

(1962) 06 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 114 of 1961

Daluram Pannalal

APPELLANT

Vs

Assistant Com. Sales Tax

RESPONDENT

Date of Decision : 05-06-1962

Acts Referred:

Madhya Bharat Sales Tax Act, 1950 — Section 14(1)(c)
Madhya Pradesh General Sales Tax Act, 1958 — Section 19

Citation : (1962) JLI 716

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : N.C. Chatterjee, R.S. Dabir, K.A. Chitale, I.L. Vyas and V.S Dabir, for the Appellant; M. Abhikari, Advocate General, H.L. Khaskalam, Govt. Advocate and R.J. Bhavne Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—This is an application under articles 226 and 227 of the Constitution for the issue of a writ of certiorari for quashing an order made by the Assistant Commissioner of Sales tax, Indore region, on 31st March 1961 consequent to a notice u/s 19 of the Madhya Pradesh General Sales tax Act, 1958, for "escaped assessment" assessing the Petitioner to sales-tax in the sum of Rs. 31,260 and imposing on him a penalty of Rs. 15,000 u/s 14(1)(c) of the Madhya Bharat Sales Tax Act, 1950.

2. The material facts are that the Petitioner Daluram Modi was a registered dealer under the Madhya Bharat Sales Tax, Act, 1950, doing the business of selling sugar and other commodities at Ratlam. He was also registered as a dealer under the M. P. General Sales Tax Act, 1958, when that Act came into force. For the year 1957-58 his taxable turnover was determined at Rs. 5,27,230 and he was accordingly assessed to tax on 20th January 1959 under the M.B. Sales Tax Act by the Sales Tax Officer, Ratlam. In January 1959 a firm doing the business of selling sugar under the name and style of "Gajanand Satyanarayan"

was assessed to tax and penalty amounting to Rs. 18,543/12/0 for the year 1957-78, On this firm a tax and penalty of Rs. 8,926/14/0 had also been imposed for the previous year 1956-57. These assessments were best judgment assessment. In fact in the assessment proceedings the firm Gajanand Satyanarayan was not found to be registered as a dealer. The notice of assessment proceedings could not be served on the said dealer and, therefore, the service of notice was effected by affixing a copy thereof on a building where the said firm was supposed to be doing its business. In the recovery proceedings the sales tax authorities were unable to trace this firm and recover any amount of tax or penalty imposed on Gajanand Satyanarayan. Subsequently on receiving information that the Petitioner Daluram Modi was himself doing the business of importing and selling sugar under the fictitious name of Gajanand Satyanarayan, the sales-tax authorities started enquiries and learnt that the applicant imported sugar at Ratlam in the name of "Gajanand Satyanarayan" and distributed and sold the sugar so imported to various persons in his own name and did not enter the sales in his account books and include them in the returns he had filed in the name of Daluram Pannalal Modi, a registered dealer. By doing the business of importing and selling sugar in this manner the Petitioner evaded the payment of sales tax. A notice u/s 19(1) of the M.P. General Sales Tax Act, 1958, was, therefore, issued on 13th February 1960 by the Sales-Tax Officer, Ratlam. In response to this notice, the applicant appeared before the Sales Tax Officer, Ratlam, and asked for information on the basis of which the said notice was issued to him. The information was supplied to him and he was informed by the Sales Tax Officer that the case against him was that he had traded under other names including the name "Gajanand Satyanarayan" and had evaded the payment of sales tax. During the course of the enquiry by the Sales Tax Officer, Ratlam, the applicant filed his reply denying the allegation that he had imported sugar under the name of Gajanand Satyanarayan and sold it subsequent to various persons at different places in his own name. The re-assessment proceedings were, however, transferred to the Regional Assistant Sales Tax Commissioner on 18th March 1960 as the turnover of the Petitioner seemed to exceed Rs. 15 lakhs. On 2nd January 1961 another notice for re-assessment was issued to the applicant by the Regional Assistant Commissioner u/s 19(1) of the M. P. General Sales-Tax Act, 1958, and for penalty u/s 14(1)(c) of the M.B. Sales Tax Act, 1950. Ultimately the impugned assessment order was made on 31st March 1961.

