(2011) 01 GAU CK 0031

In the Gauhati High Court

Case No : Writ Petition (C) No. 5475 of 2009

Bharat Press APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Assam Value Added Tax Act, 2003 — Section 105, 9
Central Sales Tax Act, 1956 — Section 5

Citation : (2011) 5 GLR 738 : (2011) 1 GLT 600

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : A. Hazarika, for the Appellant; D. Saikia for Finance Department, for the Respondent

Final Decision : Allowed

Judgement

U.B. Saha, J.—The instant writ petition is filed by the Petitioner, M/s Bharat Press, a partnership firm, through its Managing Partner, namely, Sri Pabitra Jiban Baruah, for quashing/setting aside the impugned orders dated 2.4.2009 and 27.4.2009 (Annexure-F & H to the writ petition respectively) issued by the Deputy Secretary to the Govt. of Assam, Election Department and letter dated 23.9.2009 (Annexure-M to the writ petition) issued by the Under Secretary to the Govt. of Assam, Election Department denying the exemption to the Petitioner from paying the Value Added Tax (in short VAT) on printing of Compendium, Hand Books, Manual etc. (altogether nine printing items) in connection with General Elections to the Lok Sabha, 2009.

2. The Deputy Secretary to the Govt. of Assam issued a short tender notice on 2.2.2009 for printing the aforesaid printing items and the tender offered by the Petitioner was accepted. Accordingly, the Petitioner has done the printing works and submitted the bill(s). According to the Petitioner, the aforesaid printing items fall within the definition of books, periodicals and journals in terms of Entry at S1. No. 5 of the First Schedule to the Assam Value Added Act, 2003 (hereinafter

referred to for short as ''the Act 2003'') which are exempted from payment of VAT. But while making payment of the bill(s) of the Petitioner, the Respondent No. 3 vide his letter dated 2.4.2009 (Annexure-F) informed the Petitioner that the Petitioner is to pay VAT, though the aforesaid materials are not taxable, rather exempted from the tax liability, even as per the Taxing authority. Thereafter, although the Petitioner vide letter dated 3.4.2009 inform the Respondent No. 3 that as per first schedule u/s 9 of the Act, 2003, the printing books are exempted from payment of VAT, the Respondent No. 3 vide impugned order dated 27.4.2009 (Annexure-H) informed the Petitioner that the payment of the bill of the Petitioner will be made subject to the deduction of VAT. The Petitioner then sought clarification on rate of tax on the item "Hand Books of Election Procedures" and the Taxing authority, the Commissioner of Taxes, Assam, the Respondent No. 5 vide his order dated 28.5.2009 (Annexure-J to the writ petition) held that on physical verification of the specimen copies that these are bound book with cover and as per entry at S1. No. 5 of the First Schedule, books, periodicals and journals are exempted from tax. Hence, it was clarified that the above mentioned books are exempted from payment of tax as per Entry at SI. No. 5 of the First Schedule. Although the said clarification of the taxing authority was furnished by the Petitioner, the Respondent No. 4 vide impugned letter dated 23.9.2009 informed the Petitioner that the Finance (Taxation) Department had not agreed to the request of the Petitioner and turned down the same for non-deduction of VAT from the bill(s) of the Petitioner submitted for printing of Hand Book etc. in connection with the General Election to Lok Sabha, 2009. Being aggrieved by the actions of the Respondents, the Petitioner has filed the instant writ petition.

3. Heard Mrs. A. Hazarika, the learned Counsel for the Petitioner as well as Mr. D. Saikia, the learned Standing counsel for the Finance Department.

4. As agreed to by the learned Counsel for the parties and considering the nature of the case, the writ petition is taken up for final disposal at this stage.

5. The main grievance of the Petitioner is that though the printing of compendium, hand books, manuals etc. are not taxable and comes within the purview of VAT in view of Section 9 read with Entry at S1. No. 5 of the first schedule of the Act, 2003, the Respondent No. 4 turned down the prayer of the Petitioner for non-deduction of VAT @ 4% from the bill(s) of the Petitioner as sought for by its letter dated 3.4.2009 (Annexure -G to the writ petition) considering the supply of the aforesaid printing materials on works contract.

