
(2009) 12 GAU CK 0002
In the Gauhati High Court
Case No : Writ Petition (C) No. 8080 of 2004

K.D.C. Bonded Warehouse (P.) Ltd.	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 18(1), 31(1), 36, 36(1), 37

Citation : (2011) 38 VST 111

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : B.P. Todi, A. Nath and A. Todi, for the Appellant; K.N. Choudhury, A.A.G. and R. Dubey, for the Respondent

Judgement

Hrishikesh Roy, J.—Heard Dr. B.P. Todi, learned senior counsel appearing for the writ Petitioner (Assessee). Also heard Mr. R. Dubey, learned Counsel representing the Respondents (Revenue).

2. The Assessee herein challenges the order dated February 7, 2004 passed by the Joint Commissioner of Taxes in purported exercise of suo motu power of revision conferred u/s 36(1) of the Assam General Sales Tax Act, 1993 (hereinafter referred to as, "the AGST Act"). By the impugned order the Appellate order dated April 11, 2003 has been quashed and fresh assessment has been ordered u/s 18(1) in lieu of Section 37(1) of the AGST Act.

3. For the year 1996-97, an assessment order was passed on June 24, 1998 by the Superintendent of Taxes. Subsequently a show-cause notice was issued to purportedly rectify the assessment u/s 31(1) of the AGST Act and by the rectification order dated January 16, 2001, the Superintendent of Taxes referred to a further verification exercise and the alleged failure of the Assessee to comply with the show-cause notice and ordered rectification of the assessment u/s 37(1) of the AGST Act in the manner indicated in the order.

4. The Assessee approached the Appellate authority to challenge the above order

by advancing various contentions and it was recorded by the Deputy Commissioner, Taxes (Appeals) that invoking the provisions of Section 37(1) was not at all warranted as there was no mistake of factual nature apparent from the records of the case. Accordingly the rectification order was set aside and the original assessment made on June 24, 1998 was restored. Pursuant thereto, the assessing authority passed an order on August 6, 2003 and assessed the Petitioner to taxes as recorded in the said order.

5. Thereafter a show-cause notice dated January 11, 2003 was issued with the intimation that the Appellate order passed in favour of the Assessee is erroneous and also prejudicial to the interest of the Revenue and accordingly the Assessee was asked to respond to the show-cause notice. The Assessee sought information as to the actual basis for considering the assessment as erroneous and prejudicial to the interest of the Revenue. But even without disclosing the factual foundation for making the allegation, in exercise of suo motu power of revision u/s 36(1), the impugned order dated February 7, 2004 has been passed, directing a fresh assessment for the year in question.

6. It is argued by Dr. B.P. Todi that rectification u/s 37(1) of the AGST Act can be ordered only to rectify an arithmetical mistake or mistakes of a factual nature apparent from the records and in the instant case the Appellate authority rightly held on August 27, 2002 (annexure 4) that there was no justification for passing of the rectification order by the Superintendent of Taxes on January 16, 2001, as the conditions precedent u/s 37(1) of the AGST Act were absent in the instant case. Accordingly the learned Counsel submits that the Appellate authority had rightly intervened in the matter by declaring that the exercise of powers u/s 37 of the AGST Act was wholly unauthorised by the statutory provisions.

7. It is also submitted on behalf of the Assessee that neither in the show-cause notice nor in the revisional order, it is disclosed as to how the assessment orders are erroneous and prejudicial to the interest of the Revenue and it is submitted that unless the factual basis for making the said allegation are made known and found established, there cannot be any justification for exercising the revisional power u/s 36(1) of the AGST Act.

8. It is specifically submitted that power of suo motu revision has to be sparingly exercised and not for correction of just any error. Only in cases of illegality, impropriety and or procedural irregularity, recourse to revisional power may be justified and in the present case the condition precedent being absent, the impugned process of suo motu revision and the revisional order are contended to be unauthorised by law.

