(2002) 05 GAU CK 0032

In the Gauhati High Court

Eleco Construction Co. APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2002) 3 GLT 594 : (2007) 7 VST 600

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Judgement

N.S. Singh J.

1. Upon hearing Mr. G.K. Joshi, learned Counsel for the petitioner and Mr. A.C. Buragohain, Senior Government Advocate, Assam, and also on perusal of the available materials on records, I am of the view that this matter can be disposed of at this stage considering the simple nature of the case. Accordingly, it is disposed of on its own merits with the following short order.

2. The petitioners herein questioned the validity of the deduction of sales tax at source u/s 27 of the Assam General Sales Tax Act, 1993 (hereinafter referred as, "the Act of 1993") by the respondent Nos. 3, 4 and 5 from the bills of the petitioner No. 1 in respect of the works contract executed by the petitioners by contending, inter alia, that it is a failure on the part of the Commissioner of Taxes, Assam, in clarifying the correct legal position in respect of the tax deduction at source u/s 27 of the Act of 1993 and Rule 35 of the Assam General Sales Tax Rules, 1993. According to Mr. Joshi, this legal issue had already been examined by this court and this court had decided the issue finally and it has attained the finality for ever as there is no appeal and, this order has not been set aside as yet. In support of his contention, the learned Counsel for the petitioner has produced a copy of the judgment and order dated March 26, 2002 Arunodoi Construction Co. (P.) Ltd. v. State of Assam [2002] 127 STC 561 (Gau) passed by this court in as many as 486 cases including C.R. No. 5161 of 1996.

3. I have perused the relevant observation and finding of this court in C.R. No. 5161 of 1996 and others which finds its place in paragraph 16 of the judgment and relevant portion of it is quoted below :

...It is well-settled proposition of law that generally the courts would like to maintain the provision of law, if possible, and even if by reading down the provisions, if required. Following the majority decision in the case of 20th 20th Century Finance Corpn. Ltd. and Another Vs. State of Maharashtra, we hold that the provision of Section 27 of the Act should be upheld by reading it down as below :

(1) The words ''sale or supply of goods liable to tax under this Act'' appearing in Section 27 of the Act cover the supply of goods in works contract also and only those goods which are liable to tax or which are included in the taxable turnover will be subject to deduction of tax at source.

(2) Section 27 of the Act will have to be read together with charging sections, namely, Sections 7, 8 of the Act and deductions and exemptions provided under Sections 7 and 8 of the Act as regards the inter-State trade, declared goods, exempted goods, etc., etc., shall also be applicable in case of deduction of tax at source u/s 27 of the Act.

(3) The certificate under Rule 35(5) will be available to the contractors executing works contract where deduction of tax at source u/s 27 is made.

(4) In the Schedule of exempted items and taxable items, which were amended vide notifications dated December 24, 1999 and January 27, 2000, Schedule I is in respect of exemption of items and Schedule II provides for tax at the point of first sale. Rule 19 was amended during the pendency of this case and Rule 19(2) was amended-''omitted'' with effect from January 19, 2000. Prior to the omission it read as follows :

(2) Notwithstanding anything contained in Sub-rule (1), the dealers specified in Section 2(10)(iv) shall not be entitled to use the declaration in form A.

Thus, in the light of Sub-rule (2) the contractor or a lessor was not entitled to use the declaration in form A. The effect of exemption of the said sub-rule with effect from January 19, 2000, is that, henceforth, the contractor or lessor shall be entitled to use the declaration in form A. Thus, when a declaration at form A is given by the contractor, no tax is charged from him at the time of purchase of goods described in Schedule III and the liability to pay tax shifts to the contractor. In view of above, after the Assam General Sales Tax (Amendment) Rules, 1999, the works contractors have become eligible to use declaration in form A.

In the light of the aforesaid directions we hold that the provisions of Section 27 of the Act and Rule 8(3)(iv) of the Rules are not ultra vires and illegal and that cannot be said to be confiscatory in nature. Deduction of tax at source is permissible under the law and the above provision of law are to be read down as provided above. We may also mention here that deduction of tax at source u/s 27 of the Act is not an end of the matter and the dealers/assessees are at liberty to claim all permissible deduction, if any, available to them while final assessment is being made.

4 The factum of existence of this judgment and order passed by this court is not disputed by the Government Advocate and apart from that, there is no dispute between the parties that the case is covered by the said judgment and order. In view of it, the petitioners shall also get the same benefit. In Bishnu Traders v. State of Assam (1995) 1 SCC 461, the apex court held thus :

The need for consistency in approach and uniformity in the exercise of judicial discretion in respect of similar cases require that all similar matters should receive similar treatment except where the factual difference require a different treatment.

5. Following this decision of the apex court, this court had also rendered certain judgments by holding that once a person got relief in a matter, another person who is similarly situated with that person shall also be afforded with the same relief. This is the law of the land as contained under article 14 of the Constitution. In view of the above decision, this court need not go more into depth as it will suffice to make the above observation to make the following order and direction.

6. The respondents, particularly, the respondent Nos. 3, 4 and 5 are hereby restrained from making deduction of tax at source from the entire bill amount of the bills of the petitioners. However, they are at liberty to deduct tax at source from the bills of the petitioners after excluding therefrom the labour, engineering and other service charges as well as turnover of declared goods, tax-paid goods and goods obtained in the course of inter-State trade within India for being used in the related work in terms of the related provisions of the Act of 1993 and Rules made thereof.

7. With the above observations and direction, the writ petition is disposed of. No costs.