SUPREME COURT OF INDIA

State of Jharkhand & Ors.

Vs.

Shivam Coke Industries

C.A.No.6889-6891 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

10.08.2011

JUDGMENT

Dr. Mukundakam Sharma,J.,

SLP (Civil)No.19104-19106 of 2008

1. Delay condoned in SLP (C) No. 8424 of 2010.

2. Leave granted. By this common judgment and order, we propose to dispose of these appeals as they involve similar issues both of facts as also of law and therefore, they were heard together.

3. Appeals arising out of SLP (Civil) Nos. 19104-19106 of 2008 are directed against the judgment and order dated 14.3.2008 in WP (T) No. 6377 of 2007, WP (T) No. 5895 of 2007 and WP (T) No. 5892 of 2007. The appeal arising out of SLP (Civil) No. 21491 of 2008 is directed against the judgment and order dated 19.3.2008 in WP (T) No. 6071 of 2007 and the appeal arising out of SLP (Civil) No. 8424 of 2010 is directed against the judgment and order dated 31.7.2009 in W.P. (T) 54 of 2009 passed by the High Court of Jharkhand at Ranchi allowing all the Writ Petitions filed by the respondents herein.

CIVIL APPEAL ARISING OUT OF SLP (C) NO. 19104 OF 2008

4. The facts leading to the filing of the case in the appeal arising out of SLP (C) No. 19104 of 2008 are that the respondent-M/s Shivam Coke Industries, Dhanbad is a manufacturer of coal and was registered under the provisions of the Bihar Finance Act, 1981 [now repealed - for short "BFT Act, 1981"] and presently under the provisions of Jharkhand Value Added Tax, 2005. Respondent-assessee being manufacturers of hard coke buys coal from Bharat Coking Coal Ltd. after making the payment of local Sales Tax @ 4% which is being used as an input for the purpose of manufacturing the hard coke. Respondent was assessed to tax for the Financial Years 1988-89, 1992-93 and 1996-97 determining the tax on intra-State sales transactions as well as Central Sales Tax on inter-State sales transactions. Respondent

preferred an Appeal before the Joint Commissioner of Commercial Taxes (Appeals), Dhanbad Division, Dhanbad against the assessment orders passed between 26.4.1990 to 23.12.1998 for the Financial Years 1988-89, 1992-93 and 1996-97, who vide order dated 25.08.2003 remanded the aforesaid assessment proceedings by a common order to re-examine the books of account and to re-determine the nature of sales as to whether they are intra-state sales or inter-state sales, on the basis of the books of account and the audit reports as well as on the basis and within the meaning and scope of Section 3(a) of the Central Sales Tax Act, 1956 (for short "the CST Act"). Thereafter, Deputy Commissioner of Commercial Taxes, Dhanbad Circle on the basis of guidelines issued by the Joint Commissioner of Commercial Taxes (Appeals) passed the revised assessment orders on 26.12.2003 reversing the then inter-State sales under Section 3(a) of the CST Act 1956 into the intra-State sales. Respondent on 10.3.2005 filed an application for refund of excess amount of tax after adjustment of the amount to be paid by Respondent. Accordingly, on 21.8.2006 notice was issued by Deputy Commissioner of Commercial Taxes to Respondent to file its refund application before the Joint Commissioner of Commercial Taxes since the amount refundable to the Respondent is above Rs. 25,000/-. Thereafter in the year 2006, as is alleged by the respondent, the Deputy Commissioner of the Dhanbad Circle got changed and the new Deputy Commissioner examined the revised assessment orders of the Respondent and he opined that the revised assessment orders do not conform to the appellate direction and Deputy Commissioner informed the Joint Commissioner of Commercial Taxes (Administration) about his observations. The Joint Commissioner of Commercial Taxes (Administration), Dhanbad Division, Dhanbad [Appellant No. 4] then initiated the proceeding suo motu under Section 46(4) of the adopted Bihar Finance Act, 1981 [now repealed] and issued notice/Memo No. 744 dated 1.8.2007 directing the Respondent to furnish the complete sets of books of account in order to determine the legality and propriety of the said revised assessment orders conforming to the appellate order. On 28.11.2007 Respondent filed Writ Petition before the High Court of Jharkhand which was registered as WP (T) No. 6377 of 2007 praying for a direction to quash the notice/Memo No. 883 dated 20.9.2007 [which was issued in pursuance to earlier notice/Memo No. 744 dated 1.8.2007] issued by the Joint Commissioner of Commercial Taxes (Administration) for initiating the proceeding suo motu under Section 46(4) of the repealed BFT Act, 1981 and also for quashing the order dated 26.11.2007 passed by the Joint Commissioner of Commercial Taxes by which he set aside the revised assessment order dated 26.12.2003. The High Court of Jharkhand vide its order dated 14.03.2008 allowed the Writ Petitions of the respondent herein against which the appellants have filed the present appeals on which we heard the learned counsel appearing for the parties.

