
(2007) 02 GAU CK 0007
In the Gauhati High Court

Assam Marble Industries

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Income Tax Act, 1961 — Section 263

Citation : (2007) 2 GLT 828

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amitava Roy, J.—The writ jurisdiction of this Court is sought to be invoked to interfere with the order dated 21.11.2000, passed by the Deputy Commissioner of Taxes, Guwahati Zone-C, Guwahati, respondent No. 6 u/s 36(1) of the Assam General Sales Tax Act, 1993 (hereinafter also referred to as the "Act"), directing fresh assessment of the taxable turnover of the petitioner for the assessment years 1995-96, 1996-97, 1997-98, as well as the consequential demands made. While issuing rule on 4.5.2001, this Court had suspended the operation of the impugned order and the proposed exaction

2. I have heard Mr. G.K. Joshi, Senior Advocate assisted by Mr. R.K. Joshi, Advocate for the petitioner and Mr. R. Dubey, learned Standing counsel, Finance Department for the respondents.

3. The pleaded facts in short, are that the petitioner is a sole-proprietorship concern and is registered as a small-scale industrial unit with permanent registration certificate No. 02/05/05182, dated 19.3.1994, issued by the General Manager, District Industries Centre, Kamrup, Guwahati. It manufactures marble sinks, marble flower tops and marble tiles. It sells its products within the State of Assam, as well as beyond. The Government of Assam evolved the 1991 Industrial Policy (hereinafter also referred to the "Policy") and thereunder framed the 1991 Incentive Scheme (hereinafter for short as "Scheme"), offering various

concessions to new industrial units for securing rapid industrial development of the State within a time frame. Being inspired and assured by the various concessions under the Scheme, the petitioner undertook the establishment of its new industrial unit complying with the terms and conditions specified therein. It started its commercial production on 13.1.1994 and since then has been manufacturing the above commercial items. It also submitted an application before the respondent No. 4, Udyog Sahayak, District Industries Centre, Kamrup, Guwahati-781024, for being granted the eligibility certificate under the Scheme, for availing sales tax exemption in respect of the aforementioned finished products, as well as other incentives. The above authority being satisfied that the petitioner had taken the necessary effective steps with regard to its establishment and was entitled to the same, granted Eligibility Certificate in form No. 11A bearing No. DIC/K (US) EC-91/274 (93-94) SL-169, dated 22.3.1994 in its favour. Thereunder, the petitioner was granted sales tax exemption under the Policy for the period from 13.1.1994 to 12.1.2001 on the sale of finished products, as well as in respect of State Capital Investment Subsidy. Consequent thereto, the petitioner became eligible to the benefit of sales tax exemption during the above period. In terms of paragraph 6 of the Incentives enumerated in Part-III of the Scheme, the petitioner was entitled to sales tax exemption on the purchase of raw materials and sales of finished products for a period of 7 years. On being issued the eligibility certificate, it thereafter, submitted the same before the Senior Superintendent of Taxes, Unit-D, Guwahati, for the issue of authorization certificate to avail such tax exemption. The said authority, however, kept the matter pending without assigning any reason.

4. The Assam Industries (Sales Tax Concessions) Scheme, 1995 (hereinafter also referred to as the 1995 "Scheme"), was framed in exercise of powers conferred by Section 9(4) read with Clause (f) of Section 74(3) of the Act. The scheme was published in the Assam Gazette Extra Ordinary vide Notification No. FTX.78/91/235, dated 16.8.1995. Subsequent thereto, the petitioner was informed by the respondent No. 7 that as sales tax exemption would be available only under the 1995 Scheme, the dealers would have to obtain fresh eligibility certificate from the competent authority thereunder. On this, the petitioner made an application for grant of an eligibility certificate under the 1995 Scheme and the respondent No. 5, General Manager, District Industries Centre, Kamrup, Bamunimaidan, Guwahati, was pleased to issue the same on 12.4.1996 for the above period i.e., 13.1.1994 to 12.1.2001. Incidentally, though, the petitioner in its application for the eligibility certificate had sought for sales tax exemption in respect of the sale of its finished products namely, marble sinks, flower tops and marble tiles which in issuing the said certificate, the Respondent No. 5 omitted to include Marble Sinks as a finished product therein.

