

(2014) 07 KL CK 0078
In the High Court Of Kerala
Case No : ST. Appl. No. 1 of 2012

Parisons Agrotech (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Income Tax Act, 1961 — Section 263

Kerala General Sales Tax Act, 1963 — Section 19, 35, 35(2A), 37, 45A

Citation : (2014) 203 ECR 27 : (2014) 74 VST 309

Hon'ble Judges : K.M. Joseph, J;K. Harilal, J

Bench : Division Bench

Advocate : M. Gopikrishnan Nambiar, P. Gopinath Menon, P. Benny Thomas, K. John Mathai and Kuryan Thomas, Advocate for the Appellant; Bobby John Pulikaparambil, Govt. Pleader, Advocate for the Respondent

Judgement

K.M. Joseph, J.—Appellant is a registered assessee under the Kerala General Sales Tax Act, Central Sales Tax Act and the Kerala Value Added Tax Act. This case relates to the assessment year 2003-04. The assessment under the Central Sales Tax Act in the year in question was completed on 24-1-2009 fixing the total and taxable turnover of Rs.19,90,425/-. Notice dated 10.8.2010 was issued proposing to disallow the claim of stock transfer amounting to Rs.6,38,18,405/- and to assess the same as interstate sale. In the original assessment exemption was granted to the appellant on the basis of "F" Forms issued by the consignment agent of the appellant. Further notice dated 9.9.2010 was issued purporting to invoke powers under rule 6(7) of the Central Sales Tax (Kerala) Rules, 1957. The said notices were challenged before this Court. This Court granted stay of all further proceedings pursuant to the notice. While so, the Commissioner of Commercial Taxes issued notice to the appellant under section 37 of the Kerala General Sales Tax Act, 1963, hereinafter referred to as "the Act", proposing to set aside the assessment order. The reason stated was that subsequent to the completion of assessment by the Fast Track Team, invalidation of "F" Form issued to Sakthi Murugan Trading Company was reported by the

Commercial Tax Officer, Tamil Nadu. The appellant sent a reply raising objections, including the jurisdiction of the Commissioner. Thereafter, writ petition was filed by the appellant challenging the notice issued by the Commissioner. The said writ petition was disposed of by this Court directing the Commissioner to consider all the contentions raised by the appellant, including the question of jurisdiction and to pass appropriate orders. On the basis of the same, Annexure-7 order was passed by the Commissioner. The said order has been challenged in this appeal.

2. The following questions of law are raised in this appeal:-

"I. Whether the Commissioner of Commercial Taxes was right in invoking the powers conferred under section 37 of Kerala General Sales Tax Act on the material which was not available with the assessing authority at the time of passing of the order?

II. Had not the Commissioner of Commercial Taxes erred in treating Annexure-1 order as erroneous and prejudicial to the interest of revenue, based on subsequent material and which were not within the knowledge of the assessing authority at the time of completion of assessment?

III. When Annexure-4 notice and Annexure-7 order clearly admit that the suo motu proceedings under section 37 of Kerala General Sales Tax Act was initiated based on materials which was not available with the Fast Track Team vide Annexure-1 order, was the Commissioner of Commercial Taxes right in setting aside Annexure-1 order and remitting it to the assessing authority for reassessment based on the subsequent materials?

IV. While the reassessment proceeding by the assessing authority are pending vide Annexure-2 and 3 notices, has the Commissioner of Commercial Taxes not erred in invoking suo motu proceedings regarding the very same issue and based on the very same material relied on in the reassessment proceedings? Is this not bad for initiation of two parallel proceedings by the department on the same issue?

V. Can the exemption claimed by the appellant based on valid Form "F" declarations and allowed in Annexure-1 assessment order be disallowed based on the subsequent disqualification of the dealer who issued the statutory forms?"

