

(2002) 06 AP CK 0090

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 15312 and 15313 of 1996

ITC Limited

APPELLANT

Vs

Deputy Commissioner (CT), Guntur Division, Guntur and
Another

RESPONDENT

Date of Decision : 20-06-2002

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(2), 14(4), 14(4)
Constitution of India, 1950 — Article 14, 226

Citation : (2002) 4 ALD 324 : (2002) 4 ALT 500

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

**Advocate : S. Ganesh and S. Suri Babu, for the Appellant; Special Government
Pleader for Taxes, for the Respondent**

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—In both the writ petitions, the petitioner viz., M/s. ITC Limited, is the same. In both the writ petitions, the petitioner has assailed the constitutional validity of provisions of Sections 14(4-C) and 20 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act"). Initially in both the writ petitions, the notices issued by the concerned Deputy Commissioner (CT) u/s 20 of the Act proposing to revise the assessment orders for the assessment years 1991-92 and 1992-93 were also assailed. However, in WP No. 15312 of 1996, subsequently, by filing WPMP No.20759 of 1996 the prayer was amended seeking quashing of the order of the State Government dated 20-7-1996 in substitution of the earlier prayer to quash the show-cause notice issued by the Deputy Commissioner (CT) Division Guntur u/s 20 of the Act and that amendment was ordered by the Court on 2-9-1996.

2. The facts leading to the filing of the writ petitions be noted briefly and they are as follows: M/s. ITC Limited (IBD Division), Secunderabad and Guntur, the petitioner herein, registered dealers on the rolls of the concerned Commercial

Tax Officer. The dealers were assessed by the concerned Commercial Tax Officer for the assessment years 1991-92 and 1992-93. The concerned Commercial Tax Officer exempted the purchase turnover of cashew as per Section 38 of the Act on the ground that the resultant cashew kernel was exported to other countries and treating cashew (raw) and cashew kernel are one and the same commodity in the light of the judgment of this Court in *Singh Trading Company Vs. Commercial Tax Officer and Others*, and *Malabar Cashew Nuts and Allied Products Vs. The State of Andhra Pradesh and Others*. Subsequently, the Supreme Court in *Vijayalaxmi Cashew Company v. The Deputy Commercial Tax Officer*, 22 APSTJ 126, held that cashew nut and cashew kernel are not the same goods and, therefore, the benefit of Section 5(3) of CST Act is not available. Placing reliance on the said judgment of the Apex Court, the concerned Deputy Commissioner issued the impugned notices u/s 20 of the Act proposing to revise the assessment orders made in respect of assessment years 1991-92 and 1992-93. Being aggrieved by the above action of the department, the writ petitions are filed.

3. We have heard Mr. S. Ganesh, learned senior Counsel for the petitioner and the learned Special Government Pleader for Taxes for the State authorities. The learned Special Government Pleader for Taxes, at the outset, contended that the petitioner has not made out any case to declare the impugned provisions to be invalid and the real purpose of filing the writ petitions straightaway in this Court is to circumvent statutory remedies and that such an attempt on the part of the petitioner to prolong the proceedings under the Act for decades should not be countenanced by the Courts.

4. At the threshold, it needs to be stated that the Act is a code in itself as regards legal remedies also. The Act provides for several tiers of legal remedies. It is true that as quite often held and reiterated by the Courts, Article 226 is not meant to circumvent the statutory remedies and particularly such a course of action is always discouraged in revenue and tax matters. The following observation of the Supreme Court in para (3) of the judgment in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, is quite apposite.

"Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by the statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the

proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

But, since the authorities including the Tribunal cannot decide the constitutional validity of the provisions of the Act, it seems, the petitioner has filed these writ petitions directly in this Court. Therefore, it may not be appropriate to refuse these writ petitions particularly at this distance of time without deciding the constitutionality question raised in the writ petitions. Giving a quietus to the controversy early is also in the interest of the assessee as well as the Revenue.

5. Therefore, it is apt that we should deal with the challenge to the constitutional validity of Section 14(4-C) and Section 20 of the Act in the first instance.

6. While assailing the constitutional validity of Section 20 of the Act, it is the contention of the petitioner that in the Statement of Objects and Reasons of the Amendment Act 18 of 1985 by which the words "for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such proceeding are deleted and those words were substituted by the words "and if such order or proceeding recorded is prejudicial to the interest of the revenue", "no clue is available to discover the reason for such amendment". It is also contended that the unamended section had imposed a condition on the revising authority that it could resort to that power only when the order sought to be revised was not in accordance with legality, propriety or regularity and that provision operated as a limitation on the power as well as a guideline to exercise the power. However, in the amended Subsection (1) of Section 20, the power can be exercised by the authority whenever it thinks that the order sought to be revised is prejudicial to the revenue. According to the petitioner, if an authority empowered to revise the order u/s 20 if he thinks that more revenue should be generated for the State, he can resort to the power regardless of the fact whether there is legal and factual justification for doing so. This power, according to the petitioner, conferred on the Commissioner and other prescribed authorities under Sub-section (2) of Section 20 is totally uncontrolled, unbridled and uncanalised and, therefore, totally arbitrary and violative of Article 14 of the Constitution. While assailing the constitutional validity of Sub-section (4-C) of Section 14 of the Act, it is contended that the power conferred upon the authorities u/s 14 and Section 20 is the same; the same power has been conferred on several authorities to be exercisable simultaneously with respect to the same subject-matter, the basic scheme of the Act is to secure the administration of the statute through officers who are to perform their functions within the areas assigned to them. Therefore, the common power conferred upon the several authorities u/s 14 of the Act which can be exercised simultaneously with respect to the same subject-matter is totally arbitrary, unreasonable and violative of Article 14 of the Constitution. In support of this contention, reliance was placed on the decision of this Court in *Sri Balaji Rice Company v. CTO*, (1984) 55 STC 292. It was also contended, assessments of hundreds and thousands of other assesseees were allowed to become final and the assessments

were revised only in the case of the petitioner which action of the department is arbitrary and discriminatory. It was also contended that the law declared by the Supreme Court in *Vijayalaxmi Cashew Company's case* (supra) is only prospective and that judgment should not affect the assessments already concluded and, therefore, the very initiation of the proceedings by issuing the impugned notices are one without jurisdiction and unjustified.

