

GAHC020004322020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/155/2020

INDIAN OIL CORPORATION LTD.(ASSAM OIL DIVISION)
7TH MILE CHUMUKEDIMA, DIMAPUR, A GOVT. OF INDIA
UNDERTAKING, INCORPORATED UNDER THE COMPANIES
ACT,1956, HAVING ITS REGISTERED OFFICE AT INDIAN OIL
BHAWAN, G-9, ALI YAVAR MARG, BANDRA (EAST), MUMBAI -
400051 AND IN THE PRESENT PROCEEDINGS REPRESENTED BY SRI
ASHOK KUMAR SUTAR, THE DEPUTY GENERAL
MANAGER(FINANCE) OF THE PETITIONER COMPANY.

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF NAGALAND, DEPT. OF FINANCE AND TAXATION,
NAGALAND SECRETARIAT, NAGALAND

2:THE COMMISSIONER OF TAXES

DIMAPUR
NAGALAND

3:THE ADDITIONAL COMMISSIONER OF TAXES

NAGALAND
DIMAPUR

4:THE SUPERINTENDENT OF TAXES

WARD - F
DIMAPUR
NAGALAN

Advocate for the Petitioner : A SARAF

Advocate for the Respondent : GOVT ADV NL

Linked Case : WP(C)/157/2020

INDIAN OIL CORPORATION LTD.(ASSAM OIL DIVISION)
7TH MILE CHUMUKEDIMA
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A GOVT. OF INDIA UNDERTAKING
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Advocate for : A SARAF
Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND
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Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND
AND 3 ORS

Date of judgment : 19/12/2024

BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

JUDGMENT

(Mridul Kumar Kalita, J)

- 1.** Heard Dr. A. Saraf, learned senior counsel assisted by Mr. P. Baruah, learned counsel as well as Mr. K. V. Nagi, learned counsel for the petitioners. Also heard Mr. Moa Imchen, learned Senior Government Counsel for the State Respondents.
- 2.** By this, judgment, this court propose to dispose of these three writ petitions, which were taken up for hearing together as they involve common question of law.
- 3.** The common question for determination in these three writ petitions is as to whether the show cause notice, dated 28.04.2020, issued by the respondent No. 3 to the petitioner in all three writ petitions as well as the orders by which the assessments for the years 2012-13, 2013-14 and 2014-15 were revised and the turnover escaped assessment and short payment of taxes were determined and subsequent demand notices dated 09.09.2020 are *prima facie* illegal and without jurisdiction, and contrary to the provisions of Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Act, 1967.
- 4.** Writ Petition No. 155/2022 pertains to the show cause notice, order and demand notice for the assessment year 2014-2015. Writ

Petition No.156/2020 pertains to the show cause notice, order and demand notice for the assessment year 2012-2013 and Writ Petition No. 157/2020 pertains to the show cause notice, order and demand notice pertaining to the year 2013-2014.

5. The petitioner company is a Government of India undertaking incorporated under the Companies Act, 1956 having its registered office at Mumbai. The petitioner company is engaged in the business of refining the crude petroleum and selling and distribution of petroleum products throughout the country. During the relevant point of time, the petitioner company was a registered dealer under Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 and under Central Sales Tax Act, 1956 having the certificate of registration bearing registration No. 13000024266 and 13010255140 respectively.

6. For the assessment year 2014-2015, 2012-2013, and 2013-2014, the original assessment was completed by the Superintendent of Taxes, Ward-F, by order of assessment dated 19.01.2015, 16.01.2015 and 20.01.2015 respectively under the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 and under Central Sales Tax Act, 1956 in exercise of powers under Section 11 (3) of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 read with Section 9 (2) of the Central Sales Tax Act, 1956.

7. The Additional Commissioner of Taxes (Respondent No. 3), issued a notice dated 28.04.2020 under Section 20 of the Nagaland

(Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 directing the petitioner to appear in-person or through a representative in writing before the said authority on 20.05.2020 in respect of the proceedings for assessment year 2013-2014 and 2014-2015 as well as on 19.05.2020 in respect of proceeding for assessment year 2012-2013 and to show cause in writing with all supporting documents as to why they returns filed by the petitioner company should not be rejected as incorrect and incomplete and necessary action, including the order under Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 should not be passed against the petitioner company. The said notice which has been impugned in the present bunch of writ petitions, is reproduced as below:-

"Notice for Revision under Section 20 of the Nagaland (Sales of Petroleum Etc.) Taxation Act, 1967

Whereas despite notice followed by reminder notices including the last notice served to you in your official mail id dated 2/11/2019, you have not fully complied with the terms of the notices till date. Now it appears to me beyond reasonable doubt that you are willfully and deliberately ignoring to fully comply with the terms of the notices and thereby defaulted and liable for necessary action under appropriate provisions of the Act and Rules, and

Whereas, cross verification of the statements produced so far by you before this Court with the records filed by you during assessment proceedings etc., reveals the following inconsistencies;

Tax Period 2011-12:

- 1. Form "C" statement shows that there was purchase of LPG worth Rs.250205245/- during the period.*

- However, the Sales figures as per ADS (excluding tax) shows Rs.245768240/-only
2. IOC (MD) record shows that it has received 104.5 KL of LPG from IOC (AOD) during the period. Whether such stock were issued inclusive of tax or not and why?
 3. No Trading Account was made available before this Court nor filed at the time of assessment.
 4. As per IOC (MD) record, 4439.1 KL, worth Rs.3347476/-of SKO-IND was received from IOC (ADD). Whether such stock were issued inclusive of tax or not and why?
 5. CST Sales declared Including tax was Rs.386152884/-. However, CST Sales supported by Form "C" was Rs.355538897/- only. Consequently, there is possible evasion of tax by way of assessing sales turnover of Rs.30613987/- at a lower rate of 2% instead of 12% resulting in short assessment and short payment of tax by Rs. 13061398/- (3673678-612279)
 6. No record of purchase of MS, HSD and SKO was made available to this Court for scrutiny despite several notices
 7. Cross examination of transaction records between IOC (AOD) and IOC (MD) for the period reveals the following inconsistencies in figures;