5. Being aggrieved by the omission, the petitioner vide its application dated 3.9.1996 requested the respondent No. 5 to include the same in the said document. It was inter alia, pointed out that marble tiles had been incorporated as a finished product in the permanent SSI Registration Certificate issued on

9.1.1995 by the said authority. The petitioner, asserted that from the commencement of its commercial production it had not charged for collected sales tax on marble tiles from its customers. As the aforementioned authority sat over the matter, the petitioner again on 20.9.1996 reiterated the request. After a lot of persuasion, the amendment as applied for, was granted on 31.3.1998 by inserting marble tiles as an item of finished products in the eligibility certificate with effect from 13.1.1994. The petitioner next approached the respondent No. 7 for a similar amendment in the authorization certificate, requesting the latter to include marble tiles in the list of finished products in the said certificate from the date of the commencement of production. The request was acceded to and the respondent No. 7 amended the authorization certificate on 3.12.1998 mentioning that the dealer was entitled to avail sales tax exemption in respect of the said finished product as well, with effect from 13.1.1994.

6. By then, the assessment proceedings for the years 1995-96, 1996-97, 1997-98, were pending before the respondent No. 7, who by his letter dated 13.8.1999 made further inquiries from the respondent No. 5 on the petitioner's eligibility for being sanctioned sales tax exemption in respect of marble tiles with effect from 13.1.1994. To this, the respondent No. 5, by his communication dated 8.8.1999/13.10.1999, apprised the above authority that sales tax exemption in respect of marble tiles had been approved by the District Level Committee in its meeting held on 21.3.1998. The respondent No. 5 also clarified that the effective date for such exemption was that of the commercial production as mentioned in the permanent registration certificate. A copy of the minutes of the meeting was also forwarded to the respondent No. 7. The assessments for the aforementioned years, were therefore, completed by the respondent No. 7 u/s 17(4) by the orders dated 12.3.1999, 29.4.1999 and 29.4.1999 respectively, wherein, the petitioner's turnovers were indicated to be Rs. 28,28,990/-, Rs. 33,29,064/- and Rs. 25,76,259/-. As exemption u/s 9(4) of the Act was sanctioned for the entire amounts, no tax was payable by the petitioner for the said years.

7. In the audit's scrutiny that followed, it was opined that the sales tax exemption to the petitioner in respect of marble tiles with effect from 13.1.1994, had been irregular. The audit held the view that as the amendment in the eligibility certificate was incorporated on 31.3.1998 with regard to marble tiles, sales tax exemption with regard thereto, would be admissible with effect from that date and not earlier. The grant of retrospective sales tax exemption for marble tiles by the amendments in the certificate of authorization made on 31.12.1998, was also considered to be impermissible. A report to the above effect was submitted before the respondent No. 7, objecting to the grant of sales tax exemption in favour of the petitioner for marble tiles in respect of the aforementioned three years with retrospective effect. It was thereafter that the respondent No. 7, issued the notice dated 3.5.2000 to the petitioner requiring it to explain, as to why the assessment for the aforementioned years would not be rectified. It was asserted therein that the petitioner had obtained endorsement

from the General Manager, District Industries Centre, respondent No. 5, in the eligibility certificate on 31.3.1998 for availing sales tax exemption in respect of marble slabs with effect from 29.4.1994 without the approval either of the District Level Committee or the State Level Committee and that the claim for such exemption with retrospective effect was not tenable by virtue of Section 9(4) of the Act. The petitioner replied on 20.5.2000, contending that the exemption in respect of marble tiles had been allowed by the District Level Committee and that the claim for the tax holiday had been made with effect from 29.4.1994 in terms of the AGST Registration Certificate. It also asserted that it had not collected sales tax from the customers on the sales of marble tiles.

8. While the matter rested at that, Respondent No. 6, suo moto initiated a revision proceeding u/s 36(1) of the Act, vis-a-vis the assessment orders for the aforementioned three years and issued a show cause notice in connection therewith. The petitioner in response to the said notice appeared before the respondent No. 6 and produced the books of accounts along with the amended eligibility certificate and the authorization certificate granting exemption to marble tiles as finished product with effect from 13.1.1994. A copy of the minutes of the District Level Committee as above, was also filed. The respondent No. 6, however, by a common order dated 21.11.2000 held the earlier exempted sale of marble tiles as taxable to the extent of Rs. 26,76,474/-, Rs. 31,28,398/- and Rs. 12,98,071/- thereby, raising the tax effect at the rate of 14% to the extent of Rs. 3,74,706/-, Rs. 4,37,976/- and Rs. 1,81,310/- for the said years. This was a consequence of the conclusion that the exemption was admissible, vis-a-vis, the marble tiles with effect from 31.3.1998. Thereby, the original orders of assessment were set aside being held to be erroneous and prejudicial to the interest of the Revenue. The respondent No. 6 ordered fresh assessment after proper verification of the books of account and for amendment of the certificate of authorization by inserting the item "marble tiles" with effect from 31.3.1998.

