
(2008) 04 GAU CK 0040
In the Gauhati High Court

Dhanani Shoes Ltd. and Another	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Constitution of India, 1950 — Article 22, 226

Citation : (2008) 14 VST 422

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—The petitioner No. 1, namely, M/s. Dhanani Shoes Ltd., is a company registered under the Companies Act, 1956. The petitioner-company is registered both under the Central Sales Tax Act, 1956, as well as the Assam Value Added Tax Act, 2003 (in short, "the Act"). The petitioner-company deals in plastic and leather footwear, sports goods, ready-made garments and allied business. The petitioner-company is distributor, in the entire North-Eastern India, of some classified products, namely, Liberty, Action, Hotshot, Woodland, Levis, Lakhani, etc. The petitioner No. 2, accounts officer of the petitioner-company, is the authorised signatory of the company. The petitioner-company is engaged in the business of stocking and selling, in wholesale as well as retail, of different varieties of shoes. On February 6, 2008, respondent No. 4, namely, Inspector of Tax, Unit B, Guwahati, came to inspect the petitioner-company's godown at Dhirenpara, Guwahati, and served, on the petitioner-company, a notice, dated February 6, 2008 issued u/s 74(1) of the Act and demanded that the petitioner-company shall produce or cause to be produced all necessary documents related to the books of account, on February 6, 2008 itself, in order to ascertain the taxes payable by the petitioner-company. Respondent No. 4 also seized, vide two seizure lists, stock of goods, documents, stock register, other registers and books relating to the business of the petitioner-company. At the time of the said seizure, the petitioner-company had, in their stock, both plastic as well as leather goods. While the plastic goods are taxable at the rate of four per cent of their value, the leather goods are taxable at the rate of 12 per cent.

2. By making this writ application, under Article 226 of the Constitution of India, the petitioners have impugned the said notice and also seizures of the books of account and goods by respondent No. 4 on the ground, inter alia, that the notice aforementioned as well as seizures of the goods and also of the books of account were without the authority of law and, hence, without jurisdiction.

3. When the writ petition was taken up for motion hearing, it was submitted, on behalf of the respondents, that the writ petition be taken up for final disposal at the motion stage itself. To the submissions so made, no objection was raised on behalf of the petitioners. This writ petition has accordingly been heard for final disposal at the motion stage itself.

4. I have heard Mr. P.K. Goswami, learned Senior Counsel, for the petitioners, and Mr. D. Saikia, learned Counsel, appearing on behalf of the respondents.

5. While considering the present writ petition, it needs to be pointed out that though the notice, dated February 6, 2008, served on the petitioners demanding production of the cash book, register, etc., has been impugned in this writ petition, no specific argument has been advanced, on behalf of the petitioners, assailing the service of the said notice issued u/s 74(1) of the Act. This apart, it is not in dispute that respondent No. 4 does have the power to direct production of cash book, register, etc. In such circumstances, the notice for production of cash book, register, etc., served on the petitioner-company, cannot be said to be without jurisdiction and/or illegal.

6. The petitioners have, however, seriously assailed the seizure of the various documents including the books of account, register, etc., and also seizure of the goods.

7. Appearing on behalf of the petitioners, Mr. Goswami, pointing out to the provisions of Section 74(3)(a) of the Act, has submitted that under Sub-section (3)(a) of Section 74, the sine qua non for exercise of power of seizure of books of account is that the authority concerned must have reason to believe that the dealer has evaded or attempted to evade any tax liable to be paid and is keeping or has kept his accounts in such a manner as is likely to cause evasion of tax

8. In the present case, according to Mr. Goswami, there was no material available with the respondents enabling them to seize the books of account and other documents

9. Assailing the seizure of the goods, Mr. Goswami has contended that J under Sub-section (5)(a)(ii) of Section 74, the power of seizure is exercisable only when the authority concerned has reason to believe that though the goods belong to the dealer, the same have not been accounted for by the dealer in his accounts or registers or other documents maintained in the ordinary course of his business. In the present case, submits Mr. Goswami, a careful reading of the relevant seizure list does not show that the goods, found lying in the godown of the petitioners, had not been accounted for. Thus, the condition precedent,

according to Mr. Goswami, for invoking the provisions of Sub-section (5)(a)(ii) of Section 74 did not exist in the present case and, hence, in such circumstances, the exercise of power of seizure of the goods, in question, was without the authority of law and needs to be regarded as arbitrary and without jurisdiction.