7. The petitioner has sought mandamus to declare the provisions of Sections 14(4-C) and 20 of the Act as unconstitutional and invalid. It is true that mandamus is the proper relief to be asked for where the petitioner seeks a declaration that an "Act" or "Ordinance" is unconstitutional and a consequential direction restraining the State and its Officers or the concerned authority or authorities, as the case may be, from interfering or giving effect to the provisions of such unconstitutional law. It is trite law that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles and limits, whether it is a pre-Constitution or post-Constitution law. The Courts generally lean towards the constitutionality of a Statute upon the premise that a Legislature appreciates and understands the needs of the people, that the laws it enacts are directed to problems which are made manifest by experience that the elected representatives in a Legislature enact laws which they consider to be reasonable for the purposes for which these laws are enacted and that a Legislature would not deliberately flout a constitutional safeguard or right. It is also well-settled that to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge and may assume every state of facts which can be conceived as existing at the time of the enactment of the legislation in question. In *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, and in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, the Supreme Court held that the burden of proving all the facts which are requisite for the constitutional invalidity is upon the person who challenges the same. However, it is not to state that by reason of the presumption in considering the validity of the impugned law, the Court will be restricted to the pleadings only. The Court would be free to satisfy itself whether under any provision of the Constitution the impugned law can be sustained having due regard to the circumstances in which such law was enacted. For the same reason, the Court should, if possible, make such a progressive and/or narrow construction of the impugned statute as would sustain its constitutional validity. The Supreme Court in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, , has opined that the Court should not cover grounds or make observations on points not directly involved in the proceeding, thereby meaning that unless a point arises for consideration and decision out of the pleadings of the parties, the Court shall not express its opinion on such point. The Supreme Court in *R.K. Garg v. Union of India*, AIR 1981 SC 2138, and *Delhi Cloth and General Mills Co. Ltd. and Others Vs. Union of India (UOI) and Others*, and several other decisions to follow has stated that in case of economic

legislation, the Court feels more inclined to judicial deference to legislative judgment. Similarly, the Courts adopt a liberal attitude towards tax legislation. Explaining its attitude towards such legislation, the Supreme Court said in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, , said:

"On questions of economic legislations and related matters, the Court must defer to the legislative judgment. When the power to tax exists, the extent of the burden is a matter for the discretion of the law-makers. It is not function of the Court to consider the propriety or justness of the tax, or enter upon the realm of legislative policy....."

8. The Supreme Court in *Bharat Singh and Others Vs. State of Haryana and Others*, , has declared that a party raising a point in a writ petition must plead not only relevant facts but also state facts by way of evidence in proof of facts so pleaded in support of such point. The Supreme Court in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, , and in *The Municipal Board, Maunath Bhanjan Vs. Swadeshi Cotton Mills Co. Ltd. and Others*, , has handed down the opinion that the Constitutional Courts will not pronounce upon a constitutional issue, unless it has been raised in a proper lis between two or more contending parties. The Supreme Court in *Third Income Tax Officer, Mangalore Vs. M. Damodar Bhat*, , held that a writ application should contain in a concise form of the matters on which the party relies for his claim. The Supreme Court in *Municipal Bd. v. Swadeshi Cotton Mills*, (1977) UJSC 180 has opined that the pleading in the writ petition must not be vague. The Supreme Court in *Mathew alias Mathachan Vs. State of Kerala*, , has opined that the Court would not enter into the constitutionality of a statutory provision unless its constitutionality has been specifically challenged in the pleading setting out relevant grounds. One who invokes the power of Constitutional Court to declare an enactment enacted by the competent Legislature to be unconstitutional must be able to show not only that the statute is invalid on certain constitutional grounds but that he had sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement and not merely that he suffers in some indirect way in common with the people at large. If a party challenges a legislation on the ground of contravention of Part-III of the Constitution, then he must satisfy the Court that some fundamental rights to which he can lay claim has been impaired or has been threatened by the impugned legislation.

9. It would be appropriate and beneficial to remind ourselves of certain basic principles, propositions governing judicial review of legislation and limitation in that behalf before we proceed to consider the contentions raised in these writ petitions. Essentially, the question of constitutionality is always a question of power. As we know, in the United Kingdom, the Parliament is supreme and there are no limitations upon the power of the Parliament to legislate. Therefore, no Court in the United Kingdom can strike down an Act enacted by the British Parliament on any ground whatsoever. On the other hand, the United States of

