
(2005) 07 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 105 of 2001

Associated Company Ltd.

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Income Tax Act, 1961 — Section 147

Jammu and Kashmir General Sales Tax Act, 1962 — Section 10, 12, 7(8), 8B

Citation : (2006) 3 JKJ 602

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : M.M. Gupta, for the Appellant; A.H. Naik, AG, for the Respondent

Judgement

Permod Kohli, J.—Petitioner is a dealer registered with J&K Sales Tax Department Circle-B at Jammu and deals in sale of cement.

Petitioner was assessed for the years 1990-91 to 1996- 97 on its turn over for the respective years under the General Sales Tax Act. The

Assessing Authority after assessing turn over, assessed the petitioner for payment of sales tax @ 8% for the cement and @ 4% for the packing

material (gunny bags) under SRO 135 Schedule C&D respectively. The orders of assessment passed by the Assessing Authority for the aforesaid

assessment years have been set aside by the Commissioner of Sales Tax i.e. respondent-2 vide impugned order dated 14.12.2000 in exercise of

its revisional powers and directed respondent-3 to pass fresh assessment orders by re-assessing the petitioner on its turn over @ 8% uniformly for

the sale of cement and bags. Consequently, respondent-3 has issued impugned notices No. 1923/STB and 1924/STB both dated 16.12.2000 for

re- assessment. These notices have also been challenged by petitioner in the

present petition.

2. Main contention of petitioner is that petitioner is liable to pay tax @ 4% on gunny bags, which is liable to be taxed separately being a separate

item specified in Schedule -D of SRO 135, prescribing tax @ 4%. It is alleged that the Revisional Authority did not examine the books of accounts

produced by the petitioner and all the documents though the staff and respondent-2 test checked the books of accounts and documents. It is

further alleged that respondent -2 relied upon report of the Audit Authority and without due application of mind, passed impugned order. Further

case of petitioner is that, at the most respondent-2 could have directed assessment of tax @ 8% in respect to the incriminatory bills where under

petitioner has charged uniform tax @ 8%. It is stated that the revisional authority has revised all the assessment orders for the years 1990-91 to

1996-97 without there being any material before it. The challenge to the impugned order is also on the ground that he could have re-opened the

cases only for two years and not for the years beyond that. The impugned order is also challenged on the additional ground that there was only one

bill for the year 1995-96 and two bills for the year 1997-98 and as assessment for the year 1997-98 is still pending, there was no occasion for

respondent -2 to have revised the assessment for all these years. The power of revisional authority is said to be available to re- open the cases

upto two years and thus, the impugned order relating to assessment years beyond two years, preceding date of assessment, is bad in law.

3. From the perusal of assessment order passed by respondent-3 u/s 7(8) of the J&K General Sales Tax Act, 1962 for the years 1990-91 upto to

1996-97, it is evident that the Assessing Authority has charged tax @ 8% on sale of cement and @ 4% of sale of packing material separately. This

assessment has been made after examining the books of accounts, which were put to check by the Assessing Authority. Before passing of the

impugned order, respondent -2 issued notice dated 11-2-1999 to the petitioner u/s 12 of the J&K General Sales Tax Act, 1962. In this notice, it

is stated that from the examination of the assessment file, it has been revealed that the petitioner issued Form-F for importing cement with relation

to number of bags and no form-F has been issued for the packing material / cement bags separately though assessment has been made for cement

and packing material separately. Similarly, stock and transfer challan also do not mention the cement and bags separately. In the aforesaid notice,

reliance is placed upon Entry No. 9 of Annexure-E of SRO 135 which inter alia prescribes that Bardana and other packing material including the

containers used in goods which are not liable to tax or are exempt from tax and the sale price thereof is not charged separately from the purchaser

of such goods, are exempt from sales tax, although Bardana and other packing material as an independent commodity is taxable. It is stated in the

notice that since the commodity and packing material are sold as one unit without any split in price, uniform rate of tax is to be charged. Petitioner

was asked to appear before respondent-2 at the time and date specified in the notice and file objections.

