**(2011) 03 GAU CK 0042**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No. 9384 of 2004

J.K. Industries Ltd. and Another — APPELLANT

Vs

State of Assam and Others — RESPONDENT

**Date of Decision :** 31-03-2011

**Acts Referred:**

Assam General Sales Tax Act, 1993 — Section 3(1), 44, 44(1), 44(3), 57

**Citation :** (2011) 3 GLR 642

**Hon'ble Judges :** Hrishikesh Roy, J

**Bench :** Single Bench

**Advocate :** A.K. Saraf, D. Barua, N. Hawelia and M. Gope, for the Appellant; Government Advocate Assam, for the Respondent

## Judgement

Hrishikesh Roy, J.—Heard Mr. K. Choudhury, learned Counsel appearing for the Petitioners. Mr. R. Dubey, learned standing counsel, represents the Revenue.

2. The Petitioners challenge the notice dated May 15, 2004 (annexure C) issued by the Inspector of Taxes u/s 44(1) of the Assam General Sales Tax Act, 1993 (hereinafter referred to as "the AGST Act"). By the impugned notice, Petitioner No. 2 was asked to produce the books of accounts of their business with effect from April 1, 2003 onwards. They also challenge the seizure list of the same date (annexure D) under Sub-section (3) of Section 44 of the AGST Act.

3. Petitioner No. 1 carries on the business of manufacture and sale of tyres and Petitioner No. 2 is the carrying and forwarding agent of the Petitioner No. 1. They supply tyres to the Indian Security Agencies and the present proceeding relates to the supply order(s) issued by the Chief Engineer (Projects), Dantak. The supply was made to the different locations of Bhutan but the precise destination was undisclosed for security consideration. The Petitioners have, inter alia, enclosed the communication made by the Chief Engineer of Project, Dantak to show that the supplies in question were made in a foreign country''s destination and therefore the transactions are exempt from sales tax, under the Assam General Sales Tax Act or the Central Sales Tax Act, 1956.

 

4. Mr. K. Choudhury, learned Counsel, refers to the provisions of Section 44(3) of the AGST Act to show that before any seizure is made, the concerned officer must have reason to suspect that the dealer is to evade payment of tax or has kept his account in a manner, which is likely to cause evasion of tax. On the basis of such reasoning which has to be recorded in writing, a seizure exercise can be undertaken in exercise of powers under Sub-section (3) of Section 44 of the AGST Act.

5. For ready reference, the provisions of Section 44(3) of the AGST Act is extracted herein below:

44. (3) If any authority appointed under Sub-section (1) of Section 3 has reason to suspect that any dealer is to evade the payment of any tax or any clearing or forwarding agent or a person transporting goods or any owner of a warehouse or a go down is keeping or has kept his accounting in such a manner as is likely to cause evasion of tax payable under this Act, such authority may for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer or the clearing or forwarding agent or the person transporting goods or the owner of a warehouse or go down as may be, necessary and shall grant a receipt for the same, such seized accounts, registers or documents shall be retained for so long as may be reasonably necessary for examination thereof or for a prosecution u/s 57 and shall thereafter be returned to the person concerned in the prescribed manner:

Provided that if the seized accounts, registers or documents are retained by any authority other than the Commissioner for more than one hundred and twenty days, the reasons for so doing shall be recorded in writing and the approval of the Commissioner shall be obtained by the authority so retaining them.

6. The Petitioners contend that seizure can''t be made without fulfilling the requirement of having a reason to suspect and also basing such suspicion on objective reasoning. The learned Counsel refers to the impugned seizure notice to show that no reason(s) are recorded by the concerned officer and therefore he contends that the exercise of seizure power was illegal and without jurisdiction.

7. As no counter-affidavit has been filed by the Revenue, Mr. R. Dubey, learned Counsel, orally submits that as the sales tax authorities suspected evasion of tax by the dealer, the seizure was made and since the dealer failed to produce papers to show the destination of the tyre consignment in a foreign country, proceeding under the AGST Act is justified.

