(2002) 06 GAU CK 0056

In the Gauhati High Court

Case No : Writ Petition (C) No. 2922 of 1999

Barnajan Tea Co. (P) Ltd. — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 07-06-2002

Acts Referred:

Citation : (2002) 128 STC 316

Hon'ble Judges : J.N. Sharma, J;D. Biswas, J

Bench : Division Bench

Advocate : D.R. Gogoi and A. Buzarbaruah, for the Appellant; N.C. Phukan, Government Advocate, for the Respondent

Judgement

J.N. Sarma, J.—This matter relates to a stay order dated October 1, 1996 passed in C.R. No. 4852 of 1996 by the learned single Judge of this Court in a matter with regard to payment of taxes (i.e., sales tax). That portion of the stay order is quoted below :

"As an interim measure, I direct that the petitioner shall give an undertaking before the respondent No. 3 that in case he does not succeed in the writ petition, he shall pay all taxes that may be found due from him and on such undertaking being furnished the respondent No. 3 shall pass orders stating therein that an undertaking has been furnished by the petitioner. On the said orders being produced before the respondent Nos. 4 to 8, the consignments of the petitioner shall be allowed to pass without insisting on payment of tax or sales tax clearance certificate and without any hindrance."

2. A bunch of writ petitions have been filed wherein similar interim order quoted above was being followed. The State of Assam as usual slept over the matter and did not take any steps whatsoever to get a modification of the order with regard to these matters. This is the usual mode followed by the State of Assam. The State of Assam takes interest in some matters, but in tax matter where huge amount of revenue is involved it always lies low. That we can almost take judicial

notice and in this case, same is the situation. Though the present is pending before this Court since 1999 and on July 2, 1999, a single Judge of this court was not inclined to follow the stay order quoted above in a similar case and referred the matter to division Bench. Accordingly this matter has come before us. Though this matter was referred to a division Bench by order dated July 2, 1999, till today, no affidavit-in-opposition has been filed nor any record has been produced.

3. Mr. A.M. Buzarbaruah, learned Government Advocate, submits that he appears in this case, but he does not have the brief of the case, and in fact, he does not know anything with regard to this case and he is of no assistance to us. So, we have no option, but to decide the matter on our own without any assistance from the learned Government Advocate for the State of Assam.

4. We have heard Mr. D.R. Gogoi, learned counsel for the petitioner.

5. The apex Court in Union Territory of Pondicherry and Others Vs. P.V. Suresh and Others, pointed out as follows :

"Before parting with the case, we feel constrained to reiterate our unhappiness about the interim injunction order made in the Mahe writ petitions. Passing of interim orders is not and cannot be a matter of course--nor a matter of charity. In the matters touching public revenue the courts ought to be more cautious. For better or worse the courts have come to acquire a veto over the public exchequer. This power should be exercised with good amount of self-restraint and with a sense of responsibility. The power is coupled with accountability--accountability to the Constitution, to the laws of the land and above all to ourselves. The court must apply its mind to the facts of the case and must also envisage the implications and consequences of the order it proposes to make."

6. In Bank of Maharashtra Vs. Race Shiping and Transport Co. Pvt. Ltd. and another, it has been pointed out as follows :

"Time and again, this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. See Assistant Collector of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, and State of Rajasthan and Others Vs. Swaika Properties and Another, relied on."

7. Further, in a case where the revenue of the State is concerned, the court must be more cautious and circumspect as because the court has the veto over the revenue collection by the State in an appropriate cases. That does not mean that the court, as a matter of fact, should adopt such an approach. An interim order is not a precedent, it does not have any binding force. It is also not the law that as and when an order is obtained in some case, no other interim order can be passed. No doubt Mr. D.R. Gogoi, learned counsel is right in contending that

judicial decorum and discipline require that there should be no discrimination in a similar situation and he relies on Vishnu Traders v. State of Haryana and Ors. wherein the law has been laid down as follows :

"In the matters of interlocutory orders, principle of binding precedents cannot be said to apply. However, the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach."

8. Be that as it may, the stay order as quoted above did not adhere to professed norm and law and as such, it is an illegal order; withholding of taxes and/or non-payment of taxes by filing an undertaking is something which is unknown in the domain of law on taxation. If, everybody can avoid the payment of taxes by filing an undertaking, till disposal of the writ petition, that would be a body blow to the revenue of the State and we cannot play fun with the revenue of State. We have the veto power, but that power must be exercised only with proper application of mind in a case where it is prima facie established that imposition/levy of tax is illegal or without jurisdiction or without legal authority. These matters are pending before this Court since long time, either because of the fault of the State of Assam or because of some other reasons.

9. The apex Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, pointed out that practice of granting interim orders practically granting principal relief sought in writ petition for no better reason than that a prima facie case has been made out with no concern for other requisites should be deprecated. The purpose of interim order/relief is to evolve a workable arrangement and the court has to strike a balance between irreparable injury to litigant and the larger public interest Siliguri Municipality and Others Vs. Amalendu Das and Others, . An interim order should not be passed to make topsy turvy the collection procedure of tax and/or a mode adopted by the authority to prevent evasion of tax. The authority has the right to adopt a mode to prevent evasion of tax and that should not be set at naught by interim order and that also in a mechanical manner without application of mind.

10. In view of that matter, we find that the stay order dated October 1, 1996 passed in C.R. 4852 of 1996 and stay order passed in C.R. No. 2902 of 1995 on July 21, 1995 and some other similar orders passed in similar other matters, shall be placed before this Division Bench in a bunch so that appropriate order can be passed with regard to stay in all cases in the light of the order passed above. However, it will be open for the petitioners to establish that the order is illegal and as such they are entitled to stay.

11. After hearing the learned counsel for the petitioner, we hold and make it clear that in a revenue matter by giving an undertaking there can be no stay

with regard to payment of taxes. A State cannot manage its show by undertaking and/or bank guarantee, etc.

12. The circular on the basis of which demand was made is of the year 1955 (annexure-A) and this is in the field for more than 45 years. There is no allegation/pleading that it violates the provisions of Sales Tax Act and/or Rules. This measure is basically to prevent evasion of sales tax and/or for better collection of revenue. It is not understood how it violates any of the right of a person. The court has a duty to prevent evasion of taxes, it cannot put a premium on wrong doing.

13. The Registrar General is directed to place all the matters in the next week before this division Bench so that uniform order can be passed in all the similar matters.

14. Send a copy of this order to Registrar-General and to Advocate-General, Assam.

15. In the present case, no stay order can be passed as prayed for and as such, the prayer for stay shall stand rejected, as nothing was shown to us in the present case that demand/levy of tax is illegal.