CIVIL APPEALS ARISING OUT OF SLP (C) NOS. 19105-06 OF 2008

5. The facts leading to the filing of appeals arising out of SLP (C) Nos.19105-06 of 2008 are that the Respondent -M/s. Rani Sati Coke Manufacturing Company, Baliyapur, Dhanbad is engaged in processing of coal to coke and was assessed to tax for the Financial Years from 1984-85 to 2000-2001 determining the tax on "intra-State sales" transactions, as well as Central Sales Tax on inter-State sales transactions. Respondent filed an appeal against the assessment orders passed between 29.12.1987 to 10.3.2003 for the Financial Years from

1984-85 to 2000-01 and the appellate authority, i.e., the Joint Commissioner of Commercial Taxes (Appeal), Dhanbad Division, Dhanbad remanded the aforesaid assessment proceedings by a common order to re-examine the nature of intra-State sales and inter-State sales on the basis of the books of account and the audit reports as well as on the basis of the meaning and scope of Section 3(a) of the CST Act, 1956. Thereafter, the Deputy Commissioner of Commercial Taxes passed the revised assessment order vide orders dated 14.12.2005 and 29.12.2005 reversing / converting the then inter-State sales under Section 3(a) of the CST Act, 1956 into the intra-State sales. Pursuant thereto, Respondent filed prescribed refund application before the Deputy Commissioner of Commercial Taxes. Thereafter in the year 2006, it is alleged by the respondents that, the Deputy Commissioner of the Dhanbad Circle got changed and the new Deputy Commissioner examined the revised assessment orders of the Respondent and he opined that the revised assessment orders do not conform to the appellate direction and as such do not have any merit as they were re-assessed on the basis of same facts for converting the then inter-State sales into the intra-State sales, which resulted the claim of refund and Deputy Commissioner informed the Joint Commissioner of Commercial Taxes (Administration) about his observations. Pursuant to this Joint Commissioner of Commercial Taxes (Administration) initiated the proceeding suo motu under Section 46(4) of the Bihar Finance Act, 1981 and issued notice No. 850 dated 06.09.2007 directing Respondent to furnish the complete sets of books of account, in order to determine the legality and propriety of the said revised assessment orders conforming to the appellate order. Thereafter, Respondent No. 2 filed two Writ Petitions before the High Court of Jharkhand which were registered as W.P. (T) Nos. 5892 and 5895 of 2007 praying for the direction to the appellants for immediate refund of the entire amount arising out of the revised assessment orders in which High Court directed the appellants to participate in revision proceedings, after which Respondent filed an amended petition before the High Court by bringing the fact that the revision proceedings under Section 46(4) of the Bihar Finance Act, 1981 was opened on the basis of an application of the Deputy Commissioner which is not permitted as per the provisions of the repealed BFT Act, 1981 and that the same is also barred by limitation. The High Court of Jharkhand vide its order dated 14.03.2008 allowed the Writ Petitions of the respondents herein against which the appellants have filed the

present appeals on which we heard the learned counsel appearing for the parties.

CIVIL APPEALS ARISING OUT OF SLP (C) NO. 21491 AND 8424 OF

6. The appeals arising out of SLP(C) No. 21491 of 2008 are against the judgment and order of the High Court of Jharkhand dated 19.03.2008 following the judgment in WP (T) NO. 6377 of 2007. The facts of this appeal and also of the appeal arising out of SLP (C) No. 8424 of 2010 are similar to the other appeals at hand. So, we need not go into the detailed facts of the said two appeals.

7. The learned counsel appearing for the appellant while taking us to the impugned judgment and also the connected records submitted that judgment and order passed by the High Court is incorrect. He further submitted that the findings arrived at by the High Court are erroneous and based on wrong readings of the materials available on record.

