(2003) 02 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (C) No. 7684 of 2002

Bhowal Traders and Another APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 44(3), 45

Citation : (2003) 2 GLR 114

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : K.H. Choudhury and S.K. Muktar, for the Appellant; Ashok Saraf and D. Baruah, for the Respondent

Judgement

D. Biswas, J.—Heard Mr. K.H. Choudhury, learned senior counsel for the petitioners assisted by Mr. S.K. Muktar, learned Counsel and Dr. A.K. Saraf, learned Senior Counsel for the respondents assisted by Mr. D. Baruah, learned counsel.

2. The petitioner M/s Bhowal Traders is a registered dealer under the provisions of the Assam General Sales Tax Act, 1993, hereinafter referred to as the ''Act'' and petitioner No. 2 is the proprietor thereof. The petitioner firm deals in the business of importing, exporting and sales of ''dry fish'' in the State of Assam having its place of business at Jagiroad in the District of Morigaon.

3. The petitioner was served with a notice dated 8.10.2002 (Annexure-H) under Sub-section (1) of Section 44 of the Act requiring the petitioner No. 2, the proprietor of the firm to produce all the relevant books of account and other documents relating to the accounting year 2000-2001 and 2001-2002 before the Inspector of Taxes, Morigaon. The said notice was issued in order to ascertain the correctness of the records of transaction maintained by the petitioners in course of their business and to verify the amount of taxes paid.

4. On the same day, the Inspector of Taxes, on receipt of information that the

petitioner No. 2, the proprietor of the petitioner No. 1 firm is carrying on business of selling and purchasing different categories of taxable goods in the name of non-existent firms along with other official drafted from different districts carried out a search in the residential premises of the petitioner No. 2 after serving notice to the landlord and seized certain documents. On that day the proprietor was out of station and as such the Inspector of Taxes had to serve the notice on the landlord and carried out the search as per provisions of Section 44 of the Act.

5. After seizure as aforesaid, the Superintendent of Taxes, Morigaon issued a notice dated 2.11.2002 to the proprietor (petitioner No. 2) directing him to appear before the investigating team to Kar Bhawan (Dispur) on 18.11.2002 at 11 A.M. along with supporting documents/ accounts for verification. The petitioner did not respond to the aforesaid notice and approached this Court filing the writ petition at hand. By the order dated 3.12.2002, this Court as an interim measure directed that the official respondents would not proceed further with the proceedings initiated pursuant to the seizure made. However, the aforesaid interim direction was modified permitting the official respondents to proceed with the proceedings but not to pass any final orders, obviously, without leave of the Court.

6. Mr. Choudhury assailed to Seizure on the following grounds :-

(i) The search and seizure was carried out in the residential premises of the proprietor;

(ii) It was carried out in the absence of the proprietor of the firm ;

(iii) No opportunity was given to him to show cause before seizure was made, and

(iv) The seizure was carried out without authority of law.

7. We may deal with the first two and fourth grounds together. Sub-section (3) of Section 44 provides for seizure by an authority appointed under Sub-section (1) of Section 8, if such authority has reason to suspect that any dealer is likely to evade payment of any tax payable under the Act. The seizure undoubtedly has to be made with reasons to be recorded in writing.

8. The seizure list (Annexure-J) shows that the search and seizure was conducted by the Inspector of Taxes, Morigaon in presence of other officers from Kamrup and Nagaon Districts. The Inspector of Taxes who is authorised under the Act to conduct the search was assisted by other officers in the matter and, therefore, the impugned Act of seizure cannot be faulted with merely because no team has been constituted by the State Government in pursuance of the provisions of Section 45 of the Act. Validity and legality of a seizure duly effected by an authorized officer in accordance with the provisions of law cannot be dubbed and deprecated. Presence of officers from different districts or from the same district will not in any manner render it untenable in law. The seizure memo does not indicate that the officers present had played any obvert role in

affecting the search and seizure of the documents.

9. There is no provision in the Act or the Rules that the residential premises of a dealer cannot be searched by taxing authority even if they have reason to suspect that Dubious documents of various transactions have been kept concealed in the residential premises of the owner/proprietor of the registered firm in order to evade tax. There is also nothing in the aforesaid Act or the rules framed thereunder even to suggest that no search can be carried out in the absence of the proprietor. Therefore, the contention raised by Shri Choudhury that search was carried out in his residential premises in his absence is of no significance.

10. With regard to the objection on the ground that no opportunity was given to the petitioner to explain before the seizure was affected, we may refer to the decision in Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, wherein the Supreme Court held as follows :-

...An assessee may be filing his returns from year-to-year regularly and his assessments may be also completed in due course over years. His books of account and documents have been duly checked from year-to-year and the assessing officer is also completely satisfied that the returns are correct. But it might so happen that this apparently honest assessee has invested large funds in properties and other financial deals, reliable information about which finds its way to the Director of Inspection. In such a case no oracle is needed to tell the Director of Inspection that if a requisition is made on the assessee to produce his documents in connection with these financial deals and investments, the assessee will most certainly omit to produce or cause to be produced such documents. On the other hand, there is ''danger that all these documents may be a destroyed because the very fact that a requisition is made with a view to investigate concealed deals would put the assessee on his guard and the relevant documents may either disappear or be destroyed. Indeed, it is possible that an assessee may, after knowing that the game is up, produce the requisite documents. But, in the nature of things, such an assessee would be rare. The question for us to consider is whether the authority u/s 132(1) may entertain the reasonable belief that in such circumstances the assessee will not or would not produce the documents. In our opinion, though in a very rare case a tax evader may comply with a requisition, the Director of Inspection who has reliable information that the assessee has consistently concealed his income derived from certain financial deals may be justified in entertaining the reasonable belief that the assessee, if called upon to produce the necessary documents, will not produce that same."

11. The decision quoted above answers the third ground of objection raised on behalf of the writ petitioner.

12. Consequent upon the above discussion, the irresistible conclusion that follows is that the writ petitioner is not entitled to any relief in the instant

petition. Hence, the writ petition is disposed of with the observation that the petitioner shall appear before the taxing authority in terms of the notice dated 2.11.2002 and submit his defence. In addition, he is also allowed to produce any other document as he considers necessary in pursuance of the notice dated 8.10.2002 served by the Inspector of Taxes. The respondents authority shall proceed with the enquiry and pass appropriate orders after taking into consideration all the documents that may be produced by the writ petitioner during the course of inquiry. The interim orders passed earlier stand merged along with this final order.