3. Before stating the contentions put forward on behalf of the Petitioner against the validity of the assessment, it is necessary to refer to the material provisions of the M. P. General Sales Tax Act, 1958, and of the rules thereunder. Section 19, so far as it is material here, is as follow:

19 (1). Where an assessment has been made under this Act and the Commissioner, in consequence of any information, which has come into his possession, is satisfied that any sale or purchase of goods, chargeable to tax under this Act, during any year has been under-assessed or has escaped

assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may at any time within five calendar years from the expiry of such year, after giving the dealer a reasonable opportunity of being heard and after making such inquiry, as he considers necessary, proceed in such manner as may be prescribed, to re-assess the tax payable on such sale or purchase and the Commissioner may direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding that amount.

Provided that in the case of an assessment made under any Act, repealed by Section 52, the period for re-assessment on the ground of under assessment, escapement or wrong deduction shall be as provided in such Act, notwithstanding the repeal thereof.

... ..

Rule 33 of the M.P. General Sales Tax Rules, 1959, inter alia prescribes that where the sale or purchase of goods by a dealer during any period has been under assessed or has escaped assessment within the meaning of Section 19(1) of the Act of 1958, then the assessing authority shall serve on the dealer a notice in form XVI specifying the default, escapement or concealment, as the case may be, and calling upon him to show cause by the fixed date why he should not be assessed or re-assessed to tax and or asked to pay penalty. Section 30 of the Act deals with the delegation of Commissioner's powers and duties. It provides that:

Subject to the provisions of this Act and to such restrictions and conditions, as may be prescribed, the Commissioner may, by order in writing delegate any of his powers and duties under this Act, except those u/s 39 and Sub-section (2) of Section 46 to any person, appointed u/s 3 to assist him.

Rule 68 of the aforesaid Rules says:

68. The Commissioner shall not delegate any powers other than those enumerated below in respect of the sections mentioned in column (2) of the Table below, nor shall he delegate any power thereunder specified in column (3) of the said Table to any officer below the rank or contrary to the conditions specified and mentioned in the corresponding entry in column (4) thereof:

Serial No.

Section

Description of powers

Designation of Officer and conditions of delegation.

(1)

(2)

(3)

(4)

7

18.19 and 22

To make an assessment or reassessment of tax or penalty, or to fix a date for payment, or to extend the date for payment of such tax or penalty, or to allow the payment of tax or penalty by instalments and to exercise all other powers under Sections 18, 19 and 22: - (1) In respect of any dealer other than dealer having no place of business in Madhya Pradesh.

Assistant Commissioner."

On 1st April 1959 an order was made by the Sales Tax Commissioner (Annexure XVI to the return) u/s 30 of the Act read with Rule 68 delegating his powers and duties specified in column (3) of the above table to the Assistant Commissioner.

4. It was argued by Shri Chatterjee, learned Counsel appearing for the Petitioner, that the issue of a notice u/s 19(1) read with Rule 33 was a condition precedent to the validity of any assessment on a turnover which had escaped assessment; that it was the Commissioner alone and no other authority who had the right to initiate action u/s 19 after satisfying himself that any Sale or purchase of goods chargeable to tax during any year had been under assessed or had escaped assessment or had been assessed at a lower rate; that Section 19(1) conferred on the Commissioner the power to make an order of re-assessment and also imposed on him the duty of being satisfied about the necessity of the order that while the power of making an order of re-assessment u/s 19 could be delegated, the function of being satisfied about any turnover escaping assessment was a duty laid on the Commissioner himself and could not be delegated to any officer; that in the present case the notice u/s 19 was not issued after the Commissioner had satisfied himself about the necessity of an order u/s 19 but was based on the satisfaction of the Assistant Commissioner; and that, therefore, the notice issued u/s 19 by the Assistant Commissioner was without jurisdiction. Learned Counsel proceeded to say that u/s 30 the delegation of the Commissioner's powers and duties was "Subject to the provision of this Act" and to the restrictions and conditions imposed by and under the Act; that Section 19(1) did not itself permit the delegation of the duty imposed on the Commissioner by that provision of "satisfying" himself; that this duty could not be delegated to an Assistant Commissioner u/s 30 read with Rule 68; and that under Rule 68 and the order dated the 1st April 1959 of the Commissioner there was in fact no delegation of this duty of the Commissioner to the Assistant Commissioner. He further submitted that this was not a case of any turnover escaping assessment within the meaning of Section 19(1) and that Section 19(1) had no applicability whatsoever. The argument was that the turnover for which the Petitioner was sought to be charged u/s 19(1) had already been included and charged in the assessment of Gajanand Satyanarayan; that therefore it did not escape from assessment; that the fact that Gajanand Satyanarayan and the Petitioner were

