

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

R.V.W.O No.5 of 2024
with
I.A. No. G.A. 2 of 2024

SALES TAX OFFICER, BARASAT CHARGE AND OTHERS

-VERSUS-

SANJAY SUR AND ANOTHER

For the petitioners : Mr. Md. T. M. Siddiqui, Sr. Adv.,
Mr. Tanoy Chakraborty, Adv.,
Mr. Saptak Sanyal, Adv.

For the respondents : Mr. Prabhat Kr. Singh, Adv.,
Mr. Prashant Kr. Singh, Adv.

Hearing concluded on : 17.12.2025

Judgment on : 02.02.2026

Kausik Chanda, J.:-

By filing this review application, the revenue seeks review of an order dated April 10, 2023 passed by a learned Single Judge of this Court. Before delving into the merits of the review application, it is necessary to outline the factual context in which the order dated April 10, 2023 was passed.

2. The writ petitioners are engaged in the cotton trade and are predominantly exporters. For the 3rd and 4th quarters of the assessment year 2010–11, the writ petitioners applied for 73 declarations in Form “H” before the Sales Tax Officer, Barasat Charge, in order to obtain certain export-related benefits.

3. By an order dated March 3, 2013, the Sales Tax Officer rejected the writ petitioners’ request for issuance of Form “H”. Challenging the said order, the writ petitioners filed an application under Section 86 of the West Bengal Value Added Tax Act, 2003 before the Joint Commissioner, Sales Tax, 24 Parganas Circle.

4. By an order dated March 26, 2014, the Joint Commissioner, Commercial Taxes, 24 Parganas Circle allowed the writ petitioners’ prayer and directed issuance of 73 Form “H” declarations. Thereafter, the said officer purported to undertake a “suo motu review” of his own order dated March 26, 2014 and, by an order dated July 23, 2014, upheld the earlier order.

5. Following the said “suo motu review”, the revenue filed an application under Section 85 of the West Bengal Value Added Tax Act,

2003 before the Senior Joint Commissioner, Commercial Taxes, 24 Parganas Circle, challenging the order dated July 23, 2014.

6. By an order dated January 7, 2015, the Senior Joint Commissioner, Commercial Taxes, 24 Parganas Circle, after hearing the parties, directed that Form "H" may be issued only in respect of six sellers located outside the State of West Bengal, in accordance with law.

7. The said order dated January 7, 2015 was challenged by the writ petitioners by filing WPO No. 782 of 2015. A co-ordinate Bench of this Court, by an order dated April 10, 2023, disposed of the writ petition by quashing the order of the Senior Joint Commissioner.

8. Thereafter, the present review application has been filed by the revenue seeking review of the said order dated April 10, 2023.

9. Mr. Talay Masud Siddiqui, learned Senior Advocate appearing for the revenue, submits that the order dated April 10, 2023 cannot be sustained. He contends that the learned Single Judge proceeded on an erroneous premise by framing the issue as whether the Commissioner/Joint Commissioner under the West Bengal Value Added Tax Act, 2003 can invoke the power of suo motu revision under Section 85 twice. According to Mr. Siddiqui, the Commissioner/Joint Commissioner has not invoked such power twice under Section 85. Rather, the order passed by the Joint Commissioner under Section 86 was revised by the Senior Joint Commissioner under Section 85. Therefore, it is argued, the learned Judge proceeded on an incorrect foundation and wrongly quashed the order dated January 7, 2015.

10. Mr. Siddiqui further submits that before the learned Single Judge the writ petitioners had challenged the vires of Section 85 of the West Bengal Value Added Tax Act, 2003 and Rules 143(1F) and 143(1). However, before this Court, the arguments made proceeded in an entirely different direction.

