Serial No. 02 Supplementary List
MLHC010002102024

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 60 of 2024

Reserved on : 04.06.2026
Pronounced on : 17.11.2026
Uploaded on : 17.11.2026

Whether the operative part or full judgment is pronounced : Full Judgment

Megha Technical and Engineers Pvt. Ltd.,
A Company incorporated under the provisions of the
Companies Act, 1956 and having its registered office
Situated at Lumshnong, P.O. Khaliehriat in the
District of East Jaintia Hills, Meghalaya-79320 and
Represented by Mr. Sanjib Kumar Saharia,
The authorised Signatory of the Petitioner Company

… Petitioner(s)

Versus

1.The State of Meghalaya represented by
Commissioner and Secretary to the Government of
Meghalaya, Finance Department,
Meghalaya Secretariat, Shillong

2.The Commissioner of Taxes,
Office of the Commissioner of Taxes,
4th Secretariat Building, Lachumiere,
Shillong-793001.

3.The Superintendent of Taxes,
East Jaintia Hills District, Khliehriat.

…. Respondent(s)

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Judge
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Dr. A. Saraf, Sr. Adv. with
Mr. S.J. Saikia, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
Mr. N. Syngkon, GA
Mr. J.N. Rynjah, GA
Ms. S. Laloo, GA

i)	Whether approved for reporting in Law journals etc:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

Per. H.S. Thangkhiew, Judge:

JUDGMENT:

1. By way of this instant writ petition, the petitioner has challenged various orders for the period from the quarter ending 30.06.2007, to quarter ending 30.06.2017 passed by the Superintendent of Taxes, East Jaintia Hills District, Khliehriat in purported exercise of power under Section 9 of the Central Sales Tax Act, 1956 read with Section 45 of the Meghalaya VAT Act, 2003 completing the assessment of the Petitioner Company, by holding that the returns submitted by the Petitioner cannot be accepted as complete and correct.

2. Dr. A.K. Saraf, Ld. Sr. Counsel with Mr. S.J.Saikia, has submitted that the notice dated. 27.04.2017(Pg. 17 of the Affidavit-in-Opposition) was not a notice under Section 45 of the Act, as the same was issued for production of the books of accounts for periods ending from 01.05.05 to 31.12.2016, under the MVAT Act, and not for completing the assessment under Section 45, rather the notice itself would show that the same was for completion of the audit assessment under Section 55 thereof. It is further submitted that a plain reading of Section 45, would show that the said power can be exercised only if no returns are filed, or if the Commissioner arrives at a specific satisfaction that returns furnished are not correct and complete. If the aforesaid pre conditions are fulfilled, he submits, the Commissioner can proceed in such manner as prescribed, to assess to the best of his judgment the amount of tax due from the dealer and in making such assessment, give the dealer a reasonable opportunity of being heard. In the present case it is contended, the Petitioner a registered dealer had paid all taxes due and submitted returns by the prescribed date, but was not issued any Show-Cause Notice, nor any opportunity granted, a pre-condition of Section 45 of MVAT Act, which was not satisfied. He further submits that the second pre-condition is that if the Commissioner is not satisfied, that the returns furnished are complete and correct, he can proceed to assess to the best of his judgment, but prior to making the said assessment, he is to afford

reasonable opportunity of being heard to the dealer. In the present case he asserts, the return furnished by the Petitioner was not found to be correct and complete and as such, a reasonable opportunity of hearing should have been granted to show cause, as to why the best judgment assessment should not be completed. As such he submits the impugned orders are without jurisdiction and violative of the principles of natural justice.