Pursuant thereto, the respondent No. 7 completed the reassessment of the turnover of the petitioner for the said years u/s 36(1) read with Section 17(5) of the Act, by the order dated 19.12.2000 and accordingly issued notices of demand dated 21.12.2000. In the revised orders of assessment, the claim of deduction u/s 9(4) of the Act in respect of the turnover of marble tiles to the extent of Rs. 26,76,474/-, Rs. 31,28,398/- and Rs. 12,98,071/-, was disallowed. As a corollary, huge demand was raised on the petitioner for the said period to the tune of Rs. 32,86,900/-, Rs. 3,84,189/- and Rs. 1,77,408/- on account of tax for the respective years and Rs. 3,54,985/-, Rs. 3,22,719/- and Rs. 1,06,444/- on account of interest.

The respondents did not file any counter and, therefore, the above facts, which constitute the petitioner's version of the lis have remained unresponded.

9. Mr. Joshi, has argued that the petitioner being eligible under the policy and the 1995 Scheme to sales tax exemption for its finished products namely, marble tiles, marble sinks and flower tops, the same was accordable from the date of

commencement of their commercial production on 13.1.1994, and therefore the impugned order of the Deputy Commissioner of Taxes, respondent No. 6 and the demand of tax raised on reassessment of its taxable turnover by denying such benefit, is illegal and without any authority of law. The appropriate amendments in the eligibility and authorization certificates having been effected by the authorities empowered under the 1995 Scheme, pursuant to the decision of the District Level Committee, the exemption relatable to the marble tiles, is logically grantable from the date of commercial production thereof, and, therefore, the impugned action is liable to be adjudged, ineffectual and invalid in law. The underlying purpose of extending the above incentive being to encourage industrial development in the State and the petitioner having scrupulously complied with the conditions precedent to avail the same, the respondent No. 6 acted in contravention of the letter and spirit thereof, the learned Counsel urged. As neither under the policy nor under the 1995 Scheme, the sales tax authorities under the Act, have been empowered to interfere with the aforementioned certificates, the impugned action, which tantamounts to virtual cancellation thereof, is ex facie without jurisdiction.

According to Mr. Joshi, the General Manager, District Industries Centre, Guwahati, as a member of the District Level Committee having clarified to the concerned sales tax authority that marble tiles had been approved for exemption by the Committee in its meeting on 21.3.1998, with effect from the date of its commercial production under the Policy, the impugned decision of the respondent No. 6 in purported exercise of power u/s 36(1) of the Act, is wholly misconceived. The essential conditions for invoking the power under the aforementioned provision of the Act being conspicuously absent, the impugned order dated 21.11.2000, interfering with the assessments for the aforementioned years, is non est in law. The eligibility and the authorization certificates involved being valid, in terms of the Policy and the 1995 Scheme, the assessment originally made on the basis of the materials on record with due reference thereto, were unassailable and thus the respondent No. 6 acted without any authority of law in upsetting the same in absence of any legally recognizable evidence of the same being either erroneous or prejudicial to the revenue. The assailed determination of the respondent No. 6, being vitiated by a jurisdictional error, the same is ab initio, void and consequently the reassessments and the additional demands founded thereon, are invalid. The learned Senior counsel in support of his submissions invited the attention of this Court to the relevant clauses of the Policy and the 1995 Scheme. He pressed into service the decisions in *Kumar Fuels Vs. State of Uttar Pradesh and Another*, *Rajendra Singh Vs. Superintendent of Taxes and Others*, *Herbertsons Ltd. and Another Vs. Commissioner of Taxes and Others*, 243 1TR 83 (*Malabar Industrial Co. Ltd. v. Commissioner of Income Tax*) 131 STC 70 (*Shyam Sundar Agarwal v. State of Assam and Ors.*) 104 STC 243 (*Maurya Timbers v. State of Haryana and Ors.*) 1995 2 GLR 235 (*Nezone Tubes Ltd. v. State of Assam and Ors.*) 2002 (1) GLR 197 (*Santalal Mehendi Ratta (HUF) v. Commissioner of Taxes and Ors.*)