3. We have heard the learned counsel for the appellant and learned Government Pleader for the respondent.

4. The learned counsel for the appellant submits that the order of assessment was not erroneous and prejudicial to the interest of revenue. Based on subsequent material which were not within the knowledge of the assessing authority at the time of completion of the assessment, it is impermissible for the Commissioner to pass Annexure-VII order. The learned counsel points out that Annexure-2 and Annexure-3 notices were already issued and the Commissioner could not invoke suo motu powers under section 37 of the Act. Based on very same material relied on in the reassessment proceedings, parallel proceedings

cannot be instituted. It is also contended that the proceedings are barred by limitation.

5. Per contra, the learned Government Pleader would contend that there is no embargo against the Commissioner invoking powers under section 37 of the Act. He would point out the difference between the powers conferred under section 37 of the Act and the provisions of section 263 of the Income Tax Act. He would further submit that the order is prejudicial to the interest of the revenue. He would contend that the proceedings are not barred by limitation. He would in fact submit that it is not open to the appellant to raise question of law regarding limitation not having raised any question of law.

6. Learned counsel for the appellant draw our attention to the following case law:-

In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam V. Debi Prasad Shyam Sunder & Sons, (1991)82 STC 305, a Division Bench of this Court considered the case of a purchasing dealer who filed declaration in Form 25. The goods were taxable at the last purchase point. This Court took the view that the subsequent cancellation of registration of the purchasing dealer with retrospective effect would not affect the past transactions.

7. In A. K. Corporation and another V. State of Uttar Pradesh and another, (1995) 96 STC 31, a Division Bench of the Allahabad High Court took the view that while exercising the power of revision, the revising authority must confine itself to the material available on the record of the assessing officer, and it could not take into consideration any material which was not on the record of the assessing authority. The power of revision was contained under section 10B of the U. P. Sales Tax Act, 1948, which was as follows:-

"Section 10-B: Revision by Commissioner of Sales Tax.--(1) The Commissioner of Sales Tax or such other officer not below the rank of Deputy Commissioner of Sales Tax as may be authorized in this behalf by the State Government by notification may call for and examine the record relating to any order (other than an order mentioned in section 10-A) passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereto as he thinks fit."

8. Section 21 of the said Act of course provided powers for reassessment of escaped turnover. In a decision reported in Bismillah Trading Co. Vs. Intelligence Officer, Squad No. II, Agricultural Income Tax and Sales Tax and Others, , a Division Bench of this Court was considering a case under Section 45A of the Act which dealt with imposition of penalty. The Court took the view that order, which was sought to be interfered with could not be considered to be prejudicial to the interest of the revenue. The Court referred to section 263 of the Income- tax Act and held that the expression "erroneous" in the provision enabling revision suo motu by the Commissioner refers to an order which has an error or is contrary to law. It is further held that it was necessary that the Commissioner must come to

a definite finding that the order is both erroneous as well as prejudicial to the interests of the revenue. In paragraph 22 of the said decision this Court held as follows:-

"22. In our opinion the word "prejudice" must be judicially examined. What constitutes "prejudice to the revenue" has been the subject matter of a judicial debate. One view was that "prejudicial to the interests of the revenue" does not necessarily mean loss of revenue. The expression "prejudicial to the interests of the revenue" is not to be construed in a petty- fogging manner, but must be given a dignified construction. The interests of the revenue are not to be equated to rupees and paise merely. There must be some grievous error in the order passed by the Income-tax Officer which might set a bad trend or pattern for similar assessments which, on a broad reckoning, the Commissioner might think to be prejudicial to the revenue administration. The prejudice must be prejudice to the revenue administration."

9. The Court also referred the following paragraph from the judgment of the Apex Court reported in MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, :

"10. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the assessing officer. Every loss of revenue as a consequence of an order of assessing officer cannot be treated as prejudicial to the interests of the revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the assessing officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue."

The Court further took the view that the order of the Deputy Commissioner, which was sought to be revised was not erroneous in any manner and it was also not prejudicial to the interest of the revenue. The Deputy Commissioner had interfered with the order as the penalty was imposed without following the principles of natural justice.