3. The Respondents he submits, having not proceeded in the manner prescribed by the MVAT Act and Rules, and instead placing reliance on the notice dated. 27.05.2017, which provides for audit assessment under Section 55, which involves examination of account books and not for assessment as under Section 45, have acted wholly without jurisdiction as Section 45 and 55 are distinct and operate in different scenarios. He therefore contends that where powers are required to be exercised in a specific prescribed manner, it must be exercised in such manner. Section 45 he reiterates, has expressly provided that the Commissioner shall proceed in such manner as may be prescribed to assess by best judgment the amount of tax due from the dealer, but as the manner to assess to the best of his judgment has not been prescribed by the Rules, the Commissioner cannot exercise this power under Section 45. However, he submits Rule 36 of the MVAT Rules has laid down the manner for completion of the best judgment assessment under section 55(1) of the Act and Section 51 (1)(d) in this

context mandates the service of notice to be issued upon a dealer for production of books of accounts and evidence. To give effect to this provision he submits Rule 36 has provided the manner in how the same is to be proceeded, which stipulates issuance of a notice to the dealer in Form 22, containing one or more reasons mentioned in Section 55(1) for proceeding for completion of the best judgment assessment. The Commissioner therefore he submits, cannot exercise his power to assess to the best of his judgment under Section 45 and consequently the said orders passed under this section, are illegal and without jurisdiction.

4. It is further submitted that though Section 45 of the Act does not prescribe any period of limitation, the same however does not mean that the said power can be exercised without a time limit, inasmuch, as Section 57 of MVAT provides a 5-year limitation period for assessment under Sections 55, 56 and further Section 64 limits tax recovery under Section 61(1)(b) to 5 (five) years. He therefore contends that the said power under Section 45, has to be exercised within a reasonable period which is to be determined impliedly, as per the scheme of the Act. Making a best judgment assessment therefore, he contends after the limitation period prescribed under the Act, would result in the violation of the scheme of the Act and any orders passed thereafter, would be arbitrary and without jurisdiction and as such liable to be set aside. It is also contended that an examination of the assessment

orders, shows that the same were passed under Section 45 of the MVAT by the Superintendent of Taxes, without being delegated such powers by the Commissioner under Section 26 of the MVAT. Further submissions made is that the reliance of the Superintendent of Taxes upon an internal circular dated. 07.03.2009, is unsustainable as the said circular was never published in the Official Gazette and as such has no legal force, nor can confer any jurisdiction. Delegation of assessment powers he submits, is to be as per Section 26(1) read with Rule 3 of the MVAT Rules, 2005 and the said notification in this regard, has to be published in the Official Gazette.

5. The learned Senior Counsel then finally submits that taxing statutes must be strictly interpreted according to the text without reading in implied terms or equity and any lacuna, ambiguity, or doubt in the provisions must be resolved in favour of the assessee. On the question of availability of alternate- remedy, it has been submitted that it is settled law that where the order or proceedings challenged, are wholly without jurisdiction the writ court would be justified in entertaining a writ petition, despite the Petitioner not having availed the alternate remedy as provided in the statute. In the instant case he contends, the very jurisdiction of the authority in passing the orders under Section 45 of MVAT, being the subject matter of challenge, and there being a clear violation of the principles of natural justice, the writ petition therefore is maintainable.

6. On behalf of the Respondents, the learned AG, Shri A. Kumar with Mr. N. Syngkon, at the outset has submitted that the Petitioner in the instant petition has also challenged assessment orders wherein the returns submitted have been accepted as complete and correct and are not adverse to the Petitioner. On the other assessment orders, the Ld. AG submits that the proceedings were drawn under Section 45 of the MVAT Act, 2003 read with Section 92 of the Central Sales Tax Act, and that as per Section 45, the authorities are empowered to make assessments for any period where returns are incomplete and incorrect and it contains no period of limitation. The five-year limitation period under Section 57 he submits, applies solely to an audit assessment under Section 55 and this involves random audit selections by the Commissioner whereas, Section 45 powers are delegated to the Superintendent of Taxes. It is also contended that the Petitioner cannot import the limitation period from Section 57 in proceedings under Section 45, as tax statutes and terms must be strictly interpreted and Courts cannot substitute the statutory phrase “any period” or “with five-years” or reasonable period.

