

(2005) 11 GAU CK 0021

In the Gauhati High Court

Case No : WP (C) No (s) . 7044 to 7047 of 2005

Eastern Agency

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 17(5)
Central Sales Tax Act, 1956 — Section 19, 20, 6A, 8, 8(5)
Constitution of India, 1950 — Article 226

Citation : (2006) 1 GLR 698 : (2006) 1 GLT 14

Hon'ble Judges : D. Biswas, Acting C.J.

Bench : Single Bench

Advocate : H. Roy, R. Goenka, R.K. Agarwalla, N. Baruah and M. Talukdar, for the Appellant; K.N. Choudhury, for the Respondent

Judgement

D. Biswas, Actg. C.J.

1. Writ Petitions (C) Nos. 7044, 7045, 7046 and 7047 of 2005 were heard on 5.10.2005 for final disposal as all these cases raise identical question of law.

2. Shri H. Roy, learned senior counsel assisted by Mr. R. Goenka, Mr. R.K. Agarwalla, Mr. N. Barua and Mr. M. Talukdar, learned Counsels appeared on behalf of the petitioners, while Mr. K.N. Choudhury, learned Additional Advocate General, Assam appeared for the State.

3. The petitioners are proprietorship concerns duly registered as dealers under the Assam General Sales Tax Act, 1956. They are members of the Guwahati Tea Auction Centre and engaged in the business of purchase and sale of tea in course of inter-State trade and commerce. The disputes relate to the turnovers for the year 2001-02. The turnovers disclosed total sale of tea to the tune of Rs. 8,33,26,100 (in W.P.(C) No. 7044 of 2005) ; Rs. 6,78,31,000 (in W.P.(C) No. 7045 of 1999) ; Rs. 9,05,25,900 (in W.P.(C) No.7046 of 2005) ; and Rs. 7,72,86,400 (in W.P.(C) No.7047 of 2005). The petitioners having sold the tea to the registered dealers of other States are not required to pay taxes u/s 8(5) of

the Central Sales Tax Act, 1956. The returns for the period 2001-02 were filed by the petitioners without the C-Forms (declaration) as required under law. The taxing authority, namely, the Superintendent of Taxes, Unit B, Guwahati, issued notices on 21.2.2004 to the petitioners to show cause as to why summary assessment as per provisions of the Act would not be made on their failure to produce the books of account. In reply, the petitioners informed that they would produce the books of account as soon as they receive the same from the registered dealers and requested for time. The next hearing was fixed on 22.6.2004. The petitioners tried to collect the "C" Forms from the purchasers but having failed to procure the same on the same day, i.e., 22.6.2004 informed the Superintendent of Taxes in writing that they would produce the books of account as soon as the "C" Forms are received from the purchasers. The petitioners were expecting that their prayer would be granted and sufficient time would be allowed to produce the books of account. But, the Superintendent of Taxes instead of informing anything in reply, served notices of demand dated 31.3.2005 levying a tax of Rs. 1,51,65,350 (in W.P.(C) No.7044/ 2005) ; Rs. 1,23,45,242 (in W.P.(C) No. 7045/2005) ; Rs. 1,64,75,714 (in W.P.(C) No.7046 of 2005) ; and Rs. 1,40,66,125 (in W.P.(C) No. 7047 of 2005) respectively including interest. The petitioners received the said notices on 26.8.2005. The taxing authority assessed the tax payable summarily to the best of his judgment on the basis of the report of the Area Inspector of Taxes without any opportunity of hearing to the petitioners. The copy of the report was also not furnished. Aggrieved, the petitioners have approached this Court for setting aside the aforesaid notices of demand with prayer for stay, etc.

4. The common question to be dealt with in all these writ petitions is whether the assessment orders passed by the Superintendent of Taxes, Unit B, Guwahati for the year 2001-02 u/s 17(5) of the AGST Act, 1993 read with Section 9(2) of the CST Act, 1956 could be reviewed in exercise of discretionary powers of this Court under article 226 in a case where the assessee approached the Court without availing of the alternative remedy.

5. Mr. Roy, learned Counsel for the petitioners argued that the petitioners despite all efforts could not procure the C-Forms from the purchasers (registered dealers) within the prescribed time and that the assessment orders have been passed solely on consideration of the report of the Area Inspector of Taxes without any opportunity of hearing to the assessees. Shri Roy further argued that the assessees have since procured the C-Forms from the registered dealers who had purchased the tea and therefore, the taxing authority may be directed to review the assessment orders after giving an opportunity to the assessees to produce the books of account including C-Forms. According to Mr. Roy, the assessment authority acted in gross violation of the principles of natural justice in not giving enough time to the assessees to submit their books of account and to appear and defend them in the proceedings.

6. Mr. Choudhury, learned Additional Advocate General disagreeing with the

contentions of Mr. Roy argued that there is no violation of the principles of natural justice in the cases at hand. Enough opportunities have been given to the assesseees to produce the books of account. Eventually, it is the in-action of the assesseees which compelled the taxing authority to levy the taxes according to his best judgment. Mr. Choudhury argued that the assesseees dealt with the matter in a callous and negligent manner; and their conduct all through does not justify any lenient consideration.

