

(2005) 07 GAU CK 0038

In the Gauhati High Court

Case No : WP (C) No's. 5720, 5780, 5804 and 5816 of 2002

Vinod Trading Co.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-07-2005

Acts Referred:

Assam Finance (Sales Tax) Act, 1956 — Section 20
Assam General Sales Tax Act, 1993 — Section 17, 17(2), 17(4), 17(5), 18
Assam General Sales Tax Rules, 1993 — Rule 2
Central Sales Tax Act, 1956 — Section 21
Income Tax (Amendment) Act, 1961 — Section 147
Income Tax Act, 1922 — Section 34

Citation : (2005) 4 GLT 17 : (2004) 4 GLT 17 : (2006) 144 STC 573

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : B.P. Todi and D. Das, for the Appellant; K.N. Choudhury, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The common grievance in this batch of writ-petitions relates to reassessment of tax u/s 18(1) of the Assam General Sales Tax Act, 1993 (hereinafter referred to as "the Act") on account of claimed escapement of turnover of the petitioner at the time of initial assessment for the assessment year 1994-95, The statutory appeals having failed, the petitioners have invoked the writ jurisdiction of this Court. The petitions were heard together and are being disposed of by this judgment and order.

2. I have heard Dr. B.P. Todi, learned Senior Counsel for the petitioner and Mr. K.N. Choudhury, learned Senior Counsel for the Revenue.

3. The introductory facts in brief, pleaded by the petitioners would be necessary as a prelude.

4. The petitioners are the wholesale dealers registered under the Act and the

Central Sales Tax Act, 1956 carrying on business of potato, onion, garlic, etc., on consignment basis with their principal place of business at TR Phukan Road, Fancy Bazar, Guwahati. They are liable to pay tax on the consignment sales of onion under the Act and duly submitted their return of turnover of sales for the assessment year 1994-95. The assessing authority on verification of their books of accounts and other relevant records in support of the particulars furnished by them in their return and being satisfied therewith completed the assessment u/s 17(4) of the Act vide assessment orders dated July 10, 1995, September 12, 1995, September 14, 1995 and August 22, 1995, respectively.

5. While the matter rested at that, the Superintendent of Taxes, Unit-B revised the original orders of assessment u/s 18 of the Act on the basis of a report submitted by the Accountant-General (Audit) alleging that the sale price of onion as shown in the assessment order was lower than the prevailing market price. The report was based on a survey conducted by the Deputy Director of Agriculture and/or Chambers of Commerce and was not on any independent enquiry supported by corroborative evidence. Eventually, the Superintendent of Taxes, Unit-B, respondent No. 4, revised the original assessments rejecting petitioners' contention to the contrary vide re-assessment orders dated December 18, 1996 and December 9, 1996. Being aggrieved by the orders of revised assessment, the petitioners preferred separate appeals before the Deputy Commissioner of Taxes (Appeals), Guwahati, respondent No. 3, which were dismissed by order dated July 19, 2000. Their appeals before the Assam Board of Revenue u/s 5A of the Act also met the same fate, the Board having rejected those by its common judgment and order dated February 19, 2002.

6. It has been contended on behalf of the petitioners that the sale price of onion is fixed by the transacting parties depending on the quality, size, moisture/water content as well as the demand and supply position of the market. Besides it being an agricultural product, perishable in nature, its sale price is not static, but is constantly fluctuating. The contention is that the petitioners being engaged in selling onion on consignment basis, they earn only the commission, and the sale price is fixed with the consent of the consignors, i.e., suppliers. As the retail price of the commodity is always higher than the sale price, the retail price cannot be taken as the basis of the average wholesale price. According to the petitioners, the rates of sale price circulated or published by the Deputy Director of Agriculture (Marketing) and the Chambers of Commerce are presumably based on survey of rates or wholesale price rates gathered by way of general information and are without reference to the actual transactions of sale effected by the dealers. Further, the report of the Accountant-General (Audit) was on the basis of the survey report of two internal agencies without any supporting evidence and could not have been acted upon to determine the sale price of onion. According to them, there was no tangible material for the assessing officer to believe that the turnover of sale of onion vis-a-vis the petitioners for the assessment year involved had escaped assessment and therefore, the essential precondition for exercising power u/s 18 of the Act being absent, the impugned

reassessment is illegal and without jurisdiction.