America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is subjected to two limitations viz., the division of legislative powers between the States and the Federal Government; and the limitations flowing from the Bill of Rights incorporated in the Constitution. In India too the position is substantially similar to the United States of America. In India, the power of the Parliament and the State Legislatures to enact law, broadly speaking, is subjected to two limitations: a law made by the Parliament or the Legislature of a State can be struck down by the Courts only on two grounds. viz., (i) lack of legislative competence and (ii) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or any other substantive constitutional provisions. In *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, the Supreme Court has opined that except the above two grounds there is no third ground on the basis of which the law made by the competent Legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of aforementioned two grounds. It is true that it will become the duty of the Constitutional Courts under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when the Parliament or the State Legislature has assumed to enact a law which is void, either from want of constitutional power to enact it, or because the constitutional forms or conditions have not been observed, or where the law infringes the fundamental rights enshrined and guaranteed in Part-III of the Constitution or any other substantive constitutional provisions. It is needless to state that Legislature and Judiciary are coordinate organs of the State, of equal dignity and status under the constitutional scheme. It is permissible for the Constitutional Courts to declare legislative enactments unconstitutional and void in some cases, but not because the judicial power is superior in degree or dignity to the legislative. The Court while declaring a law as invalid or unconstitutional is only enforcing the legislative will and the limits imposed by the Constitution on the law-making bodies. No Court can declare a statute unconstitutional and void, solely on the ground of unjust and harsh provisions, or because it is supposed to violate some natural, social, political or economic rights of the citizen, unless it can be shown that such injustice is, in fact, prohibited or such rights guaranteed or protected by the Constitution. Strictly speaking, the Courts are not guardians of all kinds of rights of the people of the State, unless those rights are secured and protected by some constitutional provision which comes within the judicial cognizance. In "A Treatise on the Constitutional Limitations" by Thomas M. Cooley, it is stated that the Court cannot run a race of opinions upon points of right, reason, and expediency with the law-making power, and that any legislative act which does not encroach upon the power apportioned to the other organs of the State, being prima facie valid, must be enforced, unless restrictions upon the legislative power can be pointed out in the Constitution itself, and the case shown to come within them. In the same Treatise, it is also stated that the Courts are not at liberty to declare statutes void because of their apparent injustice and impolicy, neither can they do so because of they appear to the minds of the judges to violate fundamental

rights of republican government, unless it shall be found that those rights are placed beyond legislative encroachment by the Constitution nor are the Courts at liberty to declare an enactment unconstitutional, because in their opinion it is opposed to a spirit supposed to pervade the Constitution, but not expressed in words or discernible from the context. It is not permissible to limit the legislative power of the Legislatures by judicial interposition, except so far as the expressed words a written Constitution gives that authority to the Court. In "A Treatise on the Constitutional Limitations" by Thomas M.Cooley, it is aptly stated that the law-making power of the State recognizes no restraints, and is bound by none except such as or imposed by the Constitution itself placing reliance on the opinion handed down in Sill v. Village of Corning, 15 NY 303.

10. In the premise of the above well-recognized principles governing the challenge to the constitutionality of a statute, let us proceed to consider the contentions raised in these writ petitions.

Sub-sections (4) and (4-C) of Section 14 read as follows:

14. Assessment of Tax :--(4) In any of the following events, namely, where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or has been levied at a rate lower than the correct rate, the assessing authority may, after issuing a notice to the dealer, and after making such enquiry as he may consider necessary, by order, setting out the grounds therefor.

(4-C) The powers conferred by Subsection (4) on the assessing authority may, subject to the same conditions as are applicable in the case of that authority; be exercised also by any of the authorities higher than the assessing authority including (The Assistant Commissioner (Intelligence), the Deputy Commissioner and the Joint Commissioner).

Sub-sections (1) and (2) of Section 20 read as follows:

20. Revision by Commissioner of Commercial Taxes and other prescribed authorities:--

(1) The Commissioner of Commercial Taxes may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it, under the provisions of this Act, including Sub-section (2) of this section and if such order or proceeding recorded is prejudicial to the interests of the revenue, may make such enquiry, or cause such enquiry to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as it thinks fit.

(2) Powers of the nature referred to in Subsection (1) may also be exercised by the Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner and the Commercial Tax Officer in the case of orders

passed or proceedings recorded by authorities, officers or persons subordinate to them."

11. In our considered opinion, the petitioner has utterly failed to lay necessary factual matrix to assail the constitutional validity of Section 14(4-C) and Section 20 of the Act. The pleading of the petitioner is as scanty as it could be, and as vague as it could be. The only material part of allegation in the affidavit in support of the plea that provisions of Section 20 are unconstitutional being violative of Article 14 of the Constitution is the following:

"This concept of "prejudice to revenue" in a taxing enactment merely means the imposition of tax less than the maximum conceivable. The result is that the discretionary power conferred u/s 20(1) is uncontrolled, unbridled and uncanalised."

12. Similarly, the only material allegation in the pleading to assail the constitutional validity of provisions of Section 14(4-C) is the following:

"Section 14(4-C) of the APGST Act is unconstitutional, violative of Article 14 and is void. Conferment of the same power on several authorities simultaneously with respect to the same subject-matter is arbitrary. The basic scheme of the Act is to secure the administration of the statute through officers who are to perform their functions within the areas respectively assigned to them. (See Section 4 of the APGST Act). Neither Section 4 nor Section 2(b) contemplate the authorization of more than one officer to exercise the same power within the same area. The investiture of identical powers with respect to the same territory on different officials is fought with evil consequences. It causes great hardship and inconveniences to assesses. The power is capable of being exercised in a discriminatory manner. There is also a possibility of Contradictory orders being passed by different officials in respect of the same subject-matter. The whole scheme of Section 14(4-C) is arbitrary."

13. One who invokes the power of Constitutional Court to declare an enactment enacted by the competent Legislature to be unconstitutional must be able to show not only that the statute is invalid on certain constitutional grounds but that he had sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers in some indirect way in common with the people at large. The Court would not enter into the constitutionality of a statutory provision unless the applicant has laid proper factual matrix and set out relevant grounds of challenge. Further, a party raising a point must plead not only relevant facts, but also state facts by way of evidence in proof of facts so pleaded in support of such point. A writ application should contain in a concise form all the factual matrix on which a party relies for his claim. If we test the pleadings of the petitioner in the light of the above principles, we have no hesitation to hold that the pleading is totally unsatisfactory and inadequate to assail the constitutional validity of Sections 14(4-C) and 20 of the Act.

