(1997) 01 GAU CK 0019

In the Gauhati High Court

Case No : Civil Rule No''s. 1883, 1884 and 1885 of 1996

India Carbon Limited and Another APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 06-01-1997

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 36(1), 74(3)
Assam Sales Tax Act, 1947 — Section 16, 35A
Assam Sales Tax Rules, 1947 — Rule 20, 21
Central Sales Tax Act, 1956 — Section 15, 9(2)

Citation : (1997) 1 GLR 215

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : J.P. Bhattacharjee, A.K. Saraf, K.K. Gupta and R.K. Agarwalla, for the Appellant; B.P. Todi, G.A., for the Respondent

Judgement

D.N. Baruah, J.—All the above Civil Rules involve common question on law and facts and, therefore, I propose to dispose of all the Civil Rules by this common judgment.

2. In all these Civil Rules the Petitioners have challenged the notices issued by the Deputy Commissioner of Taxes, Zone - A, Guwahati, in the purported exercise of power u/s 36(1) read with Section 74(3)(a) of the Assam General Sales Tax Act, 1993 read with Section 9(2) of the Central Sales Tax Act, 1956 directing the Petitioner No. 1 to show cause against revision of the assessment order under the Central Sales Tax Act, 1956.

3. Brief facts for the purpose of disposal of the Civil Rules are:

That the Petitioner No. 1 is a registered dealer under the Central Sales Tax Act, 1956 and the Assam (Sales of Petroleum & Petroleum Products including Motor Spirit & Lubricants) Taxation Act, 1955. The collection and enforcement of tax under the Central Sales Tax Act are done by the appropriate State as authorised by Section 9(2) of the Central Sales Tax Act. Section 15(b) of the Central Sales

Tax Act requires that if tax is paid on the purchase of any declared goods within the State and if such goods are sold in course of inter State trade and commerce, tax paid under the State Act shall be reimbursed to such dealer who paid tax at the time of purchase of such goods. Section 16 of the Assam Sales Tax Act, 1947 (since repealed and a new Act, namely, Assam General Sales Tax, 1993 came into force with effect from 1.7.93) requires submission of return by a dealer within such lime as prescribed under Rule 20 of the Assam Sales Tax Rules, 1947, Rule 21 prescribes submission of quarterly returns within a month following each period ending.

During the course of business the Petitioner company used to purchase petroleum coke and pay taxes as applicable under the Assam (Sales of Petroleum & Petroleum Products including Motor Spirit & Lubricants) Taxation Act, 1955, Petroleum was again convened by manufacturing process to calcined petroleum coke and, thereafter, sold the same in course of inter-State Trade and Commerce under the Central Sales Tax Act and claimed refund of taxes paid under the State law on the purchase of such goods in accordance with Section 15(b) of the Central Sales Tax Act, 1956. According to the Petitioners the respective Sales Tax Acts as in operation at the relevant time in Assam under which tax was levied on the purchase of petroleum coke also provided for refund of tax paid on the purchase of such declared goods in the event of such goods being sold in course of inter-State trade and commerce. The Petitioners further state that the claim of refund of the Petitioner company were allowed up to 31st March, 1980, Accordingly the Petitioners demanded reimbursement by way of adjustment. However, this was not allowed. Meanwhile, in the year 1986 Assam (Sales of Petroleum and Petroleum Products including Motor Spirits and Lubricants) Taxation Act was amended and by such amendment raw petroleum coke and calcined petroleum coke were made two different items for the purpose of taxation. The validity of the said Act was challenged by the Petitioners before this Court in Civil Rule No. 163 of 1987. This Court by judgment and order dated 16.12.91 disposed of the writ petition by reading. down that the tax on calcined petroleum coke can be imposed only when the tax is not realised on raw petroleum coke and this Court further directed that the refund should first of all be adjusted towards the tax payable and, thereafter, the balance, if any, should be refunded to the Petitioners within a period of six months from the date of judgment. Being aggrieved by the order of this Court in the Civil Rule, the State Government moved the Supreme Court by filing a SLP (S.L.P. 5469/92). The Supreme Court by an interim order dated 8.5.92 directed that the Petitioners might make adjustment as per the judgment of this Court and if any amount was left to be paid that amount should be paid. In due course the SLP was dismissed on 22.9.95. The assessment was made by the Superintendent of Taxes holding, inter alia, that no interest was leviable in view of the fact that the amount of refund was in excess and, therefore, there was no question of imposing tax. Thereafter the Deputy Commissioner of Taxes issued the impugned notices directing the Petitioners to show cause as to why the assessment for the periods mentioned therein should not be revised to levy interest on the unpaid amount of lax, Hence the present petitions.

4. I have heard Dr. A.K. Saraf, learned Counsel appearing on behalf of the Petitioner and Dr. B.P. Todi, learned Government Advocate, Assam.

5. Dr. Saraf submits that interest can be levied when any amount is payable. In the present case, as per the decision of this Court no amount was payable. Therefore, the question of payment of interest did not arise. This was confirmed by the Apex Court.

6. Dr. Todi, on the other hand, submits before this Court that it is a fact that some amount was adjusted in view of the decision of this Court in the aforesaid Civil Rule which was later on confirmed by the Apex Court, but the amount paid was not within time. Dr. Todi further submits that the condition precedent for refund is payment made under the Central Sales Tax and only then the question of refund would arise under the State Act. Dr. Todi also submits that payment was not made under the Central Act within time and, therefore, for the period of delay the interest was leviable. Dr. Todi further submits that the payment was automatic by operation of law, Further the payment of tax was due under the Central Act, but the refund was available under the State Act. Therefore, it cannot be said that the amount was already with the Department. Dr. Todi further submits that tax was payable u/s 35(A) of the Assam Sales Tax Act. Dealer is to pay tax along with the return. In the judgment of this Court as well as of the Apex Court there was no reference that the interest was required to be paid. Dr. Todi also submits that the Superintendent of Taxes completely mis-interpreted the judgment of this Court as well as of the Supreme Court.

7. On the rival contentions of the parties it is now to be seen whether the action of the Deputy Commissioner of Taxes in initiating a suo motu proceeding can sustain in law.

8. Section 36(1) of the Assam General Sales Tax Act, 1993 provides for suo motu revision by the Commissioner. The admitted fact is that the payment was to be made under the Central Sales Tax Act. The amount illegally realised by the Department after the decision of this Court was with the Department. Therefore, money was with me department when the payment was to be made. Thus, payment cannot be said to be made after the due date inasmuch as the department had already money belonging to the Petitioner with it. Besides, the Commissioner or the Deputy Commissioner, as the case may be, can take a suo motu action only when he is satisfied that the decision of the officer subordinate to him was erroneous insofar as it was prejudicial to the interest of the revenue. The Superintendent of Taxes made the assessment strictly complying with the decision of this Court as well as of the Apex Court. Therefore in my view the Deputy Commissioner without following the procedure laid down u/s 36(1) of the Act suo motu initiated action. The order of the Deputy Commissioner also does not indicate why the order passed by the Superintendent of Taxes was

erroneous. It is true that the lax was to be paid under the Central Sales Tax Act and the reimbursement was available u/s 15 of the said Act. In view of the above, the submission of Dr. Todi has no force.

9. In view of the above, I allow the above Civil Rules setting aside the impugned notices. In the facts and circumstances of the case there will be no order as to costs.

