. Sales Tax Officer, (1996) 101 STC 94 = 81 (1996) CLT 181*² the Assessing Authority concluded by observing thus:

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This Court observed as follows:

“We therefore, direct that in case petitioner indicated its stand before the Sales Tax Officer regarding absence of reason, or lack of jurisdiction as well as alleged absence of materials necessitating reopening, the Sales Tax Officer shall consider those aspects. If question relating to jurisdiction and desirability to proceed in the matter is answered against the dealer, the Sales Tax Officer shall be free to proceed further to reassess. In our view the aforesaid course would subserve



In view of the above memorandum of submission and also directions of learned first Appellate Authority in the appeal order, it is found that the dealer-company has raised the same objection before the learned first Appellate Authority and the learned first Appellate Authority noted that the Assessing Authority has erred in completing the assessment proceeding under Section 43 instead of under Section 42 of the OVAT Act, 2004. Hence, the learned first Appellate Authority set aside the complete assessment proceeding, as the Assessing Authority has not completed the assessment proceedings under the correct section. Further directed to the Assessing Authority to issue Form VAT-306 notice to the dealer-company for complete the assessment proceedings under Section 42 of the OVAT Act.”

2.7. Be that be, the Assessing Authority adhering to jurisdiction conferred under Section 49(2) refuting the contention of the petitioner concluded the Audit Assessment under Section 42 of the OVAT Act by Order dated 21.03.2025 raising a demand comprising tax and penalty.

2.8. Challenging said assessment order, the instant writ petition is filed.

Hearing:

interest of justice and is also in accordance with provisions of Order 14, Rule 2 of the Code of Civil Procedure, 1908 (in short, ‘the CPC’) which permits issue relating to jurisdiction when one of law to be tried and determined as preliminary issue. A preliminary point is one which prima facie negatives either jurisdiction of the court or negatives any cause of action, and if this preliminary point is answered, then it would be unnecessary to go upon other issues arising thereof.”



3. On 19.08.2025 during course of hearing, serious objection being raised by Sri Sunil Mishra, learned Standing Counsel for the CT and GST Organisation with respect to entertainment of writ petition by way of written note of submission. A written submission was also submitted by the counsel for the petitioner.
- 3.1. Adjournment being sought for by the learned Standing Counsel appearing for the opposite parties to address the point raised by learned Senior Counsel that Audit Assessment under Section 42 was abandoned as there was non-compliance of mandatory requirement of Section 41(4), but proceeding for assessment under Section 43 was undertaken taking into account the AVR; thereby the order of Appellate Authority could not grant fresh lease of life to the assessment under Section 42. Before issuing notice for Audit Assessment, the Assessing Authority should have verified his own jurisdiction to proceed with such assessment on the basis of time-barred AVR.
- 3.2. As the issue involved in the matter raises pertinent question affecting jurisdiction of the Assessing Authority, on the consent of the counsel for both the sides, and the Standing Counsel sought to argue on the points taken in the written note (in absence of counter affidavit), hearing is taken up on 25.08.2025.



3.3. Heard Sri V. Sridharan, learned Senior Advocate along with Sri Ishwar Mohanty, learned Advocate appearing for the petitioner and Sri Sunil Mishra, learned Standing Counsel appearing for the CT & GST Organisation on the question of entertainment of writ petition.

3.4. On conclusion of hearing, the matter stood reserved for delivery of judgment/order at a later date.

Submissions:

4. Sri V. Sridharan, learned Senior Advocate along with Sri Ishwar Mohanty, learned Advocate laid emphasis that if answer to the seminal question on the interpretation of provision of sub-section (2) of Section 49 is rendered, that would suffice to meet the contention of the learned Standing Counsel objecting to the entertainment of writ petition challenging the assessment order, though alternative remedy does exist. He submitted that since very invocation of power under Section 49(2)³ by the

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Section 49 of the OVAT Act, 2004, stood thus:

“49. Power of reassessment in certain cases.—

(1) Where any order passed by the Assessing 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 and binding, then, notwithstanding anything contained in this Act, the Assessing Authority may proceed to reassess the tax payable by the dealer in accordance with such judgment or order, at any time 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 (74 of 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 the finding or direction contained in such order, the turnover or any part thereof as relates to such assessment may



Joint Commissioner of Sales Tax, CT and GST Circle, Paradeep, being questioned, the present matter hovers round the interpretation thereof.

4.1. It is submitted that Section 49(2) of the OVAT Act is available for invocation notwithstanding the applicability of any period of limitation to such assessment or reassessment under the said Act only in the contingency mentioned therein, but not otherwise. He emphatically submitted that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all; and other methods of performance are necessarily forbidden. Hence, the learned Senior Counsel referring to paragraph 11 of the written submission dated 19.08.2025 would submit that the assessment under Section 43 being undertaken *qua* intra-State transactions and assessment under Section 42 was also framed under the same statute, the *non-obstante* clause insofar as inapplicability of limitation as laid in Section 49(2) has no effect on the present fact-situation of the case.

4.2. It is further vehemently contended that Section 49(2) empowers the Assessing Authority to invoke jurisdiction in consequence of judgment or order of any Court or

be assessed or reassessed, as the case may be, to tax at any time within five years from the date of such order, notwithstanding the applicability of any period of limitation to such assessment or reassessment under this Act."



Tribunal or to give effect to the finding or direction contained in such order. Nevertheless, such a provision cannot be said to have extended its application to the order(s) passed by the Joint Commissioner of Sales Tax (Appeal) in the first appeal. In other words, the attributes of the “Appellate Authority” cannot be perceived to have the same as that of the Court or the Tribunal. He placed reliance on *M.P. Steel Corporation Vrs. Commissioner of Central Excise*, (2015) 7 SCC 58 and *Sakuru Vrs. Tanaji*, (1985) 3 SCC 590 to forcefully urge that “Court” cannot be equated with “Tribunal”. Therefore, with the same analogy he was vocal in advancing argument that since “the Court” and “the Tribunal” are distinct having different connotations, “the Appellate Authority” also would be understood as distinct and different from the Court or the Tribunal. Sri V. Sridharan, learned Senior Advocate laid stress that the “order” passed by the Appellate Authority cannot be comprehended within the ken of Section 49(2).

- 4.3. He, therefore, strenuously argued that since the AVR being not submitted to the Assessing Authority within the period stipulated under Section 41(4), the Audit Assessment under Section 42 had already been barred taking cue from the decision rendered in *Jindal Stainless Limited Vrs. State of Odisha*, (2012) 54 VST 1 (Ori), and hence, the Appellate Authority could not grant any fresh



lease of life to take up Audit Assessment taking shelter of provisions of Section 49(2) of the OVAT Act, 2004.

5. Mr. Sunil Mishra, learned Standing Counsel appearing for the CT and GST Organisation vehemently opposing maintainability of the writ petition wherein the assessment order is questioned, would submit that this Court need not entertain the writ petition in view of the fact that the question of jurisdiction, if at all, could be raised before the fora put in place under the OVAT Act.

5.1. Drawing analogy from provisions contained in Section 77 and Section 92 of the OVAT Act, he strenuously urged that “the Tribunal” as provided under Section 78 is enjoined with the same powers as are conferred on “the Appellate Authority” under Section 77 and, hence, the order of the Appellate Authority can be construed at the same pedestal that of the order passed by the Tribunal.

5.2. Placing reliance on *P. Sarathy Vrs. State Bank of India*, (2000) 5 SCC 355, that “the Deputy Commissioner of Labour (Appeals) may not be a CIVIL COURT within the meaning of the Code of Civil Procedure, but it is definitely a COURT”, Sri Sunil Mishra, learned Standing Counsel advanced contention that “the Appellate Authority”, having the trappings of “Court”, inasmuch as it decides the rights of the parties, is a Court of limited jurisdiction. Hence, he submitted that since the



Appellate Authority has remanded the matter for proceeding with assessment under Section 42, no fault can be attributed to the Assessing Authority in passing order raising appropriate demand.

5.3. In pursuance of order of remit dated 19.10.2023 by the Appellate Authority, the Assessing Authority having issued notice in Form VAT-306 dated 01.05.2024 proceeded to assess the petitioner under Section 42 of the OVAT Act and passed order on 21.03.2025. Having participated in such assessment proceeding, the petitioner cannot now turn around to question said proceeding initiated by competent authority. Forceful argument has been advanced citing provisions of Section 98⁴ of the OVAT Act to contend that upon participation of the petitioner, the Audit Assessment being framed under Section 42 by issue of statutory notice prescribed

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Provisions of Section 98 of the OVAT Act stood thus:

“98. *Assessment proceedings, etc. not to be invalid on certain grounds.—*

- (1) *No return, assessment, appeal, rectification, notice, summons or other proceedings accepted, made, issued or taken, or purported to have been accepted, made, issued or taken in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return, assessment, appeal, rectification, notice, summons or other proceedings, if such return, assessment, appeal, rectification, notice or other proceedings are, in substance and effect, in conformity with or according to the intents, purposes and requirements of this Act.*
- (2) *The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.*
- (3) *No order, including an order of assessment, revision or rectification passed by any authority under any provision of this Act shall be invalid merely on the grounds that the action could also have been taken by any other authority under any other provision of this Act.”*



under Rule 49, the assessment proceeding cannot be invalidated.

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

Analysis and discussions:

6. At the first blush the arguments advanced by Sri Sunil Mishra, learned Standing Counsel, though appeared to be attractive, but on a deep excursion of provisions of Section 49 and Section 41 read with Section 42 would lead to obvious conclusion that the stand of the CT and GST Organisation is mere an attempt to revive what has already been time-barred.

6.1. The writ jurisdiction being a discretionary jurisdiction, it is for the constitutional courts to decide whether or not they should exercise their discretion to entertain a writ petition. In that context, it would be apposite to point out that there is a subtle distinction that exists between instances when a court dismisses a writ petition as 'not maintainable' and when it exercises its discretion against 'entertaining' it. The former is a case where the Court finds that the circumstances are such that it is rendered incapable of even receiving the *lis* for



adjudication whereas the latter is a case where the Court finds that, while it is competent to adjudicate the *lis*, the adjudication is better left to other fora that are more suited for the same.

6.2. While it is fairly well settled that when confronted with disputed questions of fact, the writ court will not ordinarily entertain a writ petition, but leave it to the Civil Courts or statutory fora to adjudicate the matter, it is equally well settled that the existence of an alternate remedy is not a bar to the entertainment of a writ petition:

- (i) where the writ petition seeks the enforcement of any of the fundamental rights;
- (ii) where there is a violation of the 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. [*Whirlpool Corporation Vrs. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1*].

That apart, as observed in *State of Uttar Pradesh Vrs. Indian Hume Pipe Co. Ltd., (1977) 2 SCC 724* and *Union of India Vrs. State of Haryana, (2000) 10 SCC 482* and re-iterated most recently in *Godrej Sara Lee Ltd. Vrs.*



Excise & Taxation Officer-cum-Assessing Authority, (2023)
3 SCR 871 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 ideally be decided by the High Court instead of dismissing the writ petition on the ground of an alternate remedy being available. In the considered view of this Court resort to illegal notice could not be encouraged and a writ petition could not be thrown out at the threshold without examining the jurisdiction of the Assessing Authority to proceed with the Audit Assessment under Section 42 as a result of audit on the basis of Audit Visit Report submitted not in conformity with requirement under Section 41 of the OVAT Act.

- 6.3. The authority cannot ignore the statutory provisions treating them merely to be a decoration piece in the statutes rather they require strict adherence. The statutory authorities cannot deviate from the statutory provisions and any deviation, if so made, is required to be enforced by legal sanction of declaration by the Courts invalidating such actions in violation of the statutory Rules and Regulations. When the action of the instrumentalities of the State is not as per the Rules and Regulations and supported by the statute, the Court must exercise its jurisdiction to declare such an act illegal and invalid. It becomes the duty of the Court to



ensure compliance of such Rules and Regulations for the reason that they are binding on the authorities. Any order or action done by the authority in violation of the statutory provisions is constitutionally illegal and such order cannot be claimed to have any sanctity in law. There can be no obligation on the part of the Court to sanctify such illegal act. Reference can be had to *Taylor Vrs. Taylor*, (1875) 1 Ch D 426; *Nazir Ahmed Vrs. King Emperor*, AIR 1936 PC 253; *Deep Chand Vrs. State of Rajasthan*, AIR 1961 SC 1527; *Sukhdev Singh Vrs. Bhagatram Sardar Singh Raghuvanshi*, AIR 1975 SC 1331; *Hukam Chand Shyam Lal Vrs. Union of India*, AIR 1976 SC 789; *State of Bihar Vrs. JAC Saldanna*, AIR 1980 SC 327; *Ambika Quarry Works Vrs. State of Gujarat*, AIR 1987 SC 1073; *Purushottam Vrs. Chairman, Maharashtra State Electricity Board*, (1999) 6 SCC 49; *Haresh Dayaram Thakur Vrs. State of Maharashtra*, (2000) 6 SCC 179; *Hira Cement Workers Union Vrs. State of Orissa*, 92 (2001) CLT 184 (Ori); *CIT Vrs. Anjum MH Ghaswala*, (2002) 1 SCC 633; *Prabha Shankar Dubey Vrs. State of MP*, AIR 2004 SC 486; *Sultan Sadik Vrs. Sanjay Raj Subba*, AIR 2004 SC 1377; *Indian Banks Association Vrs. Devkala Consultancy Service*, AIR 2004 SC 2615; *Krushna Chandra Sahoo Vrs. Bank of India*, 2008 (II) OLR 789 (Ori); *Nayak Variety Store Vrs. CST*, (2008) 18 VST 500 (Ori); *Surendranath Ghosh Trust Estate, Kolkata Vrs. State of Orissa*, 2010 (Supp.II) OLR



847 (Ori); *Vidhi Minerals Vrs. Paradeep Port Trust*, 111 (2011) CLT 262 (Ori); *Swastik Agency Vrs. State Bank*, 2009 (II) OLR 201 (Ori).

6.4. In *Reji Thomas Vrs. The State of Kerala*, (2018) 6 SCR 805 it has been stated thus:

“11. Section 69 of the Act [*Kerala Cooperative Societies Act, 1969*] is the mechanism provided by the State Legislature as contemplated under Article 243 ZK (2) of the Constitution of India. Once the mechanism provided under the Statute provides for a time schedule for preferring an election petition, in the absence of a provision in the Statute for enlarging the time under any given circumstances, no court, whether the High Court under Article 226 or this Court under Article 32, 136 or 142 of the Constitution can extend the period in election matters. In the matter of limitation in election cases, the Court has to adopt strict interpretation of the provisions. This Court in *Smita Subhash Sawant Vrs. Jagdeeshwari Jagdish Amin & Ors.* reported in (2015) 12 SCC 169, though in a different context, has held at paragraph 33 that “In the absence of any provision made in the Act for condoning the delay in filing the election petition, the Chief Judge had no power to condone the delay in filing the election petition beyond the period of limitation prescribed in law”.

12. In *Union of India & Anr. Vrs. Kirloskar Pneumatic Co. Ltd.* reported in (1996) 4 SCC 453, at paragraph 10, this Court has held as under:



‘* The power conferred by Articles 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law.**

*In particular, the Customs authorities, who are the creature of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. Maybe the High Court or a Civil Court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a Civil Court. No such delegation or conferment can ever be conceived.” ****

6.5. Following observation made in *Gujarat Steel Tubes Ltd. Vrs. Gujarat Steel Tubes Mazdoor Sabha*, (1980) 2 SCC 593, deserves to be referred to:

“72. Once we assume that the jurisdiction of the arbitrator to enquire into the alleged misconduct was exercised, was there any ground under Article 226 of the Constitution to demolish that holding? Every wrong order cannot be righted merely because it is wrong. **It can be quashed only if it is vitiated by the fundamental flaws of gross miscarriage of Justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure and the like.**

73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy



of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. **While traditional restraints like availability of alternative remedy hold back the Court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action.** The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the Court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine."

- 6.6. Present case is the one where question of jurisdiction touching very invocation of assessment proceeding under Section 42 of the OVAT Act in pursuance of an AVR submitted under Section 41, which had already hit by law of limitation, has been raised. Therefore, this Court has felt it appropriate to entertain this writ petition.



7. To proceed with the matter at hand, it requires as a prelude to bear in mind the following precept as reflected in *Commercial Tax Officer, Rajasthan Vrs. Binani Cements Ltd.*, (2014) 3 SCR 1:

“28. We are mindful of the principle that the Court should examine every word of a statute in its context and must use context in its widest sense. We are also in acquaintance with observations of this Court in Reserve Bank of India Vrs. Peerless General Finance and Investment Co. Ltd., (1987) 2 SCR 1, where Chinnappa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of statutes held thus:

‘Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and



*designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.’ ***”*

8. The question that is pertinent to be answered is whether the Assessing Authority has rightly invoked jurisdiction to proceed with Audit Assessment under Section 42 by issue of statutory notice in Form VAT-306 on the basis of AVR submitted under Section 41 beyond the period stipulated therein.

