
(2008) 03 JH CK 0016
In the Jharkhand High Court

Metallurgical and Engineering Consultants (India) Ltd.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Central Sales Tax Act, 1956 — Section 5, 6, 7
Constitution of India, 1950 — Article 226

Citation : (2008) 2 JCR 659 : (2008) 18 VST 333

Hon'ble Judges : M.Y. Eqbal, J;D.K. Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Petitioner M/s. Metallurgical and Engineering Consultants (India) Limited has filed this application under Article 226 of the Constitution of India for declaration that the Commissioner of Commercial Taxes cannot call for and examine the record of any appellate proceeding for the purpose of satisfying himself as to the legality or propriety of the appellate order in exercise of power vested u/s 46(4) of the Bihar Finance Act and further for quashing the entire revision proceeding in Revision Case No. C.C.(s) No. 500/98-99 including the order dated 16.2.1999 passed by the Commissioner of Commercial Taxes,- Bihar, Patna for the period 1987-98 by which he had initiated proceeding suo motu u/s 46(4) of the Act.

2. The facts of the case lie in narrow compass:

Petitioner is a Government of India Undertaking and registered dealer under the provisions of Bihar Finance Act, 1981 (in short Act of 1981) and also u/s 7 of the Central Sales Act, 1956 (in short Act of 1956). Petitioner filed return and the respondent No. 5 Deputy Commissioner, Commercial Taxes passed order dated 30.1.1996 both under the Act of 1981 and the Act of 1956. Under the Act of 1956, respondent No. 5 rejected the claim of the petitioner made under Sections 6(2) and 5(2) of the Central Act and raised demand. Similarly, in the State Act also the respondent No. 5 passed final order and raised demand. Aggrieved by

the said orders, petitioner-assessee preferred appeal before the Joint Commissioner, Commercial Taxes (Appeals), Ranchi Division, Ranchi. It is stated that in the said appeals State of Bihar was the party-respondent represented by the Commissioner of Commercial Taxes. The aforesaid appeals were heard by the Joint Commissioner, Commercial Taxes and after hearing the petitioner and the respondents, passed final order and remanded the matter back to the Assessing Officer for passing fresh order of assessment for the year 1987-88 under both the State Act and Central Act in terms of Order dated 27.2.1997. Petitioner's case was that the appellate order was duly communicated to the petitioner as well as Commissioner, Commercial Taxes and other authorities vide memo No. 354 dated 5.3.1997 for information. Petitioner's further case is that thereafter, on 25.4.1997 petitioner filed two separate application before the Deputy Commissioner, Commercial Taxes for refund of Sales-tax which was deposited on the condition of stay of the assessment order. In the meantime, pursuant to the appellate order dated 27.2.1997 the Deputy Commissioner of Commercial Taxes issued notice dated 13.6.1997 for production of papers and evidence for the year 1987-88 and fixed 28.6.1997 as the date for the aforesaid purposes. However, when pursuant to the remand order, assessment proceedings were in progress before the Deputy Commissioner of Commercial Taxes, the Commissioner initiated proceeding for suo motu revision u/s 46(4) of the Act on the ground that revision is necessary for the aforesaid appellate order passed by the appellate authority for the year 1987-88. A copy of the order passed by the Commissioner for initiating suo motu revision u/s 46(4) has been filed and annexed as Annexure-10 to the writ application

3. In the counter-affidavit filed by the respondents, besides challenging the maintainability of the writ application without exhausting the alternative remedy, it is stated that the Commissioner of Commercial Taxes has absolute jurisdiction to initiate suo motu proceeding u/s 46(4) of the Act for the purpose of examining the correctness of the appellate order passed by the Joint Commissioner of Commercial Taxes (Appeal). It is further stated that before exercising suo motu power of revision, the Commissioner issued notice and gave reasonable opportunity of hearing to the petitioner.