10. Controverting the above submissions, made on behalf of the petitioners, Mr. Saikia has raised two preliminary objections to the maintainability of the writ petition. In this regard, Mr. Saikia submits that though no provision for appeal has been made in the Act against seizure of books of account, etc., and also as regard seizure of stock of goods, Section 82 of the Act does make provisions for revision against such seizure. Since the seizures, made in the present case, are, according to Mr. Saikia, subject to the power of revision u/s 82, there is an alternative and efficacious remedy available to the petitioners and, hence, in such circumstances, writ jurisdiction has been wrongly sought to be invoked by the petitioners. Support for these submissions is sought to be derived by Mr. Saikia from the cases of *State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another*, *Union of India (UOI) Vs. Hindalco Industries*, and *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, .

11. It is also submitted by Mr. Saikia that a proceeding for making assessment of the tax, which the petitioners evaded, has already commenced and, in this proceeding, the petitioners' representatives have already appeared, but this fact has not been mentioned in the writ petition. Thus, the writ petition, according to Mr. Saikia, suffers from suppression of material facts and is aimed at misleading this Court and on this count too, the writ petition is, contends Mr. Saikia, not maintainable.

12. Regarding the seizure of the books of account, registers, etc., and the seizure of goods, Mr. Saikia submits that the petitioner-company has been deliberately misclassifying the leather goods as plastic goods and thereby making payment of sales tax at the rate of four per cent, whereas the tax liable to be paid, in the case of leather goods, is as much as 12 per cent

13. Thus, on the basis of reliable information received by respondent No. 4 that the petitioner had been evading payment of value added tax by resorting to misclassification of goods, when respondent No. 4 inspected the petitioner-company's business premises, goods and also documents as well as registers lying there, he cannot be said to have committed any wrong and, on noticing anomalies, when he made the seizure of the books of account, etc., he may be held to be wholly justified. As far as seizure of the goods is concerned, Mr. Saikia submits that the seizure list, made in this regard, clearly shows that the reason for seizure was that the stock of goods did not tally with the invoices; hence, in such circumstances, contends Mr. Saikia, the goods, in question, cannot be said to have been accounted for. In a case of the present nature, exercise of power u/s 74(5) was, according to Mr. Saikia, justified and may not, therefore, be interfered with.

14. Repelling the above submissions made on behalf of the respondents, Mr. Goswami has contended that if the petitioner-company has sold any goods and has not paid requisite tax, the remedy lies not in making seizure u/s 74 of the Act; rather, the remedy, in such a case, according to Mr. Goswami, lies in taking resort to Section 40 of the Act, which makes provisions for realisation of escaped assessment. As far as the goods, in the present case, are concerned, Mr. Goswami submits that there is nothing, in the seizure list, to show that the goods had not been accounted for; rather, seizure has taken place, according to Mr. Goswami, on account of the fact that the goods were misclassified. It is further pointed out by Mr. Goswami that the seizure list clearly shows that the goods, found lying in the godown of the petitioner-company, were duly accounted for in the stock register and, hence, in such circumstances, if the stock register has been maintained by misclassifying the goods, i.e., the goods, which were of leather, have been shown as plastic goods, it would become a case of escaped assessment. Consequently, the power of seizure, u/s 74(5), in such a case, according to Mr. Goswami, could not have been exercised, for, the condition precedent for exercise of such power, u/s 74(5), is that the goods have not been accounted for.

15. What is, now, necessary to point out is that Section 40 deals with escaped assessment. If an authority, prescribed under the Act, has reason to believe that the whole or any part of the turnover of the dealer in respect of any period has escaped assessment or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable or a deduction has been wrongly allowed or any credit has been wrongly permitted, then, the prescribed authority may, after giving the dealer a reasonable opportunity of being heard and after making such enquiries as he may consider necessary, proceed to assess, to the best of his judgment, the amount of tax due from the dealer in respect of such turnover. Section 40(2), however, limits the exercise of power of escaped assessment by prescribing 8 years as the period of limitation from the end of the year in respect of which or part of which tax is assessable.

