
(2006) 11 GAU CK 0071
In the Gauhati High Court

Goalpara Roller Flour Mill Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Assam Entry Tax Act, 2008 — Section 3

Citation : (2007) 2 GLR 805 : (2007) 2 GLT 952 : (2008) 12 VST 478

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—The material facts, which are not in dispute and which have given rise to the present writ petition, may, in brief, be set out as follows:

The petitioner is a company incorporated under the Companies Act, 1956, and procures wheat from the Food Corporation of India ("the FCI") for public distribution under the Public Distribution System and also for open sale. Under the Public Distribution System, the Central government allots wheat to different State governments and the State Governments, in turn, allot quota of wheat to various roller flour mills and other agencies in the State/After receiving necessary order of allotment, the petitioner company, as an allottee under the State government, purchases the allotted quota of wheat from the FCI. Upon purchasing wheat from the FCI, the petitioner company produces wheat products, such as, atta, flour, sujee, bram, etc. By virtue of the release orders, dated 23.1.2002 and 28.1.2002, the petitioner company purchased 4,000 quintals of wheat, at the fixed rate of Rs. 665, from the respondent No. 2, namely, the FCI, through the respondent No. 3, i.e., Manager, FCI, Bongaigaon, the entire transaction of payment for, and delivery of, goods having been completed between the petitioner company and the FCI on 28.1.2002. By their letter, dated 6.5.2002, issued by the respondent No. 3, the petitioner company was informed that by letter, dated 18.2.2002, the Superintendent of Taxes, Bongaigaon, had informed the respondent No. 3 that the respondent No. 3 was, with effect from 8.1.2002, liable to pay, in terms of the Assam Entry Tax Act,

2001 ("AET Act, 2001"), entry tax on the import of pulses and cereals, in any form, into the State of Assam. The respondent No. 3 accordingly requested the petitioner company to deposit 2% entry tax w.e.f. 8.1.2002 on the wheat, which the petitioner company had purchased from the FCI. Aggrieved by the demand, so raised by the respondent No. 3, by letter, dated 6.5.2002, aforementioned, the petitioner company is before this Court seeking, with the help of the present writ petition, issuance of, inter alia, appropriate writ(s) commanding the respondents not to give effect to their letter, dated 6.5.2002, aforementioned. The respondents have chosen not to file any affidavit-in-opposition in this writ petition.

2. I have heard Dr. A.K. Saraf, learned senior counsel, appearing on behalf of the petitioner company, and Mr. C. Choudhury, learned Counsel, appearing for the respondents No. 2 and 3. I have also heard Mr. R. Dubey, appearing for the respondent No. 1.

3. While considering the present writ petition, what needs to be noted, at the very outset, is that in this writ petition, the dispute is not, and I am not called upon to decide, as to whether entry tax is leviable on the wheat, which the FCI imports into the State of Assam. What is also required to be borne in mind is that the price for sale of wheat by the FCI to various allottees, in a State, is determined not by the FCI, but by the Union of India. The FCI cannot, therefore, charge, either as price or in the name of price, any amount exceeding what the Central government fixes as the price of wheat to be sold by the FCI.

4. In the case at hand, the demand for payment of entry tax at the rate of 2% has been resisted by the petitioner on two grounds, namely, (i) that when the transaction of the sale of wheat by the FCI to the petitioner company is already complete, no tax, which may have been paid or payable by the FCI, can be realized from the petitioner company in the form of price of wheat sold to the petitioner company and (ii) the scheme of the AET, 2001, does not envisage of passing of the incidence of entry tax to a buyer of the goods imported into a local area of Assam.

5. For correctly appreciating the issues involved, it is necessary to take note of the relevant provisions of Section 3 of the AET Act, 2001, which is the charging section. Section 3 of the AET Act, 2001, is therefore, reproduced herein below:

3. Levy of Tax. - (1) There shall be levied and collected an entry tax on the entry of the goods specified in the Schedule into any local area for consumption, use or sale therein at the rates shown against each item in the said Schedule and such tax shall be paid by every importer of such goods "whether he imports such goods on his own account or on account of his principal or any other person or takes delivery or is entitled to take delivery of such goods on such entry":

Provided that in the case of Specified Goods both old and new which are being imported into a local area for use therein for a specified period and are taken back after completion of their use, entry tax shall be payable on the purchase

value of the Specified Goods as ascertained under the second proviso to Clause (h) of Sub-section (1) of Section 2."

(2) The entry tax payable by an importer under this Act shall be charged on the purchase value of the goods specified in the Schedule at the rates as shown in the said Schedule:

Provided that no such tax shall be payable on the entry of the goods which are meant for the exclusive use or consumption of Defence Department of the Government of India:

Provided further that no entry tax shall be levied on the entry of the goods into any local area for consumption or use therein which are the exclusive property of the Union Government:

Provided also that no such tax shall be payable on the entry of such goods which are brought for the purpose of sale or use under the Assam Public Distribution of Articles order, 1982:

Provided further more that no tax shall be levied under this section on the entry of Scheduled goods into a local area, if it is proved to the satisfaction of the assessing authority in such manner as may be prescribed, that such goods have already been subjected to entry tax or that the entry tax has been paid by the importer or any other person under this Act in respect of the same goods.