8.1. From the assessment order it is apparent that “the Assessing Authority is directed to issue Form VAT-306 notice to the appellant and to complete the proceedings under Section 42 of the OVAT Act within a period of four months”. Accordingly, a notice in Form VAT-306 prescribed under Rule 49 was issued for undertaking Audit Assessment under Section 42. It is further revealed from the assessment order that the Assessing Authority in order to obviate statutory limitation to proceed with the assessment derived authority from Section 49(2) of the OVAT Act. The Assessing Authority in the impugned order has made the following remarks in this regard:

“Besides that, it is pertinent to mention here that as per the sub-section (2) of Section 49 of the OVAT Act, 2004, held that 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 (74 of 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 the finding or direction contained in such order, the turnover or any part thereof as relates to such assessment may be assessed or reassessed, as the case may be, to tax at any time within five years from the date of such order, notwithstanding the applicability of any period of limitation to such assessment or reassessment under this Act.”

8.2. From the above narration culled out from the material available on record and the arguments advanced by the counsel for the respective parties, what is surfaced is that it is not the case of the CT and GST Organisation that the Assessing Authority adhered to provisions of sub-section (1) of Section 49; rather the impugned assessment order makes it clear that Section 49(2) has been the source for initiation of proceeding under Section 42.

8.3. A stand has been taken by way of written submission dated 19.08.2025 filed by Sri Ishwar Mohanty, learned Advocate for the petitioner, which is as follows:

“11. The true scope of Section 49(2) of the OVAT Act is as follows:

Suppose a sale is treated as an intra-State sale and taxed under the OVAT Act. It is then held to be an inter-State sale falling under Central Sales Tax Act



(CST) by the learned Tribunal. Then Section 49(2) is triggered. Similarly, if the initial assessment is done under CST Act as inter-State sales, and then subsequently, the learned Tribunal holds it to be intra-State sales falling under the OVAT Act. Then also, Section 49(2) is triggered.

12. *Section 49(2) is not triggered between Section 43 of the OVAT Act and Section 42 of the OVAT Act. The term ‘any other provision of law’ in Section 49(2) of the OVAT Act, will refer to VAT Act vis-a-vis CST Act or vice versa and does not refer to different sections within the OVAT Act.”*

8.4. Though a written note of submission has been furnished by the learned Standing Counsel, neither any stance contrary to such suggestion of the petitioner has been taken nor did he argue on this point.

8.5. Dissection of sub-section (2) of Section 49 of the OVAT Act brings to fore the following key components, which deserve to be discussed:

a. The provision is triggered when a Court or Tribunal, in an appeal or revision proceeding, passes an order stating that a tax assessment made under this Act, i.e., the OVAT Act or the Central Sales Tax Act, 1956, should have been assessed under a different law. This implies that the assessment under Section 43 taking cognizance of the AVR submitted under Section 41 of the OVAT Act being found erroneously invoked, in the garb of



Section 49(2), the assessment could not be corrected under the OVAT Act by invoking Section 42.

- b. Under Section 80⁵ of the OVAT Act a revision lies against the order on grounds of any question of law arising out of such order of the Tribunal. The expression “any Court or Tribunal passes an order in appeal or revision” without any ambiguity leads to construe that it is the order passed by the Tribunal in (second) appeal or order passed by the High Court in revision which gives scope Section 49(2) to be activated. This can be affirmatively stated in view of the definition of the terms “Appellate Authority” in clause (1-d) and “Tribunal” in clause (58) of Section 2 of the OVAT Act. The Legislature has considered the “Appellate Authority” as distinct authority from the “Tribunal”. Had it been intention of the Legislature to bring the order passed by the “Appellate Authority” within the scope and ambit of Section 49(2), the same should have been explicitly spelt out. It does

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Section 80(1) of the OVAT Act stood as follows:

“Within sixty days from the date on which an order under sub-section (4) of Section 78 or a ruling under sub-section (4) of Section 78A was served affecting liability of any dealer to pay tax, interest or penalty under this Act, such dealer by petition in writing accompanied by a fee of rupees one hundred, or the Commissioner by petition in writing, may move the High Court against the order on grounds of any question of law arising out of such order of the Tribunal: Provided that the High Court may admit a petition preferred after the period of sixty days as aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.”



require to be observed that had it been intention of the Legislature to include order of Appellate Authority passed in exercise of powers under Section 77 of the OVAT Act for the purpose of adhering to Section 49(2), the Act should have expressed so. No doubt, the intention of Legislature is always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning. To ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself. [See, *Poppatlal Shah Vrs. State of Madras*, AIR 1953 SC 274]. The intention of Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be eschewed. Courts cannot aid the Legislature's defective phrasing of an Act, they cannot add or mend, and by construction make up deficiencies which are left there. [Vide, *Union of India Vrs. Dharamendra Textile Processors*, (2008) 18 VST 180 (SC)].



Where general words immediately follow or are closely associated with specific words, their meaning must be limited by reference to the preceding words. If the Legislature intended its general words to be used in an unrestricted sense so as to embrace the objects, persons or things covered by the particular words, it would not have taken the trouble of using the particular words at all.

Hence, the scope and the extent of power conferred on the particular authority/forum is patent from the language employed in Section 49(2), which begins with the expression “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 (74 of 1956)”. Whereas the provisions for “Appeal” are provided for under Section 77 (first appeal before the authority subordinate to the Commissioner specified under Rule 3 read with Rule 86 of the OVAT Rules), second appeal before the Sales Tax Tribunal constituted under Section 4) has been provided for in Section 78. However, the power of “Revision” is conferred on the Commissioner or his delegatee under Section 79 and Section 80 speaks of power of the High Court to revise the order



passed in second appeal by the Sales Tax Tribunal on question of law. The aforesaid expression, therefore, conveys that Section 49(2) comprehends order in appeal and order in revision. What emerges from plain reading of said provision is that the word “order” takes colour from the preceding expression “any Court or Tribunal” and the succeeding words “appeal or revision”. The words take colour and meaning from their context and the more general word is restricted in a sense analogous to the less general word. Thus, the word “order” must be given a limited and qualified sense; meaning thereby, the word “order” used in the provisions would mean “order in appeal or revision” qualified by “the Tribunal or the Court” respectively. When Section 49(2) is read in harmony with the provisions contained in Section 77, Section 78, Section 79 and Section 80, it would lead to indicate that the order of the Sales Tax Tribunal in appeal or the order of the High Court in revision that occasions exercise of power for assessment or reassessment under the OVAT Act in view of Section 49(2).

- c. The expression “in consequence of such order or to give effect to the finding or direction contained in such order” signifies that subsequent assessment



or reassessment is not an independent fresh action, but a direct result of, and an implementation of, the order of the Tribunal in appeal under Section 78 or the order of the High Court in revision under Section 80. The authorities concerned are mandated to act upon the findings of the Court or the Tribunal.

- d.* The expression “the turnover or any part thereof as relates to such assessment may be assessed or reassessed, as the case may be, to tax” clarifies that the emphasis is on the subsequent action involving the same turnover (or portion thereof) that was the subject-matter of the original assessment, incorrectly assessed to tax. The term “assessed or reassessed” indicates that if no tax was initially levied due to the wrong law— the OVAT Act or the Central Sales Tax Act, 1956, as the case may be— being applied, an assessment can now be made under the correct law. If tax was levied under the wrong law, it can be reassessed under the correct one; nevertheless, under no stretch of imagination can it be construed in view of language employed in Section 49(2) that wrong exercise of power adhering to Section 43 by considering the AVR submitted purported to have been prepared under Section 41 could be corrected



by invoking power under Section 42 as a consequence of tax audit taking into account self-same AVR, which was not submitted in conformity with the mandatory requirement under Section 41.

- e. The expression “at any time within five years from the date of such order, notwithstanding the applicability of any period of limitation to such assessment or reassessment under this Act” signifies that a special period of limitation of five years, calculated from the date of the order of Tribunal in appeal or the order in revision by the High Court is envisioned. Manifestly, this “five-years period” overrides any other period of limitation that might otherwise apply to assessment or reassessment under the OVAT Act. This ensures that even if the standard limitation period for assessment has expired, the Assessing Authority would have a window to rectify the assessment based on the directive in appeal or revision. This provision is designed to prevent tax evasion or loss of revenue due to procedural errors in applying the correct law, especially when such errors are identified at a later stage. *A fortiori*, an AVR submitted beyond period stipulated under Section 41 of the OVAT Act cannot be utilised for Audit Assessment under Section 42 as the same is



treated to be invalid AVR in view of *Jindal Stainless Ltd. Vrs. State of Odisha, (2012) 54 VST 1 (Ori)*.

8.6. Another facet which has much to be pondered upon is that the Tribunal, final fact-finding forum, is vested with powers to entertain additional evidence under certain eventualities envisaged in Rule 102 of the OVAT Rules, 2005. Therefore, so far as fact finding is concerned, finality is attached to its order. Thus, provisions of Section 49(2) contextually would lead to one definite conclusion that the word “order” employed therein juxtaposed with “finding or direction contained in such order” suggests that it is the order of the Tribunal in appeal (under Section 78) or the order in revision by the High Court (under Section 80) triggers exercise of power under Section 49(2). The overarching purpose of this provision is to provide a legal mechanism for correcting jurisdictional errors in tax assessment identified by the Tribunal in appeal or the High Court in revision. It ensures that the correct law is applied and the appropriate tax is collected, even if the initial assessment was flawed in its legal foundation. It acts as a saving clause, preventing the taxpayer from escaping liability merely because the tax was initially assessed under an incorrect statute, provided higher fora have identified such error. This principle aligns with the broader legal concept of ensuring substantive justice



prevails over procedural technicalities, especially when a Tribunal or the High Court makes a definitive finding in appeal or revision respectively.

8.7. More clarity can be gathered from the language employed in Section 49(2) of the OVAT Act. The purport of said sub-section is that if the transactions of inter-State nature are taxed as intra-State transactions amenable to be taxed under the OVAT Act, but subsequently such transactions were found to be inter-State transactions in the view of final-fact finding by the authority, *i.e.*, Sales Tax Tribunal in appeal under Section 78 or interpretation on legal issue answered by the High Court in revision under Section 80, the same can be corrected invoking provisions of sub-section (2) of Section 49 by exercising same or identical power conferred under the Central Sales Tax Act, 1956. The converse can also be true. Nevertheless, in view of interpretation set forth in *Balaji Tobacco Store Vrs. The Sales Tax Officer, 2015 (I) ILR-CUT 1079*, Audit Assessment under Section 42 of the OVAT Act cannot be made after completion of the assessment of the escaped turnover under Section 43 of the said Act, for the self-same period. It has been held by this Court in the said reported judgment as follows:

“4. On rival contentions of the parties, the only question that falls for consideration by this Court is as to



whether the Taxing authority has jurisdiction to make Audit Assessment under Section 42 of the OVAT Act after completion of the assessment under Section 43 of the said Act for the self-same tax period(s)?

6. *The Scheme of the OVAT Act read with OVAT Rules provides a complete mechanism for making different types of assessment for the purpose of determination of tax liability under the said Act. Such assessments, as provided under sub-section (5) of Section 2 of the OVAT Act, are self-assessment (Section 39), provisional assessment (Section 40), Audit Assessment (Section 42), assessment of escaped turnover (Section 43), assessment of unregistered dealer liable to be registered (Section 44) and assessment of casual dealer (Section 45). **In the present case, we are concerned with Audit Assessment and escaped assessment.***

9. *The language of Section 43 of the OVAT Act read with Rule 50 of the OVAT Rules contemplates that assessment under Section 43 of the OVAT Act can be made after a dealer is assessed either under Sections 39, 40, 42 or 44 for any tax period, on the basis of information in possession of the Assessing Authority, and he is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period or tax periods has (i) escaped assessment, or (ii) has been under-assessed, or (iii) has been assessed at a rate lower than the rate at which it is assessable, or (iv) that the dealer has*



been allowed— (a) wrongly any deduction from his turnover, (b) input tax credit to which he is not eligible. **Therefore, assessment of escaped turnover under Section 43 of the OVAT Act can be made even after completion of Audit Assessment under Section 42 of the said Act for selfsame tax period. But, this does not mean that no assessment under Section 43 of the OVAT Act can be made without completion of assessment under Section 42 of the said Act.** As stated above, assessment under Section 43 can be made after a dealer is assessed under Sections 39, 40, 42 or 44 for any tax period on fulfilment of the condition (s) stated in Section 43.

10. Needless to say that escapement of turnover from assessment cannot be predicted before the assessment is completed. Therefore, only in case of completion of assessment either under Section 39, 40, 42 or 44, the escaped assessment as provided under Section 43 can be invoked for the occurrence of any or more of the events stated in Section 43. Thus, a turnover cannot be said to be escaped assessment if proceeding in respect of assessment under either of the Sections referred to in Section 43 are pending and no final order of assessment has been passed. A proceeding is said to be pending as soon as it commences and until it is concluded. Only after final order of assessment, it can be said whether the whole or any part of the turnover of the dealer has escaped assessment.

12. Now, if we closely look at Section 42, which speaks of Audit Assessment, we will find that where the tax



audit conducted under sub-section (3) of Section 41 results in detection of suppression of purchase or sale or both, erroneous claims of deduction including input tax audit, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the Assessing Authority may notwithstanding the fact that the dealer may have been assessed under Section 39 or 40, serve on such dealer a notice as prescribed under the Rules along with a copy of the audit visit report for making an Audit Assessment. Therefore, if Audit Assessment has to be made after completion of any other assessment provided under the OVAT Act, the same is restricted to assessment made under Section 39 or Section 40 of the OVAT Act and all other types of assessment provided under the said Act are impliedly excluded. **If the Legislature in its wisdom has taken away assessment as contemplated under Section 43 from Section 42 for the purpose of making Audit Assessment, after completion of any other assessment under the OVAT Act, Section 43 cannot be read into Section 42 by the State.**

15. In view of the above settled legal position, Section 43 cannot be read into Section 42 by the State when the Legislature in its wisdom excluded Section 43 from the provisions of Section 42 of the OVAT Act. Consequentially, no assessment under Section 42 can be made after completion of the assessment under Section 43 for the self-same tax period.
16. The matter can be looked at from a different angle. **Under Section 42 of the OVAT Act, Audit**



Assessment has to be completed on the basis of the materials available in the audit visit report. There was no scope for the Assessing Authority to utilize any material other than the materials available in the audit report while making the Audit Assessment. (See Bhusan Power & Steel Ltd. Vrs. State of Orissa and others, (2012) 47 VST 466 (Ori) = 2012 (I) ILR-CUT 421.”

- 8.8. In the case at hand, on completion of self-assessment under Section 39, by taking cognizance of AVR submitted under Section 41 beyond the period stipulated therein, the assessment proceeding was completed under Section 43, which got set aside by the Appellate Authority on the premise that the Assessing Authority erred in exercising such power by not undertaking Audit Assessment under Section 42 to deal with AVR. Though such perception appears to be contrary to Section 98(3), the Revenue failed to demonstrate that the AVR was submitted within period stipulated in Section 41(4). However, it is borne on record *vide* assessment order dated 10.02.2017 that the Assessing Authority received the AVR dated 31.03.2016 on 12.07.2016 and consequent thereto initiated proceeding under Section 43 on 21.07.2016 by issue of statutory notice in Form VAT-307 prescribed under Rule 50. Thus, taking shelter of Section 49(2), the Assessing Authority in the instant case has fallen in gross error in



issuing statutory notice in Form VAT-306 prescribed under Rule 49 for proceeding with Audit Assessment under Section 42 as a result of tax audit based on AVR which lost its validity even at the time of exercise of power under Section 43. Reading of appellate order leads to impress that the Assessing Authority could not initiate proceeding for Audit Assessment as a result of AVR having received on 12.07.2016, but consciously avoiding initiation of proceeding under Section 42, exercised power under Section 43, which is found to be wrongful by the Appellate Authority. Said assessment being found to be erroneously proceeded with under Section 43, in the garb of compliance of the direction contained in the appellate order statutory notice in Form VAT-306 to initiate action under Section 42 could not be done when the AVR submitted had already been treated to be not in consonance with the mandatory requirement of Section 41(4). *Ergo*, this Court is of the firm opinion that the impugned order of assessment under Section 42 cannot be held to be tenable in the eye of law.