16. Coupled with the above, Section 74(1) empowers the prescribed authority to demand production of accounts, registers or documents or to furnish any information relating to stock of goods, etc. Section 74(3)(a) empowers the prescribed authority to seize such accounts, registers, documents including electronic records or computer of the dealer, as may be necessary, and when such seizure is made, the prescribed authority shall grant a receipt for the same and obtain acknowledgement of the receipt so given to the dealer provided that the prescribed authority has reasons to believe that the dealer has evaded or is attempting to evade the payment of any tax due from him and he is keeping or has kept his accounts in such a manner as is likely to cause evasion of tax payable under the Act. Once the seizure of the accounts, registers, etc., in such a case, is made, the authority concerned may take into custody the seized accounts, registers, etc., or may leave such seized accounts, registers, etc., in the custody of the dealer or his representative.

17. A conjoint reading of Section 40 and Section 74, particularly, Sub-section (3) thereof, makes it clear that seizure of the accounts, registers, etc., is permissible if the prescribed authority has reasons to believe that the dealer has evaded or is attempting to evade payment of any tax due from him and/or he is keeping or has kept his accounts in such a manner as is likely to cause evasion of tax payable under the Act. What Section 40 does is that it empowers the prescribed authority to make assessment of the tax, which has escaped assessment or has been under-assessed or has been assessed at a rate lower than the rate at which it is assessable or a deduction has been wrongly allowed or any credit has been wrongly permitted. For the purpose of making the assessment of the income, which has escaped assessment, the prescribed authority may, after giving the dealer a reasonable opportunity of being heard and after making such enquiries as he may consider necessary, proceed to assess, to the best of his judgment, the amount of tax due from the dealer in respect of such turnover. The power vested in an authority, u/s 74(3)(a), is really an enabling provision for the prescribed authority to collect materials for the purpose of determining if any income of the dealer has escaped assessment in any manner whatsoever. It cannot, therefore, be said that exercise of power of seizure of the accounts, registers, etc., is not possible for the purpose of ascertaining the income, which has escaped assessment.

18. However, Sub-section (5)(a)(ii) of Section 74, which relates to seizure of goods, is quite different in nature and scope, because under Sub-section (5)(a)(ii), seizure of goods is permissible only when the authority concerned has reason to believe that the goods, found lying in the place of business, belong to the dealer, but have not been accounted for by the dealer in his accounts or registers or other documents maintained in the ordinary course of his business. If this condition precedent is not satisfied, seizure of goods would be wholly without authority.

19. Thus, the jurisdiction to make seizure of goods is acquired only when the "goods have not been accounted for. It, therefore, follows that if the goods have not been accounted for, then, all such registers, documents, etc., which can prove the fact that the goods have not been accounted for, can also be seized by taking resort to Section 74(3).

20. When the goods are seized, the authority is obliged, under the law, to serve, as soon as possible, upon a dealer, a notice directing him to show cause, within a period of 30 days from the date of service of the notice, as to why penalty equivalent to three times of the amount of tax be not imposed on the dealer for not making entries in respect of such goods in his books of account or registers or other documents, as the case may be, maintained by him in the ordinary course of his business.

21. Law, thus, obliges the authority concerned to serve a notice, as soon as possible, on the dealer upon seizure of goods on the ground that the same have not been accounted for by the dealer in his accounts or registers or other

documents maintained in the ordinary course of his business. In the present case, the prescribed authority has not served such a notice till date on the petitioner-company. Though such a notice should be served as soon as possible, the language employed by Section 74 (5)(b) clearly shows that it will entirely depend on the facts of a given case as to when a notice, as envisaged in Section 74(5)(b), should be given to the dealer. There cannot be a hard and fast rule with regard to the time within which such a notice shall be given, but the legislative intent is clear and the legislative intent is that service of notice shall not be delayed, even for a moment, beyond what is absolutely indispensable or necessary for the purpose of enabling the authority concerned to assess as to what is the amount, which shall be realisable from the dealer on account of the goods having not been accounted for.