4. Petitioner has filed detailed objections to this notice. It is stated in the petition that counsel for petitioner also appeared before respondent-2 and

after hearing the counsel, impugned order came to be passed, rejecting the contention of petitioner for charging tax @ 4% on the packing material

and directed the Assessing Authority (Respondent-3) to pass fresh assessment order by charging uniform rate of tax @ 8% on bags of cement

sold by the petitioner. On the basis of aforesaid order, the Assessing Authority has issued two impugned notices, communicating the petitioner that

he is liable to tax @ 8% and to show cause, why tax at the aforesaid rate be not charged on the assessment.

5. I have heard learned Counsel for the parties.

SRO 135 dated 29.3.1989 prescribes the rates of tax of different kinds of commodities. Cement falls under Schedule-C for which the rate of tax

is 8%, whereas gunny bags for packing are specified in Schedule-D and rate of tax prescribed is 4%. Relevant extracts from Schedule -C and D

are reproduced as under:

Schedule -C

(Goods chargeable to tax at the rate of 8%)

S. No. Description of Goods

1. 2...

...

Cement and articles made of cement.

Schedule-D

(Annexed to SRO-135 dated 29.3.1989)

S. No. Description of Goods

1. 2

...

...

Packing material that is to say...

(a) Gunny bags and hessian,

...

...

6. Assessing Authority has filed reply on behalf of respondents alleging therein that petitioner has produced fake bills /accounts before the

Assessing Authority, showing that they have charged separate tax for the cement and bags from the customers, whereas on cross- checking and

proper verification, it was found that petitioner has charged uniform rate of tax both on cement as well as on bags @ 8% from the customers.

Reference is made to two bills dated 14-8-1997 whereby sale was made by petitioner in favour of Executive Engineer, JDA Division-1, Gandhi

Nagar, Jammu. In this bill, total quantity of 9574 bags of cement was sold without separately indicating the cost of cement and bags respectively.

There is another bill dated 10.4.98 for the sale of 2805 bags of cement to JK Project Construction Corporation Ltd. This bill also does not

separately indicate the sale price of cement and bags. A Number of similar bills have been placed on record for sale of cement bags for the years

1995 and 1998. There is one supply order also dated 1.7.1995 placed by the J&K Housing Board with the petitioner for sale of 10,000 cement

bags of 33-A Grade and another supply order dated 17.7.1997 issued by the Superintending Engineer, JDA for the sale of 1,00,000 of cement

bags. There are also bills issued by the petitioner to Jammu Development Authority showing number of bags and quantity. In these bills, no

separate price has been indicated for the cement and the bags. However, there are bills issued by petitioner in favour of M/S Hopewell Company,

Mata Vaishno Devi Shrine Board and J&K Housing Board separately showing the tax on cement and packing material @ 8% and 4.20%

respectively. Respondents have placed on record copy of communication No. OAD/RAW/S/2000-2001/676-78 dated 29.11.2000 from the

Senior Audit Officer(RAW) of Accountant General's office to respondent-2 communicating incorrect application of rate of tax on bags used for

packing of cement- short levy of tax Rs. 5,59,541.85.

7. While challenging the findings and validity of impugned order, Mr. M.M. Gupta, learned Counsel for petitioner has placed reliance upon the

following judgments:

8. In case of Jamana Flour and Oil Mill (P) Ltd. Vs. State of Bihar, , the Assessee had filed return of taxable turnover of wheat sold in gunny bags

and paid tax at the @ 2% as leviable under the Bihar Sales Tax Act on wheat products. The Assessing Authority found that the dealer had sold

gunny bags alongwith wheat products and determined its tax liability on its turnover at different rates and assessed the gunny bags at 4 1/2 %,

which was the rate specified for the gunny bags treating the sale of gunny bags as a separate commodity. The appellate authority on assessing,

modified order and directed that instead of taxing at higher rate on gross turnover, the assessing authority should have taxed a portion of taxable

turnover at different rates i.e. out of the turnover taxable under the Bihar Sales Tax Act, the price of bags calculated at Rs. 0.70 paise per hundred

kilogram should have been deducted and taxed 4 1/2 % and the remaining at 2%. This order was challenged by the dealer before the tribunal on

the ground that demand of sales tax at different rates on calculated turnover on gunny bags, was not warranted, as no price had been charged for

the containers. The tribunal was of the opinion that there was sale of gunny bags, which was included in the consolidated price charged by the

dealer and there was implied agreement for the sale of gunny bags and the transfer thereof was impliedly covered by the contract of sale for the

wheat products. It accordingly partially concurred with the findings of the lower court. The tribunal however, remanded the case to the Assessing