- 8.9. Had the assessment of the turnover, that formed subject matter of assessment under Section 43 of the OVAT Act, been related to inter-State transaction falling within the purview of the Central Sales Tax Act, 1956, but was assessed under the OVAT Act, in such eventuality, the provisions of Section 49(2) could be activated by



undertaking assessment under Section 9(2) of the Central Sales Tax Act read with extant Rule 12(4) of the Central Sales Tax (Odisha) Rules, 1957 and the corresponding provisions of Section 43 of the OVAT Act. This apart, another condition to set provisions of Section 49(2) into motion is that “when any Court or Tribunal passes an order in appeal or revision”.

8.10. Reading of Section 92 would suggest that the provisions therein enable the Commissioner, the Tribunal and any person appointed under sub-section (2) of Section 3 to assist the Commissioner to enforce attendance of any person and to examine him on oath or affirmation; to compel the production of accounts and documents; and to issue summons for examination of witnesses. This section, thus, clearly depicts that each of the authorities, *viz.*, the Commissioner, or any person appointed under sub-section (2) of Section 3 to assist the Commissioner; and the Tribunal is distinctly enumerated. While Tribunal constituted in terms of Section 4 read with Section 2(58) is conferred with appellate powers under Section 78 with full fidelity juxtaposed with the powers of the first “Appellate Authority”, defined under Section 2(1-d) read with Rule 86, conferred under Section 77, and apart from power to entertain “fresh evidence and witness” in terms of Rule 102 of the OVAT Rules (akin to Order XLI, Rule 27 of the Code of Civil Procedure, 1908),



the High Court is conferred with the power of revision to be entertained on question of law arising out of order of the Sales Tax Tribunal.

8.11. For convenience, the provisions of Order XLI, Rule 27 of the Code of Civil Procedure, 1908 and Rule 102 of the OVAT Rules, 2005 are given hereunder:

Order XLI, Rule 27 of the Code of Civil Procedure, 1908	Rule 102 of the Odisha Value Added Tax Rules, 2005
27. Production of additional evidence in Appellate Court (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if— (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined. (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.	102. Fresh evidence and witness.— (1) No party to an appeal shall be entitled to adduce fresh evidence, whether oral or documentary before the Tribunal: Provided that— (a) if the authority, from whose order the appeal is preferred, has refused to admit evidence which ought to have been admitted; or (b) if any party including the Government seeking to adduce additional evidence, satisfies the Tribunal that such evidence, notwithstanding the exercise of due diligence was not within its knowledge or could not be produced by it at or before the time, when the order under appeal was passed; or (c) if the Tribunal requires any documents to be produced or any witness to be examined for enabling itself to pass order, the Tribunal may allow such evidence or document to be produced or witness to be examined and in such case, the other party shall be entitled to produce rebutting evidence, if any. (2) When fresh evidence has been adduced, the parties may, if they so desire address the Tribunal on points arising out of such fresh evidence.



8.12. Though the Commissioner of Sales Tax has been vested with power of revision *suo motu* under Section 79(1) or on application being submitted under 79(2), such power is confined to revise any order other than the order passed by the Sales Tax Tribunal. Furthermore, it is manifest from Chapter-II of the OVAT Rules dealing with “Taxing Authority” that the Sales Tax Tribunal is kept out of purview of Rule 3. Therefore, it is obvious that the Sales Tax Tribunal, being not subordinate to the Commissioner of Sales Tax, is an independent final fact-finding body to perform its *quasi-judicial* functions.

8.13. It is, thus, incomprehensible to hold that the order of the Appellate Authority (other than the Sales Tax Tribunal) could sanctify the power to undertake fresh “Audit Assessment” proceeding under Section 42 of the OVAT Act based on the material contained in the AVR submitted beyond the period stipulated under Section 41(4) as the same is not permissible in terms of exposition of law spelt out in *Jindal Stainless Ltd. Vrs. State of Odisha, (2012) 54 VST 1 (Ori)* and *Balaji Tobacco Store Vrs. The Sales Tax Officer, 2015 (I) ILR-CUT 1079*.

8.14. Analysis of the scheme of the OVAT Act, 2004 insofar as it relates to “assessment” takes this Court to have regard to definition of said term as contemplated in Section 2(5) which means “determination of tax liability under this Act (the OVAT Act) and includes self-assessment,



provisional assessment, Audit Assessment, assessment of escaped turnover, assessment of unregistered dealers liable to be registered, assessment of casual dealers and reassessment". The term "Audit Assessment" has been defined in clause (6) of Section 2 to mean "an Audit Assessment made under Section 42". The manner of conducting Audit Assessment has been described in Section 42 read with Rule 49.

8.15. It has been laid down in *Bhusan Power & Steel Ltd. Vrs. State of Odisha, 2012 (I) ILR-CUT 421* that assessment under Section 42 is to be confined to the objections contained in the AVR submitted under Section 41 and in the said reported case, the Assessing Authority framed Audit Assessment under Section 42 taking into consideration the contents of the AVR as well as the report submitted by the Special Investigation Team (SIT). Co-ordinate Bench of this Court having taken exception, quashed the assessment order and remitted the matter to the Assessing Authority to make Audit Assessment afresh exclusively on the basis of the AVR and the Assessing Authority was further directed to serve a notice on the dealer in the prescribed form for the purpose of making assessment under Section 43 of the OVAT Act on the basis of the report submitted by the Special Investigation Team after affording reasonable opportunity of hearing to the petitioner. However, in



Jindal Stainless Ltd. Vrs. State of Odisha, (2012) 54 VST 1 (Ori) it has been held that “conjoint reading of Section 41(4) of the OVAT Act and Rule 45(3) of the OVAT Rules makes it clear that after completion of the tax audit of any dealer, the officer in-charge authorised to conduct such audit shall within seven days from the date of completion of the audit submit the audit visit report in Form VAT-303 to the Assessing Authority”. It is manifest from the AVR in Form VAT-303 reveals that the audit team comprising the Deputy Commissioner of Sales Tax, Jagatsinghpur Circle, Paradeep and an Assistant Sales Tax Officer visited the business premise of the petitioner for conducting tax audit on 17.12.2013; but the AVR has been prepared on 31.03.2016. The assessment order dated 10.02.2017 passed under Section 43 proceeded on the basis that “The AVR in case of the above named dealer-company for the tax periods from 01.04.2010 to 31.03.2013 was received from the Deputy Commissioner of Sales Tax, Jagatsinghpur Circle, Paradeep on dated 12.07.2016”. At the time of very initiation of proceeding under Section 43, it was within the knowledge of the Assessing Authority that the AVR has not been submitted within the period stipulated under Section 41(4) and therefore, Audit Assessment under Section 42 could not be initiated as recommended in AVR. In *Balaji Tobacco Store Vrs. The Sales Tax Officer, 2015 (I) ILR-CUT 1079*, it has unequivocally been held that the Taxing



Authority has no jurisdiction to make Audit Assessment under Section 42 of the OVAT Act after completion of the assessment under Section 43 of the said Act for the self-same tax period(s).

8.16. When the present case is examined in the perspective of law laid down by this Court as referred to in preceding paragraph, it is quite clear that no evidence is adduced by the Revenue to demonstrate that the AVR was submitted in conformity with the stipulation envisaged in Section 41(4). In the instant case, the Assessing Authority sought to proceed with Audit Assessment under Section 42 on the basis of the observation made in the first appellate order that the Assessing Authority erred in completing proceeding for assessment under Section 43 by taking into consideration objections raised in the AVR. Audit Assessment under Section 42 is undertaken being directed by the Appellate Authority to issue notice in Form VAT-306 prescribed under Rule 49 of the OVAT Rules.

8.17. Scrutiny of the AVR, copy of which is made available at Annexure-3 to the writ petition. Following factual details relevant to present context surfaced from the said AVR dated 31.03.2016:

“06. Statement, if any, recorded in course of visit and if so, the name and status of such persons with



reference to the business from whom statement has been recorded:

Statement recorded on solemn affirmation from Sri Abhijit Banerjee, Senior Manager, Taxation and the authorised signatory of the company on 17.12.2013 in course of audit (placed in the record).

15. *Summary of Audit Visit Report indicating the specific discrepancies detected and evidence thereof including explanation, if any, furnished against such discrepancies and statement recorded by way of explanation to such discrepancies:*

**** The place of business of the dealer-company was visited on 17.12.2013 by the audit team of the Cuttack-II Range comprising the Deputy Commissioner of Sales Tax and Assistant Sales Tax Officer with prior notice in Form VAT-301 for the purpose of Tax Audit.”*

8.18. As is manifest from the above, the audit process started prior to amendment of Section 41 and Section 42 by virtue of the Odisha Value Added Tax (Amendment) Act, 2015. In exercise of power conferred on the State Government in Section 1 of the said Amendment Act, 2015, Government of Odisha in Finance Department *vide* Notification No.28080-FIN-CT1-TAX-0017-2013-F. (SRO No.490/2015), dated 19.10.2015, published in the Odisha Gazette Extraordinary No.1481, dated 19.10.2015 appointed 01.10.2015 as the date on which said Amendment Act came into force. In the context



where the Legislature vested the power on the State Government to appoint a date for giving effective date for operation of an Amendment Act, this Court in *Bansapani Iron Ltd. Vrs. State of Odisha, 2016 (I) ILR-CUT 50* held as follows:

“In the present case, the facts of the present case is distinct, inasmuch as, the Orissa Value Added Tax (Amendment) Act, 2007 did not itself declare the date from which the statute came into operation and left it to the Government to issue the appointed date through Notification. The Notification was issued thereafter indicating 1st day of June, 2008 as the appointed date.

We are of the considered view that, the same cannot be any clearer indication of legislative intent other than the Notification notifying the appointed date, from which the Act would come into operation. Apart from the above, we are also of the view that the judgment cited at the Bar by the petitioner in the case of *M/s.Punjab Traders Vrs. State of Punjab, AIR 1990 SC 2300* Hon’ble the Supreme Court clearly came to a conclusion that “the said amendment was clarificatory, since it was always well understood in trade that khandsari sugar was also sugar”. In the present case, prior to 2008 amendment to the OVAT Act, spare parts were dealt separately other than capital goods. It is only on and from the date, on which spare parts became covered under the term “capital goods” with the 2008 amendment came into force, that the situation stood otherwise and this amounted to a substantiate change insofar as taxability of a transaction is concerned.”



8.19. Such explicit legal position enunciated by this Court, leaves no anomaly that the Assessing Authority in the instant case is required to follow the procedure as was available prior to coming into force the Odisha Value Added Tax (Amendment) Act, 2015, *i.e.*, 01.10.2015. The principle as enunciated in *Taylor Vrs. Taylor*, (1876) 1 Ch.D.426 and *Nazir Ahmed Vrs. King Emperor*, AIR 1936 PC 253 that when the statute requires to do certain thing in certain way, the thing must be done in that way or not at all; and other methods or mode of performance are impliedly and necessarily forbidden as followed in very many judgments— See, *Ram Phal Kundu Vrs. Kamal Sharma*, (2004) AIR 2004 SC 1657; *Indian Bank's Association Vrs. Devkala Consultancy Service*, AIR 2004 SC 2615 and *Gujarat Urja Vikas Nigam Ltd. Vrs. Essar Power Ltd.*, (2008) 4 SCC 755— does apply to the present case. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusion alteris*" meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible.

8.20. At this juncture, it may be necessary to take cognizance of extant provisions of Section 41 and Section 42 of the OVAT Act as on the date of issue of notice in Form VAT-301 prescribed under Rule 41 of the OVAT Rules for



undertaking audit of the business of the petitioner, i.e.,
17.12.2013:

“41. Identification of tax payers for tax audit.—

- (1) The Commissioner may select such individual dealers or class of dealers for tax audit on random basis or on the basis of risk analysis or on the basis of any other objective criteria, at such intervals or in such audit cycle, as may be prescribed.*
- (2) After identification of individual dealers or class of dealers for tax audit under sub-section (1), the Commissioner shall direct that tax audit in respect of such individual dealers or class of dealers be conducted in accordance with the audit programme approved by him :*

Provided that the Commissioner may direct tax audit in respect of any individual dealer or class of dealers on out of turn basis or for more than once in an audit cycle to prevent evasion of tax and ensure proper tax compliance.

- (3) Tax audit shall ordinarily be conducted in the prescribed manner in the business premises or office or godown or warehouse or any other place, where the business is normally carried on by the dealer or stock in trade or books of account of the business are kept or lodged temporarily or otherwise.*
- (4) After completion of tax audit of any dealer under sub-section (3), the officer authorised to conduct such audit shall, within seven days from the date of completion of the audit, submit the audit report, to be called “Audit Visit Report”, to the Assessing*



Authority in the prescribed form along with the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes.

42. Audit assessment.—

- (1) Where the tax audit conducted under sub-section (3) of Section 41 results in the detection of suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit, evasion of tax or contravention of any provision of this Act affecting the tax liability of the dealer, the Assessing Authority may, notwithstanding the fact that the dealer may have been assessed under Section 39 or Section 40, serve on such dealer a notice in the form and manner prescribed along with a copy of the Audit Visit Report, requiring him to appear in person or through his authorised representative on a date and place specified therein and produce or cause to be produced such books of account and documents relying on which he intends to rebut the findings and estimated loss of revenue in respect of any tax period or periods as determined on such audit and incorporated in the Audit Visit Report.*
- (2) Where a notice is issued to a dealer under sub-section (1), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.*
- (3) If the dealer fails to appear or cause appearance, or fails to produce or cause production of the books of*



account and documents as required under sub-section (1), the Assessing Authority may proceed to complete the assessment to the best of his judgment basing on the materials available in the Audit Visit Report and such other materials as may be available, and after causing such enquiry as he deems necessary.

- (4) Where the dealer to whom a notice is issued under sub-section (1), produces the books of account and other documents, the Assessing Authority may, after examining all the materials as available with him in the record and those produced by the dealer and after causing such other enquiry as he deems necessary, assess the tax due from that dealer accordingly.*
- (5) Without prejudice to any penalty or interest that may have been levied under any provision of this Act, an amount equal to twice the amount of tax assessed under sub-section (3) or sub-section (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections.*
- (6) Notwithstanding anything contained to the contrary in any provision under this Act, an assessment under this section shall be completed within a period of six months from the date of service of notice issued under sub-section (1) along with the Audit Visit Report:*

Provided that if, for any reason, the assessment is not completed within the time specified in this sub-section, the Commissioner may, on the merit of each such case, allow such further time not exceeding six months for completion of the assessment proceeding.



(7) *No order of assessment shall be made under sub-section (3) or sub-section (4) after the expiry of one year from the date of receipt of the Audit Visit Report.”*

8.21. It is significant to take note of a Division Bench decision of this Court in the case of *Jindal Stainless Ltd. Vrs. State of Odisha*, (2012) 54 VST 1 (Ori) wherein *inter alia* following question was formulated:

“(iii) Whether the authorized officer has not submitted audit visit report to the Assessing Authority within seven days from the date of audit as provided under section 41(4) of the OVAT Act and thereby the impugned audit report dated March 31, 2008 and Audit Assessment dated August 20, 2008 would be non est/unsustainable in the eye of law?”

In answer to said question, this Court held as follows:

“Question No. (iii) is whether the authorized officer has not submitted audit visit report to the Assessing Authority within seven days from the date of audit as contemplated under Section 41(4) of the OVAT Act and thereby the impugned audit visit report dated March 31, 2008 and Audit Assessment dated August 20, 2008 would be non est/unsustainable in the eye of law. Normally, it is a mixed question of fact and law. But the documents annexed to the writ petition reveal that there is infraction of the provision and time provided under section 41(4) has not been adhered to. Section 41(4) provides that after completion of tax audit of any dealer under sub-section (3), the officer authorized to conduct such audit shall, within seven days from the date of completion of the audit, submit the audit report to the Assessing Authority



in the prescribed form along with the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claims of deductions including input-tax credit and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes.

*In the instant case, notice issued in form VAT 306 and the accompanying audit visit report reveal that the audit of the business of the petitioner was undertaken by the officers of the audit unit on October 1, 2007 and audit visit report was to be submitted within seven days from October 1, 2007 as contemplated in section 41(4). **But the audit visit report was submitted on March 31, 2008, i.e., after six months of the completion of the audit. This is in clear violation of the statutory provision contained in Section 41(4) since there is a time-limit prescribed for submission of audit visit report and the same has not been complied with. Therefore, the said audit visit report has no validity.***

It is unfortunate that while under OVAT Act Section 41(4) provides for submission of audit visit report within seven days from the date of audit and Audit Assessment is to be completed within six months from the date of receipt of AVR by the Assessing Authority, the action of the authorised officer in submitting the AVR to the Assessing Authority after six months from the date of audit visit not only violates the statutory provisions contained in section 41(4) but also is against the scheme and spirit of audit visit and Audit Assessment provided under the OVAT Act.”