10. Refuting the above, Mr. Dubey, has maintained that the eligibility certificate and the authorization certificate having been granted initially, without marble tiles as the finished product, the benefit of sales tax exemption on the incorporation thereof, understandably would be available prospectively. Without prejudice to the above, the learned Counsel has urged that there being no power under the 1995 Scheme to amend or alter the above certificates, the respondent authorities having consciously withheld marble tiles therefrom at the time of issue, the insertion of the said item in the manner so done, was wholly unauthorized. Assuming that the modification of the said certificates was contemplated under the 1995 Scheme, the procedure for the issuance thereof, ought to have been adhered to. The same admittedly not having been done, the petitioner was not entitled to the advantage of sales tax exemption, vis-a-vis, marble tiles, not to speak of with retrospective effect, he contended. Mr. Dubey, urged that as the District Level Committee, did not approve the incorporation of the marble tiles in the certificates retrospectively, the original assessments were plainly erroneous to the prejudice of the revenue and, therefore, Section 36 of the Act, was rightly invoked by the revisional authority. As the petitioner in any view of the matter was not entitled to the benefit of the exemption, vis-a-vis, the marble tiles with effect from 13.01.1994, the respondent No. 6 rightly interfered with the assessment made u/s 17(4) of the Act. The consequential reassessments and the demand being valid, no interference therewith, is called for. Mr. Dubey, placed reliance on the decisions of the Apex Court in *State of Jharkhand and Others Vs. Ambay Cements and Another*,

11. The arguments advanced have received the due consideration of this Court. The edifice of the debate being structured on the Policy and the 1995 Scheme, apt it would be begin therewith. The policy was conceived of to usher in speedy industrial development of the State and generate adequate employment opportunities through self-employment in the industrial sector. It replaced the earlier policy to meet the growing genuine aspirations of the people within a time frame through such economic and industrial development and aimed at encouraging growth and promotion of all industries based on local scarcity condition and environment by utilizing to the extent possible locally available raw materials. To achieve the above objectives, the Government in its policy amongst others resolved to extend various incentives on the condition of compliance of certain eligibility norms. While the effective date for the incentive scheme was pegged on 1.4.1991, it prescribed that only new units set up on or after 1.4.1991, and existing units undertaking expansion, modernization or diversification at the same location or any other place in the State of Assam would be eligible therefor. It defined an existing unit to be one, which had commenced production either on 1.4.1991 or any time prior thereto. The policy clarified that no right or claim for any incentive was deemed to be conferred merely by virtue of fulfillment of the conditions prescribed. It disclosed that the benefits under the 1995 Scheme could not be claimed unless the eligibility certificate had been issued by the implementing agency concerned and the unit

had complied with the stipulations of eligibility. The eligibility certificate was to be issued by the Udyog Sahayak, District Industries Centre, Guwahati, for the small scale industries and the Assam Industrial Development Corporation Limited (AIDC) (LTD) for the medium and large sector. The Policy enjoined that the eligibility certificate could be issued only after ensuring that the norms of eligibility had been fulfilled. The implementing agency in the scheme in respect of SSI Sector, was identified to be the Director Industries. The policy envisaged amongst others, committees at the divisional, as well as the state levels known as the Divisional Committee and the State Level Committee.

12. The 1995 Scheme framed in exercise of the power u/s 9(4) read with Clause (f) of Sub-section (3) of Section 74 of the Act, was made effective from 1.4.1991, the end purpose thereof, being to further the implementation of the policy. It contained comprehensive provisions pertaining to the grant of full exemption of sales tax on the purchase of raw materials within the State of Assam by the eligible industrial units situated within it and also on the sale of finished products, manufactured in such units in the State or involved in course of interstate trade or commerce. Under Clause 4 thereof, an industrial unit for obtaining the eligibility certificate, was required to apply in a prescribed form as referred to therein, to the specified authority, which would consider the same. The District Level Committee was empowered to consider such application in case of an industrial unit having investments upto Rs. 10 lacs on the plant and machinery after expansion/modernization/diversification. Similarly, depending on the extent of investment other authorities were also specified for the purpose. The provision required that the committee concerned was required to be satisfied that the requisite conditions and norms had been fulfilled by the industrial unit for being declared eligible. The committees in this regard were empowered to make inquiries for the verification of all informations and particulars in each case, whereafter recommendations were to be made, if the industrial unit concerned was found to have complied with the prescribed stipulations for being granted the eligibility certificate. Thereafter, the competent authority of the Industries Department, Government of Assam, would issue the same. In case of an eligible industrial unit, whose total investment of plant and machinery after expansion/modernization/diversification was upto Rs. 10 lacs, as in the case of the petitioner, the eligibility certificate was to be granted by the General Manager, District Industries Centre. Clause 5 of the Scheme, predicated that the terms of the eligibility certificate was to be 7 years from the date of commencement of production of the eligible unit under Category A like the petitioner.

