
(2007) 03 GAU CK 0020
In the Gauhati High Court

G.E. Lightings (India) Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 36

Citation : (2007) 3 GLT 916 : (2009) 20 VST 361

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—An order dated 20.11.2001 passed by the learned Assam Board of Revenue affirming the order dated 27.11.1998 passed by the Deputy Commissioner of Taxes in exercise of the suo motu power of revision u/s 36 of the Assam General Sales Tax Act, 1993 ("the Act") has been assailed in the present writ petition.

2. The relevant facts may briefly be enumerated at the outset:

The petitioner is a Limited Company having its Head Office in Bangalore and a Branch Office in Guwahati. It is engaged in the business of manufacture and sale of electrical goods. In course of its business, electrical goods are brought to the Branch Office in Guwahati on the basis of stock transfers from the Head Office in Bangalore and such goods are sold within the State of Assam. For the assessment year 1995-96 the petitioner company submitted its return under the provisions of the Act. In the said return the petitioner-company showed receipt of goods of the value of Rs. 1,34,41,499.89 including the opening stock as well as the closing stock of Rs. 22,49,928.41. However, in the return filed, the petitioner showed sales of a total amount of Rs. 1,12,39,927.11. The Assessing Officer, on the basis of the books of account and other documents produced in the course of the assessment proceeding, completed the assessment for the period in question by determining the sale proceeds of the petitioner to be Rs.

1,06,34,516.00. Tax was accordingly levied on the said turnover.

3. On 19.9.1998, the Deputy Commissioner of Taxes issued a show cause notice requiring the petitioner company to show cause as to why the assessment made by the primary authority on 18.2.1998 on the aforesaid turn over should not be revised in exercise of power conferred by Section 36 of the Act. The petitioner company showed cause. Thereafter, the Deputy Commissioner of Taxes initiated a proceeding u/s 36 of the Act and by order dated 27.11.1998 set aside the assessment order dated 18.2.1998 on the ground that the same was erroneous and prejudicial to the interest of the revenue. An amount of Rs. 33,44,498.89 was determined to be the suppressed amount of sales. However, on 22.3.1999 the Deputy Commissioner of Taxes rectified his order dated 27.11.1998 and re-determined an amount of Rs. 24,74,628.89 as the suppressed amount. Aggrieved, the petitioner company filed an appeal before the Assam Board of Revenue, which was vested with the power to hear appeals pending constitution of the Appellate Tribunal. The learned Assam Board of Revenue by order dated 20.11.2001 having rejected the appeal filed by the petitioner company by affirming the order of the revisional authority, the instant writ petition has been filed.

4. Before proceeding to notice the arguments advanced on behalf of the petitioner in support of the challenge made, this Court would like to take note of the materials available the revisional authority as well as the appellate authority, on due consideration of which the orders impugned in the present writ petition have been passed by the aforesaid two authorities. The first relevant document which was available is a letter of the petitioner-company dated 24.9.1998 addressed to the Deputy Commissioner of Taxes wherein it was mentioned that the stock transfer price of the petitioner is higher than the selling price due to trade and cash discounts allowed to customers. The next document which was available is a letter dated 16.3.1999 of the Regional Manager of the petitioner-company by which the Sales Tax Authority was informed that in the year 1995-96 their factory at Nadia had made stock transfer invoices to Guwahati at the assessable value declared for the purpose of assessment of Central Excise duty and that the said value was higher than the realization from the sales made at the Branch. It is on clue consideration of the aforesaid documents and other relevant facts and circumstances, as will be noticed later, that the suo motu revisional order was passed and the decision of the learned Board of Revenue affirming the said order was rendered in the appeal filed by the petitioner.

5. Dr. B.P Todi, learned senior counsel for the petitioner in course of his argument, has submitted that jurisdiction u/s 36 of the Act can be exercised in a situation where the order of the Assessing Officer is both erroneous and prejudicial to the interest of the Revenue. The learned Counsel has contended that the aforesaid two conditions are essential pre-conditions to the exercise of the suo motu revisional power u/s 36 of the Act and in a given case both the preconditions must be present before the power can be invoked. Dr. Todi has

further argued that the expression "erroneous" as appearing in Section 36 of the Act must necessarily be understood to be an error with regard to exercise of jurisdiction rather than a mere mistake in the assessment order. Unless the error committed is a jurisdictional error, according to the learned Counsel, the power of suo motu revision will not be available. In this regard reliance has been placed on a Division Bench judgment of this Court in the case of *Rajendra Singh v. State of Tripura* (1990) 79 STC 10.

Dr. B.P. Todi, learned senior counsel for the petitioner has further submitted that under the provisions of the Act in respect of an assessment made by the primary authority, different corrective powers have been conferred on the higher authorities. Each specie of such corrective power is capable of being exercised in a particular given situation as contemplated by the Act. The scheme of the Act, according to Dr. Todi, contemplates exercise of a specified power to correct a particular error. The corrective exercises are not free but: are regulated by the provisions of the Act. Care must, therefore, be taken to ensure that while exercising a particular corrective power vested in one particular authority the jurisdiction vested in other authorities are not trenching upon. Reliance in this regard has been placed on an Apex Court judgment reported in (1965) 16 STC 875 (*State of Kerala v. Cheria Abdulla Co.*). Two judgments of this Court in the case of *Nestle India Ltd. v. Commissioner of Taxes, Assam*, Kar Bhawan, Dispur and Ors. (2006) 146 STC 83 and *Santalal Mehendi Ratta (HUF) v. Commissioner of Taxes Assam and Ors.* (2006) 143 STC 511 have also been relied upon by Dr. Todi, learned senior counsel for the petitioner.

6. According to Dr. Todi, learned senior counsel for the petitioner, in the present case, as there is an allegation of suppression of sales or the value thereof, as the case may be, any correction, if at all, would be called for u/s 19 of the Act which provision of the Act vests in the assessing authority the power to re-open a concluded assessment. To such a situation, according to the learned Counsel for the petitioner, the power u/s 36 of the Act will have no application.

7. Sri R. Dubey, learned Counsel for the Revenue while refuting the contentions advanced on behalf of the petitioner has asserted that in the present case the Assessing Officer, while passing the initial order of assessment, had clearly ignored the materials available in the return filed by the petitioner as regard the total value of the stock of the petitioner which was disposed of during the relevant assessment year. If the Assessing Officer had taken into account the aforesaid value of the stock while determining the value of the sales affected, he would have had to make a proper investigation as to how as against a higher stock value a lower sales value could have been reflected in the return filed. This was not done. That apart, Sri Dubey, learned Counsel for the Revenue, has argued that the Assessing Officer had given absolutely no reason or indication as to why he had accepted the plea of the petitioner with regard to lesser value of the sales against the higher value of the stock sold. This, according to the learned Counsel, is a jurisdictional error which had rendered the order dated

18.2.1998 clearly erroneous within the meaning of Section 36 of the Act. Learned Counsel for the Revenue has further argued that as, against possible higher revenue lesser revenue has come to the State on account of the assessment made, the order of the primary authority has to be understood to be prejudicial to the interest of the revenue. Learned Counsel, therefore, has argued that there is no infirmity with the suo motu revisional order dated 27.11.1998 as well as the order dated 20.11.2001 passed by the Assam Board of Revenue so as to warrant interference of this Court.

8. The rival submissions made on behalf of the respective parties have received the due and anxious consideration of the court. While it is correct that an erroneous order within the meaning of the said expression as appearing in Section 36 of the Act has to be necessarily a jurisdictional error as urged by Dr. B.R. Todi, learned Counsel for the petitioner, and as held by a Division Bench of this Court in *Rajendra Singh* (supra) what must be attempted to be understood is the meaning of the expression "jurisdictional error". While exercise of jurisdiction not vested in an authority by law or failure to exercise jurisdiction which has been vested are a clear instances of jurisdictional error, there maybe a category of cases where the Assessing Officer though vested with the jurisdiction may have exercised it wholly illegally or in an apparently irregular manner. Exercise of jurisdiction vested by law in an illegal manner or with material irregularity, evident on the face of the record, would be less apparent but acceptable instances of jurisdictional errors. It cannot be understood that the law would countenance a situation where if the officer is empowered and authorized to pass an order, the manner of exercise of such powers can never give rise to a jurisdictional error. In the present case, the learned appellate Board has clearly recorded that in the monthly sale bills of the petitioner, which were scrutinized both by the revisional authority as well as by the appellate authority, there is no mention of any discount being offered by the petitioner in its sales. Even if the stand taken by the petitioner that if it sold its goods at a price lower than the assessable value is to be accepted, whether such a situation had prevailed at all times during the assessment year and if so, the reasons therefore are facts that should have been verified by the Assessing Officer. No such verification was done. The Assessing Officer had assigned no reasons whatsoever as to why the goods were sold at a lower price and that too all throughout the year. Even though the petitioner had informed the authority about the losses suffered by it, the Assessing Officer did not make any enquiry as to whether such losses had been suffered by other dealers engaged in the manufacture and sale of electrical goods during the relevant period. The aforesaid facts, which were required to be ascertained and verified by the Assessing officer, remained wholly unascertained at the time of completion of the assessment. The Assessing Officer, who is vested with the powers of completing the assessment is duty bound in law to make all such enquiries as are reasonably necessary to determine the correct quantum of the turnover of an assessee. If an assessment is completed without making any such enquiry and without determination of the basic facts, the assessment made

will suffer from the vice of exercise of jurisdiction in a grossly irregular manner. Such gross irregularities in the exercise of jurisdiction will undoubtedly give rise to a jurisdictional error and, therefore, occasion an erroneous order within the meaning of Section 26 of the Act. In the present case it has already been noticed that the different facets of the fact-finding enquiry that should have been looked into by the Assessing Officer were bypassed and ignored. If in such circumstances the suo motu revisional power was exercised on the ground that the assessment is erroneous and prejudicial to the interest of revenue, the court cannot find any fault with such an exercise.

9. Insofar as the assessment being prejudicial to the revenue is concerned, what the court has to observe is that if a lesser amount of revenue has come to the State on account of an erroneous assessment, surely, such an assessment must be held to be prejudicial to the interest of the revenue. In the above view, the court is inclined to hold that both the conditions precedent to the exercise of powers u/s 36 of the Act are abundantly present in the instant case. The order dated 27.11.1998 passed by the Deputy Commissioner of Taxes as affirmed by the learned Board of Revenue by order dated 20.11.2001, therefore, will not require, any interference of the court.

10. The Writ Petition, consequently, is found to be without any merit. It is accordingly dismissed. However, in the facts and circumstances of the case, I make no order as to costs.