7. No affidavit in opposition on behalf of the State-respondents has been filed.

8. Elaborating the above contentions, Dr. Todi has argued that the tax payable under the Act being determinable on the turnover of sales actually effected by the petitioners, reopening of the assessments already made u/s 17(4) of the Act on the basis of the audit objection is on the face of the records illegal and arbitrary. Being perishable in nature, the price of onion, garlic, etc., depends on many factors namely, quality, size, moisture content/water content, supply and demand and though the declared market price may be taken to be a vertical ceiling on the price, it could be sold by a dealer at a lower price depending on the condition of his stock. The report of the Agricultural Marketing Board based on the data furnished by the Chambers of Commerce, being general in nature and not relat-able to the petitioners' transactions in particular during the relevant period, the same was not a germane consideration justifying reopening of their completed assessment, he urged. With reference to Section 2(34) of the Act and rule 2(k) of the Assam General Sales Tax Rules, 1993 (hereinafter referred to as "the Rules"), the learned Senior Counsel argued that the petitioners having supported their transactions mentioned in their returns by producing their books of accounts and other relevant records, the average market price which is a general price index reflected in the report of Agricultural Marketing Branch could not have been taken note of to presume that any part of their turnover of sales during the relevant period had escaped assessment to tax and therefore, the impugned orders of reassessment are plainly without any authority of law.

9. He contended that it being apparent from the orders of the appellate authorities that the market price quoted in the report of the Agricultural Marketing Branch was determined to be on the higher side and the very fact that the reassessment was sought to be made on the basis of a lower price demonstrates the unacceptability of the report. As sales tax according to Dr. Todi is payable on the sale price actually realised and not on the market price prepared on the average of sale prices of various transactions, there was no real and existing material to generate any belief of the assessing officer u/s 18 of the Act to reopen the assessment. The decision to make the reassessment being a mere change in opinion, in absence of any fresh material in support thereof, it was impermissible in law, he contended. The requirement of furnishing full and true particulars of sales turnover u/s 18 appertains to the actual dealings and it being not the case of the Revenue at any stage that the petitioners had failed to comply therewith, it was not open for the State authorities to effect the reassessment. The appellate authorities having approached the issue in the wrong legal perspective, the orders passed in the statutory appeals are also unsustainable and are therefore liable to be set aside, he urged. In support of his submissions, Dr. Todi placed reliance on the following decisions :

(1) [1997] 107 STC 103 (P&H) Haryana Co-operative Sugar Mills Limited v. State of Haryana.

(2) Delux Wines Vs. State of Andhra Pradesh,

(3) [1998] 108 STC 569 (All.) Lucknow Skin Co. v. State of U.P.

(4) Baijnath Biswanath and Another Vs. State of Assam and Others,

10. In reply, Mr. Choudhury has argued that the reassessment order clearly reveals the basis of the satisfaction of the assessing officer and as the same conforms to the requirements of Section 18 of the Act, it is unassailable. According to him, production of the books of accounts and other records by the assessee by itself does not amount to full and true disclosure of the particulars of the sales turnover and as in the instant case, the petitioners had omitted to disclose the prevailing market price of onion for the relevant period, it amounted to concealment of primary facts justifying reopening of the assessment. Mr. Choudhury referred to Section 2(34) of the Act and rule 2(k) to contend that in determining the turnover of a dealer under the Act, the market price is a relevant factor and therefore, the assessing officer was within his authority to act on report of the Agricultural Marketing Branch prepared on the basis of the particulars furnished by the Chambers of Commerce and the Onion Dealers' Association. As the market price revealed in the said report, on a comparison with the sale price disclosed in the petitioner's return, furnished an acceptable basis for the assessing officer to believe that there had been an escapement of turnover on sales, the impugned decision cannot be faulted with. According to him, the statutory appellate authorities were justified in dismissing the appeals on a consideration of the materials on record. Mr. Choudhury drew sustenance for his arguments from decisions of the apex Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, and Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, Income Tax Officer, Calcutta v. Lakhmani Mewal Das.

11. Before advertng to the rival contentions, it would be appropriate to notice the relevant provisions of the Act and the Rules involved.

12. The Act is a legislation to amalgamate, consolidate and amend the laws relating to the levy of tax on the sale or purchase in the State of Assam.