10. In Panchi Petha Store Vs. Commissioner of Sales Tax, , a learned Single Judge of the Allahabad High Court while dealing with a case under section 10B of the U.P.Trade Tax Act, 1948 took the view that it was not permissible for revising authority to revise the assessment on the basis of the fact that in the income-tax search and seizure the dealer admitted suppression of sale. It was held that subsequent information could not be the basis for the revising authority to revise the assessment order. It was further held that the revisional power could be

exercise only to satisfy the revising authority about the legality or correctness of the order passed under the Act on the basis of existing materials and not on the subsequent information or materials.

11. In the decision reported in MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, the Supreme Court dealt with the meaning of words "prejudicial to revenue" and held as follows:-

The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. This High Court of Calcutta in DAWJEE DADABHOY and CO. Vs. S. P. JAIN AND ANOTHER., , the High Court of Karnataka in Commissioner of Income Tax, Mysore Vs. T. Narayana Pai, , the High Court of Bombay in Commissioner of Income Tax Vs. Gabriel India Ltd., and the High Court of Gujarat in COMMISSIONER OF Income Tax Vs. SMT. MINALBEN S. PARIKH., treated loss of tax as prejudicial to the interests of the Revenue.

Mr. Abraham relied on the judgment of the Division Bench of the High Court of Madras in Venkatakrishna Rice Company v. CIT (1987) 165 ITR 129 interpreting "prejudicial to the interests of the Revenue". The High Court held (page 158): "In this context, it must be regarded as involving a conception of acts or orders which are subversive of the administration of revenue. There must be some grievous error in the order passed by the Income Tax Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue administration." "In our view, this interpretation is too narrow to merit acceptance. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully payable by a person, its will certainly be prejudicial to the interests of the Revenue.

The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, which an Income Tax Officer adopted one of the courses permissible in law and its has resulted in loss of Revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others, and in Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, ."

12. Learned Government Pleader draw our attention to the following case law:

In *Devidas Kesava Menon V. The State of Kerala*, (1998) 6 KTR 318 (Ker) a Division Bench of this Court while dealing with a case where the Commissioner exercised suo motu power of revision under section 35 of the Act held as follows:-

"7. Now we will consider the third contention taken by the assessee that the revisional authority has travelled outside the record of assessment and therefore the revisional order is without jurisdiction. Section 35 as it stood during the relevant period provides that "the Deputy Commissioner may, of his own motion, call for and examine any order passed or proceedings recorded under this Act by (any officer or authority subordinate to him other than an Appellate Assistant Commissioner) and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit". The above would show that after calling for the assessment records and scrutinising the same it is open to the Deputy Commissioner to conduct an enquiry or cause an enquiry to be conducted. The proceedings of the Deputy Commissioner dated 25-4-1994 would clearly show that it was the assessment records which were called for by the revisional authority and scrutinised. On such scrutiny it was found that the assessments were not properly made. The investigation conducted by the Intelligence Officer is then referred. The Intelligence Officer who is also an assessing authority had brought to the notice of the assessee the inter-state sale of rubber products effected by him during the relevant years which were not accounted and also the suppressed purchase of rubber and other materials used for the manufacture of such goods. Pursuant there to the assessee admitted the irregularity before the Intelligence Officer in writing, the offence was permitted to be compounded departmentally by remitting a compounding fee of Rs.24,000/- for the year 1981-"82 and Rs.41,490/- for the year 1982-"83. We find no merit in the contention raised by the assessee that the revisional authority cannot look into any material other than those available in the assessment records.