22. In the case at hand, since no notice has yet been served on the petitioner-company, no proceeding, under Clause (b) read with Clause (c) of Sub-section (5) of Section 74, has really commenced. The fact that the respondents are still working out as to how much tax is liable to be paid cannot be said to be a proceeding for the purpose of Clause (b) and/or Clause (c) of Sub-section (5) of Section 74. In such circumstances, it was not incumbent, on the part of the petitioner-company, to mention, in the writ petition, the fact that the respondents are working out as to how much amount is, according to the respondents, payable as tax by the petitioner-company. When the seizure of goods is admitted and the notice, as contemplated by Clause (b) of Sub-section (5) of Section 74, has not been issued, it is but natural to infer that making of the assessment is still in progress. Had there been no progress, the petitioners could have come to the court. The fact, however, remains that mere participation in the verification proceeding by the representative of the petitioner does not ipso facto debar the petitioners from coming to the High Court seeking to invoke the High Court's jurisdiction under Article 226 if they are, otherwise, entitled to invoke such a jurisdiction.

23. In the circumstances, as indicated hereinbefore, I find no force in the 16 submissions, made on behalf of the respondents, that the petitioner-company has suppressed the fact that making of assessment of the tax, allegedly evaded by the petitioner-company, is in progress.

24. Let me, now, deal with the question as to whether there is an alternative and efficacious remedy available to the petitioners and whether such remedy has barred, in the present case, the petitioner-company from seeking to invoke this court's extraordinary jurisdiction under Article 226 of the Constitution Of India.

25. While considering Mr. Saikia's submission that because of the fact that the provisions for revision, which have been made in the Act by way of Section 82, the petitioners had an alternative remedy available to them as regard their grievances, if any, against the seizures, which, according to the petitioners, are illegal, and, hence, the present writ petition is not maintainable, it is necessary to bear in mind that existence of alternative remedy does not create any legal

and/or constitutional bar to the entertainment of a writ petition; it is, rather, a restriction, which courts impose upon themselves not to interfere, generally, in a matter, where alternative remedy is available.

26. Notwithstanding, however, such self-imposed restrictions, the writ court has the discretion to interfere in a matter, where the State action is shown to be suffering from arbitrariness and/or without authority of law and/or in violation of the principles of natural justice.

27. In *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, , it was contended, on behalf of the State, that since provisions exist in the statute enabling the person, proceeded against, to show cause against the assessment, which is sought to be made, and when provisions also exist for preferring appeal against the order, which may be passed in the assessment proceeding, there was an alternative remedy available to the person proceeded against and, hence, writ jurisdiction, under Article 226, was not invocable. Reacting to the submissions so made, the Constitution Bench pointed out that when the conditions precedent for assumption of jurisdiction, u/s 34 of the Income Tax Act, is satisfied, the High Court would be justified in invoking its jurisdiction under Article 226. In fact, leaving no room for doubt, the apex court emphasised, in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, , that when the Constitution confers on the High Courts the power to give relief, it becomes the duty of the High Court to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. Thus, existence of alternative remedy cannot be construed as a bar to the exercise of jurisdiction under Article 226 if a statutory authority exercises a power without satisfying the conditions subject to which exercise of such power is permissible. In such a case, such exercise of power would be treated as an exercise of power without authority of law and without jurisdiction.

28. In the case of *Wazir Chand Vs. The State of Himachal Pradesh*, , the Constitution Bench had, in no uncertain words, held that when seizure is made in the absence of any authority under the law, such a question can be raised in a writ petition and for restoration of goods so seized, a writ, in the nature of mandamus, can be issued.

29. In *Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.*, , a three-judge Bench of the Supreme Court, while reacting to the question as to whether the Collector, who had issued the impugned notice, did or did not have the authority under the relevant rules, reacted by observing that such a question, i.e., a question as to whether the authority, which issues a notice, has or does not have any authority of law is a question of jurisdiction and when such a question goes to the root of the case and when such a question can be decided without taking further evidence, a writ petition under article 226 can be entertained.

30. I may also refer to Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , wherein the apex court has clarified the position of law in the following words:

The power to issue prerogative writs under article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the fundamental rights contained in Part III of the Constitution but also for "any other purpose".

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order of proceeding is wholly without jurisdiction or the vires of an Act is challenged.

