

(1984) 06 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 183 of 1971

Bhattacharjee Brothers

APPELLANT

Vs

Superintendent of Taxes and Others

RESPONDENT

Date of Decision : 15-06-1984

Acts Referred:

Assam Sales Tax Act, 1947 — Section 17(3), 19A, 7

Citation : (1986) 63 STC 346

Hon'ble Judges : T.C. Das, J;K. Lahiri, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and B.P. Saraf, for the Appellant; Adv.-General and Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Lahiri, J.—What is the decisive factor, the terms of the written contract or the interpretation put by the parties to the contracts to ascertain whether the goods sold were "exempted goods" u/s 7 of the Assam Sales Tax Act, 1947, for short "the Act", read with Schedule III to the Act ? In our opinion the written contract speaks eloquently the nature and character of the goods sold or purchased and whether the goods fall within or outside the purview of the items enumerated in Schedule III to "the Act". The question whether the goods fall in any of the items of the schedule can be best decided by the taxing authorities on a proper appreciation of the terms of the contract.

2. This writ petition stems from an order of assessment dated 17th December, 1970, rendered by the Superintendent of Taxes, Dibrugarh, u/s 17(3) read with Section 19A of "the Act" and the appellate order dated 16th March, 1971, of the Assistant Commissioner of Taxes, Assam at Jorhat.

3. The petitioner is a registered partnership firm which carried the business of supplies of various materials to the Director of Supply and Transport, NEFA, against orders placed by the said administration. According to the petitioner it

received orders for supply of "meat" to the administration. It has been averred by the petitioner that on acceptance of the tender of the petitioner a written contract was executed by it with the NEFA administration. On execution of the contract the petitioner supplied "meat". It is stated that one of the conditions of the tender was that "meat" should be the produce of healthy, well-nourished stock of animals. The animals had to be passed by the representatives of the Director, as fit for slaughter. The petitioner was to produce the animals for inspection and examinations before they were slaughtered. According to the petitioner the supply orders were for meat. It has been averred that the terms and conditions of the contract in the tender form were that one-half of the actual weight of the live animals would be taken to be "meat" received or receivable from such animal and the same ratio was taken to be the weight of the meat for the purpose of supply. In exercise of the power u/s 19A(1) of "the Act" the Superintendent of Taxes, Dibrugarh, issued notice dated 29th May, 1970, initiated the proceedings for escaped assessment. In the course of the said proceedings the Superintendent issued notice dated 20th August, 1970, calling upon the petitioner to show cause why the sale or supply made by the petitioner to the Direction should not be treated as sale of live animals or "meat on hoof" and taxed accordingly, and also asked the petitioner to show cause why deduction which had been claimed by the petitioner u/s 7 of "the Act" read with item 11 of Schedule III to "the Act" should not be disallowed. The petitioner showed cause and asserted that it supplied "meat" which was covered by item 11 of Schedule III to "the Act". The petitioner also furnished copy of the relevant contract to the Superintendent of Taxes, vide annexure IV to the petition. However, by the impugned order dated 17th December, 1970, the Superintendent of Taxes, Dibrugarh, assessed the petitioner on the turnover treating the goods sold as "meat on hoof", i.e., "live animals", and not meat. The Superintendent held that "meat on hoof" was not covered by the exemption granted by item 11 of Schedule III. A notice of demand was issued for Rs. 13,993.74 for the return period. The petitioner preferred an abortive appeal which was dismissed on a technical ground. It is worthwhile to recall at this stage that the Superintendent of Taxes decided that live animals were sold to the Director, NEFA, on the basis of and relying solely on the opinion expressed by the Director of Supply, NEFA. The Superintendent of Taxes had asked the Director whether the assessee had actually supplied "meat on hoof", i.e., live animals, or he had supplied "flesh" or "meat". The Director opined that "meat on hoof" was supplied. On the foundation of the opinion, the Superintendent was satisfied that the dealer had supplied live goats and held that they were not covered by item 11 of Schedule III.