14. The first and foremost contention raised by the petitioner to assail the constitutional validity of Sub-section (4-C) of Section 14 and Section 20 of the Act is that an uncontrolled, unbridled and uncanalised arbitrary power is conferred upon the authorities and, therefore, it offends Article 14 of the Constitution. It is also contended that since the power conferred upon the authorities under the above provisions is not subjected to any limitations or guidelines, there is every scope for abuse or misuse of that power. Looking from that angle also, it is contended, the power conferred upon the authorities should be held to offend Article 14. It is trite law that an enactment cannot be declared to be invalid solely on the ground that such an enactment is capable of being misused or abused. It is because every power is capable of being used as well as misused or abused. Every power is capable of being exercised arbitrarily, unreasonably and unfairly. Therefore, simply because a power granted to an authority is capable of being misused or abused, that circumstance can never be a valid ground to strike down a law enacted by a competent Legislature. If a donee of the power under a statute abuses or misuses the power granted to him or it, or such a power is exercised arbitrarily and irrationally, the affected person can always work out his remedies under the concerned statute by way of appeals, revisions or references etc., and also invoke jurisdiction of the Constitutional Courts seeking judicial review of such action and seek appropriate redressal to the injury suffered by him/her or it or resort to private law review remedies like declaration, injunction and for damages. Similarly, no enactment can be struck down by the Constitutional Courts just saying that in the opinion of the Court it is arbitrary or unreasonable. Although non-arbitrariness, reasonableness and fairness are postulates of Article 14 of the Constitution, when an enactment is sought to be struck down on the ground of arbitrariness and unreasonableness, the reviewing Court should find some or other constitutional infirmity in addition to those grounds before invalidating the enactment. An enactment cannot be struck down merely on the ground that the Court thinks it is unjustified and unwise. This position is fairly well settled by the decision of the Supreme Court in *Mc Dowell and Company* case (supra). It is not open to a Court to declare an enactment unconstitutional and void solely on the ground of unwise and harsh provisions or that it is supposed to violate some "of the perceived natural, social, economic or political rights of the citizen, unless it can be shown with satisfactory proof that such injustice is in fact prohibited or such rights guaranteed or protected by the Constitution.

15. We do not agree with the contention of the learned Counsel for the petitioner that the authorities specified under Sub-section (1) and Sub-section (2) of Section 20 or the authorities under Subsections (4) and (4-C) of Section 14 are conferred with uncontrolled, unbridled and uncanalised power. The Commissioner of Commercial Taxes or the other authorities specified under Sub-section (2) of Section 20 can exercise the power of revision only if they are of the opinion that an order or a proceeding recorded by the subordinate authority is prejudicial to the interest of the revenue. The key words are "prejudicial to the interest of

the revenue". In other words, unless the revising authority satisfies himself that an order or proceeding of the subordinate authority which he proposes to revise is prejudicial to the interest of the revenue, he cannot assume the jurisdiction conferred under Sub-section (1). Therefore, the satisfaction that the order or a proceeding sought to be revised is prejudicial to the interest of the revenue is not only a jurisdictional fact to exercise the revisional power, but also it operates as a limitation on the power of the authority exercising the revisional power under Sub-section (1). In a given case, if the revising authority wrongly records the satisfaction that the order or proceeding of the subordinate authority is prejudicial to the interest of the revenue, then, it is always open for the aggrieved dealer to question the correctness of the satisfaction of the revising authority in an appropriate legal proceeding either under the Act or by way of judicial review under the Constitution. But, it cannot be said that the power conferred under by Subsection (1) is uncontrolled, unbridled and uncanalised. The expression "prejudicial to the interest of the revenue" in the context, should mean prejudicial to the interest of the revenue in terms of law and not de hors the law as contended by the learned Counsel. Statutory authorities and administrative authorities in the domain of public law are constitutionally bound to act and perform their duties and functions in accordance with law within which they operate and not de hors the law. Therefore, the apprehension of the petitioner that the expression "prejudicial to the interest of the revenue" occurring in Sub-section (1) of Section 20 enables the revising authority to resort to that power whenever the State wants to generate more tax is totally misconceived, uncharitable and requires to be noticed only to be ignored. Even assuming that in a given case, the revising authority initiates proceedings under Sub-section (1) of Section 20 where there is no prejudice to the interest of the revenue, such authority cannot pass final order without hearing the dealer and without giving a fair opportunity of being heard to the dealer and, therefore, it was open for the dealer, in such a situation, to show that the initiation of the proceeding is unwarranted and illegal. Despite such a plea, if the revising authority wrongly revises the assessment, a very comprehensive appeal remedy is provided to the High Court if the revising authority is the Commissioner, and to the Appellate Tribunal if the revising authorities are the other authorities specified in Sub-section (2) of Section 20 of the Act. Therefore, it cannot be said that Sub-section (1) of Section 20 of the Act confers a totally uncontrolled, unbridled and uncanalised discretionary power on the Commissioner and the other authorities specified under Sub-section (2) of Section 20 of the Act. Similarly, it cannot be said that the power conferred upon the assessing authority and the authorities higher than the assessing authority such as the Assistant Commissioner (Intelligence), the Deputy Commissioner and the Joint Commissioner to revise the assessments u/s 14(4) of the Act is arbitrary and unreasonable for want of guidelines and norms. The power conferred upon the assessing authority and other higher authorities under Sub-section (4) of Section 14 of the Act can be exercised only if the concerned authority is of the opinion that the whole or any part of the turnover of the business of a dealer has