8.22.Said interpretation of Section 41(4) *vis-a-vis* Section 42 has been referred to Larger Bench in the case of *Pal*



Construction Vrs. Assessing Authority, W.P.(C) No.16957 of 2009, vide Order dated 20.10.2014, with the following question:

On the above backdrop, the following question is referred to the Larger Bench:

Whether non-submission of Audit Visit Report to the Assessing Officer within seven days from the date of completion of audit as contemplated under Section 41(4) of the OVAT Act renders the Audit Visit Report invalid and assessment made on the basis of such Audit Visit Report is illegal?"

The Larger Bench of this Court *vide* Order dated 31.03.2022 declined to answer said question, but observed as follows:

- “2. The question involved in the present petitions concern interpretation of Section 41 (4) of the Odisha Value Added Tax Act, 2004 as it stood prior to its amendment by virtue of the Odisha Value Added Tax (Amendment) Act 2015 with effect from 1st October, 2015. ****
- 3. A question is whether the requirement of the Authorized Officer having to submit the audit report to the Assessing Authority within seven days from the date of completion of the audit is mandatory or directory?*
- 4. Learned counsel for the Petitioner had cited before the Division Bench of this Court, the decision of another Division Bench of this Court comprising two*



learned Judges in Jindal Stainless Ltd. (now JSL Ltd.) Vrs. State of Orissa (2012) 54 VST 1 (Orissa).

5. *After noticing the said judgment, the Division Bench of two learned Judges in the referral order proceeded to state that the points of issue involved in the case “are extremely important, especially the issue raised on behalf of Revenue vis-à-vis the impact of the judgment relied upon by the learned counsel for the Petitioner.” That judgment is the one in Jindal Stainless Ltd. (supra) regarding the interpretation of Section 41 (4) of the OVAT Act as it stood prior to the 2015 amendment.*
6. *In the considered view of the Court, a Division Bench of two learned Judges of this Court is bound to follow a judgment of a coordinate Bench of same strength and if it chooses to differ from the said judgment, it is only then that the matter can be referred to a Larger Bench by stating the points of difference with the judgment of the coordinate Bench. This rule of stare decisis is well settled and has been explained by the Supreme Court of India in Union of India Vrs. Raghubir Singh, (1989) 2 SCC 754 in the following passage:*

What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid



*down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. ****

We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court.'

7. *With the order dated 20th October 2014, not stating the reasons for differing from the judgment in Jindal Stainless Ltd. (supra) which is by a co-ordinate*



Bench and is therefore binding, the question of a larger Bench considering the issue does not arise. A referral order properly framed should ideally set out the point of difference from an earlier binding judgment with which the Bench is differing. That however has not been done in the referral order dated 20th October, 2014.

8. *In that view of the matter, the Court declines to answer the reference made to this Larger Bench and places all these matters before the Roster Bench on 13th April 2022 to be dealt with on merits in accordance with law. The interim order passed earlier in the respective writ petitions shall continue till then.”*

8.23. The matter standing thus being placed before the roster Bench, the Division Bench *vide* Order dated 18.04.2022 allowed the writ petition with the following order:

- “1. *It is pointed out that although in the Form VAT 303 the date of receipt of the audit report has been indicated as 6th September 2008 whereas in the impugned assessment order, the date of receipt is indicated as 16th October, 2008. This is clearly beyond seven days after completion of the audit.*
2. ***Thus the mandatory requirement of Section 41(4) of the OVAT Act, 2004 is not complied with.***
3. *On that short ground, the impugned assessment order and any consequential demand are hereby quashed.”*



8.24. Turning to the facts of the present case, the Standing Counsel having declined to file any counter affidavit, it is, therefore, not inept to consider the arguments advanced by the counsel for the respective parties with reference to material available on record. It is transpired (as has already been quoted from AVR hereinabove) that the business premise of the petitioner being visited by audit team on 17.12.2013, books of account and necessary and relevant documents were verified (as apparent from serial No.12 of the AVR). This apart, on the said date of visit, statement of authorised signatory on solemn affirmation was also recorded. The AVR was prepared and signed on 31.03.2016. It is recommended at serial No.15 therein that “In view of the above discussions, Audit Assessment proceedings under Section 42 of the OVAT Act, 2004 may be initiated against the instant dealer for the tax periods from 01.04.2010 to 31.03.2013”. No material is placed on record by the Standing Counsel to suggest that the process of audit continued after 17.12.2013 till it is signed on 31.03.2016. No explanation for such an inordinate period of delay is proffered by the Revenue. The assessment order dated 10.02.2017 revealed that the AVR was utilised in the assessment under Section 43, which was set aside by the Appellate Authority with observation that there has been error in exercise of jurisdiction *vide* Order dated 19.10.2023. This conduct



of the Assessing Authority indicates that he was conscious that by the time the AVR was received at his end, the period stipulated under Section 41(4) had already been lapsed and, therefore, possibly abandoning such recommendation he jumped to initiate proceeding under Section 43 by taking into account AVR. In the assessment order dated 10.02.2017 it is recorded as follows:

*The Audit Visit Report in case of the above named dealer-company for the tax periods from 01.04.2010 to 31.03.2013 was received from the Deputy Commissioner of Sales Tax, Jagatsinghpur Circle, Paradeep on dated 12.07.2016. Consequent upon examination of the returns filed by the dealer-company vis-a-vis the Audit Visit Report the following facts were revealed for the above tax periods. ****

In view of the above facts, assessment proceedings under Section 43 of the OVAT Act, 2004 was initiated against the dealer-company for the tax periods from 01.04.2010 to 31.03.2013 on 21.07.2016.”

This clearly indicates that having prepared the AVR on 31.03.2016, the same was supposed to have been submitted to the Assessing Authority within seven days from the date of completion of the audit. The Assessing Authority, thus, realising that acceding to recommendation contained in the AVR to initiate proceeding under Section 42 would be barred by limitation, abandoning such a course, he initiated



proceeding under Section 43. Hence, it can safely be said that whereas the initiation of proceeding under Section 42 was barred by limitation in view of invalidity attached to AVR dated 31.03.2016, and as a consequence of which the Assessing Authority proceeded to issue notice in Form VAT-307 prescribed under Rule 50 for the purpose of assessment under Section 43 instead of Form VAT-306 prescribed under Rule 49 for undertaking Audit Assessment under Section 42, the Assessing Authority is not within competence to resurrect the proceeding under Section 42 in the garb of compliance of direction of the first Appellate Authority in the appeal filed at the behest of the petitioner.

8.25. Aforesaid discussion on facts makes it abundantly clear that the mandatory requirement contemplated under Section 41(4), as it existed prior to enforcement of the Odisha Value Added Tax (Amendment) Act, 2015, was not complied with. Therefore, in order to obviate the situation that the assessment under Section 42 could not be proceeded with on the basis of such invalid AVR in terms of ratio laid down in *Jindal Stainless Ltd. Vrs. State of Odisha*, (2012) 54 VST 1 (Ori), the Assessing Authority proceeded to consider such AVR while proceeding with assessment under Section 43. In such view of the matter, after the limitation had already set in for the purpose of initiation of proceeding under Section



42, by way of subterfuge stemming on provisions of Section 49(2) the Assessing Authority is not competent to initiate assessment proceeding under Section 42.

8.26. In *Mohinder Singh Gill Vrs. Chief Election Commission*, (1978) 2 SCR 272 = (1978) 1 SCC 405 it has been stated as follows:

“We may here draw attention to the observations of Bose J. in Commissioner of Police Vrs. Gordhandas Bhanji, AIR 1952 SC 16 = 1952 SCR 135:

‘Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do.

*Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.’— **Orders are not like old wine becoming better as they grow older.**”*

8.27. As is seen from the record, notice dated 01.05.2024 in Form VAT-306 was issued on being directed by the Appellate Authority for proceeding with “Audit Assessment” under Section 42. Said section is triggered on detection of suppression of purchases or sales or both, erroneous claims of deductions including input tax credit, evasion of tax or contravention of any provision of the OVAT Act affecting the tax liability of the dealer. For



such purpose, the Assessing Authority is required to serve on such dealer a notice in the form and manner prescribed⁶ along with a copy of the AVR. Rule 49 of the OVAT Rules prescribes modality to serve notice. The Assessing Authority on receipt of the AVR chose not to initiate proceeding under Section 42, but issued notice in Form VAT-307 prescribed under Rule 50 for the purpose of assessment under Section 43. Such conduct of the Assessing Authority indicates that he could not ignore the delay in submission of AVR beyond period stipulated in Section 41(4) for the purpose of undertaking Audit Assessment under Section 42. On the specious plea of compliance of the order of the first Appellate Authority such a course of initiation of proceeding for Audit Assessment under Section 42, without verifying his own jurisdiction, is untenable when the AVR was itself invalid.

8.28. In *Institution of Mechanical Engineers (India) Vrs. State of Punjab*, (2019) 10 SCR 175 it has been reiterated as follows:

“39. The principle that what cannot be done directly cannot be achieved indirectly is well settled and was elaborated by this Court in following decisions:

⁶ The term “prescribed” has been defined under Section 2(33) of the OVAT Act as follows:
“PRESCRIBED means prescribed by Rules.”



A) *In State of Tamil Nadu and Others Vrs. K. Shyam Sunder and Others, (2011) 8 SCC 737 as under:*

‘VI. *What cannot be done directly— cannot be done indirectly*

‘21. *It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud. **An authority cannot be permitted to evade a law by ‘shift or contrivance.’*** (See *Jagir Singh Vrs. Ranbir Singh, (1979) 1 SCC 560 = AIR 1979 SC 381, M.C. Mehta Vrs. Kamal Nath, (2000) 6 SCC 213 = AIR 2000 SC 1997 and Sant Lal Gupta Vrs. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336.*’

B) *In Jagir Singh Vrs. Ranbir Singh, (1979) 1 SCC 560 as under:*

‘5. *In order to cross the hurdle imposed by Section 397(3) it was suggested that the revision application before the High Court could be treated as an application directed against the order of the Sessions Judge instead of as one directed against the order of the Magistrate. We do not think that it is permissible to do so. **What may not be done directly cannot be allowed to be done indirectly; that would be an evasion of the statute.*** It is a “well-



*known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance” (per Abbot, C.J. in Fox v. Bishop of Chester). **“To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.”** (Maxwell, 11th Edn., p. 109). When the Sessions Judge refused to interfere with the order of the Magistrate, the High Court’s jurisdiction was invoked to avoid the order ‘of the Magistrate and not that of the Sessions Judge. The bar of Section 397(3) was, therefore, effectively attracted and the bar could not be circumvented by the subterfuge of treating the revision application as directed against the Session Judge’s order. ***”*

8.29. There is a difference between existence of a power, and exercise of that power in a given case. Existence of power is generally a matter of law, whereas exercise of power is a mixed question of law and facts. [*Vide, Shilpa Sailesh Vrs. Varun Sreenivasan, (2023) 5 SCR 165*]. The Assessing Authority, while acting under the statute, is only creature of statute. He must act within the four corners thereof. The Assessing Authority at the first instance on receipt of the AVR did not choose to carry out the recommendation contained therein, but initiated proceeding for assessment under Section 43 taking into account said AVR. At this juncture after the assessment



order under Section 43 being set aside in the appeal filed at the behest of the petitioner, the initial invalidity attached to the AVR dated 31.03.2016 could not be taken to have been effaced. The Assessing Authority, on the facts and in the circumstances of the present case, therefore, remains incompetent to initiate proceeding under Section 42, recourse to which he had no jurisdiction prior to initiation of proceeding under Section 43.

8.30. It is trite that notice in prescribed statutory form cannot be regarded as a mere formality or procedural requirement. This case does not proceed as if the Assessing Authority had quoted wrong provision to proceed with assessment, but it rests on error of exercise of power and jurisdiction to initiate proceeding. Regard may be had to *Indure Ltd. Vrs. Commissioner of Sales Tax, (2006) 148 STC 61 (Ori) = 102 (2006) CLT 309* wherein it has been observed that statutory forms form part of statute as the Rules being framed in exercise of powers conferred under the Act. The relevant observations contained in said reported judgment is quoted hereunder:

“13. It is important to note the said Rules [the Odisha Sales Tax Rules, 1947] being framed under Section 29 of the said Act [the Odisha Sales Tax Act, 1947] are to be laid before the State Legislature in view of



the provisions of section 29-A of the said Act. So the Rules are part of the Act.

14. *That is the clear statutory dispensation.*
15. ***While the court is scrutinising the exercise of power by the authorities under Section 12(8) of the OST Act, the entire gamut of statutory provisions contained in the Rules and the forms are to be kept in its mind. It cannot be said and in fact it has not been said by the Revenue that any part of statutory rules and forms is redundant or that the power under section 12(8) of the OST Act can be exercised ignoring the Rules and the statutory forms. In fact, it was not so exercised and the impugned notice was issued under the statutory form, the relevant part of which has been set out previously.***

8.31. In *CIT Vrs. Kurban Hussain Ibrahimji Mithiborwala*, (1972) 4 SCC 394 significance of issue of valid notice for assessment has been spelt out by the Hon'ble Supreme Court of India in the following lines:

“It is well-settled that the Income Tax Officer’s jurisdiction to reopen an assessment under Section 34 depends upon the issuance of a valid notice. If the notice issued by him is invalid for any reason the entire proceedings taken by him would become void for want of jurisdiction. In the notice issued under Section 34 the Income Tax Officer sought to reopen the assessment of the assessee for Assessment Year 1948-49 but in fact he reopened the assessment of the year 1949-50. Hence, in our opinion, the High Court was right in holding that the notice in question was invalid and as



such the Income Tax Officer had no jurisdiction to revise the assessment of the assessee for the year 1949-50.”

8.32. Proceedings for assessment can be said to be validly initiated only if the notice is served on the petitioner-assessee as required. Even though notice in Form VAT-306 envisaged under Rule 49 for proceeding with Audit Assessment under Section 42 in order to determine the tax liability taking cognizance of AVR was served, the proceedings undertaken by the Assessing Authority in pursuance of an invalid AVR would be illegal and void, as per ratio in *Jindal Stainless Ltd. Vrs. State of Odisha*, (2012) 54 VST 1 (Ori); *Balaji Tobacco Store Vrs. The Sales Tax Officer*, 2015 (I) ILR-CUT 1079; *Pal Construction Vrs. Assessing Authority*, W.P.(C) No.16957 of 2009, vide Order dated 18.04.2022.

8.33. Conjoint reading of Section 42 read with Rule 49 and Section 43 read with Rule 50 *ex facie* posits that the exercise of power for initiating both the proceedings is discernible and said sections operate in different and distinct fields. Thus, blindly or mechanically issuing notice in Form VAT-306 for the purpose of Audit Assessment under Section 42 on the basis of AVR dated 31.03.2016 merely because the Appellate Authority directed to do so would not revive the initial infirmity. To reiterate, the Assessing Authority with eyes wide open after receipt of AVR dated 31.03.2016 with



recommendation to initiate proceeding under Section 42 having chosen not to proceed with such Audit Assessment, but initiated proceeding under Section 43 by completing self-assessment under Section 39 taking cognizance of said AVR, his action is tainted with illegality inasmuch as the AVR submitted under Section 41 is treated to be invalid.

8.34. It can, therefore, be said that the initiation of action for undertaking Audit Assessment under Section 42 as a result of AVR.

9. An argument has been advanced by Sri Sunil Mishra, learned Standing Counsel based on Section 98(2)⁷ of the OVAT Act to contend that the proceeding under Section 42 of the OVAT Act has been initiated by issue of Notice in Form VAT-306 in obedience of direction of the

⁷

Section 98 of the OVAT Act stood thus:

“98. *Assessment proceedings, etc. not to be invalid on certain grounds.—*

- (1) *No return, assessment, appeal, rectification, notice, summons or other proceedings accepted, made, issued or taken, or purported to have been accepted, made, issued or taken in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return, assessment, appeal, rectification, notice, summons or other proceedings, if such return, assessment, appeal, rectification, notice or other proceedings are, in substance and effect, in conformity with or according to the intents, purposes and requirements of this Act.*
- (2) *The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.*
- (3) *No order, including an order of assessment, revision or rectification passed by any authority under any provision of this Act shall be invalid merely on the grounds that the action could also have been taken by any other authority under any other provision of this Act.”*



Appellate Authority, which cannot be called in question by the petitioner-assessee.