8. The learned counsel appearing for the respondents on the other hand while drawing support from the impugned judgment and order submitted that the findings recorded by the High Court are findings of fact and therefore this Court should not interfere with the aforesaid conclusions of fact arrived at by the High Court by giving cogent reasons for its conclusions.

9. Upon reading the entire records and materials placed and also upon hearing the learned counsel appearing for the parties, in our considered opinion three following issues appear to arise for our consideration;

> "a) Whether the suo motu power of revision under Section 46(4) of the BFT Act, 1981, vested with the Joint Commissioner was legally and properly exercised in the present case;
>
> b) Whether or not the action taken by the Department was barred by limitation and whether such action was bad for not having been initiated within a reasonable time;
>
> c) Whether the order dated 26.11.2007 passed by the Joint Commissioner setting aside the revised assessment order dated 26.12.2003 is proper and could be maintained;"

10. We propose to deal with the aforesaid three issues one after the other and record our reasons for coming to the decision in each of the aforesaid issues; Issue 1: Whether exercise of Suo Motu power of revision as provided under Section 46(4) of the BFT Act, 1981 could be upheld;

11. Section 46 of the BFT Act, 1981 with which we are concerned in the present case came to the statute book with the enactment of Bihar Finance Act, 1981. The aforesaid Act was a consolidated Act which was passed by the State Legislature amending the law relating to levy of tax on sale and purchase of goods. In the said Act, Section 45 provides for the provision of filing an appeal whereas Section 46 of the Act lays down the provision of revision. In the present case, we are only concerned with the provision of revision and in our estimation, the entire provision of Section 46 should be extracted hereinafter.

> "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 thereunder, 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 Commissioner.

(3) Every application for revision under this section shall be filed within ninety days of the communication of the order which is sought to be revised, but where the 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, on his own motion call for an examine the records of any proceeding in which any order has been passed by any other authority appointed under section 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 deem necessary, pass such order as he thinks proper.

(5) No order under 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."

12. The said Act came to be amended in 1984. Section 10 of the Bihar Finance Amendment Act, 1984 amended Section 46 in some respect which again is extracted hereinbelow:-

"10. Amendment of section 46 of the Bihar Act V, 1981 (Part I). - 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 under section 9, for the purpose of satisfying himself as to the legality or property of such order and may, after examining the record and making or causing to be made such enquiry as he may deem necessary, pass such order as he thinks proper."

13. By inserting a provision namely Section 7 of the Bihar Finance (Amendment) Ordinance, 1989, clause (b) of sub-Section (4) has been deleted with effect from May, 1989. Therefore, the statutory provision that now stands and is operative is that Section 46 provides for a

revision of all appellate and other orders passed by various authorities under the BFT Act, 1981. According to the statutory provision as applicable, power of revision is vested with the Tribunal and the Joint Commissioner, which power is to be exercised 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 with a further power to condone the delay, if sufficient cause is shown. There is an additional power vested on the Commissioner which empowers the Commissioner to initiate suo motu revision proceedings at any time and for exercising such power no limitation has been prescribed in the statute. The power of the Commissioner to initiate such suo motu revisional proceeding has been delegated to the Joint Commissioner of Commercial Taxes (Administration) against the orders of the officers lower than his rank which is so delegated in terms of the notification issued by the State of Bihar under S.O. No. 795 dated 28th June 1986.

14. It is thus established that under Section 46 of the BFT Act, 1981, it is the Commissioner who on the basis of an application filed by an aggrieved party revise the order passed by any authority subordinate to him. He also has the additional power alongwith the Joint Commissioner as a delegatee as provided under Section 46(4) of the BFT Act, 1981 to revise an order passed by an authority subordinate to it by exercising its suo motu power.

15. In all these appeals, the Joint Commissioner of Commercial Taxes has exercised the power vested on him under Section 46(4) of the BFT Act, 1981 which power in most cases concerning the present appeals was exercised by him within a period of three years but in some other cases beyond the expiry of three years period, but soon thereafter.

16. In that view of the matter, counsel appearing for the respondent submitted in the High Court that exercise of such power by the Joint Commissioner after expiry of more than two years time is illegal, without jurisdiction and bad in law. The Division Bench of the Jharkhand High Court found force in the aforesaid submissions of the counsel appearing for the respondent and held that such suo motu power vested on an authority must be exercised within three years period which is a period prescribed under Article 137 of the Limitation Act, 1963. According to the High Court where no time limit is prescribed for filing a revision, Article 137 of the Limitation Act would apply to such cases. It was further held that since under Section 46(4), no time limit is prescribed the limitation as prescribed under Article 137 of the Limitation Act would apply to the facts and circumstances of the present case.