escaped assessment to tax, or has been underassessed at a rate lower than the correct rate, or where the licence fee or registration has escaped levy or has been levied at a rate lower than the correct rate. In other words the existence of want of the factors referred to above is a condition-precedent for exercising the power by the authority under Sub-section (4) of Section 14 of the Act. Further, it is trite to state that the authorities exercising the revisional power under Sub-section (4) of Section 14 of the Act cannot exercise the revisional power on any other ground except the grounds stated in the said sub-section. Therefore, there is no merit in the contention that the power of revision conferred by Sub-section (4) of Section 14 of the Act is uncontrolled, unbridled and uncanalised and, therefore, violative of Article 14 of the Constitution.

16. The power delegated to the prescribed authorities under Sub-section (4) of Section 14 and Section 20(1) of the Act to revise the assessment is a form of delegated power. In order to decide whether the delegation made by the law-maker under the parent Act is excessive or not, references may be made to the case law. It is well settled by the decisions of the Supreme Court starting from *Delhi Laws Act, 1912, Re*, AIR 1951 SC 332, *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others*, *Avinder Singh and Others Vs. State of Punjab and Others*, *Brij Sunder Kapoor Vs. I Additional District Judge and Others*, *Ramesh Birch and Others Vs. Union of India (UOI) and Others*, and large number of other decisions to follow that even though there is no specific bar in our Constitution against the delegation of legislative power by the legislature to the executive, it is now well-settled that when the law-maker delegates the power to the executive, it should not commit excesses and it must lay down essential policy and norms for the exercise of such delegated power. In other words, by entrusting the power to the executive by way of delegate on, the legislature cannot create a parallel legislature. The provisions delegating the power in favour of the authorities prescribed under Sub-section (4) of Section 14 and Subsection (1) of Section 20 of the Act to revise the assessment orders are machinery provisions and they are not charging provisions. In *India United Mills Ltd. Vs. Commissioner of Excess Profits Tax, Bombay*, *Gursahai Saigal Vs. Commissioner of Income Tax, Punjab*, *Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others*, *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, the Supreme Court held that machinery provisions should be construed liberally so as to make the charging provisions effective. To the similar effect are the decisions in *Whitney v. IRC*, 1926 AC 37 (HL) (1940) 8 ITR 442 (Privy Council) In the leading and well known case of *Field v. Clark*, (1892) 143 US 649 the President was empowered to suspend the operation of an Act permitting free import of certain products into the US on being satisfied that the duties imposed upon such products were reciprocally

unequal and unreasonable. The Supreme Court held the Act valid on the ground that the Act was complete and the President was a mere agent of Congress to ascertain and declare the contingency upon which the will of Congress was to take effect. The Supreme Court quoted with approval the following famous passage from Pennsylvanian case, *Locke's Appeal* (1873) 72 Pa 491.

"The Legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law intends to make its own action depend. To deny this would be to stop the wheels of Government. There are many things on which wise and useful legislation must depend which cannot be known to law-making power and must, therefore, be the subject of enquiry and determination outside the hall of the Legislature."

17. However, it needs to be noticed that the delegated power must be consistent with the parent Act and cannot travel beyond the legislative policy standard laid down by the Legislature. Once the essential legislative function is performed by the Legislature and the policy has been laid down, it is open to the Legislature to delegate to the executive authority ancillary and subordinate powers necessary for carrying out the policy and purpose of the Act as may be necessary to make the legislation effective, useful and complete.

18. In *Harishankar Bagla and Another Vs. The State of Madhya Pradesh, u/s 3 of the Essential Supplies (Temporary Powers) Act, 1946*, the Central Government was empowered to issue an order for the regulation of production, distribution etc., of essential commodities and by Section 6 it was provided that "an order made u/s 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act." Both the sections were challenged on the ground of excessive delegation of legislative power. The Supreme Court held that the objection of Section 6 was not to repeal or abrogate any existing law, but to bypass the same where the provisions thereof were inconsistent with the provisions of the Essential Supplies (Temporary Powers) Act. The Court also held that the legislative policy was laid down in the Act and, therefore, there was no excessive delegation. The Court opined that it was only an attempt to bypass the difficulty. In *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, the Schedule to the Minimum Wages Act, 1948, contained a list of industries to which the Act was made applicable by the Parliament, but the appropriate Government was authorised to include any other industry to the said Schedule. The matter of application of the provisions of the Act to any industry was left to the "opinion of the Government" but no norms were laid down for the exercise of such discretion and yet, the Supreme Court upheld the validity of the Act. According to the Supreme Court, the legislative policy was apparent on the face of the Act -- to fix minimum wages to avoid the chance of exploitation of labour. In *Ramesh Birch's case* (supra), the Supreme Court observed that "it is not necessary that the Legislature should dot all the I's and cross all the t's" of its Policy.