9.1. Careful reading of whole of the provisions contained in Section 98 would indicate that service of notice, order or communication could not be called in question if notice, order or communication has been acted upon by the petitioner-dealer. In the present case as record demonstrates that the petitioner has raised objection as to issue of such notice [See, “Memorandum of Submission” dated 10.01.2025 (Annexure-11)] before the Joint Commissioner of Sales Tax, CT & GST Circle, Jagatsinghpur, Paradeep (Assessing Authority). The authority merely stated that on the direction of the Appellate Authority he has issued notice for assessment in Form VAT-306 in order to comply with the appellate order. Therefore, the plea set up by way of written note of submission dated 19.08.2025 by the Revenue is inconceivable inasmuch as the authorities should have examined whether as a result of tax audit, AVR submitted beyond the period stipulated under Section 41(4), proceeding under Section 42 can be initiated by issue of statutory notice on remand by the Appellate Authority. Rather sub-section (3) of Section 98 poses adverse to such a claim set forth by the learned Standing Counsel. If said sub-section is taken into account, the direction of the Appellate Authority appears



to be contrary to said provision. While Section 49(2) operates to correct error of jurisdiction with respect to assessments under the OVAT Act *vis-a-vis* the Central Sales Tax Act, Section 98(3) saves wrongful exercise of jurisdiction within the scope of the OVAT Act.

9.2. Hence, the contention of the learned Standing Counsel does not find favour with inasmuch as sub-section (3) of Section 98 clearly envisages that no order of assessment passed by any authority under any provision of the OVAT Act shall be invalid merely on the grounds that the action could also have been taken by any other authority under any other provisions of said Act. In the instant case, the Appellate Authority held the action of the Assessing Authority in concluding assessment under Section 43 as not in consonance with the mandate of the law. Hence, stemming on the provisions of Section 49(2), issue of notice in Form VAT-306 prescribed under Rule 49 for the purpose of Audit Assessment under Section 42 to take cognizance of the AVR submitted under Section 41(4) beyond the period stipulated cannot sanctify the exercise of power by the Assessing Authority.

10. Taking cue from Section 92 of the OVAT Act conferring power on the Commissioner, the Tribunal and any person appointed under Section 3(2) to assist the Commissioner, as such power is exercised in a Court



under the Code of Civil Procedure, 1908, Sri Sunil Mishra, learned Standing Counsel reiterated the stance taken in the “written note of submission on behalf of the opposite parties”, relevant portion of which is extracted hereunder:

- “6. That it is humbly submitted that Section 49(2) of the OVAT Act does not speak of a Civil Court but speaks only of a ‘Court’. It is not necessary that the Court spoken of in Section 49(2) of the OVAT Act should be a Civil Court. Any authority having the trappings of a Court and deciding the rights of the parties will be treated as ‘Court’.*
- 7. That it is humbly submitted that the Hon’ble Supreme Court in case of P. Sarathy Vrs. State Bank of India, (2000) 5 SCC 355 has held accordingly. The relevant portion of the judgment is extracted herewith for kind appreciation of this Hon’ble Court:*
- ‘9. Deputy Commissioner of Labour (Appeals), Madras, which is the Authority constituted under the Tamil Nadu Shops and Establishments Act, 1947 has the jurisdiction to adjudicate upon an order by which the services of an employee are terminated. He has the jurisdiction to decide whether the order of dismissal, passed by the employer, was valid or it was passed in violation of any statutory rule or principles of natural justice. Under Section 41(3), the order passed by him is binding on the employer as also on the employee. Thus, the Deputy Commissioner of Labour (Appeals) may not be a ‘Civil Court’*



*within the meaning of the Code of Civil Procedure but it is definitely a 'Court'.' ***"*

10.1. In *Union Of India Vrs. Arulmozhi Iniarasu*, AIR 2011 SC 2731 it has succinctly been laid down that,

"Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases."

10.2. The reference made to *P. Sarathy Vrs. State Bank of India*, (2000) 5 SCC 355 could not be made out of context. In the present case, the expressions "the Court or Tribunal" and "an order in appeal or revision" are key to set the provisions of Section 49(2) of the OVAT Act into motion. In the scheme of the OVAT Act, the High Court is vested with power of revision under Section 80 to entertain question of law arising out of order of the Sales Tax Tribunal and under Section 78, the order in appeal is passed by the Sales Tax Tribunal, as



constituted under Section 4 read with Section 2(58). Thus, under no stretch of imagination the order of “Appellate Authority” defined under Section 2(1-d) could be said to have comprehended in Section 49(2).

10.3. It is well settled that no word is allowed to be added, subtracted, inserted or substituted while interpreting provision of the statute. The taxing statute has to be strictly construed. Nothing is to be read in, nothing is to be implied and language used in taxing statute had to be looked into fairly. In *Ranbaxy Laboratories Ltd. Vrs. Union of India*, (2011) 10 SCC 292 it has been laid down as follows:

“14. It is a well-settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. (See Cape Brandy Syndicate Vrs. IRC, (1921) 1 KB 64 and Ajmera Housing Corpn. Vrs. CIT, (2010) 8 SCC 739.”

10.4. Therefore, if the contention of the Standing Counsel is acceded to, the interpretation put forth by him would result in absurdity.

10.5. While delving deep into the matter, it is perceived that the case of *P. Sarathy (supra)* proceeded in the context of



Section 41⁸ of the Tamil Nadu Shops and Establishments Act, 1947 *vis-a-vis* applicability of Section 14 of the Limitation Act, 1963. The question that fell for consideration before the Hon'ble Supreme Court of India that when the appeal before the Deputy Commissioner of Labour (Appeals) was within time, the period taken from the date of institution of appeal till its dismissal on the ground that the appeal under the Tamil Nadu Shops and Establishments Act, 1947 pertaining to service matter was incompetent *qua* nationalised banks

⁸ Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 stands as follows:

“41. Notice of dismissal.—

(1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one months notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

(2-A) The Appellate Authority may, if it considers that any document or the testimony of any person is relevant or necessary for the discharge of its duties under this Act as Appellate Authority, call for and inspect such document or summon and examine such person. For the aforesaid purposes, it shall have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, namely:

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) compelling the production of documents;

(iii) issuing commissions for the examination of witnesses

(2-B) The Appellate Authority, may, after giving notice in the prescribed manner to the employer and the person employed, dismiss the appeal or direct the reinstatement of the person employed, with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the Appellate Authority shall be final and binding on both the employer and the person employed.”



is entitled to be excluded for the purpose of filing suit in view of Section 14 of the Limitation Act. The Hon'ble Supreme Court of India in the said reported judgment held as follows:

*“12. It will be noticed that Section 14 of the Limitation Act does not speak of a ‘Civil Court’ but speaks only of a ‘Court’. It is not necessary that the court spoken of in Section 14 should be a ‘Civil Court’. Any authority or Tribunal having the trappings of a court would be a ‘Court’ within **the meaning of this section.***

*15. Applying the above principles in the instant case, we are of the opinion that the Deputy Commissioner of Labour (Appeals), which was an Authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeals, **was a ‘Court’ within the meaning of Section 14 of the Limitation Act** and the proceedings pending before him were civil proceedings. It is not disputed that the appellant could file an appeal before the Local Board of the Bank, which was purely a departmental appeal. In this view of the matter, the entire period of time from the date of institution of the departmental appeal as also the period from the date of institution of the appeal under Section 41(2) before the Deputy Commissioner of Labour (Appeals) till it was dismissed will, therefore, have to be excluded for computing the period of limitation for filing the suit in question. If the entire period is excluded, the suit, it is not disputed, would be within time. It was for these reasons that we have allowed this appeal by*



our short order dated 28th of July, 1998 for which the reasons are recorded by us in detail.”

10.6. It may be highlighted that for the purpose of ascertaining whether filing of suit to challenge dismissal of appeal by the Deputy Commissioner of Labour (Appeals) in connection with removal of employee from service on the ground that the provisions of the Tamil Nadu Shops and Establishments Act, 1947 were not applicable to nationalised banks was within period of limitation and benefit of Section 14 of the Limitation Act could be extended to such employee, in *P. Sarathy (supra)* it was held that said Deputy Commissioner of Labour *was a ‘Court’ within the meaning of Section 14 of the Limitation Act*. Such a question does not fall for adjudication in the present case, though voracious arguments based on whether “Appellate Authority” defined in Section 2(1-d) of the OVAT Act could be considered as “Court” so that the order passed by him can be comprehended within the meaning of Section 49(2) of the OVAT Act.

10.7. Another distinctive feature that may be highlighted taking cue from *P. Sarathy (supra)* that the Deputy Commissioner of Labour (Appeals) as the Appellate Authority was required to hear and dispose of appeal by affording opportunity of hearing to both the employee as well as the employer in view of Section 41 of the Tamil



Nadu Shops and Establishments Act, 1947 read with Rule 9 and Rule 9A of the Tamil Nadu Shops and Establishments Rules, 1948. Such a scheme of adversarial system of adjudicatory process is not contemplated under Section 77 of the OVAT Act read with Rule 86 of the OVAT Rules which deals with provisions of appeal and appellate authorities.

10.8. To discern nuance of the term 'Court' a reference to *North Eastern Chemicals Industries (P) Ltd. Vrs. Ashok Paper Mill (Assam) Ltd.*, (2023) 15 SCR 821 would be beneficial. In the said case, it has been observed that:

“8. The term 'Court' is not defined under the Code. What it does define is a decree and an order in Section 2(2) and Section 2(14) respectively. ***

9. The Indian Evidence Act, 1872 defines the word 'Courts' as under:

‘3. *** “Court”.— “Court” includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.’

However, this Court in *State of M.P. Vrs. Anshuman Shukla*, (2008) 7 SCC 487 while referring to a judgment of the Calcutta High Court [*Empress Vrs. Ashootosh Chuckerbutty*, ILR (1879-80) 4 Cal 483] observed that the definition under the said Act is not exhaustive, but all authorities authorized to take evidence must be held to be courts under the meaning of said provision.



10. In *P. Sarathy Vrs. SBI*, (2000) 5 SCC 355 this Court has observed:

‘13. The Court referred to the earlier decisions in *Bharat Bank Ltd. Vrs. Employees*, 1950 SCC 470 = AIR 1950 SC 188 = 1950 SCR 459; *Maqbool Hussain Vrs. State of Bombay*, AIR 1953 SC 325 = 1953 SCR 730 and *Brajnandan Sinha Vrs. Jyoti Narain*, AIR 1956 SC 66 = (1955) 2 SCR 955. The Court approved the rule laid down in these cases that **in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.**’

11. Article 116 of the Limitation Act provides the period of limitation for an appeal,

- a) to a High Court i.e., 90 days from the date of order/decreed; and
- b) to any other court from an order, 30 days from the date of order/decreed.

12. The Claimant-Appellants contend that this court judgment in *Vidyacharan Shukla Vrs. Khubchand Baghel*, (1964) SCR 129 = AIR 1964 SC 1099 is clearly distinguishable from the present dispute. In the said case, inter alia, **the court was faced with a statute (Representation of Peoples Act, 1951), to which the Court has been made expressly applicable, whereas the same is not the case**



here. On the other hand, the respondents argue that since an appeal under Section 22(8) of the Jogighopa Act is to a principal court of original civil jurisdiction, which qualifies as an appeal ‘governed by the Court’— Article 116 of the Limitation Act shall be attracted.

13. The Constitution Bench in Vidyacharan Shukla referred to three judgments of High Courts in Aga Mahomed Hamadani Vrs. Cohen, (1886) ILR 13 Cal 221, Ramasami Pillai Vrs. Deputy Collector of Madura, AIR 1920 Mad 407, and Dropadi Vrs. Hira Lal, ILR (1912) 34 All 496 (FB). In each of these three decisions, the respective High Courts were tasked with the question of application of Article 156 of the Limitation Act (now Article 116) to the Burma Court’s Act, the Provincial Insolvency Act, 1907 and Land Acquisition Act, 1894 respectively. In Cohen (supra) it was observed that “the natural meaning of an appeal under the Civil Procedure Code appears to us to be an appeal governed by the Code of Civil Procedure so far as procedure is concerned”. In Hira Lal (Supra) the full bench of the Allahabad High Court observed that the objection of Section 47 thereof appears to be to attract the provisions of the Code. In Ramasami Pillai (supra), it was held that by virtue of Section 54, the procedure in its entirety set out in the code to govern appeals, was made applicable to the Land Acquisition Act. Similar to the above said decisions of the High Courts this Court in the said decision was also dealing with a statute which expressly made applicable [Section 90 of Representation of Peoples Act, 1951], the provisions of the code. **The holding, therefore, is that appeals provided for in special statutes that**



are governed by the Code, can be said to be appeals under the Code for the purposes of Article 116 of the Limitation Act.

14. *We may now refer to Section 22(6) of the Jogighopa Act which deals with the powers vested in the Commissioner under the Act. The relevant portion of which reads as under:*

‘(6) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions, including the place or places at which he will hold his sittings and shall, for the purpose of making an investigation under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

- (a) The summoning and enforcing the attendance of any witness and examining him on Oath;*
- (b) the discovery and production of any document or other material object producible as evidence;*
- (c) the reception of evidences on affidavits;*
- (d) the issuing of any commission for the examination of witness.’*

15. *A perusal of the above extracted section of the Jogighopa Act makes sufficiently clear the Commissioner “for the purpose of making and investigation under this act” shall have the powers*



vested in “a Civil Court” under the Code to the limited extent as mentioned in (a), (b), (c), (d).

16. *The intent of the Assam State Legislature is quite clear. Not only under Section 22(6) is the application of the Code limited but further under Section 22(7)⁹ The application thereof is also equally well circumscribed therein, the Commissioner has been deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Section 195 provides for Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. Chapter XXVI relates to Provisions as to Offences Affecting the Administration of Justice.*
17. *The above description of the powers of either the Code or Cr.P.C. clearly testifies to the intent of the State Legislature to specifically restrict the application of both the said codes, to only the extent provided. The principle of statutory interpretation: expression unius est exclusion alterius (the expression of one thing is the exclusion of the other) supports such a view. We also notice this Court holding International Asset Reconstruction Company of India Vrs. Official Liquidator, (2017) 16 SCC 137 as extracted below:*

‘9. The fact that the Tribunal may be vested with some of the powers as a Civil Court

⁹ Section 22(7) of the Jogighopa Act [similar provisions can be found at Section 92 of the OVAT Act] reads as follows:

“(7) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code, and the Commissioner shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.”



under the Code of Civil Procedure, regarding summoning and enforcing attendance of witnesses, discovery and production of the documents, receiving evidence on affidavits, issuing commission for the examination of witnesses or documents, reviewing its decisions, etc. does not vest in it the status of a Court. Section 22(1), in fact, provides that the Tribunal shall not be bound by the procedures under CPC, and can regulate its own procedures in accordance with natural justice.’

18. Therefore, it is clear from the above extracted decision that ***the vesting of select few powers upon a Tribunal, or as in the present case, a statutory authority, does not equate the same to be a Court within the meaning of the Code.*** It is also noteworthy that Section 22(6) states “the Commissioner shall have the power to regulation his own procedure in all matters arising out of the discharge of his functions including the place or places at which he will hold his sittings; This also supports the proposition that the Code does not apply to the proceedings of the Commissioner.”

10.9. The Hon’ble Supreme Court of India in answering the question whether the Commissioner while hearing the appeal under Section 69 of the Hindu Religious Endowment Charitable Act, 1959, is a “Court” held in *Ganesan Vrs. The Commissioner, The Tamil Nadu Hindu Religious and Charitable Endowments Board*, (2019) 7 SCR 102 as follows:



“13. The definition of the Court refers to the Civil Court constituted by Legislature in the State for administration of justice. The conventional definition of the Court as mentioned in Advanced Law Lexicon by P. Ramanatha Aiyer, Third Edition is:

A Court is defined in Coke on Littleton as a place wherein justice is judicially administered. ‘In every Court, there must be at least three constituent parts— the actor, reus and judex: the actor, or plaintiff, who complains of an injury done; the reus, or defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and b its officers to apply, the remedy,’ (3 Steph. Comm. 6th Ed., pp.383, 385). See also 30 M. 326: 2 MLT 267, Court is a body in the Government to which the public administration of justice is delegated; an organised body, with defined powers, meeting at certain times, and places, for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsels, to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands and secure order in its proceedings.’

14. **The constitution of Court in this country has been by legislative enactments.** For constituting Civil Courts, the Bengal, Agra and Assam Civil Courts Act, 1887 was enacted which provided classes of Civil Courts and provided for constitution



of Courts of District Judges, Sub-ordinate Judges and Munsifs. Similarly for Civil Courts in the town of Bombay, Calcutta and Madras, the Presidency Small Causes Act, 1882 was enacted.