4. Mr. Biren Poddar, learned Counsel for the petitioner firstly submitted that final order passed by the appellate authority in appeal was communicated to the Commissioner of Commercial Taxes and in that view of the matter, the only remedy available to the Commissioner was to file revision before the Tribunal, Commercial Taxes u/s 46(1) of the Act and not to exercise suo motu revisional power u/s 46(4) of the Act. In this connection, learned Counsel referred Rule 30(2)(a) of the Bihar Finance Rules. Learned Counsel submitted that if the Commissioner is vested with the power of suo motu revision u/s 46(4) of the Act against the appellate proceeding and the appellate order, it will be serious injustice and hardship and the provision of revision will become nugatory and redundant. Learned Counsel then submitted that initiation of suo motu revision without calling for and examining the record of the concerned appellate

proceeding is arbitrary exercise of jurisdiction. Learned Counsel submitted that the appellate authority remanded back the matter to the Assessing Officer for passing fresh assessment order and while the assessment proceeding was in progress, the suo motu power was arbitrarily exercised by the Commissioner of Commercial Taxes which is nothing but colorable exercise of power. Learned Counsel relied upon various decision viz. in the case of Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders, , in the case of Bhudan Singh and Another Vs. Nabi Bux and Another, , in the case of Tirath Singh Vs. Bachittar Singh and Others, , in the case of Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another, , in the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , and in the case of Girnar Traders Vs. State of Maharashtra and Others, .

5. Mr. H.K. Mehta, learned Counsel for the respondents-Revenue on the other hand submitted that the Commissioner of Commercial Taxes vested with unlimited power to initiate suo motu revision by calling for and examining the record of any proceeding in which order has been passed by any authority appointed u/s 9 of the Act for the purpose of satisfying himself as to the legality and propriety of such order. The power of revision by the Commissioner is not restricted to only order passed by the Assessing Authority but includes any proceeding or order passed in any proceeding including the appellate proceeding. Learned Counsel then submitted that having regard to the statutory remedy available to the petitioner by challenging the order of the Commissioner before the Appellate Tribunal, the instant writ application is not maintainable.

6. Before advertng to the rival contentions of the parties, it would be useful first to trace out the legislative history of Section 46(4) of the Act.

7. In the old 1959 Act i.e. Bihar Sales Tax Act, 1959, the power of revision was given u/s 31 of the said Act. Section 31 of 1959 Act reads as under:

(1) Subject to such rules as may be made by the State Government under this Act, an order passed on an appeal under Sub-section (1) or (2) of Section 30 may, an application, be revised-

(a) by the Deputy Commissioner, if the said order has been passed by the Appellate Assistant Commissioner, and

(b) by the Board, if the said order has been passed by the Deputy Commissioner or the Commissioner.

(2) Subject as aforesaid, any order passed by the Deputy Commissioner under Sub-section (1) or by the Commissioner under Sub-section (5) may on application, be revised by the Board.

(3) Subject as aforesaid any order passed under this Act or the rules made thereunder, other than an order passed by the Commissioner under Sub-section (5) of Section 8 or an order under Sub-section (1) or (2) or an order against which an appeal has been provided in Section 30, may, an application, be revised.

(a) by the Appellate Assistant Commissioner, if the said order has been passed by a Superintendent or Assistant Superintendent.

(b) by the Deputy Commissioner, if the said order has been passed by the Appellate Assistant Commissioner or Assistant Commissioner, and

(c) by the Commissioner, if the said order has been passed by the Deputy Commissioner.

(4) Every application for revision under this section shall be filed within sixty days of the passing of the order which is sought to be revised, but the authority to whom the application lies may admit it after the expiry of the said period of sixty days if it is satisfied that the applicant had sufficient cause for not filing the application within the said period.

(5) The Commissioner may call for and examine the record of any proceeding under this Act in which any order has been passed by any other authority appointed u/s 8, of the purpose of satisfying "himself as to the legality or propriety of such order and may, after examining the record and making or causing to be made such enquiry as he may deem to be necessary, pass any order which he thinks proper :

Provided that no action under this section shall be initiated except before the expiry of four years from the date of the order which is the subject of scrutiny by Commissioner under this sub-section.

(6) No order under this section shall be passed without giving the dealer as also the authority whose order is sought to be revised or their representatives, a reasonable opportunity of being heard.

8. From bare reading of the aforesaid provision, it is manifestly clear that u/s 31 of the 1959 Act, no restriction was put on the power of the revisional authority under Sub-section (1), Sub-section (2) or subsection (3) of Section 31 of the Act. Under Sub-section (5), the Commissioner was vested with the power of calling for and examining any record of any proceeding under the Act for the purposes of satisfying himself as to the legality or propriety of an order passed by any subordinate authority. Sub-section (5) of Section 31, however, provided that the Commissioner cannot initiate such revision proceedings after the expiry of four years from the date of the order.