SS

item	inconsistencies between sales declared in Format III and Sales declared at the time of assessment by IOC (MD)	Stock issued by MD to AOD	ADD Sales Figures	Difference in amount (1-3)	Applicable rate of tax	Remarks
HSD	754019668	31760 KI	741622607	12397061.52	@12.6%	Value of K yet to be ascertained
MS	396400669	12127 KL	625158977	228758308	@21%	
SKO	70735459	10260 KL	135897730	65162271	@5.25%	

Tax Period 2012-13

1. Statutory Forms utilization statement shows that

there was Purchase of LPG worth Rs. 425599462/- during the period. However, the Sales figures as per AOS (excluding tax) shows Rs.274103366/-

2. IOC (MO) record shows that it has received 107.437 KL and 4372.958 of LPG (D\$NS) and LPG (ND&IND) respectively from IOC (ADD). Whether such stocks were issued inclusive of tax or not and why? No Trading Account was produced before this Court nor filed at the time of assessment.
3. CST Sales declared Including tax was Rs.286142950/-. However, CST Sales supported by Form "C" was Rs. 282463959/- only. Consequently, there is possible evasion of tax by way of assessing sales turnover of Rs. 3678991/- at a lower rate of 2% instead of 12% resulting in short assessment and short payment of tax by Rs. 367899/-.
4. No record of purchase for MS, HSD and SKD was made available to this Court despite several notices.
5. Cross examination of transaction records between IOC (AOD) and IOC (MD) for the period reveals the following inconsistencies in figures;

item	Inconsistencies between sales declared in Format III and Sales declared at the time of assessment by IOC (MD)	Stock issued by MD to (AOD)	(AOD) Sales Figures	Difference in amount	Applicable rate of tax	Remarks
	1	2	3	4	5	6
HSD	726952716	33699 KL	1015903907	288951191	@12%	Value of K yet to be ascertained
MS	454268044	11943 KL	647600676	193332632	@20%	
SKO	73532090	10284 KL	141904134	68372044	@5%	

Tax Period 2013-14:

1. Statutory Forms statement shows that there was Purchase of LPG worth Rs.576825709/-during the period. However, the Sales figures as per AOS

- (excluding tax) shows Rs.286878435/-only.
2. No Trading Account was produced before this Court nor filed at the time of assessment.
 3. As per IOC (MD) record, 334.142KL and 3962.18 KL of LPG (ND&IND) and LPG (D&S) was received from IOC (AOD). Whether such stock were issued Inclusive of tax or not and why?
 4. Explain the difference of amount by Rs.2519.720/- in the CST Net Turnover declared as against figures shown in the break-up (333273822-330754102). Short calculation and short payment of tax by Rs79999/- against the turnover of Rs329984754 @2% (6599695-6519696).
 5. CST Sales declared including tax was Rs336504450/-. However, CST Sales supported by Form "C" was Rs.330602310/-only. Consequently, there is possible evasion of tax by way of assessing sales turnover of Rs5902140/- at a lower rate of 2% instead of 12% resulting in short assessment and short payment of tax by Rs.590214/-.
 6. No record of purchase of MS, HSD and SKD was made available to this Court despite several notices; No record of transactions effected to other OMC was disclosed.
 7. Cross examination of transaction records between IOC (AOD) and IOC (MD) for the period reveals the following inconsistencies in figures;

item	Inconsistencies between sales declared in Format III and Sales declared at the time of assessment by IOC (MD)	Stock issued by MD to (AOD)	(AOD) Sales Figures	Difference in amount (1-3)	Applicable rate of tax	Remarks
HSD	970886	33744 KL	1258328794	1257357908	@12.6%	Value of K yet to be ascertained
MS	Nil	11677 KL	657470205		@21%	
SKO	Nil	10260 KL	142232090		@5%	
LPG	733684	4296.32KL	286878435	286144751	@5%	

Tax Period 2014-15:

1. *Statutory Form statement shows that there was Purchase of LPG worth Rs. 2384627111/- during the period. However, the Sales figures as per AOS (excluding tax) shows Rs.132453330/- only.*
2. *Statutory Forin statement shows that there was Purchase of MS & HSD worth Rs. 165444195/- during the period. However, the Sales figures as per AOS (excluding tax) shows Rs. 994274502/-only showing an excess declaration by Rs.828830307/-.*
3. *Trading Account was not made available before this Court till date or filed at the time of assessment.*
4. *Purchase record for SKD was not made available to this Court for scrutiny despite several notices.*
5. *No evidence of record of transactions effected to other DMC was disclosed.*
6. *Cross examination of transaction records between IOC (AOD) and IOC (MD) for the period reveals the following inconsistencies in figures:*

<i>item</i>	<i>Inconsistencies between sales declared in Format III and Sales declared at the time of assessment by IOC (MD)</i>	<i>Stock issued by MD to (AOD) in KL</i>	<i>(AOD) Sales Figures in value</i>	<i>Difference in amount (1-3)</i>	<i>Applicable rate of tax</i>	<i>Remarks</i>
<i>HS D</i>	<i>295656697</i>	<i>35500 KL</i>	<i>612385702</i>	<i>316729005</i>	<i>@12.6%</i>	<i>Value of K yet to be ascertained</i>
<i>MS</i>	<i>61718422</i>	<i>12948 KL</i>	<i>381888800</i>	<i>320170378</i>	<i>@21%</i>	
<i>SK O</i>	<i>Nil</i>	<i>10260 KL</i>	<i>71757445</i>		<i>@5.25%</i>	

You are therefore once again call upon to appear in person or through representative duly authorized by you in writing before me on the date and time given below at my Office Chamber and to further show cause in writing and with all supporting documents as to why the returns filed by you for the period should not be rejected an incorrect and incomplete and necessary action including an order under Section 20 of the Nagaland (Sales of Petroleum Etc..) Taxation Act, 1967 should not be passed against you.