13. "Sale price" is defined in Section 2(34) of the Act. The relevant portion thereof is extracted hereinbelow :

2(34)(d). In respect of a sale under any other sub-clause of clause (33), the amount received or receivable by a dealer as valuable consideration for the sale of goods including any sum charged, whether stated separately or not, for anything done by the dealer in respect of the goods at the time of or before delivery thereof or undertaken to be done after the delivery whether under the contract of sale or under a separate contract but excluding-

(i) the cost of outward freight, delivery, or installation or interest when such cost or interest is separately charged, subject to such conditions and restrictions as may be prescribed, and

(ii) any sum allowed as a cash discount according to ordinary trade practice :

Provided that in a case where there is no bill of sale or the sale bill is, in the opinion of the assessing authority, for an amount substantially lower than the market price of the goods, the valuable consideration receivable by the dealer shall be taken to be the market price determined in the prescribed manner.

14. Section 18 under the caption "Turnover escaping assessment" empowers an assessing officer to determine to the best of his judgment, the amount of tax due from a dealer in respect of such turnover, as he has reason to believe had escaped assessment or had been under-assessed or had been assessed at a rate lower than the rate at which he is assessable or any exemption or deduction or relief has been wrongly allowed or allowed in excess. The Section prescribes the period within which the process has to be initiated depending on the eventualities mentioned therein. The Explanation (1) to Section 18 of the Act relevant in the instant case is set out hereinbelow ;

Explanation (1) : For the purpose of this section, production before the assessing officer of accounts books or other evidence from which material evidence could with due diligence have been discovered by the assessing officer will not necessarily amount to disclosure within the meaning of this section.

"Market price" as referred to in the proviso to para (ii) of sub-clause (d) of clause 34 of Section 2 as above, is to be determined by the assessing officer in consideration of the reasonable price prevailing in the market for such goods at that time. This is the mandate of rule 2(k) of the Rules.

15. The mode of assessment of tax payable by a dealer under the Act is prescribed by Section 17. It ordains that the amount of tax payable is ordinarily assessable separately for each year. u/s 17(2) when the return is furnished, the assessing officer, in the case of such classes of registered dealers as may be prescribed and subject to such conditions as may be prescribed may make an assessment of tax payable by a dealer on the basis of the return furnished by him and the documents accompanying such return without requiring the presence of the dealer or the production by him of evidence in support of the return. The assessing officer, however, if such an assessment is made, u/s 17(2), subject to such condition as may be prescribed and in a case not falling under the said sub-section, serve on a dealer a notice in the prescribed form requiring him to appear before the assessing officer on the date and time specified and to produce or cause to be produced any evidence on which he may rely in support of his return or produce or cause to be produced such accounts or documents as the assessing officer may specify in such notice. The assessing officer, thereafter would on a consideration of the said evidence as the assessee may produce and such other evidence on specified points as the assessing officer may in the course of the hearing require and after taking into account all relevant materials which he has gathered, make an assessment or, in a case where an assessment has been made under Sub-section (2), a fresh assessment of the tax payable by

the dealer.

The assessing officer under Sub-section (5) of Section 17 is authorised to assess the dealer and determine the tax payable by him on the basis of assessment to the best of his judgment if the dealer fails to furnish a return or had failed to comply with the notice issued to him as above.

16. A conjoint reading of the above provisions of the Act unequivocally proclaims that an exhaustive process is to be undertaken by the assessing officer for assessment of the tax payable by a dealer and for that purpose, he is empowered to make all necessary inquiries to be satisfied that the particulars furnished by such dealer in his return in support of the sale transactions reflected therein are complete and true. Not only in course of such examination, the assessing officer is empowered to require the assessee to produce all evidence in support of his return, he is competent to collect all relevant materials as he may consider necessary for making an appropriate assessment of the tax liability. The assessment u/s 17(4) therefore, is preceded by a stringent and rigorous drill and is supposed to be almost full proof.