9. In 1976, an Ordinance was promulgated by which the Commissioner was vested with the power to call for and examine any record of proceeding and pass any order thereon. The statute did not specify whether this power of Commissioner could be invoked on application by an assessee or any other person. However, the position was made clear in 1977 Ordinance according to which powers could be invoked even on application, provided the application was made within 90 days of the order challenged. A limitation of four years from the date of impugned order prescribed by 1959 Act and 1976 Ordinance for intervention by Commissioner was omitted in the 1977 ordinance. For better

appreciation, firstly we shall quote Section 41 of the Bihar Sales Tax Ordinance, 1976 which reads as under:

41. Revision.-(1) Subject to such rules" as may be made by the State Government under this Ordinance, an order passed on an application under Sub-section (1) or (2) of Section 40 may, on application, be revised-

(a) by the Deputy Commissioner, if the said order has been passed by the Appellate Assistant Commissioner, and

(b) by the Tribunal if the said order has been passed by the Deputy Commissioner or the Commissioner.

(2) Subject as aforesaid, any order passed by the Deputy Commissioner under Sub-section (1) or by the Commissioner under Sub-section (5) may, on application, be revised by the Tribunal.

(3) Subject as aforesaid, any order passed under this Ordinance or the rules made thereunder, other than an order passed by the Commissioner under subsection (5) of Section 8 or an order under Sub-section (1) or (2) or an order against which an appeal has been provided in Section 40, may, on application, be revised.

(a) by the Appellate Assistant Commissioner, if the said order has been passed by a Superintendent or Assistant Superintendent,-;

(b) by the Deputy Commissioner, if the said order has been passed by the Appellate Assistant Commissioner or Assistant Commissioner, and

(c) by the Commissioner, if the said order has been passed by the Deputy Commissioner.

(4) Every application for revision under this section shall be filed within 60 days of the communication of the order which is sought to be revised, but the authority to whom, the application lies may admit it after the expiry of the said period of 60 days if it is satisfied that the applicant had sufficient cause, for not filing the application within the said period.

(5) The Commissioner may call for the and examine the record of any proceeding under this ordinance, in which any order has been passed by any other authority appointed u/s 8 for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining record and making or causing to be made such enquiry as he may deem to be necessary, pass any order which he thinks proper.

Provided that no action under this section shall be initiated except before the expiry of four years from the date of the order which is the subject of scrutiny by Commissioner under this sub-section.

(6) No order under this section shall be passed without giving the dealer as also the authority whose order is sought to be revised or their representatives a

reasonable opportunity of being heard.

10. A consolidated Act was passed amending the law relating to levy of tax for sale and purchase of goods called Bihar Finance Act, 1981. In the said Act, Section 45 lays down the provision of appeal and Section 46 of the Act lays the provision of revision. Section 46 reads as under:

46. Revision.-(1) Subject to such rules as may be made by the State Government an order passed on an appeal under Sub-section (1) or (2) of Section 45 may, on application, be revised by the Tribunal.

(2) Subject as aforesaid, any order passed under this part or the rules made there under, other than an order passed by the Commissioner under Sub-section (5) of Section 9 or an order against which an appeal has been provided in Section 45 may, on application be revised :

(a) by the Joint Commissioner, if the said order has been passed by an authority not above the rank of Deputy Commissioner; and

(b) by the Tribunal if the said order has been passed by the Joint Commissioner or the Commissioner.

(3) Every application for revision under this section shall be filed within 60 (sixty) days of the communication of the order which is sought to be revised, but where authority to whom, the application lies is satisfied that the applicant had sufficient cause for not applying within time, it may condone the delay.

(4) The Commissioner may at any time but before the expiry of four years from the date of the order, either on his motion or on application, call for and examine the record of any proceeding in which any order has been passed by any other authority appointed u/s 9, for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining record and making or causing to be made such enquiry as he may deem to be necessary, pass any order which he thinks proper.

Provided that where an application is filed seeking revision of any order, such an application shall be entertained only if made within ninety days of the communication of the order sought to be revised.

(5) No order wider this section shall be passed without giving the appellant as also the authority whose order is sought to be revised or their representative, a reasonable opportunity of being heard.

(6) Any revision against an appellate order filed and pending before the Joint Commissioner or a revision against any other order filed and pending before the Deputy Commissioner since before the enforcement of this part shall be deemed to have been filed and/or transferred respectively to the Tribunal and Joint Commissioner; and any revision relating to a period prior to the enforcement of this part against an appellate order, or against any other order passed by an authority not above the rank of Deputy Commissioner shall, after the

enforcement of this part, be respectively filed before the Tribunal and the Joint Commissioner.