17. Counsel appearing for the appellant, however, submitted before us that the aforesaid contentions on the face of it cannot be accepted as a correct position in law for by enacting sub-Section (4) in Section 46, the legislature thought it fit not to impose any restriction or time limit so far as limitation is concerned and therefore to hold that Article 137 of the Limitation Act would apply to such provisions is nothing but misreading of the provisions for if that was the intention of the legislature it would have so stated specifically by making the said provision applicable to a case like this.

18. The counsel therefore, submitted that such power of initiation of suo motu revision proceedings by the Commissioner or Joint Commissioner as the case may be should be held to be without any time or such restriction or at least it should be held that such exercise of power of revision could be exercised suo motu within a reasonable time depending on the facts and circumstances of each case.

19. Another submission which is advanced by the counsel appearing for the respondent was that the Joint Commissioner has exercised the power of suo motu revision in the instant case on the basis of an application filed by the Deputy Commissioner which was sent to the Joint Commissioner by him and that application was drawn up and submitted under Section 46(4) itself and therefore, the entire exercise of power by the Joint Commissioner is fallacious, untenable and should be held to be illegal.

20. The counsel appearing for the appellant, however, refuted the said allegations and submitted that although Deputy Commissioner had written a letter to the Joint Commissioner bringing to his notice some mistakes and errors apparent on the face of records and illegalities by his predecessor in his order, but, it was a power which was exercised by the Joint Commissioner independently on his own accord and therefore, it cannot be said that the aforesaid power was exercised illegally or without jurisdiction.

21. We may therefore, refer to the materials on record so as to record our findings on the aforesaid issue.

22. In all these appeals, there are letters which were written by the Deputy Commissioner of Commercial Taxes to the Joint Commissioner (Administration). One of such letter is dated 28.8.2007. In the said letter it is stated by the Deputy Commissioner that the said communication is regarding filing of suo motu revision under Section 46(4) of the BFT Act, 1981. The aforesaid letter by the Deputy Commissioner, Commercial Taxes was written to the Joint Commissioner (Administration). In the said letter, the Deputy Commissioner has pointed out some alleged mistakes in the original tax assessment order and the revised order. He also stated in that communication that he is unable to agree with the revised tax assessment order and reimbursement order passed by the Divisional Incharge and therefore, according to his opinion a revision should be filed under Section 46(4) of the BFT Act, 1981 against the revised tax assessment order dated 29.12.2005

23. Our attention was also drawn to the notice for revision issued by the Joint Commissioner of Commercial Taxes (Administration). One of the notices is dated 17.12.2007 issued to M/s. Shivam Coke Industries namely the respondent herein for the assessment years 1988-1989 to 1992-1993 and 1996-1997. The said notice reads as follows:-

> "Whereas all the points and facts have not been considered while passing the revised assessment orders pertaining to the above cases which were to be considered as per directions of the appellate court, hence the related revised assessment orders are not in conformity neither the directions of the appellate court and the provisions of law. In the light of the above facts the legality & propriety of the revised assessment orders

has not been established and hence the revision of the said orders have been considered necessary. You are hereby directed to be present before the undersigned on 15.5.2007 and place your side as to why the above stated revised orders should not be set aside? Joint Commissioner of Commercial Taxes (Adm.) Dhanbad Division, Dhanbad"

24. Such orders are also existing against similar notices in the connected matters.

25. Relying on the aforesaid two documents, the counsel for the respondent submitted before us that it is apparent on the face of the record that the Joint Commissioner of Commercial Taxes initiated the suo motu action on the basis of the letter of the Deputy Commissioner, Commercial Taxes who had stated that the revision should be filed under Section 46(4) of the BFT Act, 1981. It was submitted in such a situation and that since it is an application filed by the Deputy Commissioner, the same was a power to be exercised under Section 46 (2) of the BFT Act, 1981 which is an ordinary power of revision to be exercised by the competent authority on an application filed by the aggrieved party and here the Deputy Commissioner. According to the counsel, since the Deputy Commissioner is an aggrieved party, he could file such an application seeking for revision within a period prescribed i.e. 90 days and in that view of the matter even if the Joint Commissioner exercises suo motu power, such power could and should have been exercised within a period of 90 days as prescribed.