6. Mrs. Hazarika, learned Counsel for the Petitioner while urging for the relief sought for contended that the impugned letter dated 23.9.09 (Annexure-M) has been issued in violation of the order of the Commissioner of Taxes, Assam, the Respondent No. 5 herein, dated 28.5.2009 (Annexure-J) on an application u/s 105 of the Act, 2003 wherein the taxing authority clarified that the materials supplied by the Petitioner were exempted in view of Entry at S1. No. 5 of the first schedule of the Act, 2003 and any administrative authority whatever higher

position he holds including the Respondent No. 4, has no power to alter the same, rather he is bound to be guided by the said decision; it being the authority who can only clarify which material comes within the purview of the tax under the statute.

7. She further submits that the materials supplied by the Petitioner are not mere printing materials, those are bound printed books with cover and the said work is nothing but a supply simplicitor which do not come within description of works contract as prescribed in 6th Schedule of the Act, 2003. Supply of fixing or installation or fitting fixing of installation goods would only come within the purview of the works contract, not the supply simplicitor.

8. She again urges that the Respondent No. 5 though did not file any affidavit in opposition, but the Respondent No. 6, the Commissioner and Secretary, Finance by way of filing his affidavit in opposition admitted that compendium, hand books, manual etc. have been clarified by the Commissioner of Taxes vide his order dated 28.5.2009 as exempted items as per entry at S1. No. 5 of the First Schedule to the Act, 2003, but contended that the said clarification is in relation to sale of items and the Petitioner is liable to pay sale tax @ 12.5% as per Entry at SI. No. 2 of the Fifth Schedule to the Act, 2003 on the taxable turnover or alternatively, @4% on the total turnover if the Petitioner has the permission under the composition scheme, which is not tenable, the order being for printing of compendium, hand books, manual etc. More so, when the same is exempted as per Entry at S1. No. 5 of the first schedule to the Act, 2003, the letter dated 23.9.2009 issued by the Respondent No. 4 is also without jurisdiction and thus liable to be quashed.

9. Mrs. Hazarika further contended that the works in question essentially fall within the definition of books, periodicals and journals and the Respondent No. 5 rightly exempted those materials from the purview of the VAT in terms of Entry at S1. No. 5 of the first schedule of the Act, 2003 as the Petitioner while quoting the rate in its bid excluded the VAT.

10. Mr. D. Saikia, learned standing counsel for the Respondents 5 and 6 submits that admittedly the printing of compendium, hand books, manuals etc. are not taxable in view of the clarification of the Respondent No. 5, the taxing authority vide Annexure-J wherein the Respondent No. 5 specifically stated that the Petitioner submitted the specimen copies of:

1) Model Code of Conduct for the Guidance of Political Parties and candidates

2) Hand Book for Counting Agents

3) Hand Book for Polling Agents

4) Electronic Voting Machine Manual

5) Hand Book for Returning Officers

6) Compendium of Instructions on Conduct of Elections

7) Hand Book for Presiding Officers

and on physical verification of the specimen copies, it was held that those were bound books with cover which were exempted from tax as per entry at S1. No. 5 of the First Schedule. He further submits that though the materials supplied by the Petitioner is not taxable, but the Respondent No. 4 vide his letter dated 23.09.2009 informed the Petitioner that the Finance (Taxation) Department had not agreed to the request of the Petitioner and turned down the same for non-deduction of VAT from the bill(s) submitted by the Petitioner for printing Hand Book etc. in connection with the General Election to Lok Sabha, 2009.

11. Mr. Saikia while in one way supporting the clarification of the Respondent No. 5, on the other way placed reliance on Annexure-1 to the affidavit in opposition filed by the Respondent No. 6, wherein it is stated that "it appears from your endorsement dated 4.8.2009 at page 22/N of your file No. ELE. 117/2008/pt that the rates for printing books for election procedure, as quoted by the dealer, are inclusive of VAT. The same is, therefore, to be deducted from the bills".

12. While making submission, the learned Counsel for the parties have referred to the provisions of Section-9 of the Act, 2003 and the Entry at S1. No. 5 of the First Schedule, which are reproduced as under:

9. Exemptions and zero rating.--

(1) The sale of goods listed in the First Schedule shall be exempted from tax subject to conditions and exceptions, if any set therein.

(2) The sales of goods in the course of export out of the territory of India falling within the scope of Section 5 of the Central Sales Tax Act, 1956 shall be zero-rated.

(3) Any sale of goods made by a registered dealer from a Domestic Tariff Area (DTA) to a unit located in a Special Economic Zone (SEZ) shall be zero-rated.