one and the same could not afford any justification for invoking the power u/s 19(1); and that the Department could not resort to Section 19(1) merely because the amount of tax and penalty imposed on Gajanand Satyanarayan could not be recovered. In regard to the notice issued by the Assistant Commissioner u/s 19(1), it was said that it was not in accordance with law in that it was issued in the prescribed form without scoring out unnecessary words and it stated that the Petitioner's sale during the material year "has been under-assessed has escaped assessment"; and that thus the notice was vague and gave no indication of the case the Petitioner had to meet. Learned Counsel also assailed the merits of the best judgment assessment by saying that it was capricious and arbitrary and in making that assessment the Assistant Commissioner did not exercise any judgment. Relying on *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, *Kensington Income Tax Commissioners v. Aramavo* 1916 AC 1 215, and the statement of law in *Halsbury's Laws of England* (third Edn., vol. 11) in paragraph 215 at page 116, learned Counsel urged that this was a case in which the Petitioner was entitled as of right to a writ of certiorari for quashing the assessment and to a writ of prohibition for preventing the sales tax authorities from acting without jurisdiction.

5. We are unable to accede to the contentions of the learned Counsel for the Petitioner. There is no dispute that the issue of a notice is a condition precedent to the validity of an assessment u/s 19. A notice u/s 19 read with Rule 33 was issued to the Petitioner on 31st December 1960 by the Assistant Commissioner of Sales Tax and that notice contained the recital-

I am satisfied that your sale during the period from 1-4-57 to 31-3-58 has been under-assessed/has escaped assessment...

This is not disputed. The argument for the Petitioner that the notice was not valid inasmuch as it was not founded on the "satisfaction" of the Commissioner himself and the function of being satisfied was a personal duty of the Commissioner which could not be delegated is untenable. As pointed by the learned Advocate-General appearing for the Respondent State, the striking and cardinal feature of the Act is that all powers under the Act are given primarily to the Commissioner. The other officers appointed u/s 3 to assist the Commissioner derive their power to function under the Act only from the Commissioner when it is delegated to them. It is inherently impossible for the Commissioner to function as the assessing authority for all assesses in the State. The Legislature, therefore, thought it necessary to appoint the officers mentioned in Section 3 to assist him and to confer on the Commissioner wide powers to delegate so that any of the officers appointed to assist him could exercise and discharge all those powers and duties which he himself could have exercised and discharged as the assessing authority. The rules make this position very clear. Rule 3 (c) defines "assessing authority" as the person to whom the Commissioner has delegated all or any of his powers of assessment and imposition of penalty or levy of fee under

the Act. Rule 33 lays down that in the cases enumerated therein "the assessing authority shall serve on the dealer a notice in form XVI specifying the default, escapement or concealment, as the case may be." The authority to delegate is to be found in Section 30. That provision says that "the Commissioner may by order in writing delegate any of his powers and duties under this Act" and thus expressly gives to the Commissioner the authority to delegate not only any of his powers but duties also. The delegation is no doubt "subject to the provisions of this Act" and to such restrictions and conditions as may be prescribed. But that only means that the delegation can be effected only in conformity with the provisions of the Act and on the observance of (the restrictions and conditions which are imposed by or under the Act. Rule 68 puts some restrictions and conditions with regard to the delegation of powers. But it does not fetter the discretion of the Commissioner in the matter of delegation of his duties under the Act. No doubt if any provision in the Act itself expressly or impliedly prohibits the delegation of a duty conferred by the Act on the Commissioner, then that duty cannot be delegated to any of the officers appointed u/s 3 to assist the Commissioner. The question whether u/s 19(1) the power to make an assessment is quite distinct from the duty of being satisfied with regard to any turnover escaping assessment before proceeding to make a re-assessment and whether Section 19 prohibits the delegation of that duty will be examined shortly. Here it is sufficient to say that assuming that the duty of being satisfied is not a part of the power to make an assessment but is a function distinct from it, the Commissioner has the power to delegate that duty u/s 30, and Rule 68 does not put any restriction on the delegation of that duty.