(3) The State Government may, by notification in the Official Gazette, grant exemption to any organization or undertaking of the Central Government or of the State Government in respect of such goods as may be specified in such notification from payment of entry tax on entry of such goods into any local area for consumption or use therein provided that such goods are the exclusive property of such organization or undertaking.

(4) The State Government may, by notification in the Official Gazette, add to, delete, amend or otherwise modify the said Schedule and also may vary the rates of tax of the goods specified in the Schedule and thereupon the said Schedule shall be deemed to have been amended accordingly.

(5) The State Government, if considers it necessary in the public interest so to do, may by notification in the Official Gazette, subject to such conditions and restrictions as it may impose, exempt any importer or class of importers, fully or partially from payment of entry tax on any specified good and the State Government also grant such exemption retrospectively:

Provided that the State Government may withdraw any such exemption at any time, as it may think fit and proper.

6. Section 2(e) defines local area to mean the area comprised within the limits of a local authority including any area which has been or may hereafter be included in the Municipal Corporation of Guwahati, constituted under the Guwahati Municipal Corporation Act, 1969 (Assam Act I of 1973) or in the Municipality or

Two Committee constituted under the Assam Municipal Act, 1956 (Assam Act XV of 1957) or any area comprised within a Gaon Panchayat or an Anchalik Panchayat constituted under the Assam Panchayat Act of 1994 (Assam Act XVIII of 1994).

7. Section 6, which embodies the principles governing entry tax, reads as follows:

7. Registration, return, assessment, collection, etc., of entry tax. - Subject to the provisions of the Act and the Rules made thereunder, the administration of this Act in so far as it relates to registration, submission of returns by the importers and collection of entry tax from them, shall vest in the authorities specified in or under the "the Assam Value Added Tax Act, 2003 (Assam Act No. VIII of 2005)" and accordingly, the said authorities, empowered to register, receive returns, to assess or reassess and collect tax and enforce payment of any tax under the said Act, shall register, receive returns, assess, reassess and collect entry tax and enforce payment of entry tax, including imposition and realization of any penalty payable by an importer under this Act as if the tax or penalty payable by such importer under this Act is a tax or penalty payable under the Law and for this purpose they may exercise all or any of the powers conferred upon them by or that law.

8. From a careful reading of what Sub-section (1) of Section 3 embodies, it becomes transparent that entry tax is imposed on the entry of goods, specified in the Schedule to the AET Act, 2001, into any local area for consumption, use or sale therein and the entry tax is payable by the person, who imports the goods into a local area of the State. In the case at hand, since it is the FCI, which has imported wheat into a local area, it is the FCI, which is, as an importer, liable to pay entry tax. This entry tax is payable on the basis of the purchase value and the purchase value, in turn, means the value of the goods. There is nothing, in the AET Act, 2001, indicating that the entry tax paid by an importer will be passed over to the purchaser of the goods, which the importer imports into local area. Hence, the PCI cannot realize, as entry tax, from the purchaser or allottee the entry tax, paid or payable by the FCI to the State government. Whether the FCI can add, to the price of wheat, the amount of entry tax, which it pays, is a question, which is not required to be decided in the present case inasmuch as the price of wheat, which has been sold to the petitioner company, is fixed by the Central government and the price so fixed cannot be altered or changed by the FCI.

9. Turning to the question as to whether the FCI can demand payment of entry tax as price value of the wheat from the petitioner company, what may also be noted is that the transaction of sale in respect of the said 4,000 qtls. of wheat, in the present case, was over on 28.1.2002. Having sold wheat at a particular value, no further sum of money can be added by the FCI as the selling price of the goods already sold. In a given case, a seller may include, within its sale value, the amount of tax, which it pays; but having already realized the sale price, the seller cannot vary the price by adding to the price already fixed, an

amount, which it has paid by way of tax or otherwise. The petitioner company is, therefore, correct, when it contends that as the transaction of sale by the FCI to the petitioner company was already over on 28.1.2002, the FCI cannot, even if it chooses to pay entry tax on the said 4,000 quintals of wheat, realize the amount so paid by them from the petitioner company either in the form of entry tax or in the form of price of the goods sold.

10. In short, if a dealer, in a given case, intends to pass the burden of a given levy to his purchaser, he may do so, if the given legislation so permits, his burden of tax by adding to his sale price, the value of the levy, which the dealer has paid or is required to pay. In such a case, the sale price would include the tax paid or payable by the dealer. In the case at hand, apart from the fact that the AET Act, 2001, does not conceive of passing of the levy of entry tax to anyone other than the importer of goods into a local area, the FCI, having sold the wheat, in question, to the petitioner company at a given price, cannot subsequently realize the entry tax paid or payable by it, from the petitioner company either in the form of entry tax or in the form of sale price.

11. What crystallizes from the above discussion is that the FCI cannot pass over its liability to pay entry tax to the petitioner company so far as the sale of the said 4,000 quintals of wheat by the FCI to the present petitioner company is concerned.

12. This writ petition, therefore, succeeds. The impugned order, dated 6.5.2002, is hereby set aside and quashed. The FCI is directed not to insist on payment of entry tax by the petitioner company on the said 4,000 quintals of wheat.

13. With the above observations and directions, this writ petition shall stand disposed of.

14. No cost.