17. It is, in this context, that the purpose of Section 18 of the Act has to be perceived. The dominant essential pre-condition for invoking the power u/s 18 of the Act is the belief of the assessing officer that the whole or any part of the turnover of a dealer has escaped assessment to tax or has not been assessed or has been assessed at a lower rate, or in granting exemption or deduction, relief had been wrongly extended or allowed in excess. In case a dealer had concealed, omitted or failed to disclose fully or truly the particulars of such turnover or had furnished incorrect or incomplete particulars of his turnover, etc., the action may be initiated within eight years from the date of the relevant year for which or part of which the assessment or reassessment is required to be made. The initiation of the process, however, has to be, in any other case within four years of the end of the relevant year for which or part of which an assessment or reassessment is required to be made. Under the said provision of the Act, the assessing officer after affording an opportunity of hearing to the dealer concerned, will conduct an enquiry and thereafter as he considers necessary, may determine to the best of his judgment, the amount of tax due from the dealer in respect of such turnover.

18. Explanation (1) appearing below the third proviso to Section 18(1) clarifies that production before the assessing officer of books of accounts or other evidence from which material evidence could with due diligence have been discovered by the assessing officer would not necessarily amount to disclosure within the meaning of the section.

19. In the cases in hand, admittedly, the petitioners had been initially assessed u/s 17(4) of the Act. The assessment orders clearly demonstrate that the books of accounts pertaining to the sales involved were duly produced on behalf of the petitioners and were verified by the concerned authority. The assessing officer in

all cases being satisfied with the general turnover in the returns and the ledgers with the accounts reflecting the particulars of the sales, accepted the accounts as correct in absence of any information to the contrary, and consequently assessed the tax payable. Not only did the assessing officer record that the gross turnover in the returns tallied with the accounts produced disclosing the transactions supported by contemporaneous vouchers, he in the case of the petitioner, in W.P. (C) No. 5816 of 2002 also took note of the factum of damage to the stock of onion in course of railway transit. In other words, the assessment orders evidenced a thorough enquiry by the assessing officer as contemplated u/s 17(4) of the Act before finally deciding on the tax liability of the petitioners.

20. The official records produced by the learned Senior Counsel for the Revenue disclose that in case of M/s. S.K. Traders, writ petitioner in W.P. (C) No. 5804 of 2002, an audit objection was made on June 11, 1996 pointing out that though for the assessment period ending March 31, 1995 the dealer's accounts disclosed that he had sold 11,434.52 quintals of onion for Rs. 34,09,292.28 suggesting the wholesale price of onion per quintal to be Rs. 298.05, the wholesale market price of onion per quintal, on the basis of the monthly news bulletin published by the Deputy Director of Agriculture, Marketing Branch, Government of Assam, Guwahati, for the period April, 1994 to March, 1995 was Rs. 440.41. The audit report, however, mentioned that though the wholesale price of onion fluctuated every month, in absence of particulars of monthly sales, the average rate was applicable to determine the turnover of the dealer during the period. Therefore, applying the average wholesale price per quintal at Rs. 440.41, an amount of Rs. 1,20,618.12 was according to the audit, payable in addition by the said dealer. The audit report further mentioned that the data of the wholesale price per month was made available by the Chambers of Commerce and the Wholesale Dealers of Onion. Thus, according to the audit authorities, Rs. 440.41 was the average wholesale price per quintal of onion for the assessment year 1994-95.

21. On a reading of the assessment orders, it is explicit that the assessing officer did not accept the average wholesale price at Rs. 440.41 as reflected in the monthly bulletin of the Agricultural Marketing Branch. In course of the enquiry, the assessing officer examined the registers of the Chambers of Commerce and the Onion Dealers' Association at Guwahati, and on a comparison of the average maximum and minimum sale price of onion reflected therein with the petitioners' wholesale price, was of the view that during the period, the petitioners had sold three categories of onion-(i) good quality, (ii) gulty (small size onion) sold below minimum rate and (iii) dagi (half damaged) sold at throwaway price. The assessing officer on the basis of the particulars in the registers of the Chambers of Commerce and the Onion Dealers' Association of Guwahati ascertained the minimum price of the three qualities of onion at Rs. 369, Rs. 300 and Rs. 200 per quintal. On determining different grades of onion sold by the petitioners and applying the above rates, the assessing officer computed the difference in the sales turnover which according to him, had therefore, escaped assessment to

tax. By following the above formula, the wholesale market price for the petitioner was ascertained to be Rs. 350, Rs. 315.38, Rs. 350 and Rs. 324 respectively and additional tax liability of Rs. 60,860, Rs. 31,580, Rs. 1,00,301 and Rs. 43,072 was quantified.