7. It is then submitted that there has been no violation of natural justice, inasmuch as, notice dated 27.04.2017 for the period 01.05.2005 to 31.12.2016, had been served on the Petitioner’s authorized representatives, which was also duly complied on 19.10.2021, by the production of the books

of accounts and that as the assessment orders were passed after examining the and verifying the books of accounts as per Section 39, it cannot be said that the Petitioner was not given adequate opportunity of being heard. The proceedings he reiterates, being drawn up under Section 45, the applicability of the limitation period of five-years given under Section 57 does not arise, and the argument that the assessment orders are under Section 55 of the Act is incorrect. Section 55 powers it is further submitted, relates to audit assessment carried out exclusively by the Commissioner of Taxes and cannot be delegated to lower officers, but however, the power under Section 45 has been validly delegated to the Superintendent of Taxes as per Section 26 of the MVAT Act read with Rule 3 and Rule 7 of the MVAT Rules. The Superintendent of Taxes therefore he submits, having exercised delegated powers under Section 45, the limitation period prescribed for Sections 55 and 56 under Section 57, cannot be imported into Section 45 or Section 39 proceedings.

8. The Ld. Advocate General on the question of delegation of powers has produced a notification dated 16.04.2007, to show that Section 45 powers were delegated to the Superintendent of Taxes and submits that the action taken, was in exercise of such valid delegated authority and not under Section 55, which is the exclusive domain of the Commissioner. It is then contended that a best judgment assessment only arises if the returns

furnished by the registered dealer are incorrect or incomplete and that in the instant case, discrepancies for the periods quarter ending 31.12.2010 to quarter ending 30.06.2011, were detected in the value of stock transfer and also similarly for quarter ending 30.09.2011 to 30.06.2013. It is then submitted that even for quarter ending 30.03.2014 to 30.07.2017, verification revealed discrepancies in the value of stock transfer, sales turnover of finished goods declared in the return and the actual figures in the books of accounts, which substantiates the stand of the Respondents that there was deliberate under-declaration and tax concealment. The stock transfers by the Petitioner it is submitted, being not wholly covered under Form-F as prescribed by MVAT Act, the amounts not covered would therefore be considered as sales and lose the exemption of 14.5%.

It has also been submitted that dealers under the Remission Scheme are required to submit monthly, quarterly and annual returns whereas the Petitioner, had furnished only monthly returns thereby violating Section 35 read with Rule 30 of the MVAT Rules. It is further submitted that dealers with an annual gross turnover exceeding Rs. 40,00,000/- (Rupees Forty Lakhs only) were required as per notification dated 17.01.2009, to submit audited accounts within six months which the Petitioner failed to comply up to the expiry of the remission period, resulting in statutory fines under Section 86 and that only after the said expiry of the remission period,

the Petitioner filed certified audit accounts. In this context, it is submitted that by invocation of Section 9(2) of the Central Sales Tax Act, 1956, the general sales tax machinery i.e., MVAT Act, 2003, has been legally imported to assess, enforce and collect central tax liabilities, interest and penalties.

9. Reference has also been made to the notice dated 27.04.2017, and it is asserted by the Ld. AG that the same was concealed to build up a plea of limitation whereas in fact, the notice was duly received and complied with by the submission of the books of accounts. As such he contends the plea that no reasonable opportunity of being heard in terms of Section 45 is misplaced and incorrect. It is also been argued that the Petitioner has recourse to alternate statutory remedy under Section 65 of MVAT Act and also that Section 108, excludes civil court jurisdiction over tax assessments. It is lastly submitted that though the Petitioner complied with the notice in 2017, the writ petition has been filed only in 2024 a delay of over 7 years, to challenge the notice apart from attempting to raise new arguments and pleadings in the oral and written submissions. In support of his arguments, the Ld. AG has relied upon the following judgments: **-**

a. ***K. Jayaram and Ors. v. Bangalore Development Authority (2022)12 SCC 815***
b. ***S. Tirupathi Rao v. M. Lingamaiah and Ors. (2024) 20 SCC 188***

c. ***PHR Invent Educational Society v. UCO Bank and Ors. (2024) 6 SCC 579***
d. ***Kamala Mills Ltd. V. State of Bombay (1965) SCC Online 92***
e. ***Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax (1963) 51 ITR 557***
f. ***Allahabad University and Ors. v. Geetanjali Tiwari and Ors. (2024) 20 SCC 23***