<i>Date</i>	<i>Time</i>	<i>Tax period</i>
19.05.2020	11 am	2011-12 and 2012-13
20.05.2020	11 am	2013-14 and 2014-15

Take notice that in the event of your further failure to comply with the terms of this notice, I shall be at liberty to initiate appropriate action against you under the Act and also pass revision order under Section 20 of the Act ex parte without any further reference to you."

8. Thereafter, the respondent No. 3 passed a final order in purported exercise of powers under Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 by order dated 07.09.2020, whereby the assessment order dated 16.01.2015 passed by Superintendent of Taxes for the assessment year 2012-2013 was revised and the turnover escaped assessment and short payment of taxes was determined as hereinunder:

Tax Period 2012-13

"1. Statutory Forms utilization statement shows that there was purchase of LPG worth Rs. 425134062/- during the period.

The Sales figures declared (excluding tax) was Rs. 27,41,03,366/-only.

Cross examination with IOC Ltd (MD) (referred as MD for short) record shows that it has received 4372.958 of LPG (ND & IND) from IOC Ltd (AOD) (referred as AOD for short)

The sales figures of LPG declared by MD for the period is Rs 13,48,79,562/- only and the closing stock was declared as zero in the Format-III

Thus, the firm has suppressed turnover of Rs. 1,61,51,134/- (151030696-134879562) taxable at the rate of 4% leading to short assessment of tax by Rs. 646045/-

2. Total CST Sales declared including tax was Rs 317662235/-.

CST Sales declared including 2% tax was Rs. 28,61,42,950/-. However, CST Sales supported by Form "C" including 2% tax was Rs 28,24,63,959/-only.

CST Turnover of Rs. 3527025/- was assessed @ 12.6% and

Thus the remaining sales turnover of Rs 3678091 (317662235-282463959-3527025) is found to have assessed at a lower rate of 2% instead of 2% resulting in short assessment and short payment of tax by Rs. 367699 (441478.92 (@12%)-7357982 (@2%))

3. Cross examination of transaction records with MD reveals that it has issued 33699 KL, 11943 KL and 10284 KI of HSD, MS and SKO respectively to ADD during the period: The values of the stock issued by (MD) to (AOD) per Kt were calculated on the basis of the sales statement declared and filed by (MD) during the period;

Item	Value of stock issued to AOD by MD	(ADD) Sales Figures	Diff. in value	Less CST turnover	Turnover escaped assessment
	1	2	3(1-2)	4	5(1-3-4)
HSD	33699 KL x 40173.85 = 135,38,18,648	101,59,03,907	33,79,14,741	310456219	Rs.27458533
MS	11943 KL x 54847.45 = 655043095/-	647600676	74,42,419	Nil	Rs.7442419
SKO	10284KL x 15968.93 = 16,42,24,570/-	14,19,04,134	2,23,20,436	Nil	223320436

4. Turnover escaped assessment and short payment of tax during the year;

Item	Turnover escaped assessment	Applicable rate of tax	Short payment of tax
LPG	Rs. 16151134/-	4%	Rs. 646045/-
CST	Rs. 3678991/-	12% but assessed @ 2%	Rs.367899/-
HSD	Rs.27458522/-	12%	Rs.3295022/-
MS	Rs.7442419/-	20%	Rs. 1488483/-
SKO	Rs.22320436/-	5%	Rs. 1116021/-

Total			Rs 69,13,470/-
Add surcharges @ 5%			Rs 3,45,673/-
Total dues payable			Rs. 72,59,143/-

9. Similarly, by order dated 08.09.2020, the respondent No.3 revised the assessment order dated 20.01.2015, passed by the respondent No.4 and turnover and escaped assessment and short payment of taxes for the assessment year 2013-2014 was determined as hereinunder: -

Tax Period 2013-14

"1. Statutory Forms statement shows that there was purchase of LPG worth Rs. 576825709/- during the period. The Sales figures as per AOS (excluding tax) is Rs. 286878435/-only.

As per Ms IOC Ltd (MD) (referred as MD for short) statement in Format-111, 334.142 KL and 3962.18 KL of LPG (ND & IND) and LPG (D&S) respectively were received from AOD.

The value calculated on the basis of statement declared and filed by MD at the time of assessment during 2012-13 comes to Rs. 132554207/- only (334.142 KL + 3962.18 KL-4296.32 KL x 30852.95 per KL)

Therefore, LPG value amounting to Rs. 157393067/- (Rs 576825709 (Total purchases)- Rs 286878435 (Total sales)- Rs 132554207 (Total Stock issued to MD)] has been short assessed resulting in short payment of tax by Rs 74,76,170/- @4.75% 2. To CST Sales over of 10 and MS od tax@ 2% 34

CST sales of HHSD including tax@12.6% was Rs. 7734

Thus turnover of Rs 1902164/- (330602310 332504474) taxable 12% was assessed 2% resulting in short assessment and short payment of tax by Rs. 190216 ((228259 (@12%)-38043 (@2%))

3. Cross examination of transaction records between AOD and MD for the period reveals that MD has issued 33744 KL, 11677

KL, 10260 KL of HSD, MS and SKO respectively to AOD;

In the absence of any documents available on record to ascertain the value of the stock received from MD, the value per KL is calculated on the basis of statement declared and filed by MD for the assessment period 2012-13 in respect of SKO and statement declared by MD against Ms HPCL for the assessment period 2013-14 in respect of HSD and MS and turnover escaped assessment is worked out as follows:

Item	Value of stock issued to AOD by MD	(ADD) Sales Figures	Diff. in value	Less CST turnover	Turnover escaped assessment
	1	2	3(1-2)	4	5(1-3-4)
HSD	33744 KL x 54550.31 = Rs. 184,07,45,660.64	125,83,28,794	58,24,16,866.64	32,61,26,632	25,62,90,234
MS	11677 KL x 565515.9 = Rs. 65,99,36,164.30	65,74,70,205	24,65,959.3	545064	1920895.3
SKO	10260 KL x 15968.93 = Rs. 163841221.80	14,22,32,090	21609131	Nil	21609131.80

4. Turnover escaped assessment and short payment of tax during the year;

Item	Turnover escaped assessment	Applicable rate of tax	Short payment of tax
LPG	Rs. 256290234.00	12%	Rs.30754828/-
CST	Rs. 1920895.30	20%	Rs.384179/-
HSD	Rs. 21609131.80	5%	Rs.1080456/-
MS	Rs. 157393067.00	4.75%	Rs.7476170/-
SKO	Rs. 1902164.00	Assessed @ 2% instead of 12 %	Rs.190216/-
Total		-	Rs.39885849/-
Add surcharges @ 5%		5%	Rs.1994292/-
Total dues payable		-	Rs.4,18,80,141/-

10. Similarly, the respondent No.3 by order dated 09.09.2020 revised the assessment order dated 19.01.2015, passed by the Superintendent of Taxes for the assessment year 2014-2015, and the escaped assessment and short payment of taxes for the said period was determined as hereinunder:

"Tax Period 2014-15

"1. Total Purchase of HSD and MS during the period Statutory Form statement shows that there was purchase of MS & HSD worth Rs. 16,54,44,195/- during the period but the purchase invoices was not available on record for verification. The total sales of HSD and MS declared was Rs. 994274502/-. Out of which 62% accounts for HSD and the remaining 38% accounts for MS. Therefore, in the absence of any break up figure of purchases, the consolidated purchase value declared for HSD and MS amounting to Rs. 16,54,44,195/- is split up on the basis of 62% and 38% respectively as under:

Items	Total purchases	(AOD) Sales Figures	Diff
HSD	Rs.10,25,75,400/-	Rs.61,23,85,702/-	509810302
MS	Rs. 6,28,68,795/-	Rs.38,18,88,800/-	319020005
Total	Rs. 16,54,44,195/-	Rs.99,42,74,502/-	828830307

Cross examination of Ms IOC Ltd (MD) (referred as MD for short) Statement in Format-III reveals that the Firm has received 35500 KL, 12948 KL and 10260 KL of HSD, MS and SKO respectively from MD. The value of the stocks received is calculated on the basis of sales declared by MD in Format III in respect of SKO and Ms HPCL in respect of HSD and MS during the same period.

<i>Item</i>	<i>Stock received from MD by AOD</i>	<i>Value as calculated on the basis of sales statement declared by MD in Format-III and for HPCL during the same period</i>
<i>HSD</i>	<i>35500 KL</i>	<i>12948 x 51297.43= Rs 66,41,99,123.64</i>
<i>MS</i>	<i>12948 KL</i>	<i>3550 x 46072.61- Rs. 163,55,77,655</i>
<i>SKO</i>	<i>10260 KL</i>	<i>10260 x 24777.24= Rs. 254214482.40</i>

3. Total turnover escaped assessment during the period

<i>item</i>	<i>Stock value received from MD</i>	<i>Purchases during period</i>	<i>Total (stock the received and purchased)</i>	<i>(AOD) sales Figures</i>	<i>Less CST sales</i>	<i>Turnover escaped assessment</i>
<i>HSD</i>	<i>35500x46072.61= Rs163,55,77,655</i>	<i>Rs.102575400</i>	<i>1738153055</i>	<i>Rs.612385702</i>	<i>209767572</i>	<i>915999781</i>
<i>MS</i>	<i>12948x51297.43= Rs 6,41,99,123.64</i>	<i>Rs.62868795/-</i>	<i>727067918</i>	<i>Rs.381888800</i>	<i>1105964</i>	<i>344073154</i>
<i>Total</i>	<i>Rs.229,97,76,778/-</i>	<i>Rs.165444195</i>	<i>2465220973</i>	<i>Rs.994274502/-</i>	<i>210873536</i>	
<i>SKO</i>	<i>10260x24777.24= Rs.254214482.40</i>	<i>Nil</i>	<i>254214482</i>	<i>Rs.71757445/-</i>	<i>Nil</i>	<i>18245703</i>

4. Total turnover escaped assessment and short payment of tax during the period:

<i>Particulars</i>	<i>Total escaped assessment</i>	<i>Tax rate</i>	<i>Total Short payment of Tax</i>
<i>HSD</i>	<i>915999781</i>	<i>12%</i>	<i>Rs.10,99,19,973/-</i>

<i>MS</i>	<i>344073154</i>	<i>20%</i>	<i>Rs. 6,88 14,630/-</i>
<i>SKO</i>	<i>182457037</i>	<i>5%</i>	<i>Rs. 91,22,851/-</i>
<i>Total</i>			<i>Rs. 18,78,57,454/-</i>
<i>Add surcharges</i>		<i>5%</i>	<i>Rs.9392872/-</i>
<i>Total dues payable</i>		<i>-</i>	<i>Rs 19,72,50.326</i>

11. It is pertinent to mention herein that by the aforesaid orders which has been impugned in these writ petitions not only the taxable turnover under Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 was determined, but the turnover taxable under Central Sales Tax Act, 1956 was also determined by the respondent No. 3.