4. The petitioner has urged that "meat" was an exempted goods specified in item 11 of Schedule III to "the Act" whereas "live animals" were not. The validity of the orders of the authorities have been questioned by the petitioner on the ground that the authority decided that the goods sold were live animals and not flesh or meat on the opinion of the buyer and not on scrutiny of the terms of the

contract which the authority was bound to consider and as such the authority failed to exercise jurisdiction vested in it by law and deprived the petitioner of his valuable right of exemption to be taxed confined by under the statute.

5. There is no wrangle at the Bar that u/s 7 read with item 11 of Schedule III to "the Act" no tax is leviable on sale of "meat". However, the decision was taken by the authority that the goods sold were live animals on the basis of the statement of the Director, the buyer. In our opinion the oral statement of the parties to the contract are nebulous, may irrelevant where written contract exists. The only decisive factor to decide the issue is the written contract. To adjudge the nature and character of goods supplied the terms of the contract are conclusive. It appears from the tender form that supplies might have been in respect of "meat" and/or "dressed meat".

6. We are of the opinion that the determinative fact to adjudge whether "live animals"/"meat on hoof" or flesh/meat were supplied by the petitioner could be adjudged only on the correct reading of the contract between the assessee and the Director. We are also of the view that if the price paid by the buyer was on the basis of the meat content of the animals, in that event it must be treated as supply of "meat". It appears from the terms of the tender forms that the price paid by the buyer was on the basis of the meat content of the animals, i.e., 50 per cent of the weight of the animal was taken while calculating the price of "flesh"/meat, or "dressed meat". The correct procedure to determine the question as to whether the live animals were sold or meat or flesh were sold should be based on true construction of the terms of the contract. We are of the firm opinion that in order to decide what was sold by the petitioner to the buyer, would depend on the reading of the contract between the parties.

7. In *Daffadar Bhagat Singh and Sons Vs. The Joint Excise and Taxation Commissioner, Punjab, Patiala and Another*, their Lordships have held as under:

...Counsel for the respondents submitted that "meat on hoof in army vocabulary meant the live animal. Whether what was sold by the appellants to the army authorities as meat on hoof was really meat, or it was live animals that were sold, would depend on a correct reading of the contract between the parties. ...On behalf of the appellants extracts from the contract were handed over to us, but the counsel for the respondent seemed to think that there were other terms in the contract regarding skins, for instance, which have a bearing on what was sold. We are, therefore, not in a position to decide for ourselves what exactly was, the contract between the parties...As we feel that the question can be answered only on a proper appreciation of the terms of the agreement between the appellants and the army authorities, the case must go back to the High Court for disposal of the matter according to law on a consideration of the relevant contract;....

It follows that when a written contract exists the decision as to whether animals or "meat" were sold should be determined by the taxing authorities on the basis

of the terms of the contract. No other extraneous consideration or opinion should be taken into consideration. In the instant case the authority below did not at all look at the contract, although it was very much before it. We hold that the question could be resolved only on a proper appreciation of the terms of the agreement between the dealer and the buyers. We are constrained to hold that the impugned order was "a purported decision" and not a "real decision". The decision was based on extraneous ground leaving aside the real determinative factor. We therefore quash the impugned order and remit the matter to the Superintendent of Taxes, Dibrugarh, for disposal according to law. The copy of the contract filed by the dealer is with the Superintendent, on perusal thereof, the Superintendent shall dispose the matter at an early date after serving due notices to the parties. We would observe that while considering the moot question, the Superintendent shall consider as to whether price paid by the buyer was on the basis of the meat content of the animal or the price was fixed per animal and thereafter determine as to whether the goods supplied fall in item 11 of Schedule III to "the Act".

8. In the result the writ petition is accepted, the impugned orders are quashed, however, we make no order as to costs. Send down the records to the Superintendent of Taxes, Dibrugarh, for disposal of the case according to law and the directions set out above.