19. In *Gwalior Rayon Silk Mfg. Company case* (supra), u/s 8(2)(b) of the Central

Sales Tax Act, 1956, the parliament did not fix the rate of Central Sales Tax but adopted the rate applicable to the sale or purchase of goods within the appropriate state in case such rate exceeds 10 per cent. The said section was challenged on the ground that the Parliament in not fixing the rate itself and in adopting the rate applicable within the appropriate State has not laid down any legislative policy and has abdicated its legislative functions. However, the validity of the section was upheld by all the five judges holding that sufficient guidelines were provided in the Act by the Parliament. In concurring judgment, Mathew, J, relying upon the decisions in *Queen v. Burah*, (1878) 3 AC 889 = (1978) 5 LA 178 (PC) and *Cobb v. Kropp*, (1967) AC 141 opined that the legislature cannot be said to abdicate its legislative function if it could at any time repeal the legislation and withdraw the authority and discretion it had vested in the delegate. Further, in *M.K. Papiiah and Sons Vs. The Excise Commissioner and Another*, , Mathew, J., without referring to the opinion in *Gwalior Rayon Silk Mfg. Company case* (supra) reiterated his views. In that case, Section 22 of the Karnataka Excise Act, 1966 conferred on Government a power to fix the rates of excise duty and Section 71 empowered the Government to make rules. Rules made under the Act were to be laid before the State Legislature as soon as practicable after they had been made. Both the sections were challenged on the ground of impermissible delegation of legislative power. Mathew J., speaking for a unanimous Court of 3 Judges observed that the laying of the rules before the legislature was a sufficient check on the power conferred on the delegate. The petitioners thereupon argued that the rules ? would come into force as soon as they were framed and that the power of the legislature to repeal rules subsequently could not be regarded as sufficient control over delegated legislation. Rejecting this argument, Mathew, J., observed that considering the compulsions and complexities of modern life such control must be regarded as sufficient.

20. In *Brij Sander's case* (supra), the validity of Section 3 of Cantonments (Extensions of Rent Control Laws) Act, 1957 fell for consideration, Section 3 read thus-

"The Central Government may, by notification in the Official Gazette, extend to any cantonment with such restrictions and modifications as it thinks fit, any enactment relating to the control of rent and regulation of house accommodation which is in force on the date of the notification in the State in which the cantonment is situated."

It was contended that the above provision suffered from the vice of excessive delegation of legislative power, mainly for three reasons (i) firstly, on the date of the enactment, Parliament could not predicate what type of provisions would be in operation in other areas of the States on some future date on which the Central Government may issue notification u/s 3 in respect of various States and the Parliament had no occasion to apply its mind at all; (ii) secondly, the delegation of the words "on the date of the notification" makes it clear that the

Central Government can issue a general notification that any state enactment in force in the State would apply to cantonments as well. Thus, on a mere notification by the Central Government, not only the existing provisions but even the future enactments which may come into force from time to time in the State would automatically apply to cantonment area. Thus, even the notifying authority may not have had occasion to apply its mind to the provisions of law that are to be made applicable to the cantonments; and (iii) thirdly, the Central Government was empowered to apply such laws, with such restrictions and modifications as it thinks fit. Such an restricted power may well result in the notification modifying the State law in the material respects and enacting a law of its own for cantonment areas, which is not permissible. The Supreme Court negated all the contentions while holding the provision valid.

21. From the above pronouncements of the Apex Court, it could be seen that very broad delegation of power is permissible. When a provision in the parent Act is challenged on the ground that it is unconstitutional or ultra-vires the powers of the Legislature, which enacted it, it becomes necessary to examine the true nature and character of the statute. To do that, one must have regard to the enactment as a whole, to its objects and the scope and effect of its provisions. In *Charan Lal Sahu Vs. Union of India*, (Bhopal Gas Disaster case), the constitutional validity of the Bhopal Gas Disaster (Processing of Claims) Act, 1985 was challenged on the ground that the power conferred by the Act on the Central Government to conduct that suit and enter into compromise was uncanalised and arbitrary, as contended in the present case. Negating the said contention, the Supreme Court held-

"The power is circumscribed by the purpose of the Act. If there is any improper exercise or transgression of the power then the exercise of that power can be called in question and set aside, but the Act cannot be said to be violative of the rights of the victims on that score. We have noted the relevant authorities on the question that how power should be exercised is different and separate from the question whether the power is valid or not."

22. The above discussed cases are the authorities to state that skeletal legislation has come to stay and whenever a delegate under the statute exercises the power granted to him or it, the validity of the exercise of such power has to be decided not only with reference to the limitations and conditions imposed on the exercise of that power but also applying the postulates of Article 14 of the Constitution, such as reasonableness, fairness and non-arbitrariness. If this settled position in law is kept in mind, we find absolutely no ground to invalidate the provisions of Sub-sections (4) and (4-C) of Section 14 or Section 20(1) of the Act.

23. This takes us to the contention raised by the petitioner that since the power conferred upon the authorities under Sections 14(4) and 20(1) of the Act is the same and since that power conferred on several authorities can be exercised simultaneously by those authorities, the impugned provisions of Sections 14 and

