
(2003) 04 GAU CK 0003
In the Gauhati High Court
Case No : WP (C) No. 6272 of 2000

Blue Star Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 27(3)(4), 8(3)

Citation : (2005) 1 GLR 351 : (2006) 146 STC 432

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : N.N. Saikia, G. Deka and J. Bora, for the Appellant; N.C. Phukan, GA, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—The petitioner company, engaged in the business of execution of works contracts, was assessed to sales tax for the period 1995-96 by an order dated 26.6.1998 passed by the jurisdictional Assessing Officer. Aggrieved by the assessment made, a revision application u/s 36 of the Assam Sales General Sales Tax Act, 1993 (hereinafter referred to as the Act of 1993) was filed by the petitioner company and the revision having been rejected by order dated 13.7.1999, the instant writ petition has been filed.

2. A perusal of the pleadings contained in the writ petition, and a consideration of arguments advanced by Mr. J. Bora, learned counsel appearing for the writ petitioner, would go to show that four grievances, in the main, have been projected by the writ petitioners as against the assessment order made by the primary authority as upheld by the Revisional Authority.

Firstly it has been contended that the benefit of tax already deducted at source has been granted by the lower authorities only on the basis of treasury challans showing deposit of tax deducted at source in to the Government Treasury and while considering the entitlement of the writ petitioner - assessee on the said

account, several tax deductions certificates showing deduction of tax at source have been ignored. Secondly, it has been contended that several items procured by the petitioner assessee, in the course of inter State sales on which tax under the Central Sales Tax Act had already been paid, have again been assessed to tax under the Act of 1993 and in a similar fashion items procured within the State on which the tax has already been paid under the Act of 1993, have been again assessed to tax by the authorities below. The benefits of exemption on account of labour and other charges under the provisions of Section 8(3)(iv) of the Act of 1993 as claimed by the assessee have not been allowed in full. Lastly, it has been contended that the assessment has been made without adhering to the provisions of the Rule 14(1)(d) of the Rules framed under the Act of 1993.

3. The claims advanced on behalf of the writ petitioner assessee have been resisted by the State, who are represented by Mr. NC Phukan, learned Government Advocate. Mr. Phukan has placed before the Court the various averments made in the counter affidavit filed by the State Respondent opposing the contentions advanced on behalf of the writ petitioner.

4. I have considered the arguments and counter arguments advanced by the parties.

Under Section 27(3)(4) the adjustment of tax already deducted at source, is to be made in course of the assessment proceedings upon production of the requisite certificate of the tax deduction. The said certificate which is issued in Form XIV would contains the details of the deposit made into the Government treasury of the tax deducted at source. The provisions contained in the Rules requiring one copy of the challan to be transmitted to the assessing authority for completion of the assessment proceeding is a procedural provision and in view of the substantive provisions contained in Section 27 the Act, 1993, an assessee would be entitled to adjustment of taxes deducted at source upon production of the statutorily prescribed tax deduction certificate. The controversy on this count however, has become significant in view of the clear and categorical statement contained in the counter affidavit of the State to the effect that as and when treasury challans are transmitted to the assessing Officer by the Treasury Officer, the proportionate adjustments to benefit of petitioner would be accordingly made. In view of the aforesaid conclusions reached by the Court and the stand taken in the counter affidavit filed by the State, the Assessing Officer will now give necessary benefit to the assessee, as may be due, in respect of the tax already deducted at source from the bills of the petitioner. Such benefit shall be given to the petitioner on the basis of such tax deduction certificate as may have already been filed by the petitioner or as may be produced by the writ petitioner before the Assessing Officer.

5. The absence of power of the State authority to levy tax on goods brought into the State in the course of the inter state sales is not in dispute. The matter has been set at rest by the decision of the Apex Court in the case of Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, The said

position has been statutorily incorporated in Section 7(4) of the Act, 1993. Though u/s 8(3)(iv), the taxable turnover in respect of the goods involved in any works contract is required to be determined by excluding the turnover relating to declared of goods and labour and other charges only, Sections 7 and 8 of the Act, 1993 have been read together and the prohibitions contained in the Section 7(4) must also be applied in a determination of the turn over relating to works contracts. In the instant case; the petitioner claims exclusion of a part of its turnover on the ground that such turnover pertains to goods, which have been brought into the State by way of inter-state sales. If the contentions of the writ petitioner are correct and it is able to substantiate the same by valid documents, it would certainly be entitled to exclusion of such part of its turnover. In the instant case, the authority appears to have negated the said claim on the ground that the same is not unauthorised by the expressed provisions of Section 8(3)(iv) of the Act, 1993. Clearly, the authority appears to have committed an error in reaching the aforesaid finding. Similarly, if the goods procured within the State have already suffered taxation under the Act of 1993 and such goods have been used for the execution of any works contract by the petitioner assessee, he would be entitled for execution of any works contract by the petitioner assessee, he would be entitled for exclusion of the turn over in respect of such goods under the provisions of Section 8(3)(ii) of the Act, 1993. As the said claims of the writ petitioner has been turned down on the ground that the provisions of Section 8(3) (iv) do not contemplate any such exclusion in view of the conclusions reached by this Court on the above score, this matter will now have to be reconsidered by the Assessing Officer.

In so far as the third grievance of the writ petitioner is concerned i.e. exclusion of labour and other charges to the extent of Rs. 1,47,45,357.76 and Rs. 84,21,437.02 respectively, what is disclosed by the order of the primary authority as well as the revisional authority is that the aforesaid claims are highly excessive compared to the nature of the works undertaken. That apart, both the authorities below have recorded that the said claims were not substantiated by the petitioner assessee on the basis of the valid documents. Accordingly, deduction to the extent permissible as per Schedule VI was allowed by application of Rule 14(1)(b) of the Rules. As both the authorities below have conclusively held that the petitioner assessee was not able to substantiate the said claim on the basis of valid documents and, therefore, the deduction as projected in Schedule VI to the Act was allowed, this Court find no good reason to direct the authority to reopen the said question.

6. The last contention advanced on behalf of the writ petitioner is that the assessment made without adhering to Rule 14(1)(d) would not be a valid assessment. This Court finds that the aforesaid projection made by the writ petitioner as regards the validity of the assessment order has been made for the first time in the present writ petition. The aforesaid projection not having been made before the primary authority and the order of assessment made by the said primary authority not having been challenged in the revision proceedings on

the said basis, this Court sees no good ground to permit the writ petitioner-assessee to re-open the assessment made on the basis of the aforesaid question now raised.

7. In view of the foregoing discussions, this writ petition is allowed to the extent indicated above. The entitlement of the writ petitioner to the adjustment of the tax deducted at source on the basis-of the tax deduction certificates as well as entitlement of the writ petitioner for exclusion of the turn over in respect of the goods on which tax under the Central Sales Tax Act as well as Assam General Sales Tax have been paid, will be re-examined by the Assessing Officer. Such re-examination will be made strictly on the basis of the materials already brought on record by the writ petitioner-assessee in course of the assessment proceedings and thereafter, the order of assessment dated 26.6.1998 will be modified, if required, in the light of such findings as may be arrived at.