15. The definition of Court as contained in Section 6(7) as noted above, thus, clearly indicates that what Act, 1959 refers to a Court is a Civil Court created in the State. The scheme of the Act clearly indicates that Commissioner is an authority under the Act who is to be appointed by the Government. **The Commissioner is entrusted with various functions under the Act and one of the functions entrusted to the Commissioner is hearing of the appeal under Section 69 of the Act, 1959.**

17. When an appeal is provided against the order of the Commissioner under Section 69 to the Court which is defined under Section 6(7), there is no question of treating the Commissioner as a Court under the statutory scheme of Act, 1959. We, thus, conclude that Commissioner is not a Court within the meaning of Act, 1959.
18. We may, however, notice a judgment of this Court in *P. Sarathy Vrs. State of Bank of India*, (2000) 5 SCC 355. In the above case Deputy Commissioner of Labour (Appeals) was an authority constituted under Section 41(2) of Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeal. The appellant, an official of the State Bank of India was removed by an order dated 11.01.1983 after holding regular departmental proceedings. The



appellant had filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 which appeal was dismissed holding that provisions of Tamil Nadu Shops and Establishments Act, 1947 are not applicable to nationalized Banks. After the dismissal of the said appeal the orders of Deputy Commissioner of Labour (Appeals) dated 01.09.1987 was challenged in this Court which too are rejected. It was thereafter appellant instituted a regular suit in the City Civil Court where the question came for consideration regarding applicability of Section 14 of Limitation Act. In the above case in paragraph 3 the issue was noted to the following effect:

3. In order to bring a suit within the period of limitation, the appellant claimed benefit of Section 14 of the Limitation Act on the ground that he had represented to the Local Board and, thereafter, filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 and was, therefore, prosecuting “civil proceedings” in a Court with due diligence. It is claimed that the entire period during which those proceedings were pending has to be excluded and if this is done, the suit will be well within limitation.’
19. In the above context, this Court in paragraphs 12 to 15 laid down following: ***¹⁰
20. **There are two reasons due to which the above case is not applicable in the present case.**

¹⁰ Paragraphs 12 and 15 of *P. Sarathy Vrs. State Bank of India*, (2000) 5 SCC 355 have already been extracted supra.



Firstly, in the above case this Court was considering applicability of Section 14 of Limitation Act for excluding time (civil proceeding). The present is a case where applicability of Section 5 of the Limitation Act has to be examined. Thus, the above judgment is distinguished.

The second reason for not relying the above judgment is three-Judge Bench judgment of this Court in The Commissioner of Sales Tax, U.P. Lucknow Vrs. M/s. Parson Tools and Plants, Kanpur, (1975) 4 SCC 22. *In the above case under the U.P. Sales Tax Act, 1948 the Appellate Authority has been constituted. The question arose as to whether the period taken in pursuing the appellate proceedings can be excluded by applying Section 14 of the Limitation Act for purposes of filing revision before the Revisional Authority under Section 10(3-B) of the U.P. Sales Tax Act, 1948. In the above context, this Court held that Appellate Authority and the Judge (Revisions) are not Courts, hence, Section 14 of the Limitation Act shall not be applicable.* *In paragraph 9 following has been laid down:*

‘9. The above observations were quoted with approval by this Court in Jagannath Prasad Vrs. State of U.P., (1963) 2 SCR 850 and it was held that a Sales Tax Officer under U.P. Sales Tax Act, 1948 was not a Court within the meaning of Section 195 of the Code of Criminal Procedure although he is required to perform certain quasi-judicial functions. The decision in Jagannath Prasad case it seems, was not brought to the notice of the High Court. In view



of these pronouncements of this Court, there is no room for argument that the Appellate Authority and the Judge (Revisions) Sales tax exercising jurisdiction under the Sales Tax Act, are “Courts”. They are merely Administrative Tribunals and “not Courts”. Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such Tribunals.’

21. There being three-Judge Bench judgment having held that Appellate Authority under U.P. Sales Tax Act is not a Court, we are not persuaded to follow the judgment of two-Judge Bench in P. Sarthy (supra).”

10.10. It is, thus, necessary to have regard to observations made by a three-Judge Bench decision of the Hon’ble Supreme Court of India in *Jagannath Prasad Vrs. State of U.P.*, (1963) 2 SCR 850, which is to the following effect:

“It is no defence to say that the appellants were asked by the Sales Tax Officer to produce invoices. The appellants were trying to get exclusion from their turnover of the sale of goods worth about Rs.3 lacs and had made statements before the Sales Tax Officer in regard to it on July 9, 1951, and in order to prove that the goods were not required to be included in the turnover the invoices were produced by appellant-Jagannath Prasad. When a fact has to be proved before a Court or a tribunal and the Court or the tribunal calls upon the person who is relying upon a fact to prove it by best evidence it cannot be a defence as to the offence of forgery if that best evidence which, in this case, was the invoices turn out to be forged documents. A person who produced those documents cannot be heard to say that he was required to prove his



case by the best evidence and because he was so required he produced forged documents.

It was then submitted that the Sales Tax Officer was a Court within Section 195 of the Criminal Procedure Code and in the absence of a complaint in writing by such an officer no cognizance could be taken of any offence punishable under Section 471 of the Indian Penal Code. This, in our opinion, is an equally erroneous submission. The Sales Tax Officers are the instrumentalities of the State for collection of certain taxes. **Under the Act and the Rules made thereunder certain officers are appointed as Sales Tax Officers who have certain duties assigned to them for the imposition and collection of taxes and in the process they have to perform many duties which are of a quasi-judicial nature and certain other duties which are administrative duties. Merely because certain instrumentalities of State employed for the purpose of taxation have, in the discharge of their duties, to perform certain quasi-judicial functions they are not converted into Courts thereby.** In a recent judgment of this Court in *Shrimati Ujjam Bai Vrs. State of U.P.*, AIR 1962 SC 1621, **all the opinions were unanimous on this point that taxing authorities are not Courts even though they perform quasi-judicial functions.** The following observation of Lord Sankey, L.C., in *Shell Co. of Australia Ltd. Vrs. Federal Commissioner of Taxation*, (1931) AC 275, was quoted with approval:

‘The authorities are clear to show that there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power.’



Lord Sankey also enumerated some negative propositions as to when a tribunal is not a Court. At page 297 his Lordship said:

‘In that connection it may be useful to enumerate some negative propositions on this subject:

- 1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision.*
- 2. Nor because it hears witnesses on oath.*
- 3. Nor because two or more contending parties appear before it between whom it has to decide.*
- 4. Nor because it gives decisions which affect the rights of subjects.*
- 5. Nor because there is an appeal to a Court.*
- 6. Nor because it is a body to which a matter is referred by another body. See Rex Vrs. Electricity Commissioners, (1924) 1 KB 171.’*

Hidayatullah, J., in Shrimathi Ujjam Bai’s case, AIR 1962 SC 1621 described Sales Tax Authorities thus:

*‘The taxing authorities are instrumentalities of the State. They are not a part of the Legislature, nor are they a part of the judiciary. Their functions are the assessment and collection, of taxes, and in the process of assessing taxes, they have to follow a pattern of action, which is considered judicial. **They are not thereby converted into Courts of civil judicature.** They still remain the instrumentalities of the State and are within the definition of ‘State’ in Article 12.’*



No doubt the Sales Tax Officers have certain powers which are similar to the powers exercised by Courts but still they are not Courts as understood in section 195 of the Criminal Procedure Code. In sub-section (2) of Section 195 it is provided:

Section 195(2): 'In clauses (b) and (c) of sub-section (1) the term 'Court' includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.'

It cannot be said that a Sales Tax Officer is a Revenue Court. Under Section 2(a) of the Act and Assessing Authority is defined to mean any person authorized by the State Government to make assessment under the Act and under Rule 2(h) a Sales Tax Officer means:

'SALES TAX OFFICER means a Sales Tax Officer of a circle appointed by the State Government to perform the duties and exercise the powers of an Assessing Authority in such circle.'

Thus under the Act a Sales Tax Officer is only an Assessing Authority. Under Section 7 of the Act, if the Sales Tax Officer, after making such enquiries as he thinks necessary, is satisfied that a return made is correct and complete, he shall assess the tax on the basis thereof and if no return is submitted he can make such enquiries as he considers necessary and then determine the turnover of a dealer. Thus his determination depends upon enquiries he may make and which he may consider necessary. Sections 9, 10 and 11 of the Act deal with appeals, revisions and statement of the case to the High Court. Under Section 13 power is given to a Sales Tax



Officer to require the production of all accounts, documents and other information relating to business and accounts and registers shall be open to inspection of the Sales Tax Officer at all reasonable times. He has the power to enter any office, shop, godown, vehicle or any other place in which business is done which is a power destructive of the Sales Tax Officer being a Court which is a place where justice is administered as between the parties whether the parties are private persons or one of the parties is the State. Under Section 23 certain secrecy is attached to documents filed before the Sales Tax Officer and information received by him. Similarly under Rule 43 certain power is given to the Sales Tax Officer to calculate turnover when goods are sold for consideration other than money and this is after such enquiry as he considers necessary. **All these provisions show that the Sales Tax Officer cannot be equated with a Court. In our opinion therefore the Sales Tax Officer is not a Court.** In *Krishna Vrs. Goverdhanaiiah*, AIR 1954 Mad 822, it was held that the Income-tax Officer is not a Court within the meaning of Section 195 of the Criminal Procedure Code and this view was accepted by this Court in *Shrimati Ujjam Bai's case*, AIR 1962 SC 1621. In *Brajnandan Sinha Vrs. Jyoti Narain*, (1955) 2 SCR 955, a Commissioner appointed under the Public Enquiries Act, 1950, was held not to be a Court. *Shell Co. of Australia Vrs. Federal Commissioner of Taxation*, (1931) A.C. 275 was referred to in that case. At page 967 the following passage from Halsbury's Laws of England, Hailsham Edition, Volume 8, page 526 was approved:

'Many bodies are not Courts, although they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality, such as assessment



committees, guardians committees, the Court of referee constituted under the Unemployment Insurance Acts to decide claims made on the Insurance Funds, the benchers of the Inns of Courts when considering the conduct of one of their members, the General Medical Council, when considering questions affecting the position of a medical man.'

That passage is now contained in Volume 9 of the 3rd Edition at page 343.

*But it was submitted that the Sales Tax Officer while acting as an Assessing Authority is a Court within the meaning of Section 195(2) of the Criminal Procedure Code because by the amendment of 1923 the definition of the word 'Court' was enlarged by substituting the word 'includes' in place of the word 'means' and the section now reads as has been set out above. Undoubtedly by this change the Legislature did mean to make the definition of the word 'Court' wider but that does not enlarge the definition of the words 'Revenue Court'. The track of decision which was pressed on our attention is based primarily on a Full Bench judgment of the Bombay High Court in *In re Punamchand Maneklal*, (1914) ILR 38 (Bom). In that case an Income-tax Collector was held to be a Revenue Court within the meaning of the word as used in section 195. The learned Chief Justice who gave the judgment of the Court proceeded on the basis that inquiries conducted according to the Forms of judicial Procedure under Chapter IV of the Income-tax Act were proceedings in a Revenue Court. This was on the ground that under the law as it then stood revenue questions were generally removed from the cognizance of Civil Courts and the officers charged with the duty of deciding disputed questions relating to revenue between an*



individual and the Government would be invested with the functions of a 'Revenue Court'. This view was followed by the Bombay High Court in *State Vrs. Nemchand Pashvir Patel & Others*, (1956) 7 STC 404. After referring to the various powers which were given to the Sales Tax Officers under the Bombay Sales Tax Act that Court proceeded to say that the Sales Tax Officers under the Bombay Sales Tax Act were Revenue Courts because they had jurisdiction to decide questions relating to revenue, are exclusively empowered with the powers which are normally attributes of a Court or a tribunal and are authorised to adjudicate upon a disputed question of law or fact relating to the rights of the citizens. The Madras High Court in *In re R. Nataraja Iyer*, (1913) ILR 36 (Mad), held that a Divisional Officer hearing appeals under the Income-tax Act was a Court within the meaning of Section 476 of the Criminal Procedure Code but a Tahsildar who was the original Assessing Authority was not because there was no lis before him. There is one passage in the judgment of Sundara Ayyar, J., at p. 86 which is of significance. It was said:

*'I may observe that I am prepared to agree with Dr. Swaminathan that **mere authority to receive evidence would not make the officer recording it a Court.**'*

At page 84, it was said that the determination of the assessment in the first instance may not be of a Court although the assessing officer may have the power to record statements. **But an appeal against the assessment is dealt with by the Collector in the manner in which an appeal is disposed of by a Civil Court.** In this connection reference may be made to the statement of the law contained in the judgment of Venkatarama Ayyar, J., in *Shri Virindar Kumar*



*Satyawadi Vrs. The State of Punjab, (1955) 2 SCR 1013 (1018). **There the distinction between a quasi-judicial tribunal and a Court was given** as follows:*

*'It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. **When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.**'*

Dealing with quasi-judicial tribunals it was observed in Gullapalli Nageswara Rao Vrs. Andhra Pradesh State Road Transport Corporation, (1959) Supp.1 SCR 319:

'The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to the norms of judicial procedure in performing some acts in the exercise of its executive power.'

It is not necessary to refer to other cases because they were decided on their own facts and related to different tribunals. In our opinion a Sales Tax Officer is not a Court within the meaning of Section 195 of the Criminal Procedure Code and therefore it was not necessary for a Sales Tax Officer to make a complaint and the



proceedings without such a complaint are not without jurisdiction.”

10.11. In *Lalji Haridas Vrs. State of Maharashtra*, (1964) 52 ITR 423 (SC), five-Judge Constitution Bench of the Hon’ble Supreme Court of India made the following observations:

“25. We have not thought it necessary to refer to the numerous decisions of the High Courts in India, of this Court or of the Privy Council in which the question of what is a Court has been considered. We have considered this unnecessary in view especially of the fact that most of these were noticed in a recent decision of this Court in *Jagannath Prasad Vrs. State of Uttar Pradesh*, AIR 1963 SC 416 where the question whether a Sales Tax Officer was a Court or not within the meaning of Section 195(2) of the Criminal Procedure Code was considered. This Court held that **the Sales Tax Officer is not a Court within the meaning of that section**. All the reasons set out in this judgment which Kapur, J., delivered for the Court are applicable to the case of the Income Tax Officer and if the reasoning in that case is taken to be correct, as it must be, the Income Tax Officer also must be held to be not a Court—unless any different conclusion is justified from the provisions of Section 37(4) of the Act.

26. It will not be out of place to mention here what the Constitution Bench of this Court said in *Jaswant Sugar Mills Vrs. Lakshmi Chand*, AIR 1963 SC 677 as regards the nature of the functions of Income Tax Officers. The question for the Court’s decision in that case was whether a Conciliation Officer under



clause 29 of the Government Order under Sections 3 and 8 of the U.P. Industrial Disputes Act was a “Tribunal” within the meaning of Article 136 of the Constitution and the Court held that it was not such a tribunal. As illustrations of other authorities whose primary function is administrative even though they have the duty to act judicially, Shah, J. speaking for the Court said:

‘The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State. Even administrative or executive authorities are often by virtue of their constitution, required to act judicially in dealing with question affecting the rights of citizens. Boards of Revenue, Customs Authorities; Motor Vehicles Authorities, Income Tax and Sales Tax Officers are illustrations prima facie of such administrative authorities, who though under a duty to act judicially, either by the express provisions of the statutes constituting them or by the rules framed there-under or by the implication either of the statutes or the powers conferred upon them are still not delegates of the judicial power of the State. Their, primary function is administrative and, not judicial.’

27. It is true that the question whether an Income Tax Officer was a Court or a tribunal was not directly for decision in *Jaswant Suger Mills case*, AIR 1963 SC 677. **It is clear however that as a part of the reasoning which the Court applied for coming to the conclusion that the Conciliation Officer is not a Tribunal this Court was of opinion that an Income Tax Officer is also not a “Tribunal”.**



Obviously, if it is not even a Tribunal it cannot be a Court.”

10.12. See also discussions in *M.P. Steel Corporation Vrs. Commissioner of Central Excise*, (2015) 7 SCC 58 wherein aforesaid judgment in *Jagannath Prasad (supra)* has been referred to.

10.13. Reliance has been placed by the learned counsel for the petitioner in the case of *Sukuru Vrs. Tanaji*, 1985 INSC 153 = 1985 Supp.2 SCR 109 wherein it has been held that,

“After hearing both sides, we have unhesitatingly come to the conclusion that there is no substance in this appeal and that the view taken by the Division Bench In K. Venkaiah Vrs. K. Venkateswara Rao, AIR 1978 AP 166 is perfectly correct and sound. It is well settled by the decisions of this Court in Town Municipal Council, Athani Vrs. Presiding Officer, Labour Court, Hubli, (1970) 1 SCR 51, Nityananda M. Joshi Vrs. Life Insurance Corporation of India, (1970) 1 SCR 396 and Sushila Devi Vrs. Ramanandan Prasad, (1976) 2 SCR 845 that the provisions of the Limitation Act, 1963 apply only to proceedings in ‘Courts’ and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act [The Andhra Pradesh (Telangana Area) Tenancy And Agricultural Lands Act,



1950] not being a Court, the Limitation Act, as such, had no applicability to the proceedings before him.”