Officer on the plea of the dealer that the accounts maintained by him would reveal the exact number of gunny bags used in the transaction of sale

under consideration as also the price of the same. Assessing Officer was directed to ascertain from the accounts, the turnover on account of sale of

gunny bags as container of wheat products during the period under consideration

and assess tax thereon at the prescribed rate of 4 1/2 % and the balance turnover at 2%. The Apex Court in case mentioned supra, on consideration of the circumstances held as under:

In our view the Tribunal rightly came to the conclusion that there was implied agreement of sale of the gunny bags. Admittedly gunny bags are a different commodity and sale thereof is assessable to tax at 4 1/2%. It is not disputed that appellant bought gunny bags for packing wheat products for the purpose of sale. The Control Order contemplates a net weight which means that the weight of the bag is included in the price to be charged by the dealer. Under the explanation when packing is done in cloth bags, a higher rate is admissible. The scheme clearly suggests that the price of gunny bags is inclusive and where cloth bag is used, a higher price over and above what has been provided for ordinary containers is permitted.

9. In case *Raj Steel and Others Vs. State of A.P. and Another*, the Apex Court was again seized of the question of levy of sale tax on the packing material and contents of the goods sold under the Andhra Pradesh General Sales Tax Act 1957. In this case, the dispute arose regarding the rate of sale tax on gunny bags containing cement, where the cement is sold in gunny bags and bottles where beer is sold in bottles packed in cartons. Admittedly, the Andhra Pradesh Sales Tax Act prescribed different rates of tax for gunny bags and cement. By way of amendment,

Section 6 was incorporated in the Act, which reads as under:

Notwithstanding anything in Sections 5 and 6-A, where goods packed in any materials are sold or purchased, the materials in which the goods are so packed shall be deemed to have been sold or purchased along with the goods and the tax shall be leviable on such sale or purchase of the materials at the rate of tax, if any, as applicable to the sale, or, as the case may be, purchase of goods themselves.

10. The Sales Tax Authority accordingly charged the tax on the gross sale price of the same. The Assessee challenged the order of the Sales Tax

Authority, assessing the tax on gunny bags and also the vires of Section 6(c) before the High Court. The writ petition filed came to be dismissed.

The High Court proceeded on the basis that having regard to the nature of the goods and to the trade practice in respect of beer and cement the containers were necessary concomitants in the transaction, and the transfer of

property in the containers was incidental or unavoidable and the sale transaction had to be regarded as composite and integrated sale of the containers and their contents. It was of the opinion that what was really sold was the bottled beer or the cement packed in gunny bags. The Apex Court in the aforementioned case while considering various situations involved in the sale of commodity, observed as under:

It is commonly accepted that a transaction of sale may consist of a sale of the product and a separate sale of the container housing the product with respective sale considerations for the product and the container separately; or it may consist of a sale of the product and a sale of the container but both sales being conceived of as integrated components of a single sale transaction ; or what may yet be a third case, it may consist of a sale of the product with the transfer of the container without any sale consideration therefore. The question in every case will be a question of fact as to what are the nature and ingredients of the sale. It is not right ion law to pick on one ingredient only to the exclusion of the others and deduce from it the character of the transaction. For example, the circumstance that the price of the product and the price of the container are shown separately may be evidence that two separate transactions are envisaged, but that circumstance alone cannot be conclusive of the true character of the transaction.