(emphasis supplied)"

13. In *THVL. Bombay Ammonia Pvt. Ltd. Vs. The State of Tamil Nadu*, , the Apex Court took the view that the suo motu power conferred on the Deputy Commissioner under section 32 of the Tamil Nadu General Sales Tax Act, 1959 in regard to the order or proceeding specified therein was quite wide and he could, subject to the conditions laid down in sub-sections (2) and (3), exercise the same even at the instance of an assessee who had not filed an appeal against the order for the purpose of rectifying any illegality or impropriety therein. The Court referred to a decision of the Apex Court in *The State of Kerala Vs. K.M. Cheria Abdulla and Company and Others*, wherein the Court held as follows:-

"The Deputy Commissioner is thereby invested with power to satisfy himself about the legality or propriety of any order passed or proceeding recorded by any officer subordinate to him, or the regularity of any proceeding of such officer, and

to pass such orders with respect thereto as he thinks fit. For exercising this power, he may suo motu or on application call for and examine the record of any proceeding or order. There is no doubt that the revising authority may only call for the record of the order or the proceeding, and the record alone may be scrutinised for ascertaining the legality or propriety of an order or regularity of the proceeding. But there is nothing in the Act that for passing an order in exercise of his revisional jurisdiction, if the revising authority is satisfied that the subordinate officer has committed an illegality or impropriety in the order or irregularity in the proceedings, he cannot make or direct any further enquiry... It is, therefore, not right baldly to propound that in passing an order in the exercise of his revisional jurisdiction, the Deputy Commissioner must in all cases be restricted to the record maintained by the officer subordinate to him, and can never make enquiry outside that record... Jurisdiction to revise the order or proceeding of a subordinate officer has to be exercised for the purpose of rectifying any illegality or impropriety of the order or irregularity in the proceeding."

The limitations to which the revisional power is subject were indicated by the majority thus:

"It would not invest the revising authority with power to launch upon enquiries at large so as either to trench upon the powers which are expressly reserved by the Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those powers. For instance, the power to reassess escaped turnover is primarily vested by rule 17 in the assessing officer and is to be exercised subject to certain limitations, and the revising authority will not be competent to make an enquiry for reassessing a taxpayer. Similarly, the power to make a best judgment assessment is vested by section 9(2)(b) in the assessing authority and has to be exercised in the manner provided. It would not be open to the revising authority to assume that power."

The above view was affirmed by this Court in the case of *Swastik Oil Mills Ltd. Vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay*, "

14. In *Madras Rubber Factory Ltd. Vs. The State of Kerala*, , a Full Bench of this Court dealt with the powers of the revisional authority under section 35 of the Act and held as follows:

"The power of assessing escaped turnover under section 19 of the Kerala General Sales Tax Act, 1963, and the power of revision under section 35 are two distinct and separate powers. They have been conferred on two different authorities, the power of revision being conferred on a superior authority. A valid exercise of the revisional power is not an infringement of the power of assessing escaped turnover. There is no bar or inhibition against getting at escaped turnover in exercise of the revisional power under section 35, so long as the grounds for exercise of that power are made out, viz., that the order is vitiated by illegality, irregularity or impropriety."

15. In this case it is true that by Annexure1 the assessment was completed by the Fast Track Team under the Central Sales Tax for the year 2003-'04. Equally it is true that there were proposals to revise the assessment under section 19 of the Act. During the pendency of the same, proceedings were commenced under section 37 of the Act, which reads as follows:-

"37. Powers of revision of the Board of Revenue suo motu:- (1) The Board of Revenue may suo motu call for and examine any order passed or proceeding recorded under this Act by any officer or authority subordinate to it other than an Appellate Assistant Commissioner which in his opinion is prejudicial to revenue and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act may pass such order thereon as it thinks fit.

(2) The Board of Revenue shall not pass any order under sub-sec.(1) if --

a) the time for appeal against that order has not expired;

b) the order has been made the subject matter of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal or of a revision in the High Court; or

c) more than four years have expired after the passing of the order referred to therein.

(2A) Notwithstanding anything contained in sub-section(2), the Board of Revenue may pass an order under sub-section (1) on any point which has not been decided in an appeal or revision referred to in clause (b) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of a period of four years referred in clause (c) of that sub-section, whichever is later.