The application for grant of certificate of authorization, was also required to be made in a prescribed form, as laid down in Clause 6 of the 1995 Scheme. On receipt of the application of an eligible industrial unit, which had been granted the eligibility certificate, the Assessing Officer of the area, was required to examine the correctness of the particulars furnished therein, as well as the documents accompanying the same. If the Assessing Officer was satisfied that every information furnished in the application was based on the eligibility

certificate and that any further information furnished was correct, he was required to grant and issue a certificate of authorization in favour of the said industrial unit.

Under Clause 8(b), the holder of the certificate of authorization in the case of an eligible industrial unit of the category "A", was competent to sell its finished products in the State of Assam or in the course of inter-State trade or commerce, without being required to pay sales tax under the Act. In the cash memo or the bill, however, the holder of the certificate of authorization was supposed to mention the reference particulars of his certificate and the Assessing Officer was required to verify such copy of the cash memo or bill at the time of assessment of his sales tax dues. The holder of the certificate was prohibited from collecting sales tax on the sale of his finished products. In case of such collection, the amount realized, was to be deposited by him into the Government treasury.

Part III of the 1995 Scheme deals with the termination of the eligibility certificate as well as the certificate of authorization for violation or noncompliance of any of the conditions of eligibility or on the determination of any information furnished to be false. The competent authority of the Industries Department authorized to terminate the eligibility certificate after affording an opportunity of hearing to the concerned industrial unit on the following grounds:

- a) Violation of any condition of eligibility.
- b) Any information on any of such conditions being found to be false after the issuance of certificate.

In the event of such termination, the competent authority was required to intimate the fact forthwith to the concerned eligible unit and the Assessing Officer. On receipt of such intimation, the Assessing Officer would cancel forthwith the certificate of authorization requiring the industrial unit to surrender it immediately to him. The Assessing Officer was also empowered to terminate the certificate of authorization for the failure on the part of the holder thereof, to comply with any condition, laid down therein or for failure on its part to maintain the account of declaration form or to furnish any information required by the said authority with regard to the implementation of the scheme. An opportunity of hearing was required to be offered to the certificate holder before such termination. The Assessing Officer on such decision being taken, was required to intimate the same to the concerned competent authority, who had issued the eligibility certificate to the industrial unit. On the receipt of such intimation, the said competent authority was supposed to terminate forthwith the eligibility certificate and communicate the same to the concerned industrial unit, as well as the Assessing Officer.

13. The eventualities and the procedure of termination of the eligibility and the authorization certificates, had been exhaustively laid down in the scheme. Even a cursory reading of the relevant provisions relating thereto would demonstrate

that no sales tax authority under the Act, except the Assessing Officer to the extent indicated as above, had been accorded or sanctioned a role on the said issue. The composition of the District Level Committee provided in the scheme, reveals that the Deputy Commissioner of Taxes (In-charge of the Zone) and the General Manager, District Industries Centre of the district, are amongst others the member and the member secretary thereof respectively. This assumes importance in view of the letter dated 8.8.1999/13.10.1999 (Annexure VI to the writ petition) of the General Manager District Industries & Commerce Centre, Kamrup intimating the Senior Superintendent of Taxes, Guwahati, Unit-T (Assessing Officer) that the marble tiles, vis-a-vis the petitioner had been incorporated in its eligibility certificate on being approved by the District Level Committee in its meeting held on 21.3.1998 and that the date of its commercial production as mentioned in the permanent registration certificate would be the effective date for availing the incentives under the policy. The communication indicates that the above information had been furnished in response to a query made by the Assessing Officer in his letter dated 13.8.1999 and that a copy of the minutes of the meeting of the District Level Committee had also been forwarded to him.

14. As minuted hereinabove, the pleaded averments in the writ petition have remained uncontroverted in absence of any counter by the respondents. The petitioner had been registered as a small scale industrial unit with the Director of Industries and a certificate to the said effect had been issued by the General Manager District Industries Centre, Guwahati on 19.3.1994. The registration certificate reveals that the petitioner had been permanently registered as a small scale industrial unit in which marble polish tiles, marble sinks and flower tops were being manufactured, the date of commencement of production being 13.01.1994. Though, initially before the 1995 Scheme, an eligibility certificate had been issued under the policy on 22.3.1994, by the Udyog Sahayak, District Industries Centre, Kamrup, Guwahati, granting the incentive of sales tax exemption from 13.1.1994 to 12.1.2001, thereafter, on 12.4.1996, another eligibility certificate for sales tax exemption was granted also for the same period.

