(2004) 07 GAU CK 0018

In the Gauhati High Court

K.K. Sarma APPELLANT

Vs

Superintendent of Taxes and Others RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Citation : (2007) 7 VST 628

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Judgement

B.K. Sharma, J.—This writ application has been filed assailing the legality and validity of the assessment order dated March 11, 1994 passed by the Superintendent of Taxes, Guwahati Unit-A for the period ending from July 1, 1993 to February 28, 1994 under the Assam General Sales Tax Act, 1993 against the petitioner.

2. According to the averment made in the writ petition the petitioner is connected in the business of purchase and sale of lottery tickets which are taxable under the said Act. The respondent No. 1 issued a notice dated November 30, 1993 requiring the petitioner to show cause against non-submission of monthly statement of turnover with payment of due taxes under the provisions of the said Act. The petitioner was directed to show cause in writing by appearing in person on December 4, 1993 as to why penal action should not be taken as per the provisions of the Act. According to the petitioner the notice was received by his representative as he was out of station and accordingly he could not appear on December 4, 1993. However, he appeared before respondent No. 1 on November 30, 1993 and ascertained in writing that he would file the pending returns with full payment of due taxes. He deposited taxes amounting to Rs. 7,200 for the period from July 1, 1993 to December 31, 1993 on January 4, 1994.

3 The Inspector of Taxes of the Guwahati Unit-A attached to respondent No. 1, visited the premises of the petitioner on March 10, 1994. According to the petitioner he was not present at that time, the representative of the petitioner

was asked to produce the monthly/quarterly statement of turnover as proof of payment of taxes. Same was produced by the representative of the petitioner in respect of payment of