12. Thereafter, by demand notice dated 09.09.2020, the respondent No. 4 directed the petitioner company to make payment of Rs 72,59,143/- in respect of the assessment year 2012-2013 on or before 09.10.2020. Similarly, demand notice was also issued on the said date directing the petitioner company to make Rs. 4,18,80,141/- in respect of assessment year 2013-2014 and to make payment of Rs. 19,72,50,326/- in respect of assessment year 2014-2015 on or before 09.10.2020. No fresh assessment order was passed by the assessing authority i.e., the respondent No. 4.

13. In these writ petitions, the aforementioned show cause notice dated 28.04.2020, the orders passed by the respondent No. 3 determining the turnover escaping assessment and short payment of taxes for the aforementioned period, as well as notice of demand

dated 09.09.2020 for the assessment years 2012-13, 2013-14 and 2014-15, issued against the petitioner by the respondents have been impugned.

14. Dr. A. Saraf, learned senior counsel for the petitioner has submitted that the impugned show cause notice dated 28.04.2020 and the orders passed by respondent No.3 determining the turnover escaping assessment and short payment of taxes during the period under consideration and subsequent demand notice dated 09.09.2020 are prima facie illegal and without jurisdiction and contrary to the provision of Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967. He has also submitted that the pre-requisite to the exercise of the power of *Suo motu* revision by the Commissioner under Section 20 of the Act is that the order passed by any person appointed under Section 5 of the Act to assist him is erroneous, in so far as it is pre-judicial to the interest of revenue.

15. It is submitted by learned senior counsel that the Commissioner before exercising the powers under Section 20 of the Act has to be satisfied of twin conditions, namely, (a) the order passed by any person appointed under Section 5 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 to assist him (*i.e., in the present case, the Assessing Officer*) is erroneous and (b) it is pre-judicial to the interest of revenue. If any of these conditions is absent, and if order of Assessing Officer is erroneous, but is not pre-judicial to interest of revenue, or if it is not erroneous order, but is pre-judicial

to interest of revenue, recourse cannot be taken to Section 20 of the Act.

16. It is also submitted by learned Senior Counsel, that in the instant case, the respondent No. 3 in his order No. CT/pet/Del/1/2019/2278 dated 09.09.2020, in connection with assessment year 2014-2015, and in similar orders passed in connection with the assessment year 2012-2013 and 2013-2015, though the respondent No. 3 has mentioned in the said orders that the assessment order passed by the Superintendent of Taxes are erroneous in so far as it is pre-judicial to the interest of revenue, however, in the same line, he has also mentioned in the said order that same requires further inquiry and verification and to pass necessary orders under Section 20 of the Act, which according to learned Senior Counsel makes it abundantly clear that the respondent No. 3 never arrived at a finding that the order of assessment passed by the Assessing Officer was erroneous in so far as same was pre-judicial to the interest of revenue, rather he had embarked upon re-verification and recalculation of the facts and figures which were already examined by the assessing authority at the time of completion of the original assessment. Learned Senior counsel for the petitioner has submitted that the Section 20 of aforesaid Act does not confer on the Additional Commissioner powers to make fishing and roving inquiries, and to re-examine the order of assessment already completed by the assessing authorities.

17. In support of his submission learned Senior Counsel has cited a ruling of a division bench of this Court in "**Sri Rajendra Singh**

and others Vs. Superintendent of Taxes and others” reported in **(1990) 1 GLR 449**, in which this court was dealing with the power of *suo-motu* revision of the Commissioner under Section 21 of the Tripura Sales Tax Act, 1976, which is in *pari-materia* with the Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967, wherein it was observed as follows:

"7. From a reading of Sub-section (1) of Section 21 it is clear that the power of suo motu revision can be exercised by the Commissioner only if, on examination of the records of any proceedings under this Act, he considers that any order passed therein by any person appointed to assist him is "erroneous in so far as it is prejudicial to the interest of the revenue". It is, therefore, not an arbitrary or unchartered power. It can be exercised only on fulfilment of the requirements laid down in Sub-section (1). The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interest of the revenue, must be based on materials available on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such actions will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated

beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. (See Parashuram Pottery Works Co. Ltd. v. I.T.O (1977) 106 ITR 1 (10) SC)."

18. Learned Senior counsel for the petitioner has submitted that under the Act of 1967, the powers to re-assess the escape turnover is primarily vested by Section 14 on the Assessing Officer and same is to be exercised subject to certain limitations. It is submitted that in exercise of power under Section 20(1) of the Act, the Additional Commissioner does not have Power to re-assess the escape turnover which is outside the purview of the powers of *suo-motu* revision conferred on the Additional Commissioner.

19. It is submitted by the learned Senior Counsel for the petitioner that though under Section 20 of the Act, the Commissioner may pass an order for directing a fresh assessment by the assessing authority, he himself cannot make any reassessment and direct the assessing authority simply to issue a demand notice, as has been done in the instant case.

20. It is also submitted by the learned Senior Counsel for the petitioner that by reviewing and doing the entire assessment himself, the Additional Commissioner has stepped into the shoes of assessing authority and has deprived the present petitioner the corrective remedy by way of appeal or revision, which would have been available to the present petitioner against the order passed by the assessing authority. In support of the submissions made by learned Senior Counsel, he has again cited the ruling of the Division

Bench of this court in "**Rajendra Singh Vs. Superintendent of Taxes**" (Supra), wherein it was observed as follows:

"10. From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an officer acting in accordance with law makes certain assessment and determines the turnover of a dealer, the same cannot be branded as erroneous by the Commissioner simply because according to him the order should have been written more elaborately. This section does not visualise a case of substitution of judgment of the Commissioner for that of the officer, who passed the order, unless the decision of the subordinate officer is held to be erroneous. Cases may be visualised where assessing officer while making an assessment examines the accounts, makes his enquiries, applies his mind to the facts and circumstances of the case and determines the turnover either by accepting the accounts or by making some estimates himself. The Commissioner on perusal of the records may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the turnover at a higher figure than the one determined by the assessing officer. That would not vest the Commissioner with power to re-examine the accounts and determine the turnover himself at a higher figure. It is because the officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interest of the revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, namely, that the order is erroneous, is absent. Similarly if an order is erroneous but not prejudicial to the interest of the revenue, then

also the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed."