The said document amongst others, discloses the date of commencement of commercial production to be 13.1.1994. However, the items of finished products referred to therein, originally included only marble sinks and flowerpots. Marble tiles was incorporated in the certificate on 31.3.1998, with the corresponding endorsement of the General Manager, District Industries Centre, Kamrup. In the certificate of authorization issued by the Senior Superintendent of Taxes, Guwahati Unit-D, on 26.6.1997, as well, only marble sinks and flowerpots were enlisted as finished products. However, marble tiles was inserted on 3.12.1998, under the signature of the Senior Superintendent of Taxes, Guwahati Unit-D. The related endorsement declared that the petitioner was entitled to sales tax exemption in respect thereof, as well for the period 13.1.1994 to 12.1.2001. The incorporations in the aforementioned certificates, followed the decision of the District Level Committee in its meeting held on 21.3.1998, the relevant extract of

the minutes whereof, is as hereunder:

GM DLC placed application for some unit manufacturing marble tiles etc. which were earlier issued EC for STE under IP'93 but the Item marble tiles were not included in the EC. The committee after detail discussion considered the matter and approved including of marble tiles in the EC for STE in cases of such units. The application for M/S. R.K. Marbles & Tiles. Industrial Area. Bamunimaidan. Guwahati-21, which was deferred in earlier DLC (District Level Committee) Meeting has also been discussed in details and committee approved the case for sales and Cement Mosaic Tiles (marble tiles) Manufactured by pressing and curing cement, marble chips, sand and stone dust and for the raw materials (except cement).

15. It would appear from hereinabove, that the District Level Committee thereby, had considered the cases of several units including the petitioner, manufacturing marble tiles but, whose eligibility certificates did not include the said item for sales tax exemption. The Committee after a detailed discussion approved the inclusion of the said finished product in the eligibility certificates of those units for such exemption. The Committee did not mention however, whether the benefit would be available prospectively or retrospectively.

16. The Assessing Officer on a scrutiny of the books of accounts of the petitioner and the other related documents pertaining to its sales for the assessment years in question, accepted the gross turnover as disclosed thereby. The authority took into account the eligibility, as well as authorization certificates with the modifications as above and also recorded that no tax had been realized by the petitioner on its sales of the finished products during the relevant period. The petitioner was granted the benefit of exemption of tax and the assessment was finalized. This was on 12.3.1999 and 29.4.1999.

17. The respondent No. 6, overturned these assessments solely on the ground that as the decision of the District Level Committee approving the inclusion of marble tiles in the eligibility certificate of the petitioner did not specify the date from which it would be entitled to tax exemption, the amendment in the certificate of authorization with retrospective effect in regard thereto, was irregular. The said authority therefore, entered a finding that the assessments made on the basis thereof, were erroneous and prejudicial to the interest of the revenue. The Assessing Officer was, therefore, directed to make fresh assessments after proper verification of the books of accounts, giving effect to the insertion of marble tiles in the certificate of authorization from 31.3.1998. The earlier assessment orders were thus annulled.

18. Having regard to the impelling objective of the policy and the scheme adumbrated in the framework thereof, the decision of the District Level Committee, irrefutably has to be construed to effectuate the professed purposes thereof. Logically any interpretation extinctive of the object sought to be achieved thereby, has to be necessarily eschewed. In other words, a true

construction of the approval of the District Level Committee would be one that would advance the end purpose of the policy and the scheme founded thereon. Admittedly, exemption from sales tax, had been the prime incentive to encourage industrial units to make increased investments thus contributing to the industrial growth in the State and argument its economic prosperity. The period of exemption had been prescribed to be seven years from the date of the commercial production of the industrial unit. Noticeably, the District Level Committee did not confine the benefit of the sales tax exemption, vis-a-vis the marble tiles for the period commencing from the date of its decision. It clearly referred to the eligibility certificates of the units concerned, which did not include marble tiles. That the District Level Committee desired that sales tax exemption for the said item of finished product under the policy be extended to the units concerned is writ large on the face of its minutes. There is no material on record that the omission to mention marble tiles in the certificate held by the petitioner was on account of any default on its part or deficiency in its entitlement therefor.

19. It is not a recorded fact either that the petitioner had not commenced production of marble tiles with effect from 13.1.1994. The clarification provided by the Manager, District Industries Centre, Kamrup, Member Secretary of the District Level Committee that the approval for incorporation of marble tiles in the eligibility certificate of the petitioner, was with a view to provide tax exemption to it from the date of the commencement of production cannot be lost sight of and rather has to be conceded the due premium. The respondent No. 6, who also was a member of the District Level Committee, did not record in the minutes that retrospective benefit had not been intended by the Committee. The approval for inclusion of marble tiles in the eligibility certificate of the petitioner having been granted, the consequential benefit essentially has to flow from the date of commencement of its production to be attuned with the policy and the guidelines. The petitioner was as a corollary, entitled to sales tax exemption for its finished product of marble tiles with effect from 13.1.1994 to 12.1.2001. The approach of the assessing officer in computing the assessment u/s 17 (4) of the Act, cannot thus be questioned in absence of any rebuttal of the sworn statements made in the writ petition. The finding that the petitioner had not collected sales tax for the relevant assessment years also cannot be impeached as factually incorrect, on the basis of the available materials on record.