10.14. In *Nahar Industrial Enterprises Ltd. Vr. Hong Kong Shanghai Banking Corporation*, (2009) 8 SCC 646, it has been succinctly stated that:

“67. The terms “Tribunal”, “Court” and the “Civil Court” have been used in the Code differently. **All “Courts” are “Tribunals” but all “Tribunals” are not “Courts”. Similarly all “Civil Courts” are “Courts” but all “Courts” are not “Civil Courts.”** It is not much in dispute that the broad distinction between a “Court” and a “Tribunal” is whereas the decision of the “Court” is final the decision of the “Tribunal” may not be. The “Tribunal”, however, which is authorised to take evidence of witnesses would ordinarily be held to be a “Court” within the meaning of Section 3 of the Evidence Act, 1872. It includes not only Judges and Magistrates but also persons, except arbitrators, legally authorised to take evidence. It is an inclusive definition. There may be other forums which would also come within the purview of the said definition.

73. We may, however, notice that in the context of applicability of Section 5 of the Limitation Act in regard to the Arbitration Tribunal which was constituted in terms of a statutory provision has been referred to a three-Judge Bench in *State of M.P. Vrs. Anshuman Shukla*, (2008) 7 SCC 487. Be that as it may, the word “Civil Court” vis-à-vis a Court



must be construed having regard to the text and context of the statute.”

10.15. It has been held in *State of Gujarat Vrs. Gujarat Revenue Tribunal Bar Association*, (2012) 10 SCR 816 that the terms “Tribunal” and “Court” cannot be used as inter-changeable words and the Hon’ble Supreme Court of India observed as follows:

“9. Although, term ‘Court’ has not been defined under the Act, it is indisputable that Courts belong to the judicial hierarchy and constitute the country’s judiciary as distinct from the executive or legislative branches of the State. Judicial functions involve the decision of rights and liabilities of the parties. An enquiry and investigation into facts is a material part of judicial function. The legislature, in its wisdom has created tribunals and transferred the work which was regularly done by the Civil Courts to them, as it was found necessary to do so in order to provide efficacious remedy and also to reduce the burden on the Civil Courts and further, also to save the aggrieved person from bearing the burden of heavy Court fees etc. Thus, the system of tribunals was created as a machinery for the speedy disposal of claims arising under a particular Statute/Act. Most of the Tribunals have been given the power to lay down their own procedure. In some cases, the procedure may be adopted by the Tribunal and the same may require the approval of the competent authority/Government. However, in each case, the principles of natural justice are required to be observed. Such tribunals therefore, basically perform quasi-judicial functions. The system of tribunals is



hence, unlike that of the regularly constituted Courts under the hierarchy of judicial system, which are not authorised to devise their own procedure for dealing with cases. Under certain statutes Tribunals have been authorised to exercise certain powers conferred under some provisions of the Code of Civil Procedure (hereinafter referred to as the 'CPC') or the Code of Criminal Procedure (hereinafter referred to as the 'Cr.P.C.'), but not under the whole Code, be it Civil or Criminal. However, in a regular Court, the said Codes, in their entirety, civil as well as criminal, must be strictly adhered to. **Therefore, from the above, it is evident that the terms 'Court' and 'Tribunal' are not inter-changeable.**

A Tribunal may not necessarily be a Court, in spite of the fact that it may be presided over by a judicial officer, as other qualified persons may also possibly be appointed to perform such duty. One of the tests to determine whether a tribunal is a Court or not, is to check whether the High Court has revisional jurisdiction so far as the judgments and orders passed by the Tribunal are concerned. Supervisory or revisional jurisdiction is considered to be a power vesting in any superior Court or Tribunal, enabling it to satisfy itself as regards the correctness of the orders of the inferior Tribunal. This is the basic difference between appellate and supervisory jurisdiction. Appellate jurisdiction confers a right upon the aggrieved person to complain in the prescribed manner, to a higher forum whereas, supervisory/revisional power has a different object and purpose altogether as it confers the right and responsibility upon the higher forum to keep the subordinate Tribunals within the limits of the law. It



is for this reason that revisional power can be exercised by the competent authority/Court suo motu, in order to see that subordinate Tribunals do not transgress the rules of law and are kept within the framework of powers conferred upon them. Such revisional powers have to be exercised sparingly, only as a discretion in order to prevent gross injustice and the same cannot be claimed, as a matter of right by any party. **Even if the person heading the Tribunal is otherwise a 'judicial officer', he may merely be persona designata, but not a Court, despite the fact that he is expected to act in a quasi-judicial manner. In the generic sense, a Court is also a Tribunal, however, Courts are only such Tribunals as have been created by the concerned statute and belong to the judicial department of the State as opposed to the executive branch of the said State.** The expression 'Court' is understood in the context of its normally accepted connotation, as an adjudicating body, which performs judicial functions of rendering definitive judgments having a sense of finality and authoritativeness to bind the parties litigating before it. Secondly, it should be in the course of exercise of the sovereign judicial power transferred to it by the State. Any Tribunal or authority therefore, that possesses these attributes, may be categorized as a Court.

10. Tribunals have primarily been constituted to deal with cases under special laws and to hence provide for specialised adjudication alongside the Courts. Therefore, a particular set of Rules will determine whether the functions of a particular Tribunal are akin to those of the Courts, which provide for the



basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority, i.e., a situation where,—

- (a) a statutory authority is empowered under a statute to do any act;*
- (b) the order of such authority would adversely affect the subject; and*
- (c) although there is no lis or two contending parties, and the contest is between the authority and the subject and*
- (d) the statutory authority is required to act judicially under the statute,*

the decision of the said authority is a quasi-judicial decision.

An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a ‘Court’, but not all. In case certain powers under C.P.C. or Cr.P.C. have been conferred upon an authority, but it has not been entrusted with the judicial powers of the State, it cannot be held to be a Court.”

10.16. The following observations made by the Hon’ble Supreme Court of India (5-Judge Constitution Bench) with respect to Court *vis-a-vis* Tribunal in the case of *Associated Cement Companies Ltd. Vrs. P.N. Sharma*, (1965) 2 SCR 366 may not be out of place in the present context:



*“The question which we have to decide in the present appeal is whether the State Government is a Tribunal when it exercises its authority under Rule 6(5) or Rule 6(6). **No rules have been made prescribing the procedure which the State Government should follow in dealing with appeals under these two sub-rules, and there is no statutory provision conferring on the State Government any specific powers which are usually associated with the trial in Courts and which are intended to help the Court in reaching its decisions.** The requirements of procedure which is followed in Courts and the possession of subsidiary powers which are given to Courts to try the cases before them, are described as trappings of the Courts, and so, it may be conceded that these trappings are not shown to exist in the case of the State Government which hears appeals under Rule 6(5) and Rule 6(6). **But as we already stated, the consideration about the presence of all or some of the trappings of a Court is really not decisive.** The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. **The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State’s inherent power exercised in discharging its judicial function.** Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State’s judicial power. It has been conferred on the State Government by a statutory Rule and it can be exercised in respect of disputes between the management and its Welfare Officers. **There is, in that sense, a lis;***



there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides, it is an order passed on appeal. Having regard to these distinctive features of the power conferred on the State Government by Rule 6(5) and Rule 6(6), we feel no hesitation in holding that it is a Tribunal within the meaning of Article 136.”

10.17. At this stage the following dicta of the Hon’ble Supreme Court of India in *Santoshi Tel Utpadak Kendra Vrs. Deputy Commissioner of Sales Tax*, (1982) 1 SCR 97 may be gainfully referred to:

“Now the sub-section speaks of an ‘Appellate Authority both in the first appeal and the second appeal’. It is quite clear, therefore, that the appellate powers detailed in clause (a) have the same amplitude in a second appeal as in a first appeal. An Appellate Authority disposing of a first appeal has power to enhance the assessment. So has Appellate Authority in a second appeal. We may also point out that when an Appellate Authority is considering a second appeal a ‘first appellate’ order, it is examining an order which can be broadly described as an order of assessment. It is a final order disposing of an appeal which, in a sense, is a continuation of the assessment. A second appeal against such an order is an appeal against an order of assessment.”

10.18. A reference may be made to *P. Giribabu Vrs. Deputy Director of Enforcement*, (2010) 326 ITR 575 (Mad),



wherein the following is quoted from *V. Datchinamurthy Vrs. Assistant Director of Inspection, Income-tax, (1984) 149 ITR 341 (Mad)*:

*“It is thus manifest that there is great latitude allowed to the Income-tax Officer in the collection of materials and he does not act as a Court at that stage. **There are no two parties before him, and the procedure in the adversary system of proceedings cannot be applied to him.** However, the Income-tax Officer, before he uses the materials so collected, is bound to give the necessary opportunity to the assessee to test the evidence, to adduce any evidence in rebuttal and to explain the facts that appear against him. **Thus, it is clear that the Income-tax Officer cannot be asked to put on, or be thrust with, the garb of a Court, even at the stage of collection of evidence.**”*

10.19. In *Sree Ayyanar Spinning & Weaving Mills Limited Vrs. State of TN, (1998) 109 STC 205 (Mad)* the concept of adversarial system of adjudication has been succinctly explained in the following manner:

10. The moot question so posed can very well be answered, by referring to the observations of their Lordships of the Full Bench of this Court in the case of *State of Tamil Nadu Vrs. Arulmurugan and Company, (1982) 51 STC 381* reflecting thus:

*** An Appellate Authority under the taxing enactments sits in appeal, only in a manner of speaking. What it does, functionally, is only to adjust the assessment of the appellant in accordance with the facts on the record and in



accordance with the law laid down by the Legislature. **An appeal is a continuation of the process of assessment, and an assessment is but another name for adjustment of the tax liability to accord with the taxable event in the particular tax-payer's case. There can be no analogy or parallel between a tax appeal and an appeal, say, in civil cases. A civil appeal, like a law suit in the Court of first instance out of which it arises, is really and truly an adversary proceeding, that is to say, a controversy or tussle over mutual rights and obligations between contesting litigants ranged against each other as opponents.** A tax appeal is quite different. Even as the Assessing Authority is not the tax-payer's 'opponent', in the strictly procedural sense of the term, so too the Appellate Authority sitting in appeal over the Assessing Authority's order of assessment is not strictly an arbitral Tribunal deciding a contested issue between two litigants ranged on opposite sides. **In a tax appeal, the Appellate Authority is very much committed to the assessment process. The Appellate Authority can itself enter the arena of assessment, either by pursuing further investigation or causing further investigation to be done. It can do so on its own initiative, without being prodded by any of the parties.** It can enhance the assessment, taking advantage of the opportunity afforded by the tax payer's appeal, even though the appeal itself has been mooted only with a view to a reduction in the assessment. These are special and exceptional attributes of the jurisdiction of a tax Appellate Authority. These attributes underline the truth that the Appellate



Authority is no different, functionally and substantially, from the Assessing Authority itself.”

10.20. It is not the case of the Revenue that the order of “the Appellate Authority” can be construed to be the order of “the Tribunal”. Rather it is strenuously argued by learned Standing Counsel that the “Appellate Authority” can be treated at par with that of a “Court” so that its order can emit flavour of order of the “Court”. As is discernible from the above judgment in *Associated Cement Companies Ltd. Vrs. P.N. Sharma*, (1965) 2 SCR 366 that in order to construe an authority to be “Tribunal”, there must be a *lis*; there must be affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it, analysing the scheme of the OVAT Act, 2004, it can be perceived indubitably that the Appellate Authority is coterminous with that of the Assessing Authority. The Appellate Authority has the power, necessary and essential to re-do the assessment, in accordance with the law enacted by the Legislature. An appeal is a continuation of the process of assessment. The Appellate Authority, unlike the Tribunal, can do what the Sales Tax Officer can do and also direct him to do what he has failed to do. In *Jute Corporation of India Ltd. Vrs. Commissioner of Income Tax*, 1990 Supp.1 SCR 340 it has been observed as follows:



“Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter.”

10.21. Given legal perspective as propounded, now coming to the main plank of arguments of the counsel for the respective parties, this Court is called upon to consider whether the ‘Appellate Authority’ could be stated to be at the same pedestal of a “Court”. Valiant attempts have been made by advancing arguments by Sri Sunil Mishra, learned Standing Counsel, which appears to be fallacious, inasmuch as the Legislature has considered the “Appellate Authority” distinct from the “Tribunal” in view of definitions of these terms in Section 2 of the OVAT Act. The tests for construing whether the “Appellate Authority” could be equated with a “Court” have already been discussed in the foregoing paragraphs with case laws. In view of decision of three-Judge Bench of the Hon’ble Supreme Court of India in *Jagannath Prasad Vrs. State of U.P.*, (1963) 2 SCR 850 as noticed in *Ganesan Vrs. The Commissioner, The Tamil Nadu Hindu Religious and Charitable Endowments Board*, (2019) 7 SCR 102 distinguishing two-Judge Bench decision rendered in *P. Sarathy Vrs. State Bank of India*, (2000) 5



SCC 355 the contention of the learned Standing Counsel that the order in appeal by the Appellate Authority passed under Section 77 is to be equated with that of order of the Court so that the action of the Assessing Authority in proceeding with Audit Assessment under Section 42, based on invalid AVR in view of *Jindal Stainless Ltd. (supra)* and *Pal Construction (supra)*, by exercising jurisdiction under Section 49(2) of the OVAT Act could not be faulted with is misconceived and cannot be countenanced in law.

10.22. The decision in *P. Sarathy (supra)*, as heavily relied on by Sri Sunil Mishra, learned Standing Counsel to bring home that the Appellate Authority in *seisin* of subject-matter under Section 77 can be said to be a “Court” for the purpose of initiation of action stemming on provisions of Section 49(2), does not assist the case of the Revenue to sustain exercise of power under Section 42 for conducting “Audit Assessment” in pursuance of submission of AVR dated 31.03.2016 under Section 41.

10.23. It would necessarily follow in view of *Santoshi Tel Utpadak Kendra Vrs. Deputy Commissioner of Sales Tax, (1982) 1 SCR 97* and *DCST Vrs. Abdul Salam, (1988) 69 STC 144 (Ker)* and from discussion in preceding paragraphs that before the “Appellate Authority” no adversarial system adjudication process is put in place; it is at the stage of “Tribunal” the assessee and the



Commissioner of Sales Tax (Revenue) are the parties and the Tribunal, being not subordinate authority as enumerated under Rule 3 of the OVAT Rules, acts as independent *quasi-judicial* body having separate powers enshrined in the OVAT Act and Rules framed thereunder.

10.24. Had the legislative intent been to include order passed in appeal by the Appellate Authority, the OVAT Act should have explicitly said so while using the words “any Court or Tribunal” in Section 49(2). In other words, the Legislature while employing the expression “an order in appeal or revision” in said sub-section (2) qualified by the words “any Court or Tribunal”, should have used the term “any Appellate Authority”. As is demonstrably manifest from said provision that it comprehends the order in appeal passed by the Sales Tax Tribunal in exercise of power under Section 78 and the order in revision is passed by the High Court under Section 80 (contradistinguished from order in revision passed under Section 79 by the Commissioner or delegatee subordinate to him). Thus order passed by an independent body which is not subordinate to the Commissioner would give rise to exercise of power under Section 49(2). Thus, no inference can be drawn that the order passed by the “Appellate Authority” defined under Section 2(1-d) of the OVAT Act could occasion initiation



of proceeding under Section 42 based on the AVR under Section 41, which at the time of its submission was time-barred by operation of Section 41(4) having regard to the interpretation of this Court laid in the case of *Jindal Stainless Ltd. (supra)* and *Pal Construction (supra)*.

11. The terms ‘Court’ and ‘Tribunal’ are not inter-changeable *vide, State of Gujarat Vrs. Gujarat Revenue Tribunal Bar Association, (2012) 10 SCR 816*. Taking cue from the same, present matter can be viewed in a different angle.

11.1. Section 2 of the OVAT Act deals with “Definitions” whereunder the term “Appellate Authority” has been defined in clause (1-d) to mean “*any authority prescribed for the purpose of Section 77*” and the term “Tribunal” is defined under clause (58) to mean “*the Orissa Sales Tax Tribunal constituted or deemed to have been constituted under Section 4*”. Rule 2(p) defines the term “Sales Tax Tribunal” to mean “*the Tribunal constituted as such by the Government under Section 4*”. Section 3 deals with “Taxing Authority” and being empowered under sub-section (1) thereof the Government appoints the Commissioner of Sales Tax and under sub-section (2) other authorities enumerated subordinate to Commissioner of Sales Tax in Rule 3 read with Rule 2(d) of the OVAT Rules are appointed by the Government to assist the Commissioner of Sales Tax. The Commissioner defined under Rule 2(g) is conferred with power to



delegate his powers and functions on such persons appointed under Section 3(2). The expression “Sales Tax Authority” is defined under Rule 2(n) to mean “*any person appointed under Section 3 of the Act to assist the Commissioner under any designation as prescribed under Rule 3*”. However, Section 4 deals with the Sales Tax Tribunal and its functions. While Rule 86 read with Rule 87 prescribes manner of “appeals to the Appellate Authority” and “submission of appeal petition”, Rule 93 deals separately with respect to “Second appeal under Section 78” and Rule 94 specifies modalities regarding “presentation of appeals” by person/dealer and the Government represented by the Commissioner of Sales Tax. On filing appeal, scope for filing cross-objection is given to the respondent under Rule 98. The Tribunal has the occasion to dispose of the cross-objection as cross-appeal. Separate sets of modalities are prescribed for proceeding with the hearing of the appeals before the Appellate Authority in Rules 88 to 92 and the Tribunal in Rules 95 to 117.