11. Mr. Siddiqui specifically contends that an order of revision passed under Section 86 by a Joint Commissioner can, in fact, be revised by the Senior Joint Commissioner under Section 85. Drawing attention to the phrase “order passed by a person appointed under sub-section (1) of Section 6 to assist him”, appearing at the end of Section 85, he argues that this empowers a Senior Joint Commissioner to suo motu revise an order passed by a Joint Commissioner in exercise of powers conferred under Section 86 of the Act of 2003.

12. Learned counsel contends that the only a valid exercise of suo motu revisional jurisdiction under Section 85 was undertaken by a superior authority, namely the Senior Joint Commissioner, who issued Form 70, afforded an opportunity of hearing to the writ petitioners, and thereafter passed the order dated January 7, 2015 modifying the order of the Joint Commissioner. It is submitted that under Sections 3(4) and 6 of the Act, read with Rules 3, 142 and 143 of the West Bengal Value Added Tax Rules, 2005, the Senior Joint Commissioner was fully competent to exercise such revisional jurisdiction.

13. It is further submitted that the writ petitioners themselves have acknowledged the existence of the revisional power under Section 85 by

challenging the constitutional validity of Section 85 of the Act read with Rules 142 and 143 of the Rules, and therefore cannot dispute the authority's jurisdiction. Learned counsel also submits that if the judgment under review is allowed to stand and the writ petitioners are issued the 'H' Forms to which they are not legally entitled, it would result in an unwarranted reduction of approximately Rs. 40 crores from the taxable turnover of the dealer, thereby causing serious prejudice to the State revenue.

14. On the aforesaid grounds, Mr. Siddiqui submits that the judgment dated April 10, 2023 suffers from a manifest factual error and deserves to be reviewed in exercise of the review jurisdiction of this Hon'ble Court.

15. Mr. P.K. Singh, learned counsel appearing for the writ petitioners/ respondents, contends that the expression "order passed by a person appointed under sub-section (1) of Section 6 of the Act to assist the Commissioner," as appearing in Section 85, refers to the category of officers appointed to assist the Commissioner and not to the subject matter of the order. Consequently, the subject matter of such orders remains confined to assessment, provisional assessment or similar determinations.

16. It is further submitted that a harmonious construction of Sections 85 and 86 of the Act, read with the notification dated January 16, 2009 and keeping in mind the object and purpose of the enactment, would lead to the conclusion that the revisional power extends only to assessment-related orders and cannot be stretched to include appellate

or revisional orders. Learned counsel argues that if revisional orders are brought within the ambit of “any order”, it would amount to permitting revision of a revisional order by an authority of the same rank or class, which is dehors the statute and amounts to abuse of the process of law.

17. Learned counsel submits that although the designation of Senior Joint Commissioner is administratively higher than that of Joint Commissioner, such distinction is only for administrative purposes and not for judicial hierarchy. Therefore, the Senior Joint Commissioner cannot act as an appellate or revisional authority over orders passed by a Joint Commissioner. According to the respondents, a second revision against a revisional order passed by a Joint Commissioner or Senior Joint Commissioner lies exclusively before the Appellate and Revisional Board under Section 87 of the Act.

18. It is also contended that Sections 85 and 86 both confer revisional powers, one exercisable at the instance of the assessee and the other *suo motu* by the authority, but both provisions are substantially similar in nature. Once revisional jurisdiction is exercised under either provision, the other provision cannot be invoked in respect of the same order. Pressing both sections successively into service, it is argued, is impermissible in law. Learned counsel further submits that subordinate legislation in the form of rules or notifications cannot override or enlarge the scope of the substantive provisions of the Act.

19. It is further argued that both the Joint Commissioner and the Senior Joint Commissioner are delegates of the Commissioner and,

therefore, orders passed by them are deemed to be orders of the Commissioner himself. In that view, suo motu revision of a revisional order of the Joint Commissioner by the Senior Joint Commissioner would amount to a second revision by the same authority, which is impermissible under settled principles of law.

20. On the aforesaid grounds, learned counsel for the writ petitioners/respondents prays that the review application be dismissed.