3. No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

16. The Commissioner by the impugned order found that the assessment was completed granting exemption on a portion of the turnover based on the "F" form. Subsequent information received revealed that "F" Form furnished was invalid. The Commissioner found that in the present case the "F" Form declaration was invalid at the point of issue itself, but information came about the invalidity only subsequently. The decision in (1991) 82 STC 305 (supra), was distinguished by holding that that is a case where registration was cancelled subsequently. It is found that granting of exemption on the strength of invalid declaration was prejudicial to the interests of the revenue. It is also found that there was no need for the order which is sought to be revised to be found erroneous.

17. Unlike the provisions under section 263 of the Income-tax Act which requires not merely that the orders sought to be revised is prejudicial to the interest of revenue but further more that order is erroneous, under section 37 of the Act the

only requirement is that the order must be prejudicial to the interest of the revenue. Therefore, it may not be proper to go into the question as to whether there is any error in the order of the assessing authority. It is not necessary at all for exercise of power under section 37 of the Act that the Commissioner must find that the order is both erroneous as also prejudicial to the interest of the revenue, as that is not a requirement of section 37 of the Act. It may be true that expression "prejudicial to the interest of revenue" is not to be construed in a petty- fogging manner. The interests of the revenue are not to be equated to rupee and paise merely, as held in Bismillah Trading Company's case (Supra). It is true that as held by the Apex Court in Malabar Industrial Company Ltd. (Supra) every loss of revenue as a consequence of an order of the assessing authority may not be treated as an order prejudicial to the interest of the revenue. If it is a case where the officer adopts one of the two possible views, it may not be an erroneous order prejudicial to the interest of the revenue. Here again we must notice that the Apex Court made the above observation under section 263 of the Income-tax Act which requires both that the order must contain an error and that it must be prejudicial to the interests of the revenue. The Apex Court also noticed that the view of the Madras High Court that there must be grievous error in the order passed by the Income-tax Officer which might set a bad trend or pattern for similar assessments which, on a broad reckoning, the Commissioner might think to be prejudicial to the revenue administration was too narrow to merit acceptance. It was the duty of the revenue to levy and collect tax in accordance with the Act. If there is an error resulting in revenue losing tax, it would be prejudicial to the interests of the revenue, which was held.

18. As far as section 37 of the Act is concerned, it is not necessary to show that the order was erroneous. It suffices, if the order is prejudicial to the interest of the revenue. The following decisions are relied by the State for the proposition that the court should not interfere in matters where related administration of factual aspect:-

" Commissioner of Trade Tax, U.P. Vs. J.U. Pesticides and Chemical P. Ltd, , commissioner of Sales Tax, U.P. V. Kumaon Tractors & Motors, (2002) 9 SCC 379 , and Alukkas Jewellery Vs. State of Kerala, "

19. In Alukkas Jewellery's case (Supra) this Court held that under section 35(2A) of the General Sales Tax Act the Deputy Commissioner was entitled to exercise jurisdiction on any point that had not been decided in appeal. As far as the judgment of this Court in Bismillah Trading Co.(Supra) is concerned, the decision turned on the facts which as we already noted is that penalty was imposed without observing the principles of natural justice. The said order was set aside by the Deputy Commissioner and the matter was remanded for fresh consideration. It is in the said order which was revised by the Commissioner under section 37 of the Act. It is in the said circumstances, it was found that the order could not be found to be prejudicial to the interest of the revenue, as

following the order of the Deputy Commissioner the order could be passed after affording an opportunity of hearing to the assessee.

20. We have our own reservations about the judgment to the effect that the provision could be invoked only when the order is erroneous. The law does not require that the order is erroneous for invocation of power under section 37 of the Act. On the facts of the said case, the decision appeared to be well founded. We do not think that it is necessary to make a reference to the Larger Bench.

21. As per the judgments of the Allahabad High Court are concerned (both Division Bench and that of the Single Judge) they related to the revisional power under section 10B of the Local Act. We are concerned with the interpretation of section 37 of the Act. Moreover, we would notice that this Court in a Division Bench of this Court in Devidas Kesava Menon's case (Supra) has taken the view that under section 35 of the Act the revisional authority can look into materials not available in the assessment records.