20. The plea that there had been a conscious omission to mention marble tiles in the eligibility as well as authorization certificates of the petitioner impliedly denying the claim therefor, in absence of affidavit or the official records cannot be sustained. Had it been so, the District Level Committee at the first place would not have approved the insertion of the said item. Further, prospective grant of benefit of sales tax exemption in such a case would have been specifically mentioned in its decision as well. Apart from the fact that the scheme does not require that for the amendment or alteration of the certificates, the same procedure followed on the application therefor, ought to be adhered to, in the case in hand, the District Level Committee being the recommending authority

for the initial grant of the eligibility certificate by the additions in the certificates made in compliance of the approval of the said Committee in a way, the same procedure in substance had been pursued. The challenge to the incorporations in the certificate based on the noncompliance of the procedure prescribed, thus does not appeal to this Court.

21. The Policy, as well as the 1995 Scheme, observed hereinabove, comprehend a restricted role of the sales tax authorities in the matter of grant or termination of the eligibility and authorization certificates. The Assessing Officer of the area alone has been empowered to grant and repudiate the authorization certificates. No other sales tax authority has been recognized by the Policy or the 1995 Scheme for the said purpose. The authorities/committees specified in the Policy and the 1995 Scheme, are the only entities endowed with the power to assess the eligibility of the industrial units for being granted the certificates. The concerned committee and the Assessing Officer are only authorized to cancel the same. As the decision of the respondent No. 6, for all practical purposes, has the effect of cancelling the certificates of the petitioner qua marble tiles with effect from 13.01.1994 till 21.3.1991, the existence of the conditions precedent for exercise of power u/s 36 (1) of the Act, therefore, is of cardinal significance in the above background to test the validity of the action impugned.

22. In *Kumar Fuels (supra)*, a show cause notice was issued under Rule 41(5) of the UP Sales Tax Rules, intimating the petitioner that it was not entitled to sales tax exemption u/s 4A of the UP Sales Tax Act, 1948. The jurisdiction of the Sales Tax Officer to determine the petitioner's entitlement for such exemption on being questioned, the plea was upheld. The petitioner therein, had been granted an eligibility certificate quarantying exemption from payment of sales tax. Noticing the scheme of Section 4A of the said legislation, the jurisdictional High Court held that the tax authority concerned was not authorized to sit in judgment over the grant of eligibility certificate by the Government and that he was empowered to exercise the power u/s 4 A(3), only when there was an act or omission viz misuse of the certificate granted.

23. The same view in the context of Section 4 of Assam Industries (Sales Tax Concessions) Act 1986, was expressed by this Court in *Nezone Tubes Limited (supra)*. The Commissioner of Taxes, Assam in that case, had rejected the application for authorization certificate on the ground that it was not entitled to sales tax concession thereunder.

24. In *Maurya Timbers (supra)*, the petitioner had been granted the eligibility certificate under the Haryana Sales Tax Act, 1973. The Excise and Taxation Commissioner in exercise of power of suo moto revision u/s 40 of the said Act, withdrew the benefit provided by the assessing authority on the ground that the petitioner had been wrongly extended the facility of exemption from the date of commencement of production. The High Court of Punjab and Haryana held that in view of the object of the scheme extending such exemption from the date of commencement of production, the petitioner having been granted the eligibility

certificate with effect therefrom, the revisional authority could not withdraw the benefit granted by the competent authority under the legislation. It held that the revisional authority while modifying the assessment order had indirectly made an order of partial cancellation of the eligibility certificate, which he could not have done.