22. The statutory appellate authorities rejected the contentions raised on behalf of the petitioners on the ground that at the time of initial assessment, the assessing officer had failed to take note of the prevailing market price and therefore being subsequently aware thereof, he justifiably proceeded to re-examine the entire matter afresh. Though, it was held that the price quoted by the Agricultural Marketing Branch was on the higher side, the action of the assessing officer was upheld on the ground that the reassessment was made on the basis of the germane materials. The report of the Agricultural Marketing Branch based on the inputs of the Chambers of Commerce and Onion Dealers" Association was held to be a relevant information warranting the impugned reassessment.

23. A close scrutiny of the reassessment orders and the documents contained in the official records placed before this Court does not reveal any imputation against the petitioners of withholding full and true particulars of their sales turnover for the relevant period. To repeat, the original assessment orders in clear terms reflected that the petitioners had produced the books of accounts and other relevant documents and records involving the transactions. It was recorded in the aforementioned assessment orders that no information contrary to what had been furnished by the petitioners was available. Having regard to the fact that tax is payable by a dealer on his taxable turnover relatable of sale transactions, his liability has to be ascertained vis-a-vis the transactions actually effected. Assuming that the minimum average price of different categories of onion at the relevant point of time as furnished by the Chambers of Commerce and the Onion Dealers" Association is acceptable, in order to determine the tax liability, ascertainment of the actual sale price realised from the transactions involved is indispensable. Applying the wholesale average minimum price to the total quantity of onion sold during a particular period, may not decisively yield the correct sales turnover. The determination of turnover of a dealer by applying the wholesale average minimum price ascertained for a particular category of onion to the whole quantity thereof sold during a period would produce a figure which may not tally with the sale price realised through the actual sale transactions. The computation of turnover by applying the above formula, in my opinion therefore leaves a room for error. The exercise as above would lead to a presumptive figure in a given situation subjecting a dealer to an additional tax liability. This is more so when dealer had produced contemporaneous records in support of the sales transactions involved and acted upon for assessment sought to be reopened. The relevance of "market price" as visualised in the proviso to Section 2(34)(d) and Rule 2(k) cannot be de hors the above considerations. Following example may illustrate the above proposition :

Assuming that a dealer "X" has sold certain quantities of onion during a particular week at the prevailing market price as shown below :

Prevailing market	Quantity sold	Turnover of sales	price per kg.
Day-1	Rs. 2.00	500 kg.	Rs. 1,000.00
Day-2	Rs. 3.00	200 kg.	Rs. 600.00
Day-3	Rs. 4.00	100 kg.	Rs. 400.00
Day-4	Rs. 4.00	nil	nil
Day-5	Rs. 6.00	nil	nil
Day-6	Rs. 3.00	nil	nil
Day-7	Rs. 6.00	nil	nil
Total	Rs. 28.00	800 kg.	Rs. 2,000.00.

24. From the above calculations, it is clear that the actual turnover of sales of the dealer for the week is Rs. 2,000. However, if the average price of onion per kg. is taken to be Rs. 4.00 (Rs. 28.00 divided by 7), his turnover sale if calculated on the basis of such average price would be Rs. 3,200 resulting in excess for Rs. 1,200. The market price relevant though for computing the sales turnover, under the Act and the Rules could thus not be conclusively decisive of the sales turnover de hors the actual transactions.

25. In the case in hand, no attempt has been made by the assessing officer to determine the actual transactions undertaken by the petitioner and figures for the purpose of reassessment of tax were arrived by merely applying the wholesale average minimum price collected from the registers of the Chambers of Commerce and onion dealers on the quantity of onion of different categories sold during the period. This, in my view cannot be considered to be a correct assessment of the sales turnover of the petitioners. Though, it is true that the underlying object of Section 18 is to prevent avoidance of tax payment, as the exercise indicated therein would involve reopening of the assessment already made, the prescribed requirements have to be strictly adhered to.