(4) Any sale of goods made by a registered dealer from a Domestic Tariff Area (DTA) to an Export Oriented Unit (EOU) shall be zero rated.

(5) Any sale of goods made by a unit located in a Special Economic Zone (SEZ) or an Export Oriented Unit (EOU) to another unit located in another Special Economic Zone (SEZ) or to another export oriented unit, shall be exempt from payment of tax.

First Schedule

List of exempted goods

S1. No. Description of goods

1.

2.

3.

4.

5. Books, periodicals and journals.

13. Having heard the learned Counsel for the parties and on going through the pleadings, the questions arise whether the contractee Election Department can supersede/over-ride the decision of the taxing authority like the Respondent No. 5, the Commissioner of Taxes who is appointed for carrying out the purpose of the Act and whether the supply materials in question come within the purview of the works contract or are wholly exempted from the purview of VAT in view of the provisions of Section 9 read with Entry at S1. No. 5 of the First schedule of the Act, 2003.

14. On examination of Annexure-C to the writ petition, it is found that the transaction is in the nature of work order i.e. the Petitioner was granted contract for printing materials and it is in the nature of work contract cannot be accepted in view of the order of the Commissioner of Taxes, even if his stand is otherwise correct, as the order of the taxing authority in exercise of his quasi-judicial power will always prevail over the order of the administration/executive authorities, which would be evident from the decisions of the Apex Court.

15. In Orient Paper Mills Ltd. Vs. Union of India (UOI), the Apex Court while negating the contention of the learned Attorney General,.inter alia, that assessment proceedings are not of a quasi-judicial nature nor is the assessing authority a quasi-judicial authority, held that it is apparent from the judgment referred to above and numerous other decisions of the Court delivered in respect of various taxation laws that the assessing authorities exercise quasi judicial functions and they have duty cast on them to act in a judicial and independent manner. If their judgment is controlled by the directions given by the Collector it cannot be said to be their independent judgment in any sense of the word. An appeal then to the Collector becomes an empty formality.

16. In Commissioner of Sales Tax, U.P. Vs. M/s. Indra Industries, their Lordship taking note of Para 18 of the judgment in the case of Bengal Iron Corporation v. CTO 1994 Supp (I) SCC 310 held in para-3 of the judgment that "a circular by the tax authorities is not binding on the Courts. It is not binding on the Assessee.

However, the interpretation that is thereby placed by the taxing authority on the law is binding on that taxing authority. In other words, the taxing authority cannot be heard to advance an argument that is contrary to that interpretation (emphasis supplied).

17. It appears from the record that admittedly the taxing authority, the Commissioner of Taxes, the Respondent No. 5, in his order dated 28.5.2009 came to a conclusion that the materials supplied by the Petitioner are bound books with cover and as per Entry at Sl. No. 5 of the first schedule to the Act, 2003, those are exempted from VAT. When the taxing authority exercising his

statutory power u/s 105 of the Act, 2003 is of the opinion that the supplied materials are not taxable, then whoever may be the authority higher in position is not entitled to set at naught the said decision of the taxing authority unless the same is quashed by the appropriate appellate authority or by a Court of law.

18. It is evident from the Entry at Sl. No. 5 of the first schedule to the Act, 2003 that books, periodical journals are fully exempted from VAT. Therefore, whether or not the materials supplied by the Petitioner would come within the item books, can only be decided by the taxing authority, not anybody else whatever may be the position.

19. It is not understandable as to why the Respondent No. 4, the Under Secretary to the Government of Assam, Election Department is asking for payment of tax when the printing materials supplied by the Petitioner are exempted by the statue itself. The Finance Department or the borrowing Department should not flout the order of the Taxing Authority.

20. For the foregoing reasons and discussion, this Court is of the opinion that the Petitioner is not supposed to pay the VAT against supply of the printing materials to the Elction Department in connection with General Elections to Lok Sabha, 2009. Consequently, the impugned orders dated 2.4.2009 and 27.4.2009 (Annexure-F and H respectively) are quashed and the letter dated 23.9.2009 (Annexure-Motor Vehicles Act, 1988) is also set aside. In the result, the Writ petition is allowed with no order as to costs.

21. As this order is passed in absence of the Respondents 1 to 4, those Respondents are at liberty to approach this Court either for modification or alteration of this order, if so advised.