10. On hearing the learned counsel for the parties, the issues that arises for consideration are (i) Whether the orders passed under Section 45 of the MVAT Act, 2003 read with Section 9 of the Central Sales Tax Act, 1956 are illegal and without jurisdiction for failing to fulfil statutory pre-conditions and a show cause granting opportunity of being heard. (ii) Whether best judgment assessment under Section 45 can be made when no procedure is provided in MVAT Rules, 2005 for making assessment under Section 45. (iii) Whether five-year limitation period provided under Section 57 read with Section 64 of the MVAT Act and Section 9(2) of the CST Act would be applicable. (iv) Whether the Superintendent of Taxes had jurisdiction to pass assessment orders under Section 45 in the absence of notification delegating such powers under Section 26(1) read with Rule 3 of the MVAT Rules, 2005 duly published in the Official Gazette and (v)

whether the writ petition is maintainable on account of availability of statutory appeal under Section 65 of the MVAT Act, 2003.

On the above issues so framed the most crucial are issues (i) and (ii) inasmuch as, they strike at the root of the manner in which the assessment was arrived at especially on the procedure adopted by the Respondents in this regard. Section 45 of the MVAT Act has provided the procedure to be adopted if no returns are furnished in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete. For the sake of convenience Section 45(1) of the MVAT Act is reproduced hereinbelow: -

> ***(1) If no returns are furnished by a registered dealer in respect of any period, by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax due from the dealer and in making such assessment shall give the dealer a reasonable opportunity of being heard; and in the case of failure by a registered dealer to furnish in respect of any period, a return accompanied by a receipt from a Government Treasury or the State Bank of India,(or any other bank authorized by the Govt. of Meghalaya) as required under sub-section (4) of section 35 by the prescribed date, the Commissioner may if he is satisfied that the default was made without reasonable cause, direct the dealer shall pay by way of penalty, in addition to the amount of tax assessed, a sum not a sum not exceed in one and a half time; that amount.***
>
> ***Provided that where a registered dealer brings to the notice of the Commissioner in writing, within six months from the end of the year that, due to error in fact or in law,***

> ***an amount of tax has been paid by him in excess of what was payable by him during any return period relating to such year, and request the Commissioner for making assessment under this sub-section in respect of such year, the Commissioner may if he is satisfied on the grounds adduced by such registered dealer making such assessment, proceed to make assessment in respect of such year immediately on receipt of notice by the dealer.***

From a plain reading of the above quoted section, if the pre-conditions mentioned therein are fulfilled, the Commissioner may proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer and in making such assessments, shall give the dealer a reasonable opportunity of being heard. In the present case the Petitioner is a registered dealer, and as submitted had paid the taxes due and also filed the returns within the prescribed date and thereby, the first pre-condition for invocation of Section 45 is not satisfied. The second pre-condition is that if the Commissioner is not satisfied that the returns furnished are complete and correct, he can proceed to assess to the best of his judgment but prior to making such best judgment assessment, the Commissioner has to give a reasonable opportunity of hearing to the dealer. As submitted by the Respondents the second pre-condition has been met to enable the Commissioner to apply Section 45, inasmuch as, a notice dated 27.04.2017, had been issued to the Petitioner to produce the books of accounts for the concerned periods that is 01.05.05 to 31.12.16. A perusal of the notice however would show that the said notice is only for completion

of the audit assessment failing which assessments for the stated period would be completed by the best judgment method, and is not a notice which is furnished due to the failure in filing returns. As such the two pre-conditions contemplated by Section 45 in the considered view of this Court have not been met.