26. We are, however, unable to accept the aforesaid contentions for the simple reason that a bare perusal of the notice issued on 17.12.2007, the contents of which have been extracted hereinbefore would indicate that the aforesaid notice was issued by the Joint Commissioner by exercising his individual suo motu power as provided under Section 46(4). It is not a case where such notice was issued on the basis of an application filed by the Deputy Commissioner. This is obvious because in the said notice, there is absolutely no reference made of the application sent by the Deputy Commissioner. If from the available records of a particular case, the Joint Commissioner forms an independent opinion that the same is a case where suo motu power of Revision should be exercised, he is empowered to so exercise such suo motu power of revising an order which appears to be illegal and without jurisdiction to the competent authority who is empowered to issue such notice by recording his reasons for coming to such a conclusion in the notice itself.

27. In the present case, the Joint Commissioner has exercised his own independent mind for issuing the notice and also recorded his own reasons for coming to a conclusion as to why the power under Section 46(4) should be exercised. Having recorded the aforesaid reason, such notice was issued to the assessee after forming a decision. The assessee was informed by issuing the said notice that the legality and propriety of the revised assessment order has not been established because of the reasons mentioned in the notice and therefore, the revision of the said orders is proposed is it has been considered necessary. By the said notice, the assessee was directed to be present before the Joint Commissioner and place his side as to why the above revised assessment order should not be set aside.

28. The respondent being aggrieved by the issuance of the aforesaid order filed a writ petition before the High Court. The High Court, however, did not grant any stay of the aforesaid notice and permitted the respondent to contest the said notice in accordance with law during the course of which the Joint Commissioner of Commercial Taxes has set aside the revised orders and sent back the matter for fresh assessment to the assessing officer.

29. The aforesaid subsequent development which had taken place during the pendency of the writ petition in the High Court has not been addressed to and decided by the High Court as the High Court has disposed of the entire writ petition on two issues namely on the issue of the ambit and scope of Section 46(4) of the BFT Act, 1981 and also on the ground of limitation.

30. The Deputy Commissioner, Commercial Taxes Division has pointed out in his communication to the Joint Commissioner several loopholes in the revised assessment orders passed by the assessing officer. The Deputy Commissioner has also pointed out how the assessee has made conflicting claims and statements and also how while upholding such contradictory claims, there has been a revenue loss for the department. Alongwith his letter, some of the relevant records were transmitted to the Joint Commissioner. It is true that the Deputy Commissioner, Commercial Taxes Division has brought out and pointed out some of the illegalities and irregularities committed in the revised assessment orders passed by his predecessor in the assessment orders relating to the respondent.

31. But the impugned notice issued by the Joint Commissioner ex facie indicates that he being the competent authority has formed an independent opinion and personal satisfaction that the legality and propriety of the revised assessment orders has not been established because of the reasons specifically stated in the said notice and therefore he has thought it fit to exercise his power of suo motu revision consequent upon which the aforesaid notice was issued.

32. There is no reference in the said notice to the letter and any other materials contained with the letter of the Deputy Commissioner anywhere in the notice and therefore, it cannot be said that while coming to the aforesaid conclusion in the impugned notice, the Commissioner was influenced only by the opinion of the Deputy Commissioner. On consideration of the records we are satisfied that it was not a revision initiated on the basis of any application filed by an aggrieved party namely the Deputy Commissioner but initiation of a Revisional proceeding by the Joint Commissioner by forming his own opinion and satisfaction to exercise suo motu power vested under Section 46(4) of the BFT Act on the basis of the materials on record. The aforesaid contention is therefore, rejected. Issue 2 - Whether or not the action taken by the Department was barred by limitation

33. The next issue which now arises for our consideration is whether the aforesaid exercise of power of drawing up a revisional proceeding by exercising suo motu power was not exercised within the period of limitation or within a reasonable period of time.

34. We have also extracted the provision which clearly indicates that no period of limitation is prescribed for initiation of suo motu revisional proceeding by the Commissioner or the Joint Commissioner as the case may be, whereas a period of limitation is prescribed for filing a revision application by an aggrieved party for initiation of the revisional jurisdiction of the Commissioner which period is 90 days, as is stood at that relevant time.

35. The High Court has held that there cannot be an unlimited period of limitation even for exercising of suo motu revisional power for initiation of a proceeding by the Commissioner or the Joint Commissioner as the case may be and therefore provision of Article 137 of the Limitation Act was read into the Act laying down that at least within a period of three years from the date of accrual of the cause of action such a power of suo motu Revision should be exercised by the Joint Commissioner.