25. Considering the spirit and purport of the policy and the 1995 Scheme, I subscribe to the above view.

26. The scope and amplitude of the power of suo moto revision contained in Section 36 of the Act, had been assayed by this Court on umpteen number of times. This Court in *Shri Rajender Singh and Ors.* (supra), while dealing with Section 21 of the Tripura Sales Tax, which is in pari materia with Section 263 of the Income Tax Act, held that two circumstances i.e., (1) order is erroneous and (2) is prejudicial to the interest of the Revenue, "have to subsist so as to enable the Commissioner to exercise the power of suo moto revision thereunder. Dilating on the expression "erroneous assessment", it elucidated the same to signify an assessment in deviation from law and vitiated by a defect that is jurisdictional in nature. It ruled that the provision did not visualize substitution of judgment of the Commissioner for that of the Officer, who had passed the order even if the former on a perusal of the records would hold an opinion different from that of the latter on merits. The power exercised by the Assessing Officer being quasi judicial in nature and vested in him by law, a conclusion arrived at by him by invoking the same in accordance with law could not be branded as erroneous only because the Commissioner chose not to agree with him, it held. Drawing sustenance inter alia from the ratio of the decisions in *Rajendra Singh* (supra) and *State of Kerala v. K.M. Cheria Abdulla and Co.* (1965) 16 STC 875, this Court in *Santalal Mehendi Ratta (HUF)* (supra), held that an erroneous order cannot be equated with a wrong order as understood in common parlance and that an order of assessment passed within the limits of the jurisdiction of the Assessing Authority even if considered to be wrong by the Revisional Authority would not attract the invocation of suo moto revisional powers. It expressed itself further in the following terms.

The revisional authority for various good reasons may be inclined to view an assessment offer from a negative stand point. The revisional authority may likewise disagree with the views of the primary authority in its interpretation of the law imposing the liability or the extant or the quantum thereof. It may disagree with the primary authority with regard to the determination of the amount of tax to be paid. It may also disagree with the primary authority on matters relating to deductions allowable under the statute. All such situations as aforesaid may render the order of the primary authority wrong or erroneous as commonly understood. Such situations, however, would not be facets of an erroneous decision in so far the meaning of the said expression as appearing in Section 36 of the Act is concerned. Judicial opinion unanimous that the expression as appearing in Section 36 must be confined to jurisdictional errors

otherwise there would be no distinctions between the different aspects of the corrective power conferred by the provisions of the act for application in different situation. No distinction between the power to re-open an assessment and the appellate or revisional power or the power to rectify would exist. There would be an intermingling of the powers resulting in confusion and uncertainty, the situation definitely not contemplated by any statute.

27. The same view found reiteration in *Shyam Sundar Agarwal (supra)* and *Herbertsons Ltd. (supra)*. The Apex Court in *Malabar Industrial Co. Ltd. (supra)*, while dwelling on Section 263 of the Income Tax Act 1961, had held that the provision could not be invoked to correct each and every type of mistake or error committed by the Assessing Officer and it is only when an order is erroneous that the section would be attracted. Similarly, orders passed sans applying the principles of natural justice or without application of mind would attract the applicability of the said provision.

28. The pronounced judicial opinion, therefore, underlines the indispensability of the two imperatives ingrained in Section 36 of the Act for a valid invocation thereof. The order sought to be revised has to be erroneous and that it must result in prejudice to the revenue. Not only these two preconditions must exist, no interference with the order is permissible, unless the same is impaired by a jurisdictional error or a patent illegality rendering the same *ex facie* invalid, inoperative and ineffectual in law. The endeavour of the revisional authority to derive satisfaction on the above two grounds has to be essentially abreast with the above limitations. Not only, the said authority is forbidden to conduct a roving inquiry into the facts to pick up errors, it cannot assume to itself a prerogative to substitute other entitles and supplant their roles.

29. The Revisional authority, therefore, has to be rigorously held to the limits of its *suo moto* revisional jurisdiction. The prescribed pre conditions, the *sine qua non* for a valid exercise of powers u/s 36 of the Act have to be rigidly construed. The decision of the Apex Court in *State of Jharkhand and Ors. (supra)*, disapproving the direction of the jurisdictional High Court to grant exemption in favour of the respondent in face of the statutory preconditions circumscribing for the power of *suo moto* revision, is of no assistance to the respondents in the above conspectus of facts.

30. In the facts of the present case as determined above, the assessment orders u/s 17(4) of the Act, were validly made on the basis of the contemporaneous materials on record. No illegality is discernible warranting interference in exercise of *suo moto* revisional jurisdiction u/s 36 of the Act. The Assessing Officer, as the records reveal had acted not only in accordance with the provisions of the Act but also the letter and spirit of the policy and the 1995 Scheme, whereunder the eligibility and authorization certificates had been issued to the petitioner.

31. In the wake of the above, the impugned decision of the Deputy Commissioner of Taxes, respondent No. 6, the consequential reassessments for

the aforementioned years and the tax demands on the basis thereof, are hereby adjudged, illegal, inoperative, null and void. The orders dated 21.11.2000, passed by the Deputy Commissioner of Taxes, Guwahati Zone-C, Guwahati and the notices of demand (Annexure II Series) are hereby set aside. The petition is allowed. No costs.