31. From what have been observed and laid down in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , it becomes clear that an alternative remedy is not an absolute bar to the exercise of jurisdiction, under Article 226, in, at least, three contingencies, namely, (i) where the writ petition has been filed for the enforcement of any of the fundamental rights, or (ii) where there has been a violation of the principles of natural justice, or (iii) where the order or proceeding is wholly without jurisdiction or where the vires of an enactment is under challenge.

32. In the present case, when the petitioners contend, as already indicated above, that the conditions precedent for exercise of power of seizure of books of account, etc., and also the conditions precedent for exercise of power of seizure of goods were wholly non-existent, it becomes transparent that according to the petitioners, the seizures were made without the authority of law. When such is the contention of the petitioners, the fact that there are provisions for revision in the relevant statute cannot bar the High Court from exercising its powers under Article 226 if the High Court is satisfied that the submissions made by the petitioners, as indicated hereinbefore, are well founded. The question, thus, boils down to the question as to whether in the present case, there existed or not such conditions, which are required to be satisfied before the powers of seizure of the books of Recount and/or goods, are exercised.

33. In other words, since it is the case of the writ petitioners that the conditions precedent for exercise of power of seizure of the books of account, etc., and also the conditions precedent for exercise of power of seizure of the goods had not

been satisfied before the seizures in question took place, it logically follows that the petitioners challenge the seizures as being without jurisdiction and without authority of law. In such circumstances, existence of alternative remedy, if any, cannot be treated to be an absolute bar to the exercise of extraordinary jurisdiction by the High Court under Article 226. This has been the consistent position of law and it is in this light that the decision of the Constitution Bench, in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, , needs to be construed.

34. In short, from the judicial pronouncements, as catalogued above, what becomes transparent is that an authority, which can exercise a power subject to satisfaction of some conditions precedent and when such authority assumes jurisdiction without the conditions precedent having been satisfied, such exercise of power would be treated as exercise of power without jurisdiction and such exercise of power can be challenged by way of a writ petition under Article 226. In the present case, when the specific case of the petitioners is that the conditions precedent for exercise of powers, u/s 74, had not been satisfied or were non-existent and the seizures could not have been legally made, it logically follows that if this contention is correct, exercise of power by the respondent concerned was without jurisdiction and such exercise of power is amenable to the writ jurisdiction of the High Court under Article 226, notwithstanding the fact that there may be statutory provisions for revision against such an action of the respondent/authority concerned.

35. In fact, even in the case of *Union of India (UOI) Vs. Hindalco Industries*, , which Mr. Saikia relies upon, the apex court, while cautioning that though it is inappropriate for the High Court to interfere, in exercise of its jurisdiction under Article 226, either at the stage of show cause notice or at the stage of assessment, where alternative remedy by way of filing a reply or appeal is available, has nevertheless clarified that there are limitations imposed by the courts themselves in exercise of their jurisdiction and these are not matters, which are jurisdictional in nature. This decision, therefore, shows that the principle of non-interference by way of writ jurisdiction under Article 226 in a case, where there is provision for appeal or other statutory remedy, is self-imposed and does not restrict the jurisdiction of the High Court to entertain a writ petition, in an appropriate case, even where alternative remedy may have been statutorily made available provided, of course, that the conditions for invoking such jurisdiction, as indicated hereinabove, are satisfied

36. As far as the case of *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, , relied upon by Mr. Saikia, is concerned, this case is essentially a case in respect of passing of interim orders. Even in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, , the apex court has clarified that interim orders may be passed under Article 226, where gross violation of law or injustice are perpetrated or are about to be perpetrated. Hence, when an authority acts

without jurisdiction, such exercise of jurisdiction by the authority cannot be said to be beyond the reach of Article 226.

37. Coming to the case of State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another, , it may be pointed out that even in this case, the Supreme Court has, in no uncertain words, recognised that the principle of non-interference by the High Court under Article 226, if there be an alternative remedy available, is, ordinarily, a rule of policy, convenience and discretion and not a rule of law. However, what State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another, , lays down is that even though alternative remedy does not affect the High Court's jurisdiction to exercise power under Article 226, the High Court should not, ordinarily, interfere in exercise of its powers, under Article 226, if there be an alternative remedy available?

