(2004) 12 GAU CK 0061

In the Gauhati High Court

Case No : W.A. No. 87 of 2004 and W.P. (C) No. 2095 of 1999

Ghawar Chand Gangh and Another — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 10-12-2004

Acts Referred:
Assam General Sales Tax Act, 1993 — Section 9(4)

Citation : (2006) 2 GLR 688 : (2006) 146 STC 625

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

Bench : Division Bench

Advocate : O.P. Bhati and A. Biswas, for the Appellant; K.N. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. O.P. Bhati, learned Counsel for the appellants and Mr. K.N. Choudhury, learned Addl. Advocate General, Assam appearing for the respondent-State.

2. During the period covered by the assessment years 1994-95 and 1996-97 the appellant No. 1 purchased tea from the appellant No. 2 which was subsequently sold by the appellant No. 1 within the State of Assam. The appellant No. 2 was a unit eligible for concession under the Assam Industries (Sales Tax Concessions) Scheme, 1995 framed under the provisions of Section 9(4) of the Assam General Sales Tax Act, 1993 which visualise exemption from payment of sales tax on goods sold by eligible units. Accordingly, on the transaction between the appellant Nos. 1 and 2 sales tax was not levied. However, on the subsequent sales made by the appellant No. 1 assessment to tax for the years in question had been made by the authority which assessments were challenged in revision before the departmental authority. The revision proceedings having been upheld, an approach to the learned Single Judge was made in the writ petition out of which this appeal has arisen. The learned Single Judge having dismissed the writ petition, the appellants before us in the present appeal.

3. There is no manner of doubt that in terms of the Concession Scheme framed under the provisions of the Act of 1993, what has been exempted are sales effected by eligible manufacturers of goods specified in the scheme. The exemption is qua the manufacturer and not the goods and the position before us admittedly is that the appellant No. 1 does not have eligibility for exemption. In such a situation, it is difficult to visualize as to why the subsequent transactions of sale effected by the appellant No. 1 shall not be eligible to tax. The contention of the learned Counsel for the appellants that the goods itself must be held to be entitled to exemption at all stages is an argument that we find difficult to accept. Nor is there any acceptable basis for the same. The reliance placed on the two decisions of the Apex Court in the Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, and in Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others, in our considered view, does not assist the appellant in any manner.

4. For the foregoing reasons, we find no merit in this appeal. The appeal is accordingly dismissed with costs which is quantified at Rs. 5,000 (Rupees five thousand).