21. In order to appreciate the rival contention of the parties, it is necessary to have a look at the relevant provisions of the West Bengal Value Added Tax Act, 2003:

“3. Commissioner.-

....

(4) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by an order in writing, delegate any of his powers under this Act except those under sub-section (13) of section 93.

....”

.....

“6. Other persons appointed to assist the Commissioner.- (1) The State Government may appoint such other persons to assist the Commissioner as it thinks fit and may specify the area or areas over which such persons shall exercise jurisdiction.

(2) The persons appointed under sub-section (1) shall exercise such powers as may be conferred or prescribed by this Act or delegated to them in writing by the Commissioner under sub-section (4) of section 3.

(3) Any person appointed to assist the Commissioner, under the West Bengal Sales Tax Act, 1994, and continuing in office as such immediately before the appointed day, shall, on and from the

appointed day, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be the person appointed to assist the Commissioner.”

.....

“85. *Suo motu* revision by Commissioner.— (1)

Subject to such rules as may be made for reasons to be recorded in writing, the Commissioner may, on his own motion, revise a provisional assessment under section 45, or any other assessment under section 46 or section 48, or deemed to have been made under sub-section (1) of section 47 or order passed by a person appointed under sub-section (1) of section 6 to assist him.

(2) Notwithstanding anything contained elsewhere in the Act, where an assessment in respect of the dealer for any period is taking up under clause (c) or clause (ca) or clause (d) of sub-section (1) of section 46, the Commissioner may, on his own motion, revise the orders of assessments under section 45, or section 46, or section 47 or section 48 for the previous five years also.

86. Revision by Commissioner upon application. – (1) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner or the prescribed authority may, upon application, revise any order other than an order referred to in section 87 and an order of provisional assessment or any other assessment against which an appeal lies under section 84, passed by a person appointed under sub-section (1) of section 6 to assist him.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner may, upon application filed during the period commencing from the 1st day of July, 2006 and ending on the 30th day of June, 2008, revise a final appellate or revisional order from an order of provisional assessment or any other assessment.

Explanation.— For the purposes of this section, the expression "any order" also includes the following,—

- (a) an order of seizure of accounts of a dealer or casual dealer or any other person, made under section 67;
- (b) an order of sealing any house, room, warehouse, almirah, cabinet, safe, locker, drawer, box, or any receptacle, made under section 69;
- (c) an order of seizure of account of a transporter, carrier or transporting agent made under section 71;
- (d) an order of seizure of goods of any person, made under section 76.”

22. In exercise of the powers conferred under Section 6(1) of the Act of 2003, the State issued a notification dated March 31, 2005, appointing certain categories of officers to assist the Commissioner of Sales Tax.

The said notification is reproduced below:

“(4)

Persons who will assist the Commissioner.

Notification No. 792-F.T., dated 31-3-2005

In exercise of the power conferred by sub-section (1) of section 6 of the West Bengal Value Added Tax Act, 2003, (West Bengal Act XXXVII of 2003) (hereinafter referred to as the said Act), the Governor is pleased hereby

- (1) to appoint the following persons to assist the Commissioner of Sales Tax for carrying out the purposes of the said Act, –
 - (a) Senior Joint Commissioners of Commercial Taxes as referred to in clause (qa) of sub-rule (1) of rule 2 of the West Bengal Sales Tax Rules, 1995, as Senior Joint Commissioners of Sales Tax;
 - (b) Joint Commissioners of Commercial Taxes as referred to in clause (g) of sub-rule (1) of rule 2 of the West

Bengal Sales Tax Rules, 1995, as Joint Commissioners of Sales Tax;

