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(2005) 02 GAU CK 0023

In the Gauhati High Court

Case No : Writ Petition (C) No. 3091 of 2001

Dilip Kumar Saha APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:
Assam General Sales Tax Act, 1993 — Section 17(6)

Citation : (2006) 144 STC 408

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : N.N. Saikia and J. Bora, for the Appellant; Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—Five separate assessment orders each dated November 11, 2000 for the assessment years 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98 have been impugned in the present writ petition. The assessments made are best judgment assessments under the provisions of Section 17(6) of the Assam General Sales Tax Act, 1993.

2. I have heard Shri J. Bora, learned counsel for the petitioner and Mr. K.N. Chaudhury, learned Additional Advocate-General, Assam appearing for the State.

3. The arguments advanced on behalf of the petitioner have been short and precise. The contention is that the petitioner received a notice from the assessing authority asking him to be present on August 18, 2000 for joint verification of the accounts seized by Bureau of Economic Offence. Thereafter, the assessing authority proceeded to complete the best judgment assessments in question, without, however, giving the petitioner any opportunity. In this regard the provisions of Section 17(6) and Rule 25 have been placed before the court to contend that any best judgment assessment has to be preceded by an opportunity of hearing to the affected party. The argument advanced is that the

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materials on record do not disclose that any opportunity of being heard or any notice was issued to the petitioner in the prescribed form (prescribed by Rule 25) or in any form whatsoever prior to the exercise of powers u/s 17(6) so as to enable the assesses to appear and present his case before the authority. The provisions of Section 17(6) of the Act having clearly mandated the requirements of such an opportunity and the same having not been afforded, this Court holds that each of the impugned orders is vitiated in law. Accordingly, while setting aside each of the impugned orders, I leave it open to the concerned authority to complete the assessments in accordance with law.

4. Writ petition shall stand allowed in terms of the directions indicated above.

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