9. On the other hand it is contended by Mr. R. Dubey, learned Counsel representing the Revenue, that for correction of a manifest illegality and impropriety in the assessment order, exercise of revisional power would always be justified and in the instant case it is submitted that the suo motu power has been invoked to correct a procedural illegality and to protect the interest of the

Revenue.

10. To deal with the rival contentions, it may be appropriate now to take note of some of the judgments cited on behalf of the Petitioner.

11. The decision in *Master Construction Co. (P.) Ltd. v. State of Orissa* reported in (1966) 17 STG 360 (SC) has been referred to, where the Supreme Court while examining a *pari materia* provision like Section 37(1) of the AGST Act, (Rule 83 of the Orissa Sales Tax Rules, 1947), indicated the scope of summary power of rectification.

12. The Supreme Court declared that jurisdiction under this rule is limited and is confined only to correction of mistakes or omissions mentioned in the provisions. An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. There is another qualification, namely, such an error shall be apparent on the face of the record, that is to say, it is not an error which depends for its discovery, elaborate arguments on question of facts or law.

13. It is further recorded in *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, that however widely the expression contained in the statute are construed, they cannot countenance a re-argument on merits on questions of fact or law, or permit a party to raise new arguments not earlier advanced at the first instance.

14. To explain the scope for exercise of revisional power under a taxing statute, the learned Counsel has referred to a decision of the Orissa High Court in *Rarvani Dal & Flour Mills v. Commissioner of Sales Tax, Orissa* reported in (1992) 86 STC 409, where the court indicated that to enable an effective opportunity to an Assessee to respond to a notice issued in exercise of suo motu power of revision, it must be disclosed in the show-cause notice as to the basis on which the action is proposed and the notice must indicate as to on what grounds, the order is considered erroneous in so far as it is prejudicial to the interest of the Revenue.

15. The decision in the case of *B.B. Astekar v. Commissioner of Commercial Taxes, Mysore* reported in (1967) 19 STC 462 (Mys) has also been relied upon by Dr. Todi to contend that revisional power can be exercised in a given case, only if it is found that the assessment order suffers from an illegality or impropriety or is a result of procedural irregularity.

16. The Madras High Court decision reported in (1994) 93 STC 42 in the case of *V. Ramasamy & Brothers v. State of Tamil Nadu* is also cited by the learned Counsel to contend that power of revision cannot be exercised in a routine or casual manner but only in special cases and cannot be invoked only for correction of an error in the process of assessment.

17. Having regard to the provisions of Section 37(1) of the AGST Act, I find from the order dated January 16, 2001 that rectification was resorted to after

initiating a process of further verification of the books of account of the Assessee. This certainly was not permissible as the mistake permitted to be corrected by law, apart from being a simple mistake, must be discernible from the face of the records and a verification exercise through show-cause notice is not contemplated by Section 37(1) of the AGST Act. Therefore having regard to the law laid down by the Supreme Court in Master Construction (1966) 17 STC 360, I am of the view that the Appellate authority rightly held that there was no justification for passing the error correction order by the Superintendent and exercise of powers u/s 37(1) was not justified.

18. On examination of the show-cause notice dated September 11, 2003 issued by the Commissioner, the basis for alleging that the assessment order is erroneous and prejudicial to the interest of the Revenue is not discernible to the court. In the revisional order also, apart from making a bald assertion that the assessment order was erroneous and prejudicial to the interest of the Revenue, nothing is indicated as to the basis for reaching such conclusion by the revisional authority. Accordingly, having regard to the scope and ambit of the provisions of Section 36 and also the decisions relied upon by the Assessee, I am of the view that in the present case, the exercise of suo motu revisional power by the Joint Commissioner was not supported by law.

19. In view of the above discussion, the Petitioner is held entitled to the relief sought in the writ petition and the same is accordingly granted. The impugned revisional order dated February 7, 2004 (annexure 8) is quashed and the earlier assessment order dated August 6, 2003 (annexure 5) passed by the Superintendent of Taxes, Revenue stands restored.

20. The writ petition is allowed accordingly.