- (c) Deputy Commissioners of Commercial Taxes as referred to in clause (k) of sub-rule (1) of rule 2 of the West Bengal Sales Tax Rules, 1995, as Deputy Commissioners of Sales Tax ;
- (d) Commercial Tax Officers as referred to in clause (j) of sub-rule (1) of rule 2 of the West Bengal Sales Tax Rules, 1995, as Sales Tax Officers;
- (e) Assistant Commercial Tax Officers as referred to in clause (m) of sub-rule (1) of rule 2 of the West Bengal Sales Tax Rules, 1995, as Assistant Sales Tax Officers;
- (f) Patrolman as referred to in clause (n) of sub-rule (1) of rule 2 of the West Bengal Sales Tax Rules, 1995, as Patrolman ; and

(2) to specify that the area or areas over which the persons mentioned in clause (1) shall exercise jurisdiction under the said Act and the West Bengal Value Added Tax Rules, 2005 shall be the same as those over which such persons respectively shall exercise jurisdiction under the West Bengal Sales Tax Act, 1994, and the West Bengal Sales Tax Rules, 1995 .

2. This notification shall come into force with effect from the 1st day of April, 2005.”

23. The Commissioner in exercise of power conferred upon him by Sub-section (4) of Section 3 of the West Bengal Value Added Tax Act, 2003, read with Sub-rule (1) of Rule 3 of the West Bengal Value Added Tax Rules, 2005 delegated the powers under Section 85 and 86 of the said Act to the following officers by an order dated January 6, 2009:

Sl. No.	Section	Description of power	Designation of officer
(1)	(2)	(3)	(4)
51.	85	<p>To revise <i>suo motu</i> an assessment made or an order passed by a Sales Tax Officer or an Assistant Sales Tax Officer;</p> <p>To revise <i>suo motu</i> an assessment made or an order passed by a Deputy Commissioner.</p> <p>To revise <i>suo motu</i> an assessment made or an order passed by a Joint Commissioner.</p> <p>To revise <i>suo motu</i> an assessment made or an order passed by a Senior Joint Commissioner.</p>	<p>Senior Joint Commissioner, Joint Commissioner, Deputy Commissioner.</p> <p>Senior Joint Commissioner, Joint Commissioner.</p> <p>Senior Joint Commissioner,</p> <p>Additional Commissioner.</p>
52.	86	<p>To revise, on application, an assessment made or an order passed by a Sales Tax Officer or Assistant Sales Tax Officer.</p> <p>To revise, on application, an assessment made or an order passed by a Deputy Commissioner.</p>	<p>Senior Joint Commissioner, Joint Commissioner, Deputy Commissioner.</p> <p>Senior Joint Commissioner, Joint Commissioner.</p>

	<p>To revise, on application, an assessment made or an order passed by a Joint Commissioner.</p> <p>To revise, on application, an assessment made or an order passed by a Senior Joint Commissioner.</p> <p>To revise, on application, an assessment made or an order passed by an Additional Commissioner.</p>	<p>Senior Joint Commissioner,</p> <p>Additional Commissioner.</p> <p>Special Commissioner.</p>
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24. The question that arises for consideration is whether a revision order passed under Section 86 of the West Bengal Value Added Tax Act, 2003 by a Joint Commissioner, acting as a delegatee of the Commissioner, can be subjected to further revision under Section 85 of the said Act by a Senior Joint Commissioner, who also functions as a delegatee of the Commissioner.

25. Section 85 of the Act confers suo motu revisional power upon the Commissioner. The said provision authorises the Commissioner to revise certain specified assessments and orders, namely those passed under Sections 45, 46, 47(1) and 48, as well as orders passed by a person appointed under Section 6(1) of the Act to assist him.

26. Section 86, on the other hand, provides for revision on application in respect of any order passed by an officer appointed under Section 6(1). The revisional power under Section 86 vests in the Commissioner and may be exercised by him either personally or through an authorised delegatee, such as a Joint Commissioner or a Senior Joint Commissioner.