In this context, it would be expedient to refer to Section 55(5) of the MVAT Act which deals with audit assessment wherein the power to make best judgment assessment is contained. The same being relevant for this discussion, is extracted hereinbelow: -

> ***(5) If any dealer-***
>
> ***(a) has not furnished returns in respect of any period by the prescribed date; or***
>
> ***(b) has furnished incomplete and incorrect returns for any period; or***
>
> ***(c) has failed to comply with any notice under sub-section (1) or sub-section (3); or***
>
> ***(d) has failed to maintain accounts in accordance with the provisions of this Act or has not regularly employed any method of accounting the Commissioner shall access to the best of his judgement the amount of tax due from such dealer.***

Added to the power to be exercised by the Assessing Authority under Section 55(5) it is relevant to note that this power is circumscribed by Section 57 of the MVAT Act, 2003 which reads as follows:-

> ***(1) No assessment under Section 55 or 56 shall made after the expiry of five years from the end of the tax period to which the assessment relates;***
>
> ***Provided that in case of offence under this Act for which proceeding for prosecution has been initiated, the limitation as specified in this sub-section shall not apply.***
>
> ***Any assessment made or penalty imposed under this Chapter shall be without prejudice to prosecution for any offence under this Act.***

The notice dated 27.04.2017 in the considered view of this Court, would therefore amount to a notice for initiation of proceedings under Section 55 of the MVAT Act, 2003 which however, for the period in question that is 01.05.05 to 31.12.16, would also have to meet the limitation requirements of Section 57 for the relevant periods therein. As such therefore, it can safely be concluded there was no valid notice of affording reasonable opportunity of being heard to the Petitioner. Best judgment assessment mandatorily, has to be completed in such a manner as strictly prescribed in the rules, and in the instant case what is apparent is that there has been a misapplication of the provisions, inasmuch as, Section 45 and Section 55 operate in separate fields and therefore the notice cannot be taken to be one under Section 45, as it asks only for production of books of

accounts which would by its content and intent make it at the most, a notice under Section 55.

As such as per the discussions and findings made hereinabove, issues (i) and (ii) and in fact (iii) are covered.

11. Coming to the other ancillary aspects of the matter that is whether the Superintendent of Taxes had the jurisdiction to pass assessment orders under Section 45, though the Respondents have produced a notification dated 16.04.2007, wherein it is shown that the Commissioner has delegated powers under Section 45 to the Superintendent of Taxes, apart from the same being absent from the documents and records filed before this Court, this point has been rendered redundant for any relevant adjudication in view of the findings arrived at hereinbefore.

12. On the issue of maintainability, on the mandatory pre-conditions prescribed by Section 45 not having been met, and there being a clear violation of the principles of natural justice, apart from the jurisdictional issues discussed, the writ petition is therefore maintainable.

13. In the totality of the circumstances especially on the exacting requirements of tax statutes and adherence to the prescribed procedure, as held in the case of ***Kunwar Pal Singh v. State of U.P(2007) 5 SCC 85*** that power must be exercised in the manner provided by the statute, the same holds true and is directly applicable to the facts of the instant case, that when

statute prescribes a particular manner for doing a particular act, it must be done in that manner alone, and an authority cannot assume jurisdiction in a manner not authorised or allowed by a statute.

14. The authorities placed by the Respondents have been perused but however, the same not being of much assistance to their pleaded case are not discussed or elaborated upon.

15. Accordingly, for the reasons aforementioned the impugned assessment orders dated 07.11.2022 for the quarter ending 30.06.2007 to 31.03.2010, order dated 01.03.2023 for the quarter ending 30.06.2010 to 31.03.2015, and 30.11.2023 for the quarter ending 30.06.2015 to 30.06.2017 passed by the Superintendent of Taxes, East Jaintia Hills, Khliehriat under Section 9 of the Central Sales Tax Act, 1956 read with Section 45 of the MVAT Act, 2003 are hereby set aside and quashed.

16. The writ petition accordingly stands allowed and is disposed of.

(B. Bhattacharjee)
JUDGE

(H.S. Thangkhiew)
JUDGE

Meghalaya
17.11.2026
"V. Lyndem- AR-PS"

Verified
Digitally signed by: VALENTINO LYNDEM
Signed On: 17-11-2026 17:29:49 IST