20 of the Act are arbitrary and violative of Article 14 of the Constitution. This contention of the petitioners is not well-founded. The power granted to the assessing authority and other superior authorities specified in Sub-section (4-C) of Section 14 of the Act to revise the assessment under Sub-section (4) of Section 14 of the Act and the power granted to the Commissioner of Commercial Taxes and other authorities specified in Sub-section (2) of Section 20 of the Act to revise the orders passed or proceedings recorded by any other authority, officer or person subordinate to them under Sub-section (1) of Section 20 of the Act, operate in two different planes and they are intended to achieve two separate goals/ purposes. The power conferred upon the Assessing Authority u/s 14(4) of the Act and the power conferred upon the authorities higher than the Assessing Authority u/s 14(4-C) or u/s 20(1) of the Act are independent and different powers vested in those authorities and they are not same powers. It is true that the Deputy Commissioner (CT), being a higher authority than the Assessing Authority can also exercise the power conferred on the Assessing authority under Sub-section (4) of Section 14 of the Act by virtue of the provisions of Section 14(4-C) of the Act. The Deputy Commissioner can also exercise the power of revision under Sub-section (1) of Section 20 of the Act by virtue of the provisions of Sub-section (2) of Section 20 of the Act. However, it needs to be noticed, as pointed supra, that the power conferred upon the authorities under Subsection (1) of Section 14 of the Act and the power conferred on the authorities under Sub-sections (1) and (2) of Section 20 of the Act operate in two different planes and that even the scope of powers also differs. The power of the authority u/s 20 of the Act is not of such wide amplitude so as to enable the revising authority to correct the assessments based on information subsequently gathered. In taking this view, we are fortified by the judgment of this Court in *Manepalli Venkatanarayana and Ors. v. State of Andhra Pradesh*, (1959) 10 STC 524. Sub-section (4) of Section 14 of the Act envisages reopening of the assessment already completed where the assessing authority subsequently finds certain conditions specified in Sub-section (4) of Section 14 of the Act, whereas Subsection (1) of Section 20 of the Act confers revisional power on the Commissioner of Commercial Taxes and other authorities specified in Sub-section (2) of Section 20 to call for and examine the record of any order passed or proceeding recorded by any other authority or officer or person subordinate to them, under the provisions of the Act. But this power of revision conferred upon the Commissioner of Commercial Taxes and other authorities is subjected to a rider, the rider being that the order or proceeding sought to be revised under Subsection (1) of Section 20 of the Act should be one which is prejudicial to the interest of the Revenue. In other words, if the order or proceeding which is sought to be revised under Sub-section (1) of Section 20 of the Act by the competent authority is not prejudicial to the interest of the Revenue, it should be held that the authority lacks the jurisdiction and competence to revise such order or proceeding. It is well settled that the power of revision u/s 20 of the Act can be exercised by looking into the record of assessment only, whereas under Sub-section (4) of Section 14 of the Act, the

power of reopening "has to be exercised on the basis of material de hors the record.

24. The decision in Sri Balaji Rice Company's case (supra) is of no help to the petitioners and that case is distinguishable on facts. In that case, one of the contentions urged was, u/s 4 read with Section 2(1)(b), the officers under the Act can only perform the functions under the Act within such local limits as assigned to them by the State Government or any authority or officer empowered by them in that behalf, and that such officer cannot be empowered to function throughout the State of Andhra Pradesh for making assessments under the Act, and, therefore, the Assistant Commissioners of Intelligence and the Commercial Tax Officers, Intelligence, not being officers authorized to perform the functions within the local limits, have no jurisdiction to take any proceedings against the petitioners for making assessments or levying taxes and penalties and, therefore, the notification dated 24-12-1981, issued by the Commissioner, published in the A.P. Gazette dated 4-2-1982, fixing the entire State of Andhra Pradesh as the jurisdiction of officers mentioned therein and the second proviso to G.O. Ms. No.1091 dated 10-6-1957 as amended by G.O.MsNo.434 dated 30-3-1982, are ultra-vires. Dealing with that contention, the Court held-

"...But we do not think that this submission of the learned Government Pleader can be accepted. Section 2(1)(b) merely refers to conferment of powers of assessment on any person authorized by the State Government or any other authority empowered by them in that behalf, whereas Section 4 first part empowers the Government to appoint the officers mentioned therein for the purpose of performing the functions respectively conferred on them by or under the Act. The latter part of Section 4 provides that the State Government or any authority or officer empowered by them in that behalf shall assign local limits for the purpose of performing the functions under the Act by the said officers. The word "local" according to the Chamber's Twentieth Century Dictionary means "of or belonging to a place, confined to a spot or district". According to the Webster's New World Dictionary, "local" means "relating to place; of, characteristic of, or confined to a particular place; as, items of local interest; restricted, narrow, confined." In the context in which the expression "local limit" occurs in the latter part of Section 4, it can only mean a limited area and it cannot mean the whole of the State of Andhra Pradesh. In Section 4, it is stated that the Act extends to the whole of the State. Thus, the Legislature has itself drawn a distinction between the whole of the State of Andhra Pradesh and the local limits in the State of Andhra Pradesh. Necessarily, therefore, it follows that the local limits mentioned in latter part of Section 4 can only comprise an area or territory which is part of, but something less than the whole of the area or territory of, the State of Andhra Pradesh.

While fixing the territorial jurisdiction of the officers mentioned in Section 4 for the purpose of assessing dealers covered by the second proviso to G.O.No.1091

as amended by G.O.No.434, the State Government or any authority or officer empowered in that behalf can only fix a territorial jurisdiction which is less than the whole of the State of Andhra Pradesh. Moreover, according to the definitions of "Assistant Commissioner", "Commercial Tax Officer", "Deputy Commercial Tax Officer", "Deputy Commissioner", "Joint Commissioner", they are all persons appointed u/s 4 and their powers are exercisable only within local limits to be fixed by the State Government or any authority or officer empowered by them in that behalf, and any fixation of the territorial jurisdiction which is not confined to local limits but extends to the whole of the State of Andhra Pradesh will be clearly ultra vires the powers conferred by the latter part of Section 4 on the State Government or any authority or officer empowered by them in that behalf."

25. As could be seen from the above observations of the Court, that was a clear case of ultra-vires the powers conferred by the latter part of Section 4 on the State Government or any other authority or person empowered by them in that behalf. The power conferred u/s 4 is exercisable only within limits to be fixed by the State Government or any authority or officer empowered by them in that behalf, and the fixation of territorial jurisdiction, which was not confined to local limits but extending to the whole of the State of Andhra Pradesh was held to be ultra-vires the powers. We are at a loss to understand how the above judgment would in any way aid or advance the contention of the petitioners in this case.