11. In 1984, Section 46 of 1981 Act was substituted by Section 10(2) of the Amendment Act, 1984. Section 10 of the Bihar Finance (Amendment) Act, 1984 reads as under:

(10) Amendment of Section 46 of the Bihar Act, V, 1981 (Part I).-(1) in Sub-section (3) of Section 46 of the said Act for the word "sixty" the word "ninety" shall be substituted.

(2) For Sub-section (4) the following sub-section shall be substituted namely:

(4)(a) The Commissioner may, on his own motion call for and examine the records of any proceeding in which any order has been passed by any other authority appointed u/s 9, for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining the record and making or causing to be made such enquiry as he may be deem necessary, pass such order as he thinks proper.

(b) The Commissioner may also revise any order passed by any authority appointed u/s 9 on application seeking revision or such order. Provided that where an application is filed seeking revision of any order, such an application shall be entertained only if made within ninety days of the date of communication of the order sought to be revised:

Provided further that where the Commissioner is satisfied that the applicant had sufficient cause for not applying within time, he may condone the delay.

12. In Section 7 of the Bihar Finance (Amendment) Ordinance, 1989 Clause (b) of Sub-section (4) has been deleted with effect from May, 1989. The position now stand is that Section 46 provides for a revision of all appellate and other orders passed by the various authorities under the Act. The power of revision is vested with the Tribunal and the Joint Commissioner which power shall be exercised only on application by any person aggrieved, but subject to time limit prescribed in Sub-section (3) i.e. 90 days of the communication of the order. By the said provision. Commissioner has also been vested extraordinary power to initiate suo motu revision proceeding at any time and no limitation has been prescribed.

13. The relief sought for by the petitioner is for a declaration that the Commissioner of Commercial Taxes has no power of revision u/s 46(4) of the Act against the order passed by the Appellate Authority. Mr. Poddar, learned Counsel appearing for the petitioner contended that the word "any proceeding used u/s 46(4) of the Act does not include appellate proceeding or appellate order". Learned Counsel put heavy reliance on the Rule 30 of the Bihar Sales Tax Rules and submitted that reading the power of revision u/s 46 of the Act along with the Rule 30 of the Rules, it is abundantly clear that the only remedy available to the Commissioner is to move before the Tribunal for revision against the order

passed by the Appellate Authority. Learned Counsel further submitted that since both the assessee and the revenue have equal right to file revision before the Tribunal against the order passed by the Appellate Authority, a suo motu revision cannot be initiated for the reason that if such power is vested with the Commissioner then the Commissioner in exercise of power of revision can undo judgment rendered by the appellate authority if goes against the Revenue. In this connection, learned Counsel relied upon the decision of the Supreme Court in the case of Girnar Traders Vs. State of Maharashtra and Others, . Learned Counsel further submitted that the entire statute particularly Section 46 shall be read together with the Rule in order to give correct meaning and object of the provisions of the statute.

14. The argument advanced by Mr. Poddar, though attractive, cannot be accepted for the reason discussed hereinafter. For better appreciation, Sub-sections (1) to (4) of Section 46 is reproduced herein below:

(1) Subject to such rules as may be made by the State Government an order passed on an appeal under Sub-section (1) or (2) of Section 45 may, on application, be revised by the Tribunal.

(2) Subject as aforesaid any order passed under this part or the rules made there under, other than an order passed by the Commissioner under Sub-section (5) of Section 9 or an order against which an appeal has been provided in Section 45 may, on application be revised :

(a) by the Joint Commissioner, if the said order has been passed by an authority not above the rank of Deputy Commissioner; and

(b) by the Tribunal if the said order has been passed by the Joint Commissioner or the Commissioner.

(3) Every application for revision under this section shall be filed within 60 (sixty) days of the communication of the order which is sought to be revised, but where authority to whom, the application lies is satisfied that the applicant had sufficient cause for not applying within time, it may condone the delay.

(4) The Commissioner may at any time but before the expiry of four years from the date of the order, either on his motion or on application, call for and examine the record of any proceeding in which any order has been passed by any other authority appointed u/s 9, for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining record and making or causing to be made such enquiry as he may deem to be necessary, pass any order which he thinks proper:

Provided that where an application is filed seeking revision of any order, such an application shall be entertained only if made within ninety days of the communication of the order sought to be revised.