6. In the order which the Commissioner of Sales Tax passed on 1st April 1959 the delegation of powers and duties is with reference to those specified in column 3 of the table appended to the order. It is true that this column does not specify the duty of the Commissioner u/s 19 delegated to the Assistant Commissioner. If that had been done, the argument drawing a distinction between the delegation of powers and duties would not have been even available to the Petitioner. However, even without this specification about the delegation of any duty the order of the Commissioner dated the 1st April 1959 is a valid order inter alia delegating to the Assistant Commissioner the power to make an order of reassessment on satisfying himself about any turnover escaping assessment.

7. The argument of the learned Counsel for the Petitioner that u/s 19(1) the satisfaction must be of the Commissioner himself and that whereas the Commissioner could delegate the power to make an order of re-assessment, he could not delegate his duty of "satisfying" himself, has no basis in the language of Section 19(1). There are no words in Section 19(1) saying that where the Commissioner himself is satisfied that any sale or purchase of goods chargeable to tax under the Act during any year has escaped assessment, the Commissioner on being so satisfied may either himself proceed to reasons or may direct any of the persons appointed to assist him to make the reassessment. The acceptance of the contention of the learned Counsel involves reading into Section 19(1)

words which are not there any words which as a matter of construction cannot be read into the provision. On the straightforward language of the provision, it is plain that the requirement of being satisfied about any turnover escaping assessment is not a separate duty severable from the exercise of the power to make an assessment. That requirement is merely a limitation on the power of making an order of re-assessment. It is an obligation to be discharged by the person having the power to make an assessment in the course of exercising that power. The exercise of the power to make a reassessment u/s 19(1) is subject to and dependant upon the satisfaction being previously reached. The function of being satisfied and the making of an order of reassessment are not separate and distinct attributes; but the former is an integral part of the latter. Whoever exercise the power to make an order of reassessment u/s 19(1) must first be satisfied that any turnover has escaped assessment. Section 19 (1) does not impose on the Commissioner any duty which can be commanded to be performed by the issue of a writ of mandamus. It does not even confer on the Commissioner a power with a duty to exercise it which he can be compelled to perform on the basis of *Julius v. Lord Bishop of Oxford* (1880) 5 A. C. 214. All that it does is to confer on the Commissioner, the discretionary power to make a reassessment subject to the condition or limitation of previously satisfying himself that any turnover has escaped assessment. The duty of being satisfied and the making of an order of reassessment being thus inextricably interwoven, it is not possible to separate them so as to retain the duty of being satisfied with the Commissioner and give the power to make an order of reassessment to another person. If there is a delegation of the Commissioner's power to make a reassessment u/s 19(1), that delegation carries with it the duty of being satisfied. The Act here authorises a delegation of the power to make reassessment u/s 19 There was in fact delegation of that power by the Commissioner to the Assistant Commissioner in conformity with the provisions of the Act and the restrictions placed by Rule 68. The delegation to the Assistant Commissioner of the power u/s 19 ""to make an assessment or reassessment of tax or penalty... and to exercise all other powers u/s 19" fully and validly conferred on the Assistant Commissioner the power to make an order of reassessment u/s 19 after satisfying himself about the escapement of any turnover.

8. Learned Advocate General appearing for the State referred us to *Mungoni v. Attorney General* (1960) A.C. 336, in support of his contention that the power and duty u/s 19 not being separate and severable the Commissioner could not delegate that power retaining in himself the function of being satisfied and the delegation of that power also involved the delegation of the condition precedent, namely, the duty of being satisfied, to the exercise of that power. In that case, the Privy Council considered the validity of the delegation by the Governor of Northern Rhodesia of the power to make an order of detention under regulation 16 of the Emergency Powers Regulations, 1956, of Northern Rhodesia. By regulation 16 the Governor was given the power of making an order of detention

whenever he was satisfied that it was necessary to do so for the purpose of maintaining public order. Another regulation authorised the Governor to delegate to any power all or any of the powers conferred on him by those regulations. The Governor delegated to the Provincial Commissioner the power to make an order of detention under regulation 16. In exercise of this power the Commissioner made an order detaining Mungoni for the purpose of maintaining public order. Before the Privy Council it was urged that the detention order was invalid as it was the duty of the Governor himself to be satisfied that it was necessary to exercise control over the detainee, that this was his personal duty which could not be delegated to the Provincial Commissioner, and that the Governor had not himself performed that duty. While rejecting this contention, the Privy Council said -

The power and the duty under regulation 16(1) are so interwoven that it is not possible to split the one from the other- so as to put the duty on one person and the power in another. Whosoever exercises the power, he, it must be who has to carry out the duty. It seems clear to their Lordships that, if the Governor has any authority at all to delegate his functions under regulation 16 (1), he must be able to delegate both the power and duty together to one and the same person. He cannot delegate the power to another and keep the duty to himself.