26. In *Delux Wines* [1990] 77 STC 373, the Andhra Pradesh High Court while dealing with the scope and ambit of Section 14 of the Andhra Pradesh General Sales Tax (Amendment) Act, 1985 for reopening of assessment holding that in the exercise of such power, the authority concerned has to have materials de hors the assessment record and that the reopening of assessment on a mere change of opinion is impermissible. It was of the view that once an assessment is made, it is to be presumed that the assessing authority had applied his mind to all the relevant facts and therefore, the burden of establishing that any turnover had escaped assessment to tax is on the Revenue and unless it establishes the same conclusively, no additional tax can imposed.

27. In *Bajinath Biswanath and Another Vs. State of Assam and Others*, dwelling on the scope of power of the Commissioner u/s 20 of the Assam Finance (Sales Tax) Act, 1956 to effect a suo motu revision of any order of assessment, it was held by this Court that in the absence of any authentic material regarding sale price on the date of assessment, the Commissioner ought not to have directed a fresh assessment acting on the market information and report of the Department of Agriculture.

28. That an audit note received by the assessing authority was not a "definite information" comprehended in Section 31 of the Haryana General Sales Tax Act,

1973 which justified reassessment of tax was held by the High Court of Punjab and Haryana in Haryana Co-operative Sugar Mills Limited [1997] 107 STC 103 Gau.

29. The contention that an assessment proceeding u/s 21 of the Central Sales Tax Act, 1956 cannot be reopened in absence of discovery of any new fact or development was upheld by the Allahabad High Court in Lucknow Skin Co. [1998] 108 STC 569 Gau. In the contextual facts, their Lordships having noticed that the materials as available before the assessing authority at the initial assessment, had remained the same, were of the view that the assessment proceeding ought not to have been opened for reconsideration of the whole matter only due to change of opinion of the concerned authority.

30. The decision of the apex Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , was relied upon on behalf of the Revenue to underline the statutory obligation of the assessee to disclose all primary facts so as to enable the assessing officer to effectively make the assessment and to highlight that mere production of account books and records without drawing the attention of the assessing authority to the relevant primary facts would not be amount to full and true disclosure of all material facts necessary for assessment. The case involved Section 34 of the Income Tax Act, 1922, the language of the explanation thereof, however, being in part metieria with the explanation under the third proviso to Section 18(1) in the instant case. The apex Court, however, held that the explanation did not cast any duty on the assessee to disclose an inference drawable by the Income Tax Officer from the material facts furnished.

31. As noticed hereinabove, it has not been the stand of the Revenue at any stage of the proceeding that the petitioners had omitted to disclose fully and truly the primary facts bearing on the sales turnover involved. Though, there is no dispute with regard to the legal principles enunciated in the above decision, the same in my view, has no application in the facts of the instant case to further the case of the Revenue.

32. The expression "reason to believe" as appearing in Section 147 of the Income Tax Act, 1961 was analysed by the apex Court in the Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, . The legal exposition articulated in the above decision is contained in the following extract therefrom :

As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income

Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.

33. Applying the above test in the present setting of facts, I am of the considered opinion that the purported basis of reopening the assessment of the petitioners u/s 17(4) of the Act could not have generated the belief that the petitioners' turnover pertaining to sale of onion during the assessment year in question, had escaped assessment to tax. No rational connection between the average wholesale market price on the basis of the data furnished by the Chambers of Commerce and the Wholesale Onion Dealers' Association and the petitioners' sale transactions is discernible for the purpose of computing their tax liability. The average wholesale market price so gathered cannot in the facts of the present case conclusively displace the petitioners' accounts/records in support of the sale transactions during the relevant period. The respondent-authorities in my view failed to discharge their burden to justify reassessment of the petitioners' tax liability in the touchstone of the directions of Section 18. The assessing officer, in my view proceeded in the wrong premises, legal as well factual, thus vitiating the impugned orders of reassessment by an incurable illegality. The statutory appellate authorities also were unmindful of the true purport of the taxing provisions of the Act and proceeded on the basis that the petitioners' sales turnover were computable on the average wholesale market price structured on the materials furnished by the Chambers of Commerce and the Wholesale Onion Dealers' Association without reference to the actual sale transactions effected during the relevant period.

34. In the above view of the matter, the impugned assessment orders as well as the orders of the statutory appellate authorities referred to above being in contravention of the letter and spirit of the Act and the Rules are unsustainable in law and are hereby set aside and quashed. Consequently, the petitions are allowed. No costs.