11.2. A definition of a term in the statute has to be read as it stands without either importing anything therein or removing any part of the definition. The only exception being where the context requires otherwise. It is noticed from the terms referred to above in the definitions clause contained in the OVAT Act and the Rules framed



thereunder that the Legislature used the word “means”. When the definition of a word begins with “means” it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself.

11.3. In *Commissioner of Trade Tax Vrs. Kajaria Ceramics Ltd.*, (2005) 11 SCC 149 it has been laid down as follows:

“63. The language of the definition of the phrase in Explanation (4) to Section 4-A is sufficiently clear and unambiguous. **This coupled with the use of the word “means” in the Explanation shows that the definition is exhaustive.** As has been observed in *Feroze N. Dotivala Vrs. P.M. Wadhwani*, (2003) 1 SCC 433:

‘Generally, when the definition of a word begins with ‘means’ it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself.

Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition.

64. According to the Constitution Bench in *Punjab Land Development and Reclamation Corpn. Ltd. Vrs.*



*Presiding Officer, Labour Court, (1990) 3 SCR 111 when the statute says that a word or phrase shall mean certain things it is a ‘ ‘... hard-and-fast definition, and no other meaning can be assigned to the expression than is put down ...’. A definition is an explicit statement of the full connotation of a term’. ***”*

11.4. Noteworthy here to have reference to *Sri Balaji Flour Mills Vrs. Commercial Tax Officer, (2011) 40 VST 150* wherein it has been observed as follows:

“28. *** More often than not difficulty arises in understanding the purport of the word or phrase used in the dictionary clause, due to palpable inconsistent intention of the Legislature in enacting a provision. To deal with such situations, the legislative draftsman is cautious to enter a caveat that the meaning of the words in the dictionary clause would be what it is “unless the context otherwise requires”. Justice G. P. Singh in his Treatise “Principles of Statutory Interpretation” (11th Edition, 2008) after reviewing scores of Supreme Court judgments comments as follows:

‘When a word has been defined in the interpretation clause, prima facie that definition governs whenever that word is used in the body of the statute ... but where the context makes the definition given in the interpretation clause inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause; all definitions given in an interpretation clause are therefore normally enacted subject to the qualification— ‘unless there is



anything repugnant in the subject or context’, or ‘unless the context otherwise requires’. Even in the absence of an express qualification to that effect such a qualification is always implied. However, it is incumbent on those who contend that the definition given in the interpretation clause does not apply to a particular section to show that the context in fact so requires. ... Repugnancy of a definition arises only when the definition does not agree with the subject or context; any action not in conformity with the definition will not obviously make it repugnant to subject or context of the provision containing the term defined under which such action is purported to have been taken. When the application of the definition to a term in a provision containing that term makes it unworkable and otiose, it can be said that the definition is not applicable to that provision because of contrary context.’

29. *In K.V. Muthu AIR 1997 SC 628 the question was whether (a) foster son would be “a member of family” in relation to a landlord within the meaning of section 2(6A) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The Act defined a member of family means his spouse, son, daughter, grandchild or dependant parent. A petition was filed by landlady for eviction of Muthu from a non-residential building for personal occupation, for commencement of business by her foster son. It was opposed on the ground that a foster son is not a member of the family and, therefore, the plea of personal occupation is unsustainable. The rent controller ordered eviction which was reversed by the Appellate Authority. Before the High Court, the landlady succeeded and a view was taken that*



“foster son” would also be a member of the family. Before the Supreme Court, it was argued that “the family has to be given the meaning which is commonly understood by an ordinary man and that family would include natural sons and not foster son”. The appeal was dismissed by the Supreme Court upholding the eviction observing that in every case, a foster son is not treated as a member of the family and that it would depend on the facts and circumstances of each case. As a fact it was found that the landlady’s foster son was brought up by her husband and even there was a bequeath of property in favour of his children leaving life estate to the landlady. Dealing with the question of interpreting the definition clause, the apex Court held (paras 10 and 11)

‘Apparently, it appears that the definition is conclusive as the word ‘means’ has been used to specify the members, namely, spouse, son, daughter, grand-child or dependent parent, who would constitute the family. Section 2 of the Act in which various terms have been defined open with the words ‘in this Act, unless the context otherwise requires’ which indicates that the definitions, as for example, that of ‘family’, which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the Legislature. ... While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as



*would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.’ ***”*

11.5. In *S.K. Gupta Vrs. K.P. Jain*, (1979) 3 SCC 54 it is found mentioned that:

*“The noticeable feature of this definition is that it is an inclusive definition and, where in a definition clause, the word “include” is used, it is so done in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (see *Dilworth Vrs. Commissioner of Stamps*, (1899) AC 99, 105 = 79 LT 473). **Where in a definition section of a statute a word is defined to mean a certain thing, wherever that word is used in that statute, it shall mean what is stated in the definitions unless the context otherwise requires.** But where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning. At any rate, such expansive definition should be so construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having opposite effect (see *Jobbins Vrs. Middlesex County Council*, (1949) 1 KB 142 = (1948) 2 All ER 610). Where the definition of an expression in a definition clause is preceded by the words “unless the context otherwise requires”, normally the definition given in the section should be applied and given effect to but this normal rule may, however, be departed*



from if there be something in the context to show that the definition should not be applied (see Khanna, J., in Indira Nehru Gandhi Vrs. Raj Narain, (1975) Supp SCC 1, 97. It would thus appear that ordinarily one has to adhere to the definition and if it is an expansive definition the same should be adhered to. The frame of any definition more often than not is capable of being made flexible but the precision and certainty in law requires that it should not be made loose and kept tight as far as possible (see Kalya Singh Vrs. Genda Lal, (1976) 1 SCC 304 = (1975) 3 SCR 783)."

11.6. Given the principles for interpreting the terms in the definition clause of the statute, on analysis of the scheme of the OVAT Act and the Rules framed thereunder it can be discerned that as per the definitions culled out hereinabove as contained in the OVAT Act and the OVAT Rules, if the plea of the opposite parties is accepted that the Appellate Authority can be construed to be a "Court", it would be repugnant to the context envisaged in Section 49(2). As the "Tribunal" cannot be equated as "Court" in view of *State of Gujarat Vrs. Gujarat Revenue Tribunal Bar Association*, (2012) 10 SCR 816, the expression "an order in appeal or revision" succeeding "any Court or Tribunal" in Section 49(2) has to be given restrictive meaning and the term "Appellate Authority", coterminous with the Assessing Authority, cannot be read into such expression to say that such authority can be equated with "Court".



11.7.If the Legislature intended that the Appellate Authority, for the purpose of Section 49(2) is the one authorized by the Commissioner it ought to have placed there. It is not so. Indeed the paramount power to assign powers and functions to all of the Officers under the OVAT Act vests in the Government and the Commissioner of Sales Tax only derives powers to delegate under the Section 5 read with Section 3 read with Rule 3. When once the Officers are prescribed, it is for the Commissioner of Sales Tax, by promulgating notification assign powers and functions on the authorities. The provisions of statute along with Rules framed thereunder clearly envisage “the Appellate Authority” distinguished from “the Tribunal”. The authorities before whom appeal would lay assailing orders passed under Section 34, 40, 42, 43, 44, 45, 49 or 52 have been prescribed under Section 77 read with Rule 86; whereas second appeal would lay before the Sales Tax Tribunal under Section 88 read with Rule 93 to question the order passed by the Appellate Authority. In the light of the definitions of the terms “Tribunal” [Section 2(58) read with Rule 2(p)], “Commissioner” [Section 2(10) read with Rule 2(g)], “Joint Commissioner” [Rule 2(d)], “Sales Tax Authority” [Rule 2(n) read with Rule 3], and Section 3 read with Rule 3 juxtaposition with Section 4 with reference to Section 5, it is unambiguous that the Appellate Authority cannot be



held to be a Court to construe the purport of Section 49(2) of the OVAT Act.

- 12.** This Court has the occasion to peruse assessment order dated 10.02.2017 passed under Section 43, which was set aside by the Appellate Authority *vide* Order dated 19.10.2023, and the assessment order dated 21.03.2025 passed under Section 42 with reference to AVR dated 31.03.2016. There is no evidence to suggest that the turnover or transaction relating to inter-State sales amenable to be taxed under the Central Sales Tax Act were taxed under the OVAT Act. Therefore, initially the assessment was framed under Section 43 by the Assessing Authority taking into account the AVR, being conscious of the fact that the same suffers from legal infirmity in view of Section 41(4). While Order dated 10.02.2017 passed under Section 43 of the OVAT Act depicts *“The AVR in case of the above named dealer-company for the tax periods from 01.04.2010 to 31.03.2013 was received from the Deputy Commissioner of Sales Taxes, Jagatsinghpur Circle, Paradeep on dated 12.07.2016.”*, the AVR reveals it is prepared on 31.03.2016 upon tax audit being conducted in the business premise of the petitioner on 17.12.2013. Nothing is forthcoming from the side of the Revenue to demonstrate that the AVR was submitted within the



period stipulated under Section 41(4) so that action under Section 42 could have been taken validly.

12.1. The Appellate Authority while disposing of appeal held that said assessment under Section 43 of the OVAT Act was not done invoking correct jurisdiction. Necessary corollary would be that the AVR dated 31.03.2016 submitted by the Deputy Commissioner of Sales Tax, Jagatsinghpur Circle, Paradeep should not have been the basis for initiation of proceeding under Section 43. However, said authority has purportedly given life to Audit Assessment even though the AVR could not resurrect its validity by efflux of time. This is what conspicuously agitated by the writ petitioner.

12.2. A minute scrutiny of Section 49(2) would indicate that the assessment or reassessment of tax can be permissible when a Court or a Tribunal determines that tax was initially assessed under the wrong law. To amplify it can be stated that transactions amenable to the Central Sales Tax Act has been fastened with liability under the OVAT Act. This provision aims to ensure that the correct tax is ultimately levied, even if the initial assessment was flawed in its legal basis. But said provision does not engulf a contingency when intra-State transactions are assessed in exercise of power under a wrong provision, *i.e.*, Section 43. To clarify further, it is apposite to say that at a later point of time on being



pointed out that Section 42 should have been initiated for the purpose of Audit Assessment read with Rule 49, the provisions of Section 49(2) could not be activated. There is no explicit provision contained in the OVAT Act to suggest that the exercise of power under Section 42 and Section 43 are inter-changeable.

12.3. Provisions of sub-section (1) of Section 42 *vis-a-vis* sub-section (1) of Section 43 make it abundantly clear that the Assessing Authority shall have the jurisdiction to undertake Audit Assessment under Section 42 on the basis of AVR, whereas such power for reassessment under Section 43 shall be on the basis of information in possession. Therefore, provisions of Section 42 and Section 43 operate in different and distinct circumstances. See, *Bhusan Power & Steel Ltd. Vrs. State of Odisha, 2012 (I) ILR-CUT 421*.

12.4. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. No doubt in some exceptional cases departure can be made from the literal rule of the interpretation *e.g.* by adopting a purposive construction, Heydon's mischief rule, *etc.* but that should only be done in very exceptional cases. Ordinarily, it is not proper for the Court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which



is not permissible. It is for the Legislature to amend the law and not the Court. The Court cannot legislate under the garb of interpretation. Hence there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the Courts. In fact, judicial legislation is an oxymoron. Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute. [*Raghunath Rai Bareja Vrs. Punjab National Bank*, (2007) 2 SCC 230].

12.5. Thus, the conspectus of the above boils down to the unequivocal position that sub-section (2) of Section 49 of the OVAT Act can be made operational if a Court or a Tribunal determines that a particular transaction or turnover was assessed under wrong statute, say, assessed under the OVAT Act, but it should have been made under the Central Sales Tax Act, or *vice versa*, then the Assessing Authority would have, under such circumstance, exercised the power to rectify such jurisdictional error and assess the tax under the correct law. However, such a power is not vested for correction of jurisdictional error in invocation of power while undertaking assessment under wrong provisions within the same statute, *viz.*, power under Section 43 of the OVAT Act is exercised instead of Section 42 of the OVAT Act.



Conclusion:

13. The analysis and discussions above made following conclusions *inter alia* are deduced:

- i. The term “Appellate Authority” defined under clause (1-d) of Section 2 of the Odisha Value Added Tax Act, 2004 cannot be equated as “Court” for the purpose of Section 49(2) thereof. Having not expressly provided for in Section 49(2) in juxtaposition with “any Court or Tribunal passes an order in appeal or revision”, the order passed by the Appellate Authority in exercise of power under Section 77 of the OVAT Act cannot be said to be comprehended within the ken of said section.
- ii. The words “any Court or Tribunal” preceding the expression “an order in appeal or revision” can only be construed as an order of the Tribunal passed under Section 78 and an order of the Court passed under Section 80 on the question of law arising out order passed under Section 78 by the Sales Tax Tribunal. In view of the express language employed in Section 49(2), order in revision by the Commissioner of Sales Tax or his delegatee (subordinate to him as enumerated in Rule 3) cannot be said to have been comprehended within the ken of Section 49(2) of the OVAT Act.



- iii. Section 49(2) of the OVAT Act comes into play in the eventuality when assessment of tax being made under the Central Sales Tax Act, 1956, but it was decided in the appeal or revision that the transaction(s) should have been assessed to tax under the OVAT Act or *vice versa*.
- iv. Material on record demonstrates that there was recommendation in the AVR dated 31.03.2016 prepared on completion of the tax audit being conducted on 17.12.2013 for initiating proceeding under Section 42. Said AVR was received from the Deputy Commissioner of Sales Taxes, Jagatsinghpur Circle, Paradeep by the Assessing Authority on 12.07.2016. However, tacitly the Assessing Authority abandoned to undertake such Audit Assessment inasmuch as there was non-compliance of mandatory requirement envisaged under Section 41 of the OVAT Act. Nevertheless, an assessment on the premise of escaped turnover was initiated and completed under Section 43 on utilizing the AVR. By setting aside such assessment by the Appellate Authority in appeal under Section 77 on the ground of erroneous invocation of jurisdiction, fresh Audit Assessment under Section 42 in the garb of exercise of power under Section 49(2) cannot sanctify the AVR which was invalid in



terms of Section 41(4) read with ratio of decisions rendered by this Court in *Jindal Stainless Ltd. Vrs. State of Odisha*, (2012) 54 VST 1 (Ori) and *Pal Constructions (supra)*.

14. The factual narration discussed in the foregoing paragraphs discloses that the notice in Form VAT-306 prescribed under Rule 49 issued for undertaking Audit Assessment under Section 42 based on the AVR is considered to be barred by limitation provided under Section 41(4). Since notice is invalid, the Assessment Order, therefore, is insupportable. The maxim “*sublato fundamento cedit opus*”, meaning thereby in case foundation is removed, the superstructure falls would be applicable in the present fact-situation of the case warranting indulgence in the Audit Assessment order dated 21.03.2025. Once the basis of a proceeding is gone, all consequential acts, action, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and *quasi-judicial* proceedings is equally applicable to the administrative orders. [*Vide, Badrinath Vrs. State of Tamil Nadu*, (2000) 8 SCC 395].

15. In the wake of the above, on the facts and in the circumstances, adhering to provisions of Section 49(2) of the OVAT Act issue of notice dated 01.05.2024 in Form VAT-306 prescribed under Rule 49 purportedly to



comply with the appellate order, the Audit Assessment initiated under Section 42 as a result of circumstances enumerated in the AVR dated 31.03.2016 required to be submitted in terms of Section 41 cannot be countenanced being unsustainable in the eye of law. In consequence thereof, the Audit Assessment Order dated 21.03.2025, sans legal sanctity, is liable to be quashed, and this Court hereby does so.

- 16.** In the result, having found serious flaw in application of statutory provisions to the facts of the present case, the notice dated 01.05.2024 in Form VAT-306 and the Audit Assessment Order dated 21.03.2025 passed under Section 42 are quashed.
- 17.** Accordingly, the writ petition is allowed and pending Interlocutory Application(s), if any, shall also stand disposed of accordingly, but in the circumstances there shall be no order as to cost.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE