(2005) 06 GAU CK 0036

In the Gauhati High Court

Case No : Writ Petition (C) No. 287 of 1995

B.L. Roy and Co. APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 15-06-2005

Acts Referred:

Constitution of India, 1950 — Article 366
Tripura Sales Tax (Fourth Amendment) Act, 1987 — Section 3A(3)
Tripura Sales Tax Act, 1976 — Section 1(3), 20, 22, 3, 3A

Citation : (2006) 144 STC 134

Hon'ble Judges : A. Hazarika, J

Bench : Single Bench

Advocate : S.C. Saha, for the Appellant; U.B. Saha, Sr. Government Advocate and A. Ghosh, for the Respondent

Judgement

A. Hazarika, J.—By this writ petition the petitioner has prayed for setting aside, and/or quashing and/or canceling the impugned order of assessment dated November 30, 1993 passed by the Superintendent of Taxes, Charge-I, Government of Tripura, Agartala (annexure-A), the first appellate order dated June 14, 1993 passed by the Additional Commissioner of Taxes, Government of Tripura (annexure-B) and the second appellate order dated January 10, 1995 passed by the Tripura Sales Tax Tribunal, Government of Tripura (annexure-D), as well as, for setting aside and/or striking down the provision of Section 3A of the Tripura Sales Tax Act as amended by the Fourth Amendment Act of the said Act in so far as retrospectivity provision is concerned.

2. The short question that really falls for examination is whether the petitioner''s firm is liable to pay sales tax with retrospective effect as per the Tripura Sales Tax (Fourth Amendment) Act, 1987 wherein in Section 1, sub-Section (3) it has been specifically mentioned that Clause (i) of Section 3 and Section 4 shall be deemed to have come into force on the 12th day of July, 1984 and all other provisions shall come into force at once.

3. The petitioner''s case, in brief, is that the petitioner''s firm was a manufacturer/ seller/supplier of brick bats, the petitioner''s firm had also executed some consolidated contract works and bricks/brick bats were utilised in the said contract works, viz., improvement of road, providing metalling and carpeting of road, etc.

4. The petitioner''s firm has been registered under the Tripura Sales Tax Act, 1976. The firm is a partnership business represented by its Managing Partner Shri Binayendra Lal Roy and during the assessment year 1392 B.S. the petitioner''s firm had executed some contract works in favour of and also had manufactured, sold and supplied bricks/brick bats, etc. The firm had paid sales tax and furnished returns in accordance with the provisions of the Act. But there was no agreement to supply materials necessary for the improvement of roads independent of the contract works.

5. Before the Forty-sixth Amendment of the Constitution of India in 1982, materials utilised in the consolidated contract works could not be brought under the purview of sales tax. After the Forty-sixth Amendment on insertion of Clause (29A)(b) of article 366 of the Constitution of India, the Government of Tripura amended the Tripura Sales Tax (Third Amendment) Act, 1984 with effect from July 12, 1984 and Section 3A was incorporated for levy of sales tax on the transfer of property in goods involved in the execution of works contract and tax payable at the rate of 4 per cent on contractual transfer price as per provision of sub-Section (3) of Section 3A of the Act.

6. In the present case for the assessment year 1392 B.S. (i.e., assessment year 1985) the petitioner''s firm as usual submitted returns for all the 4 (four) quarters, but though under the law the assessing authority is to complete the assessment soon after the assessment year is over, the assessing authority, i.e., the respondent No. 4, has failed to comply with the legal requirement and assessed total tax payable on January 30, 1993 to the tune of Rs. 6,24,066.80 on turnover of Rs. 39,24,987.43. This amount of tax as assessed is inclusive of interest of Rs. 2,31,568. However, the petitioner''s firm at their own instance deposited a sum of Rs. 2,61,724.90 within the prescribed time. As per provisions of sub-Section (3) of Section 3A of the amended Act, 1987 the petitioner''s firm is to pay tax at the rate of 4 per cent for the period ended in September, 1984.

7. In the instant case as the assessment period ended in September, 1985 but from July 12, 1984 the materials involved in consolidated works contract were taxable at the rate of 4 per cent sales tax u/s 3A(3) of the Act and accordingly the petitioner''s firm paid 4 per cent sales tax on the turnover of Rs. 19,46,361.94. But the assessing authority, the respondent No. 4 had illegally brought Rs. 19,46,361.94 under the purview of tax at the rate of 10 per cent and considered sale and supply and charged interest illegally and it was charged on the impugned amount of tax payable whereas the petitioner had already paid 4 per cent sales tax on the turnover of Rs. 19,46,361.94 which, in fact, was to be deducted from 10 per cent of the sales tax as per amended Act and in that case

the petitioner''s firm is to pay 6 per cent of the sales tax.

8. Being aggrieved by and dissatisfied with the aforesaid order of assessment by the assessing authority, the petitioner''s firm has preferred an appeal u/s 20 of the Act before the Additional Commissioner of Taxes, Government of Tripura (respondent No. 3) for getting proper redress. The first appellate authority, after hearing the learned counsel for the petitioner''s firm, rejected the appeal vide his order dated June 14, 1993. Challenging the first appellate order, the petitioner''s firm had preferred an appeal before the Tripura Sales Tax Tribunal, Government of Tripura u/s 22 of the Act. The Tribunal though partly allowed the appeal by order dated January 10, 1995, but just and proper cLalm of the petitioner''s firm has been denied.

9. Being aggrieved by the aforesaid two orders passed by the first appellate authority as well as by the Tripura Sales Tax Tribunal, the petitioner''s firm has preferred the instant writ petition praying for quashing/canceling/setting aside the aforesaid two orders.

10. It has been submitted on behalf of the petitioner that while the assessment order of the petitioner''s firm was for the year 1985-86, the impugned assessment was made only on January 30, 1993, i.e., almost 7 years after the assessment order was over. This inordinate delay in making the impugned assessment is neither directly nor indirectly attributable to the petitioner''s firm and as such it is submitted on behalf of the petitioner''s firm that the taxing authorities have no right to ask for any interest for the long period of 7 years. It also appears from the order of assessment and findings therein, the taxing authority has charged 10 per cent tax on the amount of contractual transfer price as provided by Section 3A of the Tripura Sales Tax Act, 1976 as amended by the Tripura Sales Tax (Third Amendment) Act, 1984 treating some materials used in the execution of consolidated contract work, as supply and sale and holding that the said supply was divisible.

11. It may be pertinent to mention here that the Tripura Sales Tax Act was amended in 1984 and materials used in works contract was made taxable and the tax was at the rate of 4 per cent as per sub-Section (3) of Section 3A of the Act. On June 12, 1987 the said provision was further amended giving effect to the Schedule, thereby in effect raising 4 per cent to 10 per cent with retrospective effect from August, 1984.

12. The petitioner''s main grievance is that the dealers in effect collects sales tax as agents of the Government. Since during the material time the tax was 4 per cent with effect from August 1, 1984 the petitioner''s firm collected 4 per cent tax and as such the petitioner''s firm cannot be asked to pay 10 per cent tax by making the amendment with retrospective effect and the taxing authority cannot also ask to pay sales tax on the turnover involved in the consolidated contract work for the period before August 1, 1984, as the petitioner''s firm did not collect any sales tax up to the period July 31, 1984 A.D. from the beginning of the

assessment year 1391 B.S. (i.e., assessment year 1984) on the materials involved in the consolidated contract works. Therefore, it is submitted by the learned advocate for the petitioner that retrospective demand of the tax by the Government is not legal and valid inasmuch as, impugned assessment was made only on January 30, 1993 for the assessment year 1985-86, almost seven years after the assessment year was over.

13. I have heard Mr. S.C. Saha, the learned counsel appearing on behalf of the petitioner and Mr. U.B. Saha, the learned Senior Government Advocate assisted by Mr. A. Ghosh, the learned counsel appearing on behalf of the respondents.

14. At the very outset, Mr. S.C. Saha fairly submits that though a prayer was made in the writ petition for setting aside and/ or striking down the provisions of Section 3A of the Tripura Sales Tax Act as amended by the fourth amendment of the said Act in so far as retrospective provision is concerned, he is not going to press the same as this Court in Civil Rule No. 114 of 1993, 115 of 1993 and 117 of 1993* has held the same to be valid.

15. Mr. U.B. Saha, the learned Senior Government Advocate has cited several decisions with regard to validity of retrospective operation of the Act such as the decision in the case of Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, and the decision in the case of R.L. Roy & Co. v. State of Tripura reported in [2006] 143 STC 657 (Gau) : (2000) 3 GLT 52. I have gone through the same. But in view of submission made by Mr. S.C. Saha, learned counsel for the petitioner, that he will not press the point of validity of Section 3A of the Tripura Sales Tax Act as amended by the Fourth Amendment Act in so far retrospectivity provision is concerned, as the same has already been held valid by this Court, I do not propose to discuss the case laws cited to that effect by learned State Counsel.

16. The only contention of Mr. S.C. Saha, learned counsel appearing on behalf of the petitioner, is that since the execution of the contract works of the petitioner''s firm was under the Government of Tripura and as the amended provision of the Act were not in existence at the relevant period, required sales tax could not be collected from the concerned department under the Government of Tripura and in case they are liable to pay the tax as per the amended provision, they may be allowed to collect the same from the concerned department, which also happens to be Government department. Mr. S.C. Saha has also produced a copy of the order dated February 24, 1989 passed by the division Bench of this Court in Civil Rule No. 2 of 1979 (Shri Binayendra Lal Roy v. State of Tripura [2001] 122 STC 316 SC) wherein this Court gave the following directions :

In this connection, Shri Majumder has submitted on instruction that other dealers have collected the tax from the purchasing departments and paid the same to the sales tax department. We would like the petitioners also to do so. To this the concerned department would not raise any objection on the ground of limitation. If the petitioner succeeds in this venture, the tax realised by him shall be paid to the sales tax department. If, however, any resistance is given by the department concerned, it is apparent that it would be inequitable to ask the dealer at this stage to pay the tax from his own pocket inasmuch as when the agreement was entered into with the department concerned sales tax was not livable and so at that stage the dealer could not have asked the department to pay the sales tax. This observation of ours would not however apply to sales to private persons.

17. On the above submission made by the learned counsel for the petitioner, Mr. U.B. Saha, the learned Senior Government Advocate appearing on behalf of the respondents, vehemently objected and relied upon the decision of the apex Court in the case of American Remedies Pvt. Ltd. Vs. Govt. of Andhra Pradesh and Another, wherein the apex Court held that :

differential amount of tax consequent to that amendment could not be escaped merely because the assessee had not collected the same from the consumer.

The apex Court further held,?

It is a settled position that an assessee is liable to pay sales tax and the question whether he has collected it from the consumer or not is of no consequence. His liability is by virtue of being an assessee under the Act.

18. In the instant case, it is not the case of the petitioner''s firm that they are not liable to pay sales tax with retrospective effect as per amended Act, but only prayer made before this Court on behalf of the petitioner is that they may be allowed to collect the sales tax from the concerned department, which also happens to be Government department and keeping in mind the said prayer made on behalf of the petitioner, this Court while disposing of the case of R.L. Roy & Co. v. State of Tripura reported in [2006] 143 STC 657 (Gau) : (2000) 3 GLT 52 relying upon the judgment and order dated February 24, 1989, passed by the division Bench of this Court in Civil Rule No. 2 of 1979 (Shri Binayendra Lal Roy v. State of Tripura [2001] 122 STC 316 observed as follows :

When the petitioners are required to pay additional tax by virtue of retrospective provisions of law, they cannot be debarred from collecting the same, more so, when they are to collect from the other department of the Government. It is, therefore, provided that the above directions shall also cover the present cases and the petitioners are entitled to the benefits of the above directions, but they will be liable to pay the tax as assessed by the concerned authorities.

19. The instant case is squarely covered by the case reported in [2006] 143 STC 657 (Gau) : (2000) 3 GLT 52 (R.L. Roy & Co. v. State of Tripura) as well as the order dated February 24, 1989 passed by the division Bench of this Court in Civil Rule No. 2 of 1979 (Shri Binayendra Lal Roy v. State of Tripura [2001] 122 STC 316 SC and thus in the line of direction given by the two judgments mentioned above, this writ petition stands disposed of. No costs.