38. Thus, according to the decision in State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another, , an alternative remedy does not completely bar the High Court from exercising its jurisdiction under Article 226, if a person approaches the court without availing an alternative remedy, which may be available to him. However, in such a case, the petitioner must satisfy the High Court that there exist good grounds to invoke extraordinary jurisdiction under Article 226. In short, thus, even according to the decision, in State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another, , alternative remedy has never been considered as an absolute bar to the exercise of extraordinary jurisdiction by the High Court under Article 226. In a given case, therefore, when the High Court finds that an authority has acted without jurisdiction or an exercise of power is without the authority of law, the High Court has the duty to step in and invoke its jurisdiction under Article 226.

39. At one stage of the hearing, Mr. Saikia had sought to contend that Section 3(10) of the Act prohibits a person, proceeded against, from challenging the jurisdiction of any authority under the Act after expiry of a period of thirty days from the date of service of notice on him. In this regard, suffice it to point out here that Section 3(10) of the Act comes into play, when a person challenges the jurisdiction of an authority under the Act upon service of notice on him under the provisions of the Act. In a given case, therefore, when the seizure itself is without jurisdiction or authority, there is no legal impediment, on the part of such a person, to come to the High Court seeking interference in exercise of the High Court's powers under Article 226.

40. Let me, now, deal with the legality of the seizure of various books, registers, etc., which forms the subject of challenge in the present writ petition. The grounds of seizure, mentioned, in this regard, in the impugned seizure list, mentions thus:

Grounds of seizure--The godown in-charge misclassified the goods and effected sale at the lower rate. Goods (footwear) taxable at 12.5 per cent are entered in books of account as four per cent. Hence, taxes are likely to be found evaded

payable under the AVAT Act, 2003.

List of document seized:

1. Exhibit 1 5 (five) Nos. notebook containing business transactions.
2. Exhibit 2 1 (one) bundle of loose slips relating to the business.
3. Exhibit 3 18 (eighteen) Nos. of challan books.
4. Exhibit 4 1 (one) rough book containing business transaction.
5. Exhibit 5 1 (one) purchase file.

41. From a careful reading of the grounds of seizure of the books of account, registers, etc., what transpires is that according to respondent No. 4, namely, Inspector of Tax, the petitioner-company had kept, in its godown, the goods in question, by misclassifying them and by making such misclassification paid sales tax at a rate lower than what is ought to have paid and has thereby evaded payment of complete tax. It is the case of the respondents that the petitioner-company has been selling leather goods, but paying value added tax at the rate of four per cent, which is meant for plastic goods : whereas such goods are taxable at the rate of 12.5 per cent. The grounds of seizure show that the entry in the books of account have allegedly been made in such a manner that the leather goods, which were taxable at the rate of 12.5 per cent, have been shown as plastic goods and tax at the rate of four per cent has been shown as payable or has been paid. The allegations, so made, in the grounds of seizure, may or may not be true. This Court is, at this stage, has to assume that these allegations are true. If these allegations are true, the inescapable inference would be that by misclassifying the goods and showing, in the books of account, the goods, which are, otherwise, taxable at the rate of 12.5 per cent, as goods liable to be taxed at the rate of four per cent, there has been evasion of tax or, at least, an attempt to evade tax. In such a case, Section 74(3) did empower the respondent No. 4 to seize the accounts, registers, etc., if he had reason to believe that the dealer, i.e., the petitioner-company has evaded or is attempting to evade payment of any tax due from it and is keeping or has kept its accounts in such a manner as is likely to cause evasion of tax.

42. Thus, in the face of the accusations, made in the grounds of seizure, it clearly follows that if these accusations are true," respondent No. 4 had good reasons to believe that the petitioner-company had evaded or was attempting to evade payment of tax due from it and was keeping or had kept its accounts in such a manner as was likely to cause evasion of tax. In such circumstances, exercise of power u/s 74(3) and seizure of books of account, registers, etc., cannot be said to be without jurisdiction or without any authority of law.

43. Turning to the seizure of goods, it needs to be noted that the grounds of seizure, as regard the goods, read as under:

Stock of goods were found not matching with the invoice produced. Goods

taxable at the higher rate are found shown as taxable at the lower rate of taxes and thereby causing evasion of taxes payable under the AVAT Act, 2003.

