**(2017) 05 GAU CK 0021**

**In the Gauhati High Court**

**Case No :** 20 of 2014

Jai Kumar Shyam Sukha APPELLANT

Vs

The State of Assam & Others RESPONDENT

**Date of Decision :** 11-05-2017

**Acts Referred:**

<a href=>Uttar Pradesh Sales Tax Act, 1948</a>, Section 3AAAA -
Madras General Sales Tax Act, 1959, Section 7A -
<a href=921>Assam Value Added Tax Act, 2003</a>, <a href=921-10>Section 10</a>, <a href=921-12>Section 12</a>

**Citation :** (2017) 05 GAU CK 0021

**Hon'ble Judges :** Ajit Singh, Manojit Bhuyan

**Bench :** DIVISION BENCH

**Advocate :** A.K.Saraf, A Goel, K Choudhdury, P Baruah, Z Islam, D Saikia

**Final Decision :** Allowed

## Judgement

1. This revision is directed against the judgment dated 19.5.2014 passed by the Assam Board of Revenue, Guwahati whereby it has dismissed petitioner''s case No.58 STA 2010 and affirmed the orders as passed by Respondent No.2 - Superintendent of Taxes, Barpeta and Respondent No.3- Deputy Commissioner of Taxes (Appeals).

2. The petitioner is a registered dealer under the Assam Value Added Tax Act, 2003 ( in short "Act") with Respondent No.2. It carries on the business of ''supari'' amongst other goods.

3. The dispute regarding petitioner''s liability of tax is for the Assessment Year 2009-2010.

4. During the aforesaid assessment year, the petitioner purchased ''supari'' from various local dealers within the State of Assam which was subsequently dispatched outside the State of Assam by way of stock transfer. The petitioner on such stock transfer of ''supari'' did not pay any tax on the gross turnover of

purchase under Section 12 of the Act because on the sale price of ''supari'', tax was leviable under Section 10 of the Act. The petitioner submitted its return of turnover before Respondent No.2 as required under law. However, Respondent No.2, after verification of petitioner''s account, vide order dated 30.3.2010 levied tax under Section 12 of the Act on the purchase value of ''supari'' dispatched outside the State of Assam. Aggrieved, the petitioner preferred an appeal before Respondent No.3, but it was dismissed vide order dated 24.9.2010. The petitioner then filed another appeal before the Assam Board of Revenue but it too has been dismissed by the impugned order with a direction to levy interest on the outstanding demand for the entire period it remained stayed during the pendency of appeal. It is in this background, the petitioner has preferred the present revision petition.

5. The learned senior counsel for the petitioner has argued that the authorities below have completely misread the provisions of Section 12 of the Act in levying tax on the purchase value of ''supari'' dispatched outside the State of Assam. According to the learned senior counsel since the tax on ''supari'' was leviable under Section 10 of the Act on its sale price, the petitioner was not liable to pay tax under Section 12 of the Act. The learned Senior counsel has also argued that the authorities below have failed to appreciate the distinction between the ''leviable'' and ''payable''. In support of his submission, the learned senior counsel has relied upon the decision of Supreme Court rendered in Peekay Re-Rolling Mills (P) Limited vs. Assistant Commissioner (2007) 4 SCC 30. The learned Advocate General, Assam, on the other hand, has strongly defended the orders of assessment passed by the respondents against the petitioner. The learned Advocate General has also cited decisions of the Supreme Court in State of Tamil Nadu v. M.K.Kandaswami (1975) 4 SCC 745 and Hotel Balaji v. State of A.P., 1993 supp(4) SCC 536 and one decision of this High Court in Pawan Industries v. State of Assam (2013) 58 VST 281 (Gauhati).

6. Relevant extracts of Sections 10 and 12 of the Act read as under:-

10. Levy of tax on sales - (1) Every dealer, who is liable to pay tax for any year under section 7, shall pay output tax on his taxable turnover for such year, -

(a) In respect of goods specified in the Second, Third and Fifth Schedule, at every point of sale of such goods within the State, at the rate or rates specified therein;

(b) * * * *"

Second Schedule under Section 10 of the Act, as it stood at the relevant time, reads as under:-

"Second Schedule List of goods taxable at [5%]

[See Section 10(1)(a)]

Serial No. Description of goods Conditional and Exceptions

 

1 2 3

7. Arecanut powder, supari and betel nuts for conversion into supari.

* * * "

12. Levy of tax on purchases.- Every dealer who in the course of his business purchases any taxable goods from any person, in the circumstances in which no tax under section 10 is leviable on the sale price of such goods shall be liable to pay tax on the gross turnover of purchase of such goods, if after such purchase the goods are,-

(i) Used or disposed of in any manner other than by way of sale in the State, or

(ii) Consumed or used in the manufacture of tax free goods specified in the First Schedule; or

(iii) Consumed or used in the manufacture of taxable goods, and such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of inter-state trade and commerce or export out of the territory of India; or

(iv) Despatched to a place outside the State other than as a result of sale in the course of inter-state or commerce or export out of the territory of India,

And such tax shall be levied at the same rate at which tax under Section 10 would have been levied on the sale of such goods within the State on the date of such purchase.

7. A conjoint reading of the above quoted Sections 10 and 12 of the Act makes it clear that under Section 10 tax is leviable on ''supari'' and under Section 12 tax can be levied only when the purchase is made from any person in the circumstances, in which, no tax under Section 10 is leviable on the sale price on such taxable goods. Admittedly, when the petitioner purchased ''supari'', tax under Section 10 was leviable on its sale price. Therefore, the pre-condition for the applicability of Section 12 was wholly absent in the case at hand. And merely because the Department for some reason could not collect tax on the sale of ''supari'' under Section 10 would not mean absence of ''levy'' or ''liability'' conferring right to levy tax under Section 12. This we say so because the Supreme Court in Peekay Re-Rolling Mills (P) Limited vs. Assistant Commissioner (supra) has clearly held that ''collection'' and ''levy'' are distinct and that collection is not an essential facet of levy. According to the Supreme Court, collection of tax may sometimes be indicative of a lawful levy of tax, but it does not logically follow that absence of collection means an absence of liability. We are, therefore, of the view that the Taxation Authorities as well as Assam Board of Revenue did not interpret the provisions of Sections 10 and 12 in proper perspective.

8. In State of T.N. vs. M.K.Kandaswami (supra), the Supreme Court dealt with the interpretation and validity of Section 7-A of the Madras General Sales Tax

 

Act, 1959 wherein term ''payable'' is used whereas in Section 12 of the Act term ''leviable'' is mentioned. And the Supreme Court has elaborately distinguished both these terms in the above referred case of Peekay Re-Rolling Mills (P) Limited vs. Assistant Commissioner. In Hotel Balaji v. State of A.P. (supra), constitutional validity of Section 3-AAAA of the U.P. Sales Tax Act, 1948 was challenged, which has no relevance in the present case. Lastly, in the case of Pawan Industries v. State of Assam, the issue involved was whether levy of purchase tax on the purchase of by-product is valid and not the one in the case at hand. Therefore, all these cases relied upon by the learned Advocate General are distinguishable and do not help the State.

9. For these reasons, we quash the orders dated 30.3.2010 and 24.9.2010 passed by Respondent Nos. 2 and 3 respectively as well as the judgment dated 19.5.2014 passed by the Assam Board of Revenue.

10. The Revision is allowed with cost of Rs.1000/- payable to the petitioner.