26. There is also no merit in the discrimination ground urged by the learned Counsel for the petitioners. In the counter filed by the department, the allegation of the petitioner that assessments of thousands of assesseees who are similarly circumstanced were allowed to become final and that the assessments were revised only in the case of the petitioners, is specifically denied. Even assuming that assessments of some similarly circumstanced assesseees were allowed to become final, only on that count, the petitioner cannot claim that no action u/s 20 of the Act should be initiated against it regardless of the merit whether there is legal and/or factual justification to initiate the proceeding or not.

27. This takes us to the last contention of the learned Counsel for the petitioner. The contention is that the law declared by the Supreme Court in Vijayalakshmi Cashew Company case (supra) is only prospective and that judgment should not affect the assessments already concluded. Here again, we do not find any merit in this contention too. It is trite to state that the declaration of law made by the Apex Court in Vijayalakshmi Cashew Company case (supra), applies to all sales and purchases, as the case may be, covered by Sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 whether such sales or purchases were effected before or after the judgment, because, the Supreme Court in the above case did not direct implementation of the judgment prospectively only. Dealing with similar contention, a Division Bench of this Court in Al-Kabeer Exports Limited v. Commissioner of Commercial Taxes, (2000) 120 STC 543 speaking through one of us, (S.R Nayak, J.) held-

"The contention that the judgment of the Supreme Court in the case of K.A.K.

Anwar's case [1998 109 STC 258] would have only prospective effect and does not apply to the earlier assessment years is not acceptable to us. The declaration of law in K.A.K. Anwar's case [1998] 108 STC 258 applies to all sales and purchases, as the case may be, covered by Sub-section (3) of Section 5 of the CST Act, whether such sales or purchases were effected before or after the judgment. However, it is open for the Court, in a given case, to direct the implementation of the judgment prospectively only and not retrospectively. Wherever the Courts felt such a course of action was necessary to avoid prejudice and hardship to the parties and wherever implementation of the judgment with retrospective effect would unsettle the settled things for years resulting in chaos and confusion, the Courts have directed implementation of the concerned judgments prospectively only, as a departure from the general rule. Examples are the decisions of the Supreme Court in I.C. Golak Nath and Others Vs. State of Punjab and Another, , Video Electronics Private Limited v. State of Rajasthan, [(1988) 71 STC 304] Hi Beam Electronics Private Limited v. State of Andhra Pradesh, [(1988) 71 STC 305] and C.B. Gautam Vs. Union of India and Others, . But, the Supreme Court in K.A.K. Anwar's case (1998) 108 STC 258 did not direct implementation of the judgment prospectively only. Therefore, we do not find any error on the part of the Commissioner of Commercial Taxes in not acceding to the request of the appellant to implement the law laid down by the Supreme Court in K.A.K. Anwar's case [(1998) 108 STC 258] prospectively only. We also think that it is not appropriate for this Court to direct implementation of the law declared by the Supreme Court in K.A.K. Anwar's case [(1998) 108 STC 258] prospectively only in the absence of such direction being issued by the Supreme Court in that case. Be that as it may, we do not find any extraordinary circumstance to direct the respondent-authorities to implement the judgment of the Supreme Court in K.A.K. Anwar's case (1998) 108 STC 258 prospectively only."

28. There is also no merit in the contention of the learned Counsel for the petitioner that in the light of the judgments of this Court in Singh Trading Company (supra) and Malabar Cashew Nuts (supra), the petitioner did not collect any tax from the purchaser and, therefore, it is not required to pay the tax simply because the aforementioned judgments of this Court were subsequently overruled by the Supreme Court. In the first place, whether tax is collected or not is an incidence of fact and that question can be decided only on the basis of satisfactory evidence. Secondly, it is well settled that the burden to prove that tax is not collected is on the dealer/assessee. Nothing is placed before us to show that the petitioner did not collect the tax for the relevant period from the purchaser. Thirdly, it is relevant to notice that similar contention urged before this Court in Al Kabeer's case (supra) was rejected and this Court, dealing with the said contention, held-

"The contention of the appellant that in view of the provisions of Section 30-B and Section 30-C of the APGST Act, it was prohibited from collecting tax in respect of transactions on which it sought exemption, is misconceived and non-

acceptable to the Court. In the instant case, it cannot be said that non-collection of tax on the part of the appellant on sales effected by it to the purchaser was an act to perform an obligation imposed on the appellant under the provisions of the APGST Act or any statutory order made thereunder. The appellant has stated that it did not collect sales tax from the exporter because it sought exemption which was granted, and that it was seeking exemption u/s 5(3) of the CST Act fortified by the decision of this Court in the case of Mohd. Basheer and Company [(1989) 72 STC 185]. That circumstance itself would not be a legal justification to avoid the liability to pay sales tax in respect of the goods sold to the exporter during the concerned period. If the petitioner by force of law is liable to pay sales tax in respect of the transactions effectuated, whether before or after the judgment of the Supreme Court in K.A.K. Anwar's case (1998) 108 STC 258 it cannot avoid the liability solely on the ground that it did not collect sales tax on the sales made by it from the purchaser. In that view of the matter, we hold that the appellant is liable to pay sales tax even in respect of sales transactions entered into between it and the exporter even before November 27, 1997 which is the date of the judgment of the Supreme Court in K.A.K. Anwar's case [(1998) 108 STC 258]."

29. In the result and for the foregoing reasons, we uphold the constitutional validity of the provisions of Sub-sections (4) and (4-C) of Section 14 and Section 20 of the A.P. General Sales Tax Act, 1957. We do not find any merit in the writ petitions and they are accordingly dismissed with no order as to costs.