(2004) 05 GAU CK 0050

In the Gauhati High Court

Case No : Writ Petition (C) No. 4120 of 1999

Geeta Art Press APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 72
Assam General Sales Tax Rules, 1993 — Rule 19(1), 19(2)
Constitution of India, 1950 — Article 366(29A)

Citation : (2004) 3 GLR 233 : (2004) 137 STC 52

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

Bench : Single Bench

Advocate : G.K. Joshi, A.K. Joshi and K. Chakrobarty, for the Appellant; K.C. Mahanta, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—The petitioner, M/s. Geeta Art Press, is a registered dealer under the provisions of the Assam General Sales Tax Act, 1993, hereinafter referred to as "the Act" and is engaged in the business of printing press and execution of works contract within the State of Assam. For the assessment year 1993-94, 1994-95 and 1995-96 the petitioner submitted his returns and assessments were accordingly made. Subsequently, show cause notice was issued and an order of reassessment was passed on April 13, 1999 u/s 18(1) of the Act. The petitioner-firm had purchased papers from the registered dealers for use in execution of works contract and the petitioner had used form A accordingly. These forms were collected from the department. Subsequently, the department came up with the plea that in view of the provisions of Rule 19(2) of the Assam General Sales Tax Rules, 1993, the petitioner is not eligible/entitled to use form A for purchase of goods used for the purpose of execution of works contract. Hence, the reassessment.

2. The petitioner has challenged the order of reassessment and penalty on the

various grounds mentioned in the writ petition.

3. The petitioner has also challenged the constitutional validity of Rule 19(2).

Sub-rule (2) of Rule 19, i.e., Rule 19(2), which contains a debarring/restricting provision in the case of a works contractor, is reproduced below :

"19(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''.

Dealers specified in Section 2(10)(iv) are works contractors and they have been deprived from the use of declaration in form A by the above provision of Rule 19(2)."

4. Shri G.K. Joshi, learned Senior Advocate appearing for the petitioners, have submitted that the above Sub-rule (2) is ultra vires of the provisions of Clause (29A)(b) of Article 366 of the Constitution of India, as well as, the provisions of Section 8(1)(e) and Section 2(33)(ii) of the Act.

5. In view of the decision of the Constitution Bench in Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, and prior to the 46th Amendment, a State Government had no jurisdiction to levy tax on works contract. However, in view of the provisions of Sub-clause (b) to Clause (29A) of Article 366 of the Constitution of India, a legal fiction was created, whereby any transfer, delivery or supply of any goods with respect to a works contract is deemed to be a "sale" of those goods by the person making the transfer, delivery or supply and purchase of those goods by the person to whom such transfer, delivery or supply is made. Accordingly, tax was leviable on such transfer of goods.

6. Pursuant to the above provisions, Section 8(1)(e) was enacted which reads as follows :

"(e) in respect of any transfer of property in goods (whether as goods or any other form) involved in a works contract of the nature specified in Schedule VI, at the rate or rates uyspecified in that Schedule ; and

.........."

7. A conjoint reading of the provisions of Section 8(1)(e) and Section 2(33)(ii) of the Act it is crystal clear that the transfer of goods involved in the execution of a works contract has been deemed to be "sale" of those goods.

8. There is no dispute at the Bar that the scheme of form A is that intermediary sales between the two registered dealers are effected without charging of tax in respect of goods specified in Schedule III to the Act. Further, the purpose for which form A can be used are specified in form A itself, i.e., for resale in the State of Assam/taking of such goods for resale. The purpose or interpretation of Rule 19(1)(b) is that any deal between the two registered dealers shall not be liable to tax if the sale/purchase is meant for resale and this has been done to avoid double taxation. There is also no dispute at the Bar that the works contract

has been excluded. The submission of the petitioner is that the works contractor are also dealers carrying on business of purchase and sale of goods and once they are registered as dealers, they cannot be deprived from the use of declaration in form A in respect of their dealings in Schedule III and Schedule IV goods in view of the provisions of Rule 19(2). According to the petitioner this amounts to double taxation and this has been done by limiting the scope.