It is not unknown that traders may, for the advantage of their trade, show what is essentially a single sale transaction of product and container, or a transaction of a sale of the product only with no consideration for the transfer of the container, as divisible into two separate transactions, one of sale of the product, and the other a sale of the container, with a distinct price shown against each. Similarly, where a deposit is made by the purchaser with the dealer, the deposit may be pursuant to a transaction where there is no sale of the container and its return is contemplated, and in the event of its not being returned the security is liable to forfeiture. Alternatively, it may be a case where the container is sold and the deposit represents the consideration for the same, and in the event of the container being returned to the dealer the deposit is returned by way of consideration for the resale. In every case, the assessing authority is obliged to ascertain the true nature and character of the transaction upon a consideration of all the facts and circumstances pertaining to the transaction

11. After making above observation, the Apex Court further held:

A perusal of the orders of the various authorities and the High Court shows that a simple question of fact has been side- tracked by copious

citations. Whether there was an agreement to sell the packing materials is a pure question of fact and that question cannot be decided on fictions or

surmises. That is what has happened in this case. The Commercial Tax Officer invoked a fiction, the Assistant Commissioner of the Commercial

Taxes relied upon the doctrine of 'finished product'; the Appellate Tribunal relied upon surmises; and the High Court, on the principles of implied

agreement. But, none has tackled the real question. The burden lies upon the Commercial Tax Officer to prove that a turnover is liable to tax. No

doubt he can ask the assessee to produce the relevant material; and if he does not produce the same, he may draw an adverse inference against

him. But, he must decide the crucial question whether the packing materials were subject of the agreement of sale, express or implied. To ascertain

the said fact he can rely upon oral statements, accounts and other documents, personal enquiry and other relevant circumstances such as the nature

and the purpose of the packing materials used.

12. The Apex Court visualized certain factors required to be taken note of while determining the question of taxability of goods packed in

containers. Following factors have been indicated by the Apex Court:

1. The packing material is a commodity having its own identity and is separately classified in the Schedule;

2. There is no change, chemical or physical, in the packing either at the time of packing or at the time of using the content;

3. The packing is capable of being reused after the contents have been consumed;

4. The packing is used for convenience of transport and the quantity of the goods as such is not dependent on packing;

5. The mere fact that the consideration for the packing is merged with the consideration for the product would not make the sale of packing an

integrated part of the sale of the product.

13. In the light of the above, the Apex Court made following observations regarding the judgment of the High Court while setting it aside and

remanded the case for further consideration and disposal:

In the appeals before us, we find that the High Court has proceeded on the assumption that the transactions are covered by trade practice and having regard to the nature of the goods it has inferred that what is charged is the price of the bottled beer or of cement packed in gunny bags, and reference has also been made to the excise law and the Cement Control Order requiring that the liquor or the cement, as the case may be, must be sold in bottles or in gunny bags respectively. We are constrained to observe that no attempt has been made by the tax authorities to ascertain the facts of each case and to determine what were the actual ingredients of the contract and the intention of the parties. Assumptions have been made when what was required a detailed investigation into the facts. We have indicated earlier the several possibilities which are open in cases of this kind, and how the ultimate conclusion can be vitally affected by the tests to be applied. Because of the lack of adequate and clear factual material, the High Court also was compelled to proceed on the basis of generalized statements and broad assumptions. We are unable, in the circumstances, to hold that the cases can be regarded as disposed of finally. It is regrettable but the cases must go back for proper findings on facts to be ascertained on fuller investigation.

14. Mr. Gupta, learned Counsel for petitioner has accordingly submitted that the ratio of the aforesaid two judgments is fully applicable to the facts and circumstances of the present case and the revisional authority committed a grave illegality in passing the impugned order without investigation of facts in right perspective and without providing an opportunity to petitioner herein. His further contention is that the revisional authority has exceeded its jurisdiction in ignoring the law laid down by the Apex Court in the aforesaid judgments, which were cited before it and referred to in the impugned order of the revisional authority. He further contended that though the books of accounts were produced but revisional authority has wrongly recorded that documents were not furnished by petitioner.

15. I have perused impugned order. It is true that the revisional authority has not only recorded the presence of Mr. M.M. Gupta on behalf of petitioner but also referred to the judgment of the Apex Court in Raj Sheel's case (supra) and other judgments. However, the revisional authority taking note of some of the bills dated 26.10.1995 for the sale of cement to

Managing Director, J&K Housing Board, Letter No. SE/JDA/593-98

dated 17.7.1997 for sale of cement to Jammu Development Authority, Bill No. 04 dated 1.11.1997 for supply of cement to JDA, formulated an

opinion that there was composite sale of cement in gunny bags for which the dealer charged 8% tax on the entire sale price including the gunny

bags from the consumer and therefore, he was liable to pay tax @ 8%. It accordingly set-aside the assessment order made earlier where -under

the gunny bags were charged as a separate commodity @ 4% and the cement @ 8% and directed the assessing authority to charge sale tax @

8% on the entire turnover of cement for the years 1990-91 to 1996- 97.