27. When a delegatee exercises the revisional power under Section 86, he does so as an extension of the authority of the Commissioner. An order passed by a Joint Commissioner under Section 86, pursuant to delegation, therefore assumes the character of an order of the Commissioner himself. Such an order cannot be regarded as an order of a subordinate officer under Section 6(1) once the revisional jurisdiction has been exercised.

28. The fact that a Senior Joint Commissioner occupies a higher administrative position than a Joint Commissioner does not alter the legal position. Both officers exercise delegated authority derived from the same superior source, namely the Commissioner. In the absence of an express statutory provision, one delegatee cannot revise or sit in appeal over the exercise of delegated power by another delegatee when such power is exercised on behalf of the Commissioner himself.

29. Section 85 permits revision only of specified assessments or of orders passed by officers appointed under Section 6(1). An order passed under Section 86 by a delegatee of the Commissioner does not fall within either category. The said order is not an order of a subordinate officer

but an order of the Commissioner rendered through delegated authority. Consequently, Section 85 does not contemplate or authorise revision of such an order.

30. Once an order has been subjected to revision under Section 86, it cannot thereafter be revised under Section 85 of the Act of 2003. Permitting such a course of action would result in an impermissible cycle of successive revisions. An order revised under Section 86 could subsequently be revised under Section 85, which, in turn, could again be subjected to revision under Section 86, thereby creating an endless and circular process. The statutory scheme of the Act clearly does not contemplate or permit such repetitive and unending re-revision.

31. If an order passed under Section 86 suffers from any illegality or infirmity, the permissible courses available under the Act are limited to rectification under the relevant statutory provision or recourse to the remedy under Section 87, if applicable. A Senior Joint Commissioner cannot independently invoke Section 85 to revise an order passed under Section 86.

32. In my view, Mr. P.K. Singh, learned advocate appearing for the respondents in this review application, has rightly placed reliance on a judgment reported at **1979 SCC OnLine Guj 93 (Ashwin Industries v. Deputy Commissioner of Sales Tax, Baroda)**. In the said case, a Division Bench of the Gujarat High Court was confronted to the issue "...as to whether the Deputy Commissioner of Sales Tax can seek to invoke suo motu revisional powers under section 67(1)(a) of the Gujarat

Sales Tax Act, 1969, hereinafter referred to as "the Act", when the Assistant Commissioner of Sales Tax on a prior occasion had exercised suo motu revisional powers regarding the same subject-matter under section 67(1)(a) of the said Act."

33. Answering the issue in negative, the Division Bench observed, *inter alia*, as follows:

"....

Thus, in 1967 when the Assistant Commissioner of Sales Tax exercised revisional jurisdiction under section 67(1), he did so as Commissioner by virtue of section 27(6) and revised the order of the Sales Tax Officer, who is one of the officers appointed under section 27 to assist the Commissioner. Thus the power under section 67(1)(a) qua the same subject-matter came to be fully exercised and was exhausted. Thereafter the Deputy Commissioner under the same section 67(1) read with section 27(5) could not have reinvoked the same revisional power of the Commissioner qua the same subject-matter when the power was once exercised and was already exhausted. Under the circumstances, we find that Mr. Kaji's submission is well-justified that the impugned notice seeking to re-exercise the same revisional powers qua the same subject-matter, once that power was already exhausted on an earlier occasion, is patently bad. Mr. Kaji in support of his submission relied upon the judgment of the Division Bench of this Court consisting of A.D. Desai and B.K. Mehta, JJ., in, Special Civil Application No. 1659 of 1972 decided on 17th August, 1973. In the aforesaid special civil application this Court was concerned with the legality of the notice issued by the Assistant Commissioner and his subsequent order purported to have been passed in exercise of suo motu revisional jurisdiction under section 27 of the Saurashtra Sales Tax Ordinance No. 18 of 1950, when the earlier order of the Deputy Commissioner under the same section 27 had resulted in exercise of revisional jurisdiction on a prior occasion qua the same subject-matter. The question before the Division Bench in the aforesaid decision was whether once under section 27 of the Saurashtra Sales Tax Ordinance revisional jurisdiction was exercised by the Deputy Commissioner the same section can be again pressed in service for sustaining reinitiation of suo motu revisional proceedings qua the same subjectmatter by the