7. There is no dispute that assesseees being registered dealers in the State of Assam and having sold the tea to the registered dealers outside the State are not required to pay taxes as provided in Section 8 of the Central Sales Tax Act, 1956, provided a declaration duly filled in and signed by the registered dealers to whom the goods have been sold are furnished to the taxing authority within the prescribed time or within such further time as the authority may, for sufficient cause, permit. In the instant case, it appears that the assesseees submitted an application only on 22.6.2004 informing the Superintendent of Taxes that they would produce the books of account as soon as the C-Forms are received from the purchasers. After that, the assesseees did not take any step and did not communicate with the taxing authority. They were completely silent till the notices of demand dated 31.3.2005 were served upon them. The conduct of the assesseees in the instant case is undoubtedly reprehensible. The taxing authority cannot be blamed for having proceeded to assess the tax as per his best judgment relying upon the report of the Area Inspector of Taxes. In the given circumstances, it would not be in furtherance of justice to interfere with the assessment orders in exercise of discretionary powers of this Court.

8. The assesseees approached this Court challenging the assessment orders without availing the alternative remedy available by way of appeal as provided in the concerned Act. Section 19 provides for constitution of Central Sales Tax Appellate Authority for settlement of disputes in course of inter-State trade and commerce. Section 20 provides for appeal by aggrieved dealer against any order of the assessing authority made u/s 6A or Section 9 of the Act relating to any dispute concerning the sale of goods effected in course of inter-State trade and commerce. The settled position of law is that an efficacious alternative remedy provided in a statute will have to be exhausted at the first instance. Discretionary powers of a Court may be invoked only when the authority acted without jurisdiction and/or in complete violation of the principles of natural justice.

9. I have duly considered the decisions relied upon by the learned Counsel for the parties. Shri Roy, learned Counsel for the petitioners relied upon the following decisions in support of his contention :

(i) Dwijendra Kumar Bhattacharjee v. The Superintendent of Taxes, Govt. of Tripura and Ors. 1990 (1) GLJ 52 ;

(ii) Electrical Cables & Conductors (Tripura) v. State of Tripura and Ors. (1990) 2 GLJ 23;

(iii) Purbachal Development Corporation v. State of Tripura and Ors. (2002) 3 GLR 621;

(iv) State of Kerala Vs. K.T. Shaduli Yusuff etc.,

(v) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others,

(vi) Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), and

(vii) Commissioner of Sales Tax and Others Vs. Subhash and Company,

10. The factual matrix in Dwijendra Kumar Bhattacharjee (supra) above is completely different from the case at hand. In Dwijendra Kumar Bhattacharjee (supra), the assessments for four years were taken at a time and the assessee was given only 5-6 days time to furnish certain information called for by the assessment authority. In the cases at hand, the petitioners were served with the show cause notice 21,2,2004. The petitioners asked for time by the letters dated 26.2.2004. The taxing authority vide letter dated 16.6.2004 informed the petitioners that the books of account are required to be produced on 22.6.2004. The petitioners submitted applications on 22.6.2004 praying for time and thereafter, did not take any interest in the matter. Long thereafter on 31.3.2005, the notices of demand were issued. The background of the cases at hand cannot be treated at par with the factual matrix of Dwijendra Kumar Bhattacharjee (supra). The decision in Electrical Cables & Conductors (supra) has been rendered by a Division Bench of this Court on a different factual matrix. It was a case where an application for adjournment filed by the assessee was not considered judicially. The ratio available in this decision is of no help to the petitioners. I have taken care of the other decisions referred to above. The decisions primarily deal with the question of violation of the principles of natural justice. The ratio available in these decisions cannot be applied in the cases at hand since the assessees here acted in utter disregard to the orders passed by the assessment authorities. There appears to be no violation of the principles of natural justice in the cases at hand. Rather the assessees appear to have dealt with the matter in a casual manner in complete deference to the requirements of law. No fault, therefore, can be attributed to the taxing authority for levying taxes as per best judgment in the given situation.

11. Mr. K.N. Choudhury, learned Additional Advocate General, Assam relied upon the decisions in H. B. Gandhi v. Gopi Nath and Sons and in Union of India (UOI) Vs. Hindalco Industries, In H.B. Gandhi (supra), the Hon'ble Supreme Court held that the powers of judicial review cannot be extended for the purpose of examining the correctness or reasonableness of a decision on re-appreciation of facts. The powers are to be invoked for examining the correctness of the decision making process only. Therefore, this Court is not entitled to sit on judgment over the assessment since the petitioners failed to point out any procedural error on the part of the taxing authority levying taxes as per his best judgment. In the decision in Hindaco Industries (supra), it is made clear that a Court would be

entitled to interfere in a case where the authority has acted without jurisdiction. The ratio available in these two judgments also augment the view that the assesseees in the instant cases are not entitled to any relief from this Court under article 226. They have no option but to approach the appellate authority constituted under the Act of 1956.

12. In view of above discussion, the writ petitions are disposed of with direction to the petitioners to avail the alternative remedy, i.e., to approach the appellate forum constituted under the Act of 1956 within a period of three weeks from today. The appellate authority shall, in the event the assesseees so approach and submit application, condone the delay for having chosen a wrong forum to vindicate their grievance. Till expiry of three weeks, the taxing authority shall not take any coercive measure for recovery.

No costs.