15. From bare perusal of the aforesaid provisions, it is manifestly clear that so

far remedy by way of revision either before the Commissioner or before the Tribunal is concerned that shall be subject to the provisions contained in the rules made by the State Government. Besides the power of revision provided under Sub-sections (1) and (2) of Section 46 of the Act, an extraordinary power has been vested with the Commissioner to call for and examine, of his own motion, the record any order passed by any person or persons sub-ordinate to him for the purpose of satisfying himself as to the legality or propriety of such order and to pass such order as he may deem fit and proper after examining the record. This special power of revision provided u/s 46(4) of the Act is intended to be exercised as one of the superintendence so as to enable the Commissioner to check and correct the orders passed by the subordinate authority including the Appellate Authority. The decision relied upon by Mr. Poddar, as rendered in the case of *Girnar Traders v. State of Maharashtra and Ors.* (supra) will not be applicable in the present case. The power of revisional authority has not been dealt with in that decision which related to interpretation of different provisions of the land acquisition and Maharashtra Regional Town Planning Act, 1966. The other decisions relied upon by the petitioner also will not be of any help to the petitioner.

16. In the case of *Commissioner of Sales Tax, Orissa and Another Vs. Halari Store*, , the question of law raised by the petitioner has been completely answered by the Supreme Court in the said decision. The case was under the Orissa Sales Tax Act. In the said Act u/s 23(4)(a) read with amended Rule 80, the Commissioner was vested with suo motu power to revise any order made under the Act. The question that falls for consideration before the Supreme Court was whether the appellate order passed under Sub-section (2) of Section 23 of the Act comes within the ambit of the expression "any order made under the Act". Answering the question their Lordships held :

10. A perusal of the aforesaid provisions shows that Section 23 of the Act deals with appeals and revision. Sub-section (1) thereof provides that any dealer or person may prefer an appeal against the order of assessment or an order directing payment of interest or an order imposing penalty. Sub-section (2) of Section 23 deals with power of appellate authority in disposing of appeals preferred under Sub-section (1). Sub-section (3)(a) deals with second appeal which enables any dealer or State Government, as the case may be, to prefer appeal to the State Sales Tax Tribunal against the appellate order. Section 23(4)(a) deals with the revisional power of the Commissioner of Sales Tax, which may be either suo motu or at the instance of a dealer or person against any order passed under the Act. The question, therefore, which requires consideration is whether an appellate order passed under subsection (2) of Section 23 of the Act comes within the ambit of the expression "any order made under the Act" occurring in Section 23(4)(a) of the Act. The language used in Section 23(4)(a) is plain, simple and there is no ambiguity in it. A plain reading of Section 23(4)(a) shows that the expression "any order made under this Act" is of a wide connotation and it includes an assessment order as well as an appellate order

passed wider the Act. This construction placed on the said expression neither runs contrary to the scheme envisaged in Section 23 of the Act nor it leads to any undesirable consequences, as observed by the High Court. We are, therefore, of the opinion that u/s 23(4)(a) of the Act, the Commissioner on his own motion can revise any order, including an appellate order made under the Act or the rules by a person other than the Tribunal or Additional Tribunal.

11. So far as the second reasoning given by the High Court that the proviso to Clause (a) of Sub-section (4) of Section 23 of the Act places limitation on the Commissioner's suo motu revisional powers to revise an appellate order is concerned, a reading of the aforesaid proviso would show that the limitation on the revisional power of the Commissioner comes in only where a dealer or person filing the revision having a remedy by way of appeal under Sub-section (3) of Section 23 of the Act, did not avail of such remedy. However, it does not curtail the suo motu revisional power of the Commissioner of Sales Tax to revise an appellate order passed under the Act. The proviso to Section 23(4)(a) contemplates that the Commissioner shall not exercise any revisional jurisdiction at the instance of a dealer or person when he has a remedy by way of an appeal under Sub-section (3) of Section 23 of the Act. Thus, the Commissioner is not required to entertain an application u/s 23(4)(a) of the Act if the dealer or person instead of filing an appeal before the appellate authority has invoked revisional jurisdiction of the Commissioner. But, the same is not the position where the Commissioner decides to exercise his suo motu revisional power to revise an appellate order. Significantly, the words "on his own motion" occurring in the enactment are conspicuously absent in the proviso. Normally, a proviso is engaged to carve out something special out of the general enactment or to qualify what is in the enactment. By enacting the proviso the legislature has excluded the revisional jurisdiction of the Commissioner of Sales Tax to revise an appellate order if invoked at the instance of a dealer or person when such dealer or person has a remedy by way of an appeal. As noticed earlier, the limitation on the suo motu power of the Commissioner as to revise an appellate order has not been expressly provided in the proviso. In the absence of any express provisions, no limitation on suo motu power of the Commissioner to revise an appellate order can be implied. We, accordingly hold that the provisions of proviso to subsection (4)(a) of Section 23 of the Act do not prohibit the Commissioner from exercising suo motu revisional power to revise an appellate order.