Assistant Commissioner purporting to exercise powers for the second time under the same section 27. The Division Bench on the interpretation of section 27 of the Saurashtra Sales Tax Ordinance came to the conclusion that once the revisional jurisdiction was invoked under section 27 by one officer exercising the same powers under the said Act, the same revisional jurisdiction could not be reinvoked by another officer seeking to exercise powers under the same section as the power of revision qua the same subject-matter at the prior stage was fully exhausted. We may mention at this stage that section 27 of the Saurashtra Sales Tax Ordinance which came up for consideration before the Division Bench in the aforesaid case is practically in pari materia with section 67(1) of the Act in the present case. Section 27 of the Saurashtra Sales Tax Ordinance reads as under:

"27. (1) Subject to such rules as may be prescribed and for reasons to be recorded in writing the Commissioner may, upon application or of his own motion, revise any order passed under this Ordinance or the Rules thereunder by a person appointed under section 3 to assist him, and subject to the aforesaid the Tribunal may, upon application, revise any order passed by the Commissioner....."

Thus under section 27 of the Saurashtra Ordinance, revisional power was conferred on the Commissioner to revise any order passed by a person appointed under section 3 of the said Ordinance; the Government was given power to appoint any person to be the Commissioner of Sales Tax and any other person to assist him as the Government may think fit. While considering the question posed for decision of the Division Bench in the aforesaid case, it was observed by A.D. Desai, J., on behalf of the Division Bench as under:

The question is, can the same authority in the exercise of the same power of revision under section 27 revise its own previous order passed in revision in respect of the same subject-matter? Under section 27 the power of revision is conferred on the Commissioner. The Commissioner can delegate the same power and the delegates when it exercises the power does so as a Commissioner. The order which a delegates passes in revision is in effect the order of the Commissioner. When an officer exercises his power as a Commissioner, the power of the Commissioner to revise an

order is exhausted. The Commissioner or his another delegates cannot exercise the power of revision over again in respect of the same subject-matter. In the present case what has happened is that in passing the order at annexure A/8 the Assistant Commissioner, respondent No. 2, exercised the power of revision and in exercise of that power reviewed the order at annexure A/6 which was passed by the Deputy Commissioner in exercise of the revisional powers vested in him as a Commissioner under section 27 of the Ordinance. The net result is that respondent No. 2 reviewed the order at annexure A/6 which was passed in the exercise of revisional powers by the Commissioner. The revisional powers cannot in this manner be exercised twice over in respect of same subject-matter with the result that the order at annexure A18 has to be set aside."

The aforesaid decision, in our view, completely clinches the issue and consequently Mr. Kaji's submission has got to be upheld."

(Emphasis supplied by me)

34. Accordingly, it must be held that an order passed under Section 86 by a Joint Commissioner acting as a delegatee of the Commissioner cannot be subjected to further revision under Section 85 by a Senior Joint Commissioner. Section 85 does not authorise revision of an order which, in law, is deemed to be an order of the Commissioner himself.

35. In view of the aforesaid discussion, this Court is of the opinion that though the learned Judge in his order dated April 10, 2023, framed a wrong issue and dismissed the review application, the order of the Senior Joint Commissioner, Commercial Taxes dated January 7, 2015, cannot be sustained for the reasons indicated above. Therefore, this Court is not inclined to entertain this review application, and

accordingly, **R.V.W.O. No.5 of 2024** along with **I.A. No. G.A. 2 of 2024** is dismissed.

36. Needless to mention that the dismissal of this review application shall not preclude the revenue from taking recourse to other remedies in accordance with law to challenge the order of the Senior Joint Commissioner, Commercial Taxes dated January 7, 2015.

37. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)