21. Learned Senior Counsel for the petitioner has also submitted that though Section 21(1) of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 provides for an appeal against an order passed under Section 20(1) of the Act to the Government and as per Rule 30(1) of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Rules 1970 the appeal has to be addressed to the Secretary to the Government of Nagaland Finance Department. It is submitted that as the said appeal is not before any quasi-judicial authority or tribunal, the provision of appeal provided under Section 21 of the said Act cannot be said to be an efficacious alternative remedy.

22. It is further submitted by learned Senior Counsel for the petitioner that as the petitioner has challenged the very jurisdiction of revisional authority to initiate proceedings under Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 in these Writ petitions, same are maintainable even if alternative remedies are provided in some form by the said statute. In support of his submission, learned Senior Counsel for the petitioner has cited a

ruling of the Supreme Court of India in the case of "**Godrej Sara Lee Limited Vs. Excise and Taxation Officers-cum-Assessing Authority and Others**" reported in **2023 SCC online SC 95**.

23. Learned Senior Counsel for the petitioner has also cited a ruling of the Supreme Court of India in the case of "**Commissioner of Income Tax, Mumbai Vs. Amitabh Bachchan**" reported in **(2016) 11 SCC 748**, wherein it was observed that when the Act provides different shades of power on different authority to deal with the orders of assessment passed by the primary authority, the said powers are to be exercised within the areas specifically delineated by the Act, and the exercise of power under one provision cannot trench upon the powers available under another provision of the Act.

24. Learned Senior Counsel for the petitioner has submitted that in the instant case, the Commissioner has himself by calling for documents from the assessee and conducting further inquiries to find out as to whether the assessee has submitted all documents and paper in support of the assessment made by him and paid all the due taxes which is due from him has far exceeded the power which has been conferred on the Commissioner under Section 20(1) of the Act. The power which is conferred under Section 20 (1) of the Act may be exercised only if order passed by the authorities appointed to assist the Commissioner is erroneous and prejudicial to the interest of revenue, or was not in accordance with law, or was passed without making any inquiry or in undue haste.

25. Learned Senior Counsel for the petitioner has also submitted

that the Rule-5 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Rules, 1970 provides that the State Government in exercise of the powers conferred under Section 5 of the Act may appoint by notification in the official gadget, following classes of the officers to assist the Commissioner:

- (i) Assistant Commissioner of Taxes;
- (ii) Superintendent of Taxes;
- (iii) Inspector of Taxes.

26. It is also submitted that Rule 18 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Rules, 1970 provides that the assessment order passed under the provision of Act shall be made in form V-A and V-B. The form V-A prescribed in the Rules, shows that the said order is to be passed by the Superintendent of Taxes, whereas Rule-19 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Rules, 1970 provides that an appeal against the order of assessment or penalty passed by a Superintendent shall lie to the Assistant Commissioner, hence, it is clear that the assessment or reassessment under the Act is to be made by the superintendent of Taxes, on whom the power has been delegated by the Commissioner of Taxes in exercise of powers under Section 45 of the Act inasmuch as appeal against the order of assessment lies only to the Assistant Commissioner of Taxes, who is an officer subordinate to the Commissioner of Taxes.

27. It is submitted by learned senior counsel for the petitioner,

that if the order of assessment had to be passed by the Commissioner of Taxes, the appeal could not have lied before Assistant Commissioner of Taxes, who is junior to the Commissioner of Taxes. Therefore, in the instant case by passing the order of assessment himself the Additional Commissioner has in this case exceeded the powers which were conferred on him by the statute, and therefore, it is submitted that the impugned notices, orders of determining the turnover, escaping assessment and short payment of taxes during the period under consideration and subsequent demand notice dated 09.09.2020 are illegal and without jurisdiction and therefore liable to be set aside.

28. Learned Senior Counsel for the petitioner has also submitted that the impugned notices dated 28/04/2020 were issued under Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act,1967, whereas the impugned orders determined the alleged escape turnover not only under the Nagaland Act of 1967 but also under the Central Sales Tax Act, 1956. Similarly, the demand notice included the demand not only under Nagaland Act of 1967 but also under the Central Sales Tax Act, 1956. Hence, it is submitted by the learned Senior Counsel for the petitioner that the said orders determining the alleged escape turnover and subsequent demand notices are without jurisdiction and not tenable in law.

29. On the other hand, Mr. Moa Imchen, learned Senior Government Counsel for the respondents has submitted that the petitioner has approached this Court without exhausting all

alternative remedies available to it. It is submitted that the Statute i.e., Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 provides for statutory appeal against the order of assessment passed by any authority under the Act.

30. It is submitted by the learned Senior Government Counsel that Section 19 of the said Act provides for an appeal against an order of assessment or penalty passed by any authority under the Act within 30 days of the date of service of the said order. It is also submitted by learned Senior Government Counsel that Section 21 (1) of the Act also provides for an appeal against an order passed under Section 19 or an order passed in revision under Section 20 (1) of the said Act. The said appeal lies to the State Government within 60 days of the date on which the order is communicated to the aggrieved person or aggrieved party.

31. It is submitted by learned Senior Government Counsel that as there is an alternative statutory remedy available to the petitioner under the Act itself, these writ petitions against the impugned notices/orders/demand notice issued by respondents are not maintainable.

