(1998) 03 GAU CK 0015

In the Gauhati High Court

Case No : Writ Appeal No. 172 of 1997 in Civil Rule No. 529 of 1997

Dau Dayal Sarda @ Maheswari APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:
Assam General Sales Tax Act, 1993 — Section 30, 46(15)

Citation : (1998) 1 GLT 423

Hon'ble Judges : M. Ramakrishna, C.J;P.C. Phukan, J

Bench : Division Bench

Advocate : O.P. Bhati, M.K. Jain and A. Biswas, for the Appellant; B.P. Borah and A.K. Goswami, for the Respondent

Judgement

M. Ramakrishna, C.J.—This appeal arises out of the order passed by the learned Single Judge in Civil Rule No. 529/97 disposed of on 19th February, 1997, by which the teamed Single Judge dismissed the writ petition. Aggrieved by the said order, the Petitioner/Appellant presented this appeal for the grounds taken therein challenging the correctness and the legality of the order passed by the learned Single Judge under appeal.

2. The salient facts for the purpose of disposal of the appeal are as follows:

Dau Dayal Sarda alias Maheswari is the owner of a fleet of Public carriers and caries on the business of transporting goods from one place to another under the name and style of M/s Assam Trade and Transportation. His case is that on 30th January, 1996, six trucks owned by the Appellant loaded with Supari (Betal nut) were being seen driven with a view to cross the Border of Assam, when the Sales Tax authorities of the Assam State at the Check point intercepted them and asked the Petitioner/Appellant to show the evidence of having paid the tax with regard to the commodity of Supari. The Petitioner''s further case is that as there was no documentary evidence supporting payment of the taxes, he agreed to pay a sum of Rs. 20,000/- by way of cash security and a sum of Rs. 40,000/- by way of Bank Guarantee, as demanded by the authorities, to enable the Petitioner to carry on with the goods across the border of Assam. Accepting the said cash security vide No. 076148 dated 31st January, 1996 and the Bank Guarantee having been issued on the Indian Bank, Beltola Branch, dated 10.2.96, the Respondents issued Transit passes so as to enable the goods to be carried forward. Accordingly, the writ Petitioner/Appellant transported the commodity and according to him, he having crossed the border of Assam State, the commodity of Supari was sold in Uttar Pradesh (U.P.) to certain dealers.

3. Later on, the Petitioner/Appellant claimed refund of the amount-in-question, but the Respondents refused to oblige the Petitioner. Aggrieved by the refusal, the Petitioner approached this Court in the above Civil Rule No. 529/97 for the ground taken in the writ petition. The learned Single Judge after hearing the learned Counsel on both the sides, dismissed the writ petition holding that:

(1) To become eligible to seek refund, the writ Petitioner must be able to show that there is no violation of the terms and conditions of the Transit pass.

(2) To move the trucks through the State of Assam, there is necessity to issue Transit pass; but the contention of the Petitioner is that whereas the vehicles are to go through the State of Assam, the goods are not meant to be sold or delivered in the State of Assam but outside the State of Assam, as such it is inter-State trade and the State of Assam, does not have the authority to insist for security. But Dr. Todi, learned Govt. Advocate appearing for the Respondents, rightly pointed out that in this peculiar case, there is no invoice of movement for these good that these goods are meant to be carried outside the State of Assam and the State Govt. is not authorised to insist for such deemed the above observation, the writ petition came to be dismissed.

4. In this appeal, we have heard the learned Counsel on both the sides. As a matter of fact, with a view to have a proper enlightenment in regard to the interpretation of the provisions of the Assam General Sales Tax Act, 1993, we requested the Commissioner of the Sales Tax to be present in the Court to assist the Court along with the Govt. Advocate.

5. One of the contentions taken by the learned Counsel for the Appellants that the learned Single Judge failed to apply the appreciate the real question involved in the writ petition inasmuch as according to the writ Petitioner/a Appellant, by virtue of the liability placed on the owner of the vehicle to make good the amount of the tax payable in regard to the goods sought to be transported, under the explanation to Sub-section (15) of Section 46 of the Assam General Sales Tax Act, 1993, hereinafter referred to as the Act, 1993, lays down as follows:

In a case where a vehicle owned by a person is hired for transportation of goods by some other person, the hirer of the vehicle shall, for the purpose of this Section, be to be the owner of the vehicle.

(emphasis supplied)

Therefore, the writ Petitioner was obliged to pay the amount-in-question and to clear the goods. This point was not appreciated by the learned Single Judge in the course of his order under appeal.

6. The other point urged in support of the appeal is that regard being had to the provisions of Sub-section (15) of Section 46 of the Act, 1993, in order to obtain Transit pass in respect of the Commodity of Supari to be transported out of the State of Assam, found in the six trucks, at the Check post when the writ Petitioner having been called upon to make good the amount-in-question, he had to pay the amount-in-question; but u/s 30 of the Act, 1993, the amount so paid by way of abundant caution shall be refundable to the writ Petitioner. Therefore, the learned Single Judge ought to have verified this provision of the law before dismissing the writ petition.

7. By a careful consideration of this provision of the law referred to above, we do not think there is any force in the submission of the learned Counsel for the Appellant.

8. We will now examine the first point to begin with. It is seen by a careful consideration that it is true that by virtue of the explanation to Sub-section (15) of Section 46 of the Act, 1993, the owner of the vehicle carrying taxable goods is deemed to be the owner of such gods, therefore, liability is cast on such person to make good the amount of tax payable. There is no difficulty about this aspect. But we fail to understand the legal argument advanced by the learned Counsel for the Appellant in this context inasmuch as we presume for the purpose of argument that the writ Petitioner/Appellant being the owner of the fleet of trucks interested only in transportation business, he is not the registered owner under the Act, 1993, therefore, if at all the writ Petitioner has made good the amount in question on behalf of the real owner of the property (Supari), then certainly he could have asked the owner of the property to make the good the amount-in-question paid by the Petitioner/Appellant on his behalf. The learned Counsel for the Appellant has not been able to convince this Court as to why that step could not be taken to recover the amount-in-question from the real owner.

9. Dealing with the second point, it is clear that so far as the provision of Sub-section (15) of Section 46 of the Act, 1993 is concerned, regard being had to the language employed in that sub-section which we extract below in order to appreciate the provision properly:

When a goods vehicle or boat coming from any place outside the State of Assam and bound for any other place outside the State and carrying the goods passes through the State, the driver or other person in charge of such vehicle or boat shall apply to and obtain a transit pass in such form and in such manner as may be prescribed from the officer in charge of the entry check-post or barrier before his exit from the State or any other officer as may be directed, failing which it shall be presumed that the goods carried have been sold within the State by the owner or the person incharge of the goods vehicle or boat. Where the goods carried by such goods vehicle or boat are after their entry into the State transported outside the State by any other goods vehicle or conveyance, the onus of proving that goods have actually moved out of the State shall be on the owner or person incharge of the goods vehicle or boat and all the provisions of this Act shall so far as may be applicable as if such transporter or carrier or the driver or other person in charge of the vehicle were a dealer within the meaning of Clause (10) of Section 2 .

(emphasis supplied)

By a careful consideration of the language employed in the above provisions of the law, it is plain that the intendment of the legislation is that in the event of the taxable goods sought to be transported outside the State of Assam, then the onus or the responsibility of convicting the taxing authority that such goods-in-question are sought to be taken out of the State for being disposed of, is on the owner or the person incharge of the vehicle carrying the goods. In other words, if there is any documentary evidence to show that the taxable goods have been brought from outside and sought to be taken away from the State of Assam for disposal, this has to be convictingly proved by the documentary evidence including the Invoice of the commodity-in-question. Unfortunately, the writ Petitioner/Appellant has not been able to produce either the documentary evidence to show that the Supari-in-question has actually been taken from outside the States of Assam to be sold in U.P.; or the Invoice of the said taxable goods (Supari) showing these to have come from Arunachal Pradesh and being taken away to U.P. to be sold there.

10. Although the writ Court did not consider this important question as referred to above, we having applied our mind to this question with the assistance of the Commissioner, Sales. Tax, have been able to consider the legal question advanced by the Appellant. The learned Counsel for the Appellant has not been able to convince us that at the outset the supari-in-question of the six trucks had been brought from outside the State.

That the taxable goods having reached the State of Assam, was taken-away out of the State of Assam and sold in U.P.

It is very strange that these arguments have been advanced not by the dealer of the taxable goods, but by a person like the trader dealing with the business of transportation of vehicles.

11. Again, let us presume for the purpose of argument that it is on account of the unfortunate circumstances that the Petitioner had to oblige the owner of the taxable goods (Supari). Still, it is open to the writ Petitioner to seek for the reimbursement of the amount-in-question from the real owner of the commodity.

Section 30 of the Act, 1993 on the other hand deals with refunding. It lays down as follows:

30 (1) Subject to any rules made in this behalf the Assessing Officer shall, on a

claim being made in that behalf before the expiry of three years from the end of the period to which such payment relates, refund to the dealer the amount of any tax, interest, penalty or other sum paid by such dealer in respect of any period in excess of the amount due from him under this Act for that period either by payment or deduction or adjustment of such excess from the amount of tax, interest, penalty or other sum due from him in respect of any other period:

Provided....

It is brought to our notice that by virtue of the amendment carried out in 1997 under the Assam General Sales Tax Amendment Act (Assam Act 6 of 1997) with the consent of the Governor given on 31st March, 1997 the above proviso is deleted.

12. Be that as it may, by a careful consideration of the provisions of the law as found u/s 30 of the Act, 1993 dealing with refund, it is clear that a claim by the dealer can be entertained by the assessing officer with a view to refund the amount-in-question only in case such dealer becomes eligible for such amount subject to the condition laid down in that Section. It is very strange that there is no application by the dealer seeking for the amount-in-question under that Section, much less there is a revision sought for by the aggrieved person seeking revision of the action taken by the Taxing authority with a view to confer any benefit on the dealer. No such action has been taken.

13. In view of the foregoing, we do not see any justification to interfere with the order of the learned Single Judge under appeal.

In the result, the appeal fails and is dismissed.

The Appellant shall be liable to pay costs throughout and the Advocate''s fee of Rs. 2000/-(Rupees two thousand) only.