

**(2002) 06 GAU CK 0001**

**Gauhati High Court**

**Case No:** Civil Rule No. 781 of 1997

Rejesh Mehendi Ratta

APPELLANT

Vs

Commissioner of Taxes and  
Others

RESPONDENT

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**Date of Decision:** June 13, 2002

**Acts Referred:**

- Assam General Sales Tax Act, 1993 - Section 36(1)

**Citation:** (2002) 128 STC 343

**Hon'ble Judges:** P.C. Phukan, J

**Bench:** Single Bench

**Advocate:** Ashok Saraf, K.K. Gupta and R.K. Agarwalla, for the Appellant; GA, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

P.C. Phukan, J.

By this application under Article 226 of the Constitution, the petitioner prays for setting aside and quashing the impugned notice dated 29.4.1996 (Annexure-III) passed by the Deputy Commissioner of Taxes, Tinsukia Zone, Tinsukia.

2.1 have heard Dr. A.K. Saraf, learned senior counsel for the petitioner and learned Govt. Advocate, Assam appearing for the State respondents.

3. The petitioner is a Proprietor of Sardar Brick Fields, which runs a small brick field at Chabua in the district of Tinsukia. The assessment of the petitioner for the period ending 30.9.1988 under the Assam Finance (Sales Tax) Act, 1956 was completed by the respondent No. 3, Superintendent of Taxes, Tinsukia on 25.4.1991 u/s 9(4) of the Assam Finance (Sales Tax) Act, 1956 summarily on the basis of the report of the Inspector of Taxes the turn over of the petitioner was determined summarily to be Rs. 79,000 and accordingly a sum of Rs. 5168 was determined as tax payable by the petitioner and a sum of Rs. 1,899 was levied as interest. The order of assessment is

at Annexure-I. Thereafter the respondent No. 2, the Deputy Commissioner of Taxes, Tinsukia Zone, issued a notice dated 5.2.1996 purported to act u/s 36(1) read with section 74(3) of the Assam General Sales Tax Act, 1993, directed the petitioner to appear before him on 25.3.1996 and to show cause why the assessment for the period ending 30.9.1988 should not be cancelled and fresh assessment should not be made. Annexure-II is the notice. The petitioner accordingly appeared before the Deputy Commissioner of Taxes through his representative and stated that there was no concealment of turn over and that the difference in the stock of the bricks was due to non consideration of the quantity of wastage, as well as Bricks consumed for brick klin, labour quarters & roads. The Deputy Commissioner of Taxes passed the order dated 29.4.1996 (Annexure-III) cancelling the assessment order dated 25.4.1991 being erroneous insofar as it was prejudicial to the interest of revenue and directed the Superintendent of Taxes to make fresh assessment by adding the turnover of Rs. 2,56,300 to the taxable turnover. Being aggrieved, the petitioner has come before this Court in the instant writ petition.

4. Dr. Saraf, learned senior counsel for the petitioner submits that the impugned order dated 29.4.1996 is illegal and without jurisdiction in as much as, suo-motu revisional proceeding cannot be initiated by making fishing and roving enquiries in to the business affairs of the petitioner, and the Deputy Commissioner of Taxes, respondent No. 2 has no power to substitute his own judgment for that of the assessing officer when assessment was completed summarily to the best judgment of the assessing officer on the basis of the local enquiry made by the Inspector of Taxes. The relevant portion of section 36(1) of the Assam General Sales Tax Act 1993 reads as under :-

"36(1). The Commissioner may call for and examine the records of any proceedings under this Act and if he considers that any order passed therein by any person appointed under Sub-section (1) of Section 3 to assist him is erroneous insofar as it is prejudicial to the interest of the revenue, he may after giving the dealer or the person to whom the order relates an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order as the circumstances of the case justify. Including an order enhancing or modifying the assessment of tax or penalty or cancelling such order and directing that a fresh order should be made :

Provided that no order under this sub-section shall be made after the expiry of eight years from the end of financial year in which the order sought to be revised was made."

In support of his contention Dr. Saraf has referred to a decision of this Court in Santalal Mehendi Ratta (HUF) v. Commissioner of Taxes (2002) 1 GLR 197. The learned counsel for the State has also conceded that this case is squarely covered by the above decision of this Court, wherein it has been held :-

"In the instant case, it is not the stand of the Deputy Commissioner that the primary authority did not have the jurisdiction to make the assessment or had exceeded its Jurisdiction. The short and simple case of the Deputy Commissioner is that the turn over of the petitioner has escaped assessment due to concealments made by the assessee. The aforesaid facts, in my considered view, does not render the order infirm on account of any jurisdictional error. If tax has escaped assessment due to concealment, the proper recourse is to reopen the assessment u/s 18 of the Act. This is precisely what was attempted to be done but was abandoned subsequently. If on the given facts, the power u/s 18 was attempted to be exercised but subsequently abandoned, it is not understood how on the same set of facts the power u/s 36 can be exercised. The powers under both the aforesaid two provisions of the Act, namely Section 18 and 36 operate in two different fields and is vested into two different authorities. To permit the revisional authority to exercise power u/s 36 in the facts of the instant case would be to permit the said authority to trench upon the powers of the primary authority u/s 18 of the Act. Such a situation has been disapproved by the Apex Court in the case of State of Kerala v. K.M. Cherla Abdulla & Company."

5. In view of the above decision, the impugned notice dated 5.2.1996 (Annexure-II) and the Suo-motu revisional order dated 29.4.1996 (Annexure-III) are set-aside and quashed.

This writ petition is allowed. No costs.