(2003) 07 GAU CK 0038

In the Gauhati High Court

Case No : Writ Petition (C) No''s. 11, 55, 131, 132, 133, 154, 222, 225, 226, 227, 229, 434, 689, 992, 993, 1446, 1447, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 2746, 2747, 2749, 2783 and 3125 of 2001 and 137, 138, 139 and 898 of 2002

George Williamson (Assam) Ltd. — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Assam Agricultural Income Tax Act, 1939 — Section 47A

Citation : (2003) 263 ITR 451

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A.K. Saraf, K.K. Gupta and S.K. Agarwall, for the Appellant; G.A. Aslam, for the Respondent

Judgement

Ranjan Gogoi, J.—The tenor of the pleadings made in the present bunch of writ petitions and the oral arguments advanced by learned counsels for the writ petitioners would go to show that the main grievance of the writ petitioners is in respect of the detention of the vehicles carrying tea at inter-State check posts, on the ground of non-production of the agricultural Income Tax clearance certificate u/s 47A of the Agricultural Income Tax Act, 1939 (as amended), The challenge to the constitutional validity of the provisions of Section 47A of the Act as well as the circular dated September 13, 2000, issued by the Commissioner has been made in the present bunch of writ petitions as in the comprehension of the writ petitioners the aforesaid provisions of Section 47A alone bear some resemblance to the power which has sought to be exercised by detention of the vehicles carrying tea.

2. Learned counsel for the petitioners has submitted that in the event this court takes the view that under the provisions of Section 47A or under any of the provisions of the Act, there is no power vested on the authority to detain the vehicles, the writ petitioners would not press for a decision on the validity of

Section 47A of the Act.

3. A perusal of the provisions of the Assam Agricultural Income Tax Act, 1939, including Section 47A thereof would go to show that no power has been conferred on the authority to detain vehicles carrying tea for non-production of the tax clearance certificates visualised u/s 47A. Section 47A of the Act requires production of a tax clearance certificate issued by the competent authority, but there appears to be no provision in the Act empowering the authority to detain the vehicles or to resort to any other form of coercive action in the event such tax clearance certificate is not produced at the check gates. In fact in the affidavit filed on behalf of the State in one of the cases, which has been treated to be a common affidavit in all the cases, there is no assertion of any such powers to detain vehicles for non-production of the tax clearance certificates. On the contrary, the stand of the authority as reflected in the affidavit filed is that there has been no detention of the vehicles carrying tea as asserted in the writ petitions.

4. In view of what has been stated above, and the stand taken by the respective counsel for the parties as well as having regard to what has been stated in the affidavit filed by the State, it would be wholly unnecessary for the court to go into the question of constitutional validity of Section 47A or the legality of the notification dated September 13, 2000. Instead, this court is inclined to take the view that having regard to the facts stated above, it would be more appropriate to close this bunch of writ petitions by holding that under the provisions of the Assam Agricultural Income Tax Act, 1939, as in force there is no power vested in the authority to detain vehicles for non-production of tax clearance certificates u/s 47A of the Act, and any such detention, if made, would be illegal, ultra vires and without authority of law.

5. The bunch of writ petitions shall stand accordingly answered.