36. We are again unable to accept the aforesaid contention as the legislature has not stated in the provision at all regarding the applicability of Article 137 of the Limitation Act to Section 46(4) of the BFT Act. If the legislature intended to provide for any period of limitation or intended to apply the said provision of Article 137 into Section 46(4), the legislature would have specifically said so in the Act itself. When the language of the legislature is clear and unambiguous, nothing could be read or added to the language, which is not stated specifically. Therefore, the High Court wrongly read application of Section 137 of the Limitation Act to Section 46(4) of the BFT Act.

37. It is a settled position of law that while interpreting a statute, nothing could be added or subtracted when the meaning of the section is clear and unambiguous. In this connection we may also refer to the decision of this Court in Sakuru vs. Tanaji reported in (1985) 3 SCC 590 wherein it was stated by this Court that the Limitation Act applies to courts and not to quasi judicial authority.

38. The aforesaid principle and settled position of law was totally ignored by the High Court while laying down that Article 137 of the Limitation Act would be applicable to the facts and circumstances of the present case.

39. We would, however, agree with the position that such a power cannot be exercised by the revisional authority indefinitely. In our considered opinion, such extra ordinary power i.e. suo motu power of initiation of revisional proceeding has to be exercised within a reasonable period of time and what is a reasonable period of time would depend on the facts and circumstances of each case.

40. For this proposition, a number of decisions of this Court can be referred to on which reliance was placed even by the counsel appearing for the respondent.

41. In *Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others reported in*[1] this Court dealing with the issue of "reasonable time" held as follows:-

29. In view of the above, we reach the inescapable conclusion that the revisional powers cannot be used arbitrarily at a belated stage for the reason that the order passed in revision under Section 34 of the 1976 Act, is a judicial order. What should be reasonable time, would depend upon the facts and circumstances of each case.

42. In *Govt. of India v. Citedal Fine Pharmaceuticals, Madras and Others reported in*[2]

> 6. .....While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the rule is to be made, but that by itself does not render the rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case....."

43. In *State of Punjab & Ors. v. Bhatinda District Cooperative Milk Producers Union Ltd. reported in*[3]

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

44. Now, the question that arises for our consideration is whether the power to exercise Suo motu revisional jurisdiction by the Joint Commissioner in the present cases was exercised within a reasonable period. On perusal of the records, we find that such powers have been exercised within about three years of time in some cases and in some cases soon after the expiry of three years period. Such period during which power was exercised by the Joint Commissioner cannot be said to be unreasonable by any stretch of imagination in the facts of the present case. Three years period cannot be said to be a very long period and therefore, in all these cases, we hold that the power was exercised within a reasonable period of time.
Issue 3: Whether the order dated 26.11.2007 passed by the Joint Commissioner is proper and could be maintained;

45. Having decided the aforesaid two issues in the aforesaid manner, the next and the last issue that arises for our consideration is whether the order dated 26.11.2007 passed by the Joint Commissioner setting aside the revised assessment order dated 27.12.2003 is proper and could be maintained, as the said order was passed during the pendency of the writ petition in the High Court.

46. On this issue also, we have heard the learned counsel appearing for the parties. The aforesaid order dated 26.11.2003 was passed while the respondent was fighting out the litigation in the High Court and therefore, it was not possible for the assessee to give his entire focus and attention and also to give full concentration to the aforesaid proceeding pending before the Joint Commissioner. The learned counsel appearing for the appellant also

could not dispute the fact that the respondent was somewhat handicapped in contesting the aforesaid matter very effectively before the Joint Commissioner.

47. Considering the entire facts and circumstances of the case, we also set aside the order dated 26.11.2007 and remit back the matter to the Joint Commissioner once again to hear the parties and to pass fresh order in respect of the legality and propriety of the revised assessment order dated 26.12.2003. Consequently, the matter is now remitted to the Joint Commissioner of Commercial Taxes to pass order in accordance with law giving reasons for its decisions as expeditiously as possible. The impugned judgment and order passed by the High Court is set aside to the aforesaid extent while remitting back the matter as aforesaid, leaving the parties to bear their own costs.

Judgment Referred.

[1]*(2010) 8 SCC 0467*
[2]*(1989) 3 SCC 0483*
[3]*(2007) 11 SCC 0363*