16. From the impugned order, it is evident that the assessing authority has directed charging of tax on the total turnover of cement including the

gunny bags at the higher rate based upon aforesaid some of the bills, it came across for the above mentioned years without any further

investigation, as to whether during all these years, the dealer has charged the sale tax at the uniform rate of 8% on all the sales covering entire

turnover. It is relevant to notice that except above referred bills, there was no other material before the revisional authority on the basis of which it

could arrive at a conclusion that there was composite sale of cement and gunny bags and the dealer had charged sale tax @ 8% on its entire

turnover during the years in question. In Paragraph-3 of the writ petition, it is specifically mentioned that books of accounts were produced before

the revisional authority. Paragraph -3 of writ petition, is to the following effect:

The petitioner had produced all the books of accounts before the Commissioner, Mr. Najamus Saqib. He and his staff had test checked all the

books and all the documents. And so it is incorrect that the petitioner had not produced supply orders and the bills raised by the Company for

various Government/Private agencies.

Rather on the last hearing the petitioner had requested the news Commissioner Mr. Mubarki to either tax the packing material of three

incriminatory bills / supply orders at 8%' or if he felt there may be some more such supply order/bill he may examine all the books of accounts

himself or get them examined through his officers and the petitioner offered to produce all the books and documents for such examination....

In reply to the above averments, objections filed by the assessing authority read

as under:

In reply to para-3, it is submitted that it is a fact that the petitioner had appeared alongwith his counsel a number of times and argued the case

alongwith some books of accounts. The bills which were produced by him wherein the petitioner has shown charged, tax at 8% on material and on

packing material at 4% separately. These bills, were put to verification. But these bills were not found in conformity with the supply order of the

concerned department and the bill preferred by him before the concerned Department and the payment received there-against.

Since these bills produced by the petitioner were put to test check in one case and it was found that these bills are not in conformity with the bills,

on which the petitioner has received the payment and the supply order, hence these bills were not taken into consideration. However, the petitioner

was repeatedly requested to furnish the copies of the supply orders and the bills raised against these supplies from various organizations/suppliers/

Government departments, but he avoided to produce the same inspite of several adjournments sought by him on this account. As such the

assessment orders passed for the years 1990-91 to 1996-97 were set-aside. It seems that before the Assessing Authority, the petitioner has

produced tailor mode bills wherein the tax element was splited between the cement and the cement bags suppressing the main bills, against which

he has received the payment with the result there was no alternative left with the Assessing Authority, but to accept the accounts furnished by the

petitioner at the time of assessment. It is fact that petitioner has prayed that three bills, which were collected by the department for test check and

found not in conformity with his accounts be taxed at 8%. This prayer of the petitioner was rightly rejected at this information was collected for test

check purposes only so as to prove that the accounts maintained by the petitioner and produced before the assessing authority were fictitious. As

already submitted, the petitioner has avoided to furnish the details of supply orders and the bills against which payments have been received, so the

impugned orders of the above mentioned years were set-aside.

Though in the reply filed, it is stated that some books of accounts were produced but the dealer has failed to produce the relevant books and

supply orders. Even this allegation has been denied in the rejoinder.

17. In view of the conflicting stand of the parties and the averments made in the reply that petitioner was allowed various opportunities to produce the bills, respondents were directed to produce the record namely; proceedings initiated by the Commissioner, which resulted in passing of the impugned order. Even after a lapse of considerable time, respondents failed to produce the record to enable this Court to examine as to whether the statement made in the reply that petitioner was afforded number of opportunities to produce the record, is evident from proceedings before the revisional authority. Normally this Court should give credence to the official version on this fact, but I am constrained to verify the averment in the reply because the revisional authority chose not to file the reply. Since the revisional authority has failed to produce the record, it is not possible to test the veracity of the reply. There is another aspect of the matter that impugned order has been passed by respondent-2(Revisional Authority), who alone is entitled to defend his order and admit or deny the factual averments made therein in the light of allegations of petitioner. However, the reply has been filed by respondent-3, who was neither in possession of record nor is the authority passing the impugned order, therefore, reply filed by respondent-3, cannot be taken into consideration much-less to refute the allegations contained in the writ petition relating to proceedings before Respondent-2.