32. Learned Senior Government counsel has also submitted that in the instant case, the principles of natural justice is not violated as several notices were issued to the petitioner company before issuing the impugned notice against the petitioner company and the said facts has not been pleaded in the writ petitions by the petitioner company. It is submitted by learned Senior Government Counsel that

the first notice issued to the petitioner was on 05.07.2019 and thereafter, reminder notices were issued on 23.07.2019, 12.09.2019 and 02.11.2019 before issuing the impugned notice dated 28.04.2020. It is submitted by the learned Senior Government Counsel that the petitioner company failed to respond to earlier notices despite having full knowledge about the same and hence there has not been any violation of principle of natural justice in this case.

33. Learned Senior Government Counsel has also submitted that the respondent authorities were well within its jurisdiction and powers to issue the order dated 09.09.2020, which has been impugned in this case.

34. It is submitted that the petitioner, instead of clarifying the assessment and the entries in the returns before the concerned authorities and instead of availing the remedies available to it under the statutes has approached this Court by invoking its writ jurisdiction, which according to learned Senior Government Counsel, same is not available to the petitioner under the facts and circumstances of the case, and therefore, he has prayed for dismissing the writ petitions.

35. I have considered the submissions of learned counsel for both sides and have gone through the materials on record very carefully, including the pleadings of the parties supported by affidavits.

36. First of all, let me discuss the question of maintainability of the present writ petitions. The Supreme Court of India in the case of "**Godrej Sara Lee Limited Vs. Excise and Taxation Officers-**

cum-Assessing Authority and Others (Supra) has observed as follows:

"4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind

the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of

"entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper."

"6. At the end of the last century, this Court in paragraph 15 of its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

- (i) where the writ petition seeks enforcement of any of the fundamental rights;***
- (ii) where there is violation of principles of natural justice;***
- (iii) where the order or the proceedings are wholly without jurisdiction; or***

(iv) where the vires of an Act is challenged"

37. Thus, from the above judgment of the Apex Court, it becomes clear that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and the Article 226 does not, in terms, impose any limitation or restraint on the exercise of powers to issue writs. Mere existence of an alternative statutory remedy would not oust the jurisdiction of this court to entertain writ petitions and to issue prerogative writs under Article 226 of the Constitution of India, if the case of the petitioner falls within any of the exceptions carved out in the case of ***"Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai"*** (*Supra*).

38. There appears to be no dispute at bar that the power of assessment under Section 14 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 has been delegated to the Superintendent of Taxes by the Commissioner of Taxes under Section 45 of the said Act. In the instant case also, in all the writ petitions, the original assessment orders were passed by the Superintendent of Taxes. It is also pertinent to note that the Form V-A prescribed by the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Rules, 1970 for making assessment order also shows that the assessment order has to be made by the Superintendent of Taxes. The petitioner's contention, in all three writ petitions, is that the powers to re-assess the escape turnover is primarily vested by Section 14 on the Assessing Officer and same is

to be exercised subject to certain limitations and that in exercise of power under Section 20(1) of the Act, the Additional Commissioner does not have the power to re-assess the escape turnover which is outside the purview of the powers of *suo-motu* revision conferred on the Additional Commissioner. In the present bunch of writ petitions, the petitioner has challenged the very jurisdiction of the respondent authorities to issue impugned show cause notices as well as to pass impugned orders. Hence, this court is of considered opinion that the present case falls within the exception No.(iii) carved out in the case of "***Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai***" (Supra), therefore, the present bunch of writ petitions are maintainable.

39. Relevant provision of Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Rules, 1967 are quoted herein below.

"Section 20 (1)- The Commissioner may call for and examine the records of any proceeding under this Act, and if he considers that any order passed therein by any person appointed under Section 5 to assist him, is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the dealer an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary to pass such orders thereon as the circumstances of the case justify including an order enhancing or modifying the assessment and directing a fresh assessment.

(2) In the case of any order other than the order to which subsection(1) applies, passed by any person appointed under Section 5 to assist him, the Commissioner may either of his own motion or on a petition by a dealer for revision, call for the records of any proceeding under the Act in which such order has been passed, and may make such

inquiry or cause any inquiry to be made, and subject to the provision of this Act, may pass such orders thereon, not being the order prejudicial to dealer, as he thinks fit."

40. From a reading of subsection (1) of Section 20, it is clear that the power of suo-moto revision can be exercised by the Commissioner only if, on examination of the records of any proceeding under this Act, he considers that any order passed therein by the person appointed to assist him is "erroneous in so far as it is prejudicial to the interest of revenue". As observed by a division bench of this court in "***Shri Rajendra Singh Vs. Superintendent of Taxes***" (Supra), it is therefore, not an arbitrary power and it can be exercised only on fulfillment of requirements laid down under subsection (1). The consideration for the Commissioner as to whether an order is erroneous, in so far as it is prejudicial to the interest of revenue, must be based on the materials available on record of the proceeding called for by him. If there are no materials on record, on the basis of which it can be said that Commissioner is acting in a reasonable manner could have come to such a conclusion, the very initiation of proceeding by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving inquiries into matters or orders which are already concluded. Such actions will be against the well accepted policy of law, and there must be a point of finality in all legal proceedings. That stale issue should not be re-activated beyond a particular stage, and that lapse of time must induce repose in and set at rest judicial and quasi-

judicial controversies as it must be in other spheres of human activity.

41. In the instant case, the original assessment order in respect of the assessment year 2012-2013 was passed on 16.01.2015, the Original Assessment Order for the Assessment Year 2013-2014 was passed on 20.01.2015, and the original Assessment Order for the Assessment Year 2014-2015 was passed on 19.01.2015 by the Superintendent of Taxes (Respondent No. 4). Thus, the aforesaid orders of assessment, which were originally passed in the year 2015, were passed by the Superintendent of Taxes, who is a person appointed under Section 5 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967 to assist the Commissioner.

