**(2003) 09 GAU CK 0020**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No''s. 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663 and 4545 of 2000

Dugar Tea Industries Pvt. Ltd. APPELLANT

Vs

State of Assam and Others RESPONDENT

**Date of Decision :** 09-09-2003

**Acts Referred:**

Assam General Sales Tax Act, 1993 — Section 19, 74(2)
Assam Industries (Sales Tax Concessions) Act, 1986 — Section 4
Assam Industries (Sales Tax Concessions) Rules, 1988 — Rule 2
Assam Sales Tax Act, 1947 — Section 17(4), 3A

**Citation :** (2004) 138 STC 159

**Hon'ble Judges :** P.G. Agarwal, J

**Bench :** Single Bench

**Advocate :** O.P. Bhati, M.K. Jain and A. Biswas, for the Appellant; B.J. Talukdar, Additional Sr. Government Advocate, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.G. Agarwal, J.—This batch of 11 writ petitions filed by the writ petitioners, M/s. Dugar Tea Industries Pvt. Ltd., were heard analogously and disposed of by this common order, as they involve common question of law. The writ petitioners have challenged clause (ii) of the notification u/s 3-A of the Assam Sales Tax Act, 1947 published in the Assam Gazette dated August 1, 1988. Separate writ petitions were filed for different periods of assessment and the different assessment order passed for the different periods. The writ petitions are W.P. (C) Nos. 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663 and 4545 of 2000 for the period ending March 31, 1990, September 30, 1988, September 30, 1992, September 30, 1990, September 30, 1989, September 30, 1991, March 31, 1993, March 31, 1992, March 31, 1989, March 31, 1991 and June 30, 1993 respectively.

2. The case of the petitioner is that it is a private limited company and it is engaged in the business of blending and packaging of tea. The petitioner had

installed plant and machineries for the purpose and according to him the construction was over in the month of January, 1988. It is submitted that originally it was a partnership firm constituted in the year 1984 and subsequently it was converted to a private limited company in the year 1986. On the prayer of the petitioner, the District Industries Centre granted a certificate to the petitioner on July 7, 1988 which amongst others provided that the petitioners will be entitled to exemption of sales tax for a period of five years. According to the petitioner the above certificate was issued pursuant to the Industrial Policy decision of the Government of Assam, 1986. Vide the impugned notification the benefit was denied, as para 2 of the impugned Notification provided as follows :

"(ii) from the 1st August, 1988 unless the dealer holds an authorisation certificate granted to him u/s 4 of the Assam Industries (Sales Tax Concessions) Act, 1986 the validity of which has not expired on the date of the relevant sale."

3. Petitioner prayed for grant of authorisation certificate u/s 4 of the Assam Industries (Sales Tax Concessions) Act, 1986. However, the prayer was rejected by the respondents whereupon the petitioner preferred Civil Rule No. 4162 of 1991. The said Civil Rule along with other analogous matter was disposed of by this Court vide the order dated August 17, 1998 and this Court held that rule 2(f) of the 1988 Rules are not ultra vires and the plea of promissory estoppel raised by the petitioners is not maintainable. The writ petition was dismissed with costs.

4. Subsequently, the concerned authorities passed assessment orders for different periods as stated above imposing tax and penalty and the petitioner had challenged the above assessment orders in this writ petition. The respondent-State has filed an affidavit in opposition in W.P. (C) No. 3662 of 2000 and the learned State Counsel has submitted that the same was accepted as the stand of the respondent-State, in all the writ petitions. The case of the respondent is that after the dismissal of the Civil Rule No. 4162 of 1991, the petitioner preferred a writ appeal against the above judgment, being Writ Appeal No. 313 of 1998. Although the said writ appeal was admitted, the division Bench of this Court did not grant any stay order to the writ petitioners and hence, the respondent-State completed the process of assessment under the Assam Sales Tax Act to realise the Government revenue. It is therefore submitted that the assessment orders were in accordance with law and Rules and no interference is called for. The respondent-State further submitted that against the assessment orders, the writ petitioners could have preferred the appeal/revision or other legal remedies available to him in accordance with the Act.

5. We have heard Mr. O.P. Bhati, learned counsel for the petitioner and Mr. B.J. Talukdar, learned Additional Senior Government Advocate.

6. Learned counsel for the petitioner has submitted that the eligibility certificate, exhibit E, was issued by the Director of Industries pursuant to the Industrial Policy/Guidelines issued by the Government of Assam on December 25, 1986 and the guidelines No. 3 provides for the same. The guideline No. 7 provides : "Sales

tax will be exempted on purchase of raw materials and sales on finished products for a period of five years, as may be decided by the Government from time to time". Thus, we find that from October 15, 1982 to July 31, 1988, the State of Assam granted sales tax concession to the eligible units but with effect from August 1, 1988 it provided that the concession will not be available unless the dealer holds authorisation certificate to be issued u/s 4 of the Assam Industries (Sales Tax Concessions) Act, 1986. Admittedly, the petitioner does not have any such authorisation certificate. As a matter of fact, the authorisation certificate was denied to him and the petitioner approached this Court in a writ petition being Civil Rule No. 4162 of 1991. The said Civil Rule was dismissed by this Court with costs and the fate of the Writ Appeal No. 313 of 1998 has not been made known to us. Learned counsel for the petitioner has placed reliance on a decision of the apex Court in the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, which was followed by this Court in the case of Manjushree Extrusions Limited v. State of Assam [2001] 123 STC 366 : (2000) 1 GLT 430 . The question of promissory estoppel was raised by the petitioner in the earlier Civil Rule and the same was decided against the petitioner. Moreover, clause (7) of the Industrial Policy decision itself provides that the sales tax exemption will be for a period of five years as may be decided by the Government from time to time. Thus, the Government had the discretion to take a decision to deny the benefits of sales tax concession in respect of a certificate, article and raw materials and if pursuant to that the benefit was denied on certain raw materials, the petitioner cannot claim promissory estoppel. We, therefore, hold that the ratio of law laid down in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, is not applicable to the present case.

7. So far the assessment orders are concerned, we find that although the dealer was given sufficient opportunity he did not produce any records or books of accounts and hence, the assessing authority proceeded in accordance with law. There is no illegality or infirmity in the above. The petitioners have however claimed that the assessment orders were not passed within the time-limit provided under the Assam General Sales Tax Act, 1993 as the earlier Act of 1947 was repealed by the 1993 Act. The respondent, on the other hand, has submitted that the provision of Section 19 of Assam General Sales Tax, 1993 are not applicable in respect of the impugned assessment as they were made u/s 17(4) of the Assam Sales Tax Act, 1947 (since repealed). Section 74(2) of the Act of 1993 provides for the same and we, there fore, hold that the impugned assessment orders are not bad in law. In view of the above, there is no merit in this writ petition and the writ petitions are accordingly dismissed. Interim order, if any, stands vacated.