18. The allegations in the writ petition are made against the revisional authority, but the revisional authority has not filed the reply in this Court and on the other hand, the assessing authority, whose order was subject matter of challenge before the revisional authority, has filed its reply justifying the action of the revisional authority. How can the assessing authority represent the revisional authority and admit or deny the allegations made in the writ petition, is not understandable. It is also pertinent to notice that the assessing authority has not stated that he is in possession of record of the revisional authority or that he was present at the time of proceedings before the revisional authority and the reply has been made on the basis of record of the revisional authority. Counter affidavit has been filed by one Romesh Chander, Excise and Taxation Officer, Sales Tax Centre-B, Jammu. The one paragraph affidavit reads as under:
That I have gone through the contents made in the accompanying objections/

statement of facts and the same have been found true and correct on the basis of record. The same has been prepared under my instructions and nothing has been concealed therein. The legal submission are believed to be true and correct as per the legal advice sought.

19. A Constitution Bench of the Apex Court in case C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, while

dealing with the question of reply to be filed by an authority against whom the allegations are made, held as under:

It is, no doubt, true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency

has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several of

the cases which have come up before this and other courts and it is found that they have been made merely with a view to cause prejudice or in the

hope that whether they have basis in fact or not some of it at least might stick. Consequently, it has become the duty of the court to scrutinize these

allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is

thus cast on the courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made

came forward to place before the court either their denials or their version of the matter, so that the court may be in a position to judge as to

whether the onus that lies upon those who make allegations of mala fides on the part of authorities of the status of those with which this appeal is

concerned, have discharged their burden of proving it. In the absence of such affidavits or of materials of record placed before the court by these

authorities, the court is left to judge of the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer.

This is precisely the situation in which we find ourselves in the present case.

20. I believe that it was obligatory upon the revisional authority to file reply, as the entire writ petition has been directed against its order/action

including specific allegation of production of record before it and its non-consideration. The assessing authority unless privy to the proceedings of

the revisional authority, is not competent to admit or deny the allegations particularly in regard to the proceedings before the revisional authority

and nothing has been said in the affidavit as to under what circumstances, the assessing authority can make statement in respect to the record of its

higher authority. Therefore, the allegations made in the writ petition, cannot be said to be effectively denied by respondents, particularly in regard to

production and examination/scrutiny of the record.

21. It is further stated that respondent-2 has based his order solely on the report of Audit Party and without due application of mind, he has acted

as a Post Office. Regarding the powers and functions of the Audit Party, Mr. Gupta learned Counsel for petitioner has referred to Indian and

Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , wherein it is held:

In the present case, an internal audit party of the Income Tax department expressed the view that the receipts from the occupations of the

conference hall and rooms did not attract Section 10 of the Act and that the assessment should have been made u/s 9. While Sections 9 and 10

can be described as law, the opinion of the audit party in regard to their application is not law. It is not a declaration by a body authorized to

declare the law. That part alone of the note of an audit party which mentions the law which escaped the notice of the ITO constitutes "information

within the meaning of Section 147(b); the part which embodies the opinion of the audit party in regard to the application or interpretation of the law

cannot be taken into account by the ITO. In every case, the ITO must determine for himself what is the effect and consequence of the law

mentioned in the audit note and whether in consequence of the law which has now come to his notice he can reasonably believe that income has

escaped assessment. The basis of his belief must be the law of which he has now become aware. The opinion rendered by the audit party in regard

to the law cannot, for the purpose of such belief, add to or colour the significance of such law. In short, the true evaluation of the law in its bearing

on the assessment must be made directly and solely by the ITO.