44. From a bare reading of the grounds of seizure of goods, as mentioned above, it becomes transparent that the stocks of goods were allegedly found to be not matching with the invoices produced. The allegations, so made against the petitioner-company, may or may not be true; but this court, in the present proceeding, has to proceed on the assumption that the allegations are true and, upon such assumption, examine and test if the grounds, assigned for the seizure of the stock, are sustainable in law. Viewed in this light, it becomes clear that when the goods, lying in the godown of the petitioner-company, were allegedly found not tallying with the invoices produced by the petitioners' representative, it cannot be said that "the goods had been accounted for by the petitioner-company" in their books of account, registers, etc. In such circumstances, if I may reiterate, the goods, in question, cannot be said to have been accounted for in terms of Section 74(5)(a)(ii).

45. Thus, the conditions precedent for exercise of power u/s 7(5)(a)(ii) did exist in the present case and, in such circumstances, such seizure, in question, cannot be said to be without jurisdiction or without the authority of law. I may also point out that the grounds of seizure, as far as goods are concerned, are divided into two parts. While the first part reads, "stock of goods were found not matching with the invoice produced", the second part states, "goods taxable at the higher rate are found shown as taxable at the lower rate of taxes and thereby causing evasion of taxes payable under the AVAT Act, 2003". In short, the grounds of seizure of the goods, in question, show that according to what respondent No. 4 had found, the goods did not tally with the invoices produced. In such circumstances, the goods, in question, cannot be said to be accounted for by the petitioner-company. The exercise of power, u/s 74(5)(a)(ii) by respondent No. 4, in such a case, cannot be said to be illegal or without foundation.

46. Because of what have been discussed and pointed out above, I do not find that the seizure of books of account, registers, etc., and/or seizure of the goods are without the authority of law. The challenge to the seizure of books of account, registers, etc., and/or seizure of the goods cannot, therefore, be sustained. The petitioners cannot, however, be left without any remedy, for, there is yet another aspect of this writ petition, which needs some observations by this court.

47. In para 18, this court has clearly held that though there is no fixed timeframe for the authority concerned to give notice, as contemplated by Section 74 (5)(b), the fact remains that the legislative intent is that service of notice shall not be delayed, even for a moment, beyond what is absolutely indispensable or necessary for the purpose of enabling the authority concerned to assess as to what is the amount, which shall be realisable from the dealer on account of the goods having not been accounted for.

48. While considering the above aspect of the case, it is necessary to bear in mind that seizure of goods, in exercise of powers u/s 74, may lead to several consequences. A verification process, upon such seizure, may not, eventually, reveal any illegality adopted in maintaining the stock. Sometimes, such verification may reveal insignificant or partial default in properly accounting a stock; but, sometimes, such verification may reveal substantial failure to account for the stock. It is, therefore, necessary that the verification process or enquiry shall be expeditiously completed and the dealer be given an opportunity to obtain release of the seized goods in terms of the provisions embodied in the Act itself.

49. In the present case, the seizure was, admittedly, made on February 6, 2008. A period of more than two months has already elapsed since then. It is also the respondents' case that they have had been carrying on a process of verification for the purpose of determining as to what, if any, income of the petitioner-company has escaped assessment due to either incorrect accounting of the goods or due to incorrect maintenance of the account books. In either case, therefore, verification process or the enquiry, which was initiated, needs to be brought to an expeditious end, for, this process of verification or enquiry cannot be kept indefinitely pending.

50. Ends of justice, therefore, demand that appropriate directions be issued to the respondents to deal with the matter in such a manner as would uphold the legislative intent embodied in Section 74(5).

51. With the above object in view, the respondents are hereby directed to complete, if they have not already completed, the process of verification or enquiry, within a period of one week from today, and, upon completion of such verification or enquiry, respondents shall permit the petitioner to obtain release of the seized goods in terms of the provisions contained in Section 74(5) and other provisions relevant thereto or connected therewith

52. In the result and for the reasons discussed above, this writ petition shall stand disposed of in terms of the above directions. There shall, however, be no order as to costs