22. This is a case where the assessment was completed granting exemption to a substantial turnover on the basis that there is no interstate sale and the matter is covered by "F" Forms. The said "F" Forms were issued and were acted upon by the assessing officer. According to the revenue, subsequently it is understood that "F" Forms had been invalidated. This is on the basis of the communication dated 7-6-2004 received from the Commercial Tax Officer, Avinashi, Tamilnadu wherein they informed that "F" Forms issued to M/s. Sakthi Murugan Trading Company are invalidated. It is on the said basis that the order is sought to be revised under section 37 of the Act. The assessment was completed by order dated 24-1-2009, which was subsequent to the invalidation of the "F" Forms being intimated is the finding of the Commissioner. This is not a case where at the time of the transaction entered into the F Form was valid as per intimation subsequently received and it was cancelled subsequently and the case of the revenue, on the other hand, is that the invalidation was there at the point of issue and the information was received only subsequently. Apart from the fact that sum involved is a large sum, the principle involved is also one which affects the revenue. We do not think that the word "prejudicial to the interests of the revenue" should be interpreted in a pedantic manner as submitted by the learned counsel for the appellant. Subsequent receipt of materials which show the original order to be passed against the interest of revenue, in our view, would suffice for the Commissioner to exercise power under section 37 of the Act. No doubt, it is contended by the appellant that the materials, which was allegedly received from the officer in Tamil Nadu, was not made available and, therefore, at any rate, the matter must be remitted back to the Commissioner with an opportunity to the appellant to go through such materials. We are of the view that, it may not be necessary, as the appellant was informed about the materials and also as we are leaving open all the contentions on the same when the matter is re-done pursuant to the order of the Commissioner and we would think that no prejudice is caused. No doubt, the appellant would have opportunity, when the

matter is considered pursuant to the impugned order, to raise all the contentions before the officer with regard to the cancellation of the "F" Forms on the assessment in question and we leave all such contentions open.

23. Another contention raised by the learned counsel for the appellant that the assessment is barred by limitation. It is so, according to the appellant, as under Rule 6 (7) of the Central Sales Tax (Kerala) Rules 1957, the original order of assessment, which was revised by the Commissioner, was itself barred. In this connection, we may refer to Rule 6 (7) (i), which reads as follows:

(i). If for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year, the assessing authority may at any time (within four years from the expiry of the year to which the tax relates proceed to) determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable on such turnover after issuing a notice to the dealer and after making such enquiries as he considers necessary."

24. The response of the learned Government Pleader is as follows:

The contention is not reflected in any of the questions of law raised. At any rate, it is not open to the appellant to ask this court to go into the question of the original assessment being barred. More importantly, it is contended that the original assessment is not barred for the reason that they are under Rule 6 (5), there is no period of limitation.

25. In answer to the same, learned counsel for the appellant would submit that even if there is no period within which the original assessment to be completed, it must be completed within a reasonable period of time. Assessment in this case relates to the year 2003 - 2004. The provisions under rule 6(7) provide an ample indication that at any rate the assessment must be completed at least within a period provided for reopening of the assessment.

26. The learned Govt. Pleader would respond to the same by contending that in so far as there is no provision prescribing limitation for the original assessment, the period of limitation for re-opening the assessment can have no operation in regard to the original assessment.

27. We are of the view that, the appeal is filed against the order which is issued under Section 37 of the Act. There is a period of limitation prescribed for exercising the power under Section 37. That period is not transgressed. In such circumstances, we are of the opinion that we need not consider the contention of the appellant.

28. Resultantly, while upholding the impugned order, we make it clear that the appellant will be free to raise all the contentions in regard to the alleged communications received from the officer in Tamil Nadu which is the basis for proceedings by the Commissioner. The appeal is dismissed subject to the aforesaid observations.