Therefore, whether considered on the basis that the nature and scope of the functions of the internal audit organization of the Income Tax

department are co-extensive with that of the Receipt Audit or on the basis of the provisions specifically detailing its functions in the Internal Audit

Manual, we hold that the opinion of an internal audit party of the Income Tax

department on a point of law cannot be regarded as "information within the meaning of Section 147(b) of I.T. Act, 1961.

22. It is lastly contended on behalf of petitioner that the revisional authority also fell in error in directing re-assessment of all the assessments based upon three or four bills without ascertaining the transaction involved in the total turnover. According to Mr. M.M. Gupta, the revisional authority if was of the opinion that the sales made through the bills annexed by it as reported by the audit party involved sale of the goods as one composite unit for which tax has been charged @ 8%, it should have asked the assessing authority to charge the tax only on the sales involved in those bills and not on the entire turnover, as such, sales can be easily dissected from other sales. What is sought to be canvassed is that, it is not one composite sale which is involved in the entire turnover but different transactions of sale and each transaction can be separated based upon the documents. The Apex Court in *State of Jammu and Kashmir and Others Vs. Caltex India (Ltd.)*, held as under:

When an assessment is not for an entire sum, but for separate sums dissected and earmarked each of them to a separate assessable item, a court can sever the items and cut off one or more along with the sum attributed to it, while affirming the residue. But where the assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, and when one component (not dismissible as "de minimis") is on any view not assessable and wrongly included it would seem clear that such a procedure is barred, and the assessment is bad wholly.

But the principle has no application in the present case because the sales tax is imposed, in ultimate analysis, on receipt from individual sales or purchases of goods effected during the entire period and it is possible to separate the assessment of the receipts derived from the sales for the period from January 1, 1955 to September 6, 1955 and to allow the taxing authorities to enforce the statute with respect to the sales taking place in this period and also prevent them by grant of a writ from imposing the tax with regard to the sales for the exempted period. In other words, the assessment for the period from January 1, 1955 to September 6, 1955 can be separated and dissected from the assessment of the rest of the period and the High Court was in error in holding that the assessment for the

entire period was invalid in toto.

23. Question arises whether the entire turnover should be assessed @ 8% on the basis of certain bills showing charge of tax at this rate on the

sales carried through these bills. It is not in dispute that total turnover for any particular accounting year include a number of transactions of

sale/purchase. What is the position of other transactions in that particular year has not been established on the basis of any record. The revisional

authority has presumed and assumed that other transactions must be of the similar nature on account of the alleged non-production of record by

assessee (petitioner). Whereas petitioner claims, it has produced the record. In any event, there is no factual finding on this. Revisional authority

assuming that the assessee has charged tax @ 8% on all its transactions for the years 1990-91 to 1996-97, issued directions to Assessing

Authority to assess the turnover @ 8% leaving no room for the Assessing Authority to verify the fact from record or allowing an opportunity to

petitioner to establish this fact before the respondent-3.

24. No doubt, if the assessee has charged tax @ 8%, it is liable to deposit the same in the teeth of Section 8-B of General Sales Tax Act,

however, without establishing the same, no liability can be fastened as it is a question of fact to be ascertained and established and cannot be

assumed or presumed.

25. Even it is accepted that petitioner has charged tax @ 8% on some bills, same can be segregated from other transactions of sale constituting

total turnover in the relevant year

26. It is further stated that the reasons in the impugned order have been supplemented in the counter to justify the same by new facts and reasons,

which is impermissible in law. This is settled preposition of law. However, I need not go into this aspect of the matter, since on other questions

discussed hereinabove, I am of the considered opinion that the impugned order is not sustainable in law.

27. In view of the totality of the circumstances and the legal position stated above, impugned order passed by the respondent-2 dated 14.12.2000

is not sustainable and is liable to be quash. I order accordingly. As a result of quashment of the impugned order, the consequential notices issued

by the Assessing Authority based upon the impugned order are also liable to be

quashed. The case is remanded back to the revisional authority with the direction to provide sufficient opportunity to the petitioner to produce the record and make submission. The revisional authority shall re-examine the matter in the light of observations made hereinabove and pass fresh order after examining the record that may be produced by petitioner for which the revisional authority shall provide sufficient opportunity.