As stated by the Supreme Court in *Hazrat Syed Shah Mastershid Ali Al Quadari Vs. The Commissioner of Wakfs, West Bengal*, the Privy Council decision is an authority for the proposition that where power and duties are interconnected and it is not possible to separate one from the other in such wise that powers may be delegated while duties are retained and vice versa, the delegation of powers takes with it the duties. The question whether the power and duties conferred on an authority by a provision are distinct and separable or whether they are so interwoven that it is not possible to separate one from the other, will of course depend on the language of the provision. But where the language clearly shows that the duty is an integral part of the power, then in the delegation of that power the principle laid down by the Privy Council will fully apply. It was on this principle that the Full Bench in *J.N.B. Jaiswal v. Collector. Damoh* 1962 JLR 533 held that the delegation to the Collectors u/s 14 of the C.P. and Berar Accommodation (Requisition) Act, 1948, of the power to requisition any property included the delegation of the power to form an opinion as to the necessity for the requisition. The applicability of the principle is also illustrated by the decisions in *Balihari Colliery Co. Ltd. Vs. Commercial Tax Officer and Another*, *Shri Shew Sakti Oil Mills v. Member, Board of Revenue. West Bengal* ILR (1949) 2 Cal. 347, *H.C. Gupta v. Mackertich John* JLR (1945) 2 Cal. 604, *Kewalram v. The Collector of Madras* ILR 1944 Mad. 826, and *Jagwant Kaur Kesarsing Dang and Others Vs. The State of Bombay*. The question that was considered in *Balihari Colliery Co. Ltd. Vs. Commercial Tax Officer and Another*, related to the validity of delegation by the Commissioner to the Commercial Tax Officer of all the powers u/s 11(2) of the Bengal Finance (Sales Tax) Act, 1941. That provision gave to the Commissioner the power to make an assessment to the best of his

judgment on a dealer if on information that has come into his possession he is satisfied that any dealer(sic), who has been liable to pay tax under the Act in respect of any period has failed to get himself registered. As in the present case it was contended before the Calcutta High Court that it was the Commissioner who had to be satisfied and this satisfaction was subjective and could not be delegated. The Calcutta High Court held that the power which had been delegated to the Commercial Tax Officer the power to assess in the manner set out therein and that power attracted the duty of being satisfied which was a condition precedent to the exercise of that power and further that it was impossible to separate this duty from that power. The other Calcutta case, namely, *Shree Shew Sakti Oil Mills v. Member, Board of Revenue, West Bengal* (supra), dealt with the delegation of the power of the Commissioner u/s 11(1) of the Bengal Finance (Sales tax) Act, 1941 to make a best assessment judgment on a dealer when the Commissioner was not satisfied that the returns furnished by the dealer were correct and complete. There also it was contended that the Act only authorised the Commissioner to delegate his powers and not his duties. It was held that the duty of being satisfied was not severable from the exercise of the power to make an assessment. In *H.C. Gupta v. Machertich John* ILR 1946 (2) Cal. 604, and *Kewalram v. The Collector of Madras* ILR 1944 Mad. 826, the validity of the delegation of the power to requisition property under Rule 75 A of the Defence of India Rules, 1939, was unsuccessfully questioned on similar grounds. The Bombay case, namely, *Jagwant Kaur v. The State of Bombay* ILR 1953 Bom. 64(sic), was with regard to the validity of delegation to the Collector of the power to requisition land under the Bombay Land Requisition Act, 1948(sic). It was said against the validity of the delegation that the Government's power to make an order requisitioning land could be delegated to the Collector but the duty of the Government to form an opinion as to whether the requisition was necessary and expedient could not be delegated to the Collector. The contention was found to be untenable by Chagla C. J., who observed-

In our opinion that is not a tenable contention because before the power can be exercised u/s 5 the condition precedent to the exercise of that power must be satisfied, and the condition precedent is that in the opinion of the State Government it is necessary or expedient to requisition the property. Therefore, a duty is cast upon the State to satisfy the condition precedent before it exercises the power conferred upon it, and not only the power can be delegated but also the duty which is attached to the exercise of the power, and, therefore, when the Collector forms an opinion u/s 5, he is discharging a duty and is carrying out the condition precedent laid down in Section 5.