42. We have seen herein before that for exercising powers under Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act , 1967, the Commissioner must come to a conclusion that the orders passed by the person appointed under Section 5 of the Act to assist him is erroneous, however, in the instant case, bare perusal of the orders dated 09.09.2020 passed in connection with the Assessment year 2014-2015, 2012-2013 and 2013-2014, it appears that though it is observed therein that the assessment orders are erroneous so far as it is prejudicial to interest of revenue, however, it is also mentioned therein that it requires further inquiry and verification, which itself shows that the respondent No. 3 had not arrive at a conclusion that the order of assessment passed by the Assessing

Officer were erroneous, rather, it appears that the respondent No. 3 had embarked upon reverification and recalculation of the assessment proceedings which were already examined by the assessing authority at the time of completion of the original assessment. Further, it also appears that the Commissioner has to arrive at a conclusion that the assessment order passed by the officer appointed to assist him is erroneous and prejudicial to the interest of revenue on the basis of records of the proceeding under the Act called for by him and not by calling supporting documents and statements again from the petitioner (assessee). He has in fact engaged into the process of reverification and reassessment without coming into conclusion that the assessment order passed originally was erroneous and prejudicial to the interest of revenue. The finding that the assessment orders are erroneous and prejudicial to the interest of revenue must be based on the materials available from records called for by the Commissioner and for arriving at the said conclusion, he cannot call for the documents from the assessee himself as it would amount to reexamination and reverification of the returns filed by the assessee.

43. In the instant case, though it was mentioned in the impugned order dated 09.09.2020, by the respondent No. 3, that the assessment order passed by the Superintendent of Taxes are erroneous in so far as it is prejudicial to the interest of revenue and requires further enquiry and verifications. However, no reason has been mentioned as to why the said assessment orders were held erroneous. Whether it was on wrong assumption of facts, or

incorrect application of law, or without due application of mind, or without following the principles of natural justice by the assessing authority, nothing has been mentioned. Rather, it mentions that further inquiry and verification is necessary to pass an order under Section 20. Thus, it implies that though it has been mentioned, in the impugned orders, that the assessment orders are erroneous and prejudicial to the interest of revenue, however, as the respondent No. 3 has called for additional documents from the Petitioner and has observed that further enquiry and verification is necessary, it shows that he did not arrive at the conclusion that the assessment order passed by the respondent No.4 was erroneous and prejudicial to the interest of revenue as he has not based his conclusion on the basis of materials already available on record. The respondent No.3 cannot initiate proceedings with a view to start a fishing and roving inquiry in matters or orders which are already concluded unless there are materials available on records called for by him from which he arrives at a conclusion that the assessment orders are erroneous and prejudicial to the interest of revenue.

44. The power under Section 20 of the Act cannot be exercised by the Commissioner without satisfying the two components mentioned in the Section 20(1) of the Act, the Commissioner does not have the power to reexamine the accounts and determine the turnover himself at a higher figure merely because he is of the opinion that the estimate made by the assessing authority was on the lower side. Further, even if we consider that the Act bestows the Commissioner all powers available under the Act, still the respondent No. 3 cannot

exercise the power which is available under a different provision of the Act in purported exercise of power available in another provision of the Act, i.e., in the instant case, by initiating proceedings under Section 20 of the Act, the respondent No. 3 cannot exercise the powers vested in him under Section 14 and 13 of the Act, as in case of powers under Section 20, the decision that the assessment order is erroneous must be on the basis of materials available from records and such conclusion must precede the initiation of proceedings under section 20, whereas, in the case of re-assessment or re-verification under Section 14 or 13 of the Act, the approach may be different.

45. Further inquiry or other verification, and/or fresh determination can be directed by respondent No. 3 only after coming to conclusion that the original assessment orders of the respondent No. 4 were erroneous and prejudicial to the interest of revenue. Without doing so, respondent no. 3 does not get the power to set aside the earlier assessment by the respondent No. 4 and to revise and determine the turnover escaped assessment and short payment of taxes himself. The Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act , 1967 provides for different shades of power in different provisions of the Act to deal with order of assessment. The said powers are exercised by the authorities in the manner specifically provided by the Act itself and the authorities cannot, in exercise of power of one provision trench upon the powers available under other provision of Act, as has been done in the instant case.

46. Finally, as has been correctly pointed out by the learned senior counsel for the petitioner, that though the impugned notices dated 24.04.2020 were issued under Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Rules, 1967. However, the impugned orders have determined the alleged escape turnover not only under Nagaland Act of 1967, but also under Central Sales Tax Act, 1956, which could not have been done by the respondent No. 3 in purported exercise of powers under Section 20 of the Nagaland (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1967.

47. As the respondent No. 3 has acted beyond his jurisdiction by issuing the impugned orders by which assessment for the years 2012-13, 2013-14 and 2014-15 were revised and the turn over escaped assessment and short payment of taxes were determined, hence, the demand notices issued by the respondent No. 4 on the basis of aforementioned orders are also untenable in law.

48. For the reasons mentioned above, this Court is of considered opinion that the respondent No.3 acted beyond jurisdiction in issuing show cause notices dated 28.04.2020 to the petitioner for the assessment years mentioned therein and also in issuing orders by which the assessment for the years 2012-2013, 2013-2014 and 2014-2015 were revised and turnover escaped assessment and short payment of notice taxes were determined. The respondent No. 4 has also acted beyond jurisdiction in issuing demand notices dated 09.09.2020 on the basis of orders passed by respondent No. 3.

Hence, all the three writ petitions are allowed. The proceeding for *suo-motu* revisions under Section 20 (1) of the Act in all three cases pending before the Additional Commissioner of Taxes are hereby quashed.

49. No orders as to cost.

50. The registry of the principal seat of this court is hereby directed to immediately send the case records of these Writ Petitions along with a copy of this judgment to the registry of the Kohima permanent bench of this High Court.

Sd/-
JUDGE

Comparing Assistant