8. The learned Counsel further submits that the authority suspected the transactions to be inter-State sales which are leviable to tax under the Central Sales Tax Act and therefore the State sales tax authorities were competent to issue the impugned notice.

9. Finally Mr. Dubey refers to the notification dated 21st September, 1993 under Memo of CTS-8/76/Pt/29 of the Commissioner of Taxes, Assam to show that the

power of the Commissioner exercisable u/s 44 of the AGST Act, has been delegated to the Inspector of Tax attached to the Bureau of Investigation (Economic Offences), Guwahati and as such he submits that the seizure was made by a duly authorized officer.

10. A reading of the notice dated May 15, 2004 of the Inspector of Taxes issued u/s 44(1) shows that no reason was recorded in the said notice and the dealer was merely asked to produce their books of accounts. Although reason(s) are not necessary to be recorded under Sub-section (1) of Section 44, but for exercise of seizure power under Sub-section (3), reason has to be recorded in writing, before seizure is made.

11. If the authorities actually believed that the dealer hadn''t exported the tyres to a foreign country and was involved in inter-State sale, such reason could have been easily disclosed in the seizure notice as it was preceded by a preliminary investigation by the Revenue authorities. But unfortunately the seizure notice does not disclose any reason and appears to be, mere re-production of the statutory provisions of Section 44(3) of the AGST Act.

12. A Division Bench of this Court in Civil Rule No. 878 of 1972 (Mercantile Stores and Agency Co. Pvt. Ltd. v. A. Rahman, Inspector of Taxes, Dibrugarh) while examining the purport of Section 44(3) of the AGST Act has laid down in its judgment dated April 1, 1975 that while exercising power of seizure u/s 44(3), the officer must have reason to suspect that the dealer is attempting to evade payment of tax and additionally reason for such suspicion, must also be recorded in writing. The court held that seizure of accounts, registers or documents of the dealer may be made only after recording in writing, the reasons of suspecting that the dealer is attempting to evade payment of tax under the AGST Act.

13. The Division Bench in the above judgment, relied upon the decision of the apex court in The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc., wherein the Supreme Court in paragraph 18 observed as follows (page 468 in 20 STC):

18. Next we come to Sub-section (3), which as we have already stated, is complementary to Sub-section (2). It provides in addition to the safeguards which have to be complied with when a search is made under Sub-section (2), that the officer may seize accounts, etc., if he has reason to suspect that any dealer is attempting to evade the payment of any tax, etc., due from him under the Act. It also provides that the officer has to record his reasons in writing and we are of opinion that these reasons have to be recorded before the accounts are seized...

14. Taking note of the Supreme Court decision, this Court in Mercantile Stores and Agency Co. Pvt. Ltd. v. A. Rahman, Inspector of Taxes, Dibrugarh Civil Rule No. 878 of 1972) recorded the following:

...

 

The legal position is very clear that before the seizure under Sub-section (3) of Section 44 is made, the officer concerned must have reasons to suspect that the dealer is attempting to evade payment of any tax under the Act and he must record such reasons in writing. First there must exist reasons to raise a suspicion in the mind of the officer concerned that the dealer is attempting to evade payment of any tax under the Act and secondly if he wants to seize any accounts, registers or documents of the dealer, he must record the reasons in writing therefore and then only he may seize the accounts, registers or documents of the dealer.

15. In this case, the seizure order merely reproduces the language of Sub-section (3) of Section 44 of the AGST Act, but does not record any objective reason for ordering the seizure. The necessity of recording reason is important as in that event, another authority can scrutinize as to whether the reasons are based on objective consideration. But in the present case reasons are conspicuous by their absence and supplementary reason(s) sought to be projected by the learned Counsel for the Revenue, can''t satisfy the legal requirement of recording reason(s), prior to making of the seizure.

16. For the foregoing reasons, it is held that the seizure made u/s 44(3) of the AGST Act doesn''t fulfil the requirement of Section 44(3) of the AGST Act and accordingly the impugned action can''t be sustained and the same are quashed. The consequential assessment made on the basis of the said seizure is also interfered with.

17. The petition stands allowed accordingly without any order of cost.