17. Having regard to the provisions discussed hereinabove, it can safely be concluded that the power of revision conferred u/s 46(4) of the Act to the Commissioner is not guided by Rule 30 of the Bihar (Now Jharkhand) Sales Tax Rules. Exercise of power of revision conferred by Sub-sections (1) and (2) of Section 46 is of course guided and restricted by Rule 30 of the said rule.

18. Mr. Poddar, learned Counsel appearing for the petitioner also raised question of limitation. Learned Counsel submitted that suo motu revision proceeding was initiated on 16.2.1999 i.e. after expiry of one year eleven months and 21 days

from the date of communication of the appellate order, which was communicated on 5.3.1997. It cannot, therefore, be said that power has been exercised within the reasonable time. The submission of the learned Counsel also cannot be accepted. The question as to what should be the reasonable time for exercise of power u/s 46(4) has been discussed by this Bench in the case of Shivam Coke Industries and Rani Sati Coke Manufacturing Company Vs. State of Jharkhand and Others, , and analogous cases, judgment delivered on 14.3.2008. Considering various decision of the Supreme Court on the question, the Bench held:

As noticed above, a suo motu power has been vested to the Commissioner to exercise revisional jurisdiction. But no time limit is prescribed to exercise such suo motu power unlike 90 days u/s 46(3) of the Act. It does not mean that it is a continuing power authorized to the concerned authority. From bare perusal of the provision of law in totality and co-jointly it can be apparently inferred that when the concerned authority does not get an opportunity to entertain the Revisional power within the statutory period of 90 days upon an application being made before it, then suo motu Revisional power must also be exercised within the reasonable period of time. If some time limit is not specified for the exercise of the power the possibility of irregular exercise of power on whim and caprice of authority cannot be ruled out. In absence of any specific period of statutory limit to exercise such power it would tantamount to arbitrary exercise of power which is not the intention of the legislation. Because unfettered power leads to corruption.

Suo Motu acts and power is to be exercised judicially i. e. ejusdem Generis. Therefore, the suo motu revisional power not to be arbitrary, fanciful and oppressive, it must be guided by meticulous analysis with legal tools and some time limit must exist. In absence of statutory time period for the exercise of the power, Article 137 of the Limitation Act, 1963, will come into play and such suo motu revisional power be exercised within three years from the date of the order sought to be revised. The interpretation that a period of 90 days is prescribed to exercise power of revision if an application is made and no time limit is prescribed for taking action suo motu is in echo of what Mimamsakas pejoratively dismissed as "ardha Jarateeya Nyaya". (The argument that an egg can be partly used for eating and partly for hatching). Its western counterpart is : "to have the cake and eat it too" as observed by Apex Court in the case of Union of India (UOI) and Another Vs. British India Corporation Ltd. and Others, .

This is the dictum of law for fairness. If such power continues for indefinite period the scope of malafide, vengeance or vested interest is always there which can be eliminated by invoking Article 137 of Limitation Act. There must be some guidelines for exercising discretionary power to avoid discrimination. Since, in a fiscal law economic fabric is woven there should be a clear-cut provision to ensure reasonableness, fairness and justice. A socio-economic perspective must play upon the interpretative process. In order to ensure fair and just exercise of

power there must be some reasonable time period within which such power is to be exercised. And the reasonable time is 3 years as prescribed under Article 137 of the Limitation Act as a residuary provision of Limitation Act, 1963.

19. As noticed above, in the instant case, the Commissioner exercised power of suo motu revision u/s 46(4) of the Act by issuing notice within two years from the date of the appellate Order sought to be revised. In that view of the matter, initiation of proceeding cannot be declared illegal and arbitrary on the ground of limitation.

20. Considering the entire facts and circumstances of the case and the law discussed hereinabove, we do not find any merit in this application, which is accordingly, dismissed.

D.K. Sinha, J.

21. I agree.