9. The petitioner submits that once a fiction is created in a Schedule, full effect is to be given to such fiction and the same have to be carried to its logical conclusion and the authorities are not entitled to frustrate the object of such legal fictions. Shri Joshi contends that the provision of Rule 19(2) of the Rules is ultra vires, as the works contractors are treated differently in the matter of sale/ purchase of goods. The petitioner has placed reliance on the decisions :

American Home Products Corporation v. Mac Laboratories Pvt. Ltd. (1986) 1 SCC 435 (R/P 501).

"In a celebrated passage Lord Asquith of Bishopstone in East End Dwelling Co. Ltd. v. Finsbury Borough Council [1952] AC 109 said (at page 132) :

''If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.''

In The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others, this Court held (at page 778) while approving the above passage of Lord Asquith :

''When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion''."

2. Commissioner of Income Tax, Delhi Vs. S. Teja Singh,

"It is a rule of interpretation well-settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. The following oft-quoted observations of Lord Asquith in East End Dwelling Co. Ltd. v. Finsbury Borough Council [1952] AC 109 may appropriately be referred to :

''If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs : it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs''."

10. The petitioner has also challenged the vires of Rule 19(2) on the ground that the provisions of Article 14 are attracted. It is submitted that other registered dealers, in view of the provisions of form A are not required to pay 8 per cent tax at the time of purchase and they are to pay 8 per cent at the time of sale only. Whereas, the person engaged in the works contract are to pay 8 per cent tax at the time of purchase of such goods as they are not allowed to use form A and subsequently, on the execution of the works contract, they are to pay another 8 per cent. Thus, they are to pay total 16 per cent tax on such goods. Article 14 does not debar classification of dealers under the taxation laws provided the classification are reasonable. In view of the decisions of the apex Court in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, it is well-settled that the provisions of Articles 14 and 19 of the Constitution also implies/available against the taxing statutes and the court has right to strike down the taxing laws, if they are found to be arbitrary.

11. In the present case, we find that the Assam General Sales Tax Act has not provided for any such classification debarring the works contractor from the benefits of form A or subjected the works contractors to double taxation. The restricted provisions have been incorporated in Rule 19(2) only and, as such, we find force in the submission that in view of the provisions of Section 72 of the Act, the rule-making authority has no legislative competence for incorporating such a rule which does not have any support from the main Act. If the Legislature had intended to deny this benefit to works contractors, provisions would have been incorporated in the main Act itself. In the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, it was held by the apex Court that no part of a statute or no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. The non obstante clause of Rule 19(2) which deprives the works contractor from using the form A seems to override the beneficial provisions of the Assam General Sales Tax Act and, as such, it is repugnant to the Act of 1993, under which it was made.

12. It has been submitted by Shri Joshi, learned Senior Counsel for the petitioner, that the provisions of Rule 19(2) has since been omitted by the Assam General Sales Tax (Amendment) Rules, 1999 with effect from January 19, 2000. It is, therefore, submitted that this was done by the State Government when the fallacy was brought home. The fact that the rules are no more in the statute book is not disputed.

13. In view of the aforesaid discussion, we hold that the provisions of Rule 19(2) is ultra vires to the constitutional provision of Clause (29A)(b) of Article 366. It is also beyond the rule-making authority u/s 72 of the Act and, as such, the provisions are not enforceable. We, therefore, strike down the same as ultra

vires and void.

14. The petitioner has also challenged the order of reassessment dated April 13, 1999, on the ground that the reassessment was in violation of the provisions of Section 18 of the Act and there was no just and proper ground to do so and the same suffers from the mandatory requirement of recording of the reasons. In view of our decision of striking down the rules, we do not propose to enter into the above submissions and accordingly, the impugned order of reassessment stands quashed. The writ petition stands allowed as stated above.