9. The Petitioner's further submission about the inapplicability of Section 19 is also difficult of acceptance. It was said that the sale transactions in respect of which the applicant has now been assessed had already been included in the assessment of Gajanand Satyanarayana and consequently there was no "escaped assessment". The argument ignores the true nature of an assessment under the

Act and of the meaning of "escaped assessment" for the purposes of Section 19. u/s 4, every dealer is liable to pay tax under the Act on his turnover in respect of the sales or supplies of goods during the prescribed period of twelve months if the turnover exceeds the specified limits. A dealer who is required to get himself registered u/s 15(1) has to make an application in form III prescribed by the rules. In the application for registration the dealer has to state all the places of his business. These are details which are required to be stated. Under Rule 15 a registered dealer having more than one place of business in the State is required to submit a consolidated return in form VIII for all the places of his business in the State including his principal place of business and also a return in the same form separately for each of his places of business. The assessment under the Act is, therefore, on the dealer's turnover at all the places of business, no matter under what name the business is carried on. Now, for the applicability for Section 19 the essential requisites are that there must be first an assessment on a dealer under the Act and secondly the Commissioner must be satisfied that any sale or purchase of goods chargeable to tax under the Act during the year of assessment has escaped assessment, or has been under-assessed or assessed at a lower rate. Thus the escapement of assessment is in relation to a dealer and not with reference to the fact whether a particular transaction has or has not been subjected to tax somewhere. A turnover is said to have escaped assessment within the meaning of Section 19 when it has not been assessed in the assessment under consideration, that is to say, in the assessment of a particular Assessee in a particular assessment year. It is wholly immaterial whether the turnover was assessed in some other assessments. The reassessment u/s 19 is nothing but a revision of a particular assessment of a particular dealer. That being so, if the turnover in respect of which Gajanand Satyanarayan was assessed was really of the Petitioner and if it was not included in the Petitioner's assessment for the year concerned, then there would be escaped assessment within the meaning of Section 19. It is noteworthy that the assessments made on Gajanand Satyanarayan were quashed by the Commissioner of Sales Tax when it became known that it was the Petitioner who imported sugar in the assumed name of Gajanand Satyanarayan and later on distributed and sold it. It was suggested that the assessment of the Petitioner and Gajanand Satyanarayan had become final and could not be revoked. The short answer to this contention is that Section 19 expressly permits reopening of an assessment and of making a fresh assessment in the Circumstances detailed in that section.

10. The point about the notice actually issued to the Petitioner by the assistant Commissioner on 31st December 1960 being defective and not in accordance with law can be disposed of briefly. The notice began by stating "whereas I am satisfied that your sale during the period from 1-4-57 to 31-3-58 has been under assessed/has escaped assessment and thereby rendered yourself liable to be re-assessed... " It was said that unnecessary words in the notice were not scored out and the notice did not give any indication to the application as to whether the sales mentioned in the notice had been under-assessed or had, escaped

assessment. There is no substance in this contention. It is abundantly clear from the record that the applicant gave a reply to this notice and had no difficulty in understanding the case he had to meet. That being so, the omission to score out unnecessary words in the notice does not render it invalid. In this connection it would be pertinent to refer to the decision of the Supreme Court in *The State of Orissa and Another Vs. Chakobhai Ghelabhai and Company*, where the failure on the part of the assessing authority to score out unnecessary words in a notice issued in form VI, u/s 12(5) of the Orissa Sales Tax Act, 1947, was not regarded as making the notice bad in law. The Supreme Court said that despite this failure the assessee in that case sent a reply to the notice and had no difficulty in understanding that the notice was one u/s 12(5) of the Act.

11. The challenge to the reassessment u/s 19 on the ground that the Assistant Commissioner had no jurisdiction to make it must, therefore, fail. In this view of the matter, it is unnecessary to consider the cases which the learned Counsel for the Petitioner cited to support the contention that the applicant was entitled as of right to the issue of a writ of certiorari and a writ of prohibition. The merits of the best assessment judgment cannot be considered in these proceedings. An assessment u/s 19 is appealable u/s 38 and the Petitioner should have canvassed the merits of the assessment by filing an appeal before the competent authority.

12. For the foregoing reasons, this petition is dismissed with costs. The applicant shall pay the costs of the opponents. Counsel's fee is fixed at Rs. 200/-. The outstanding amount of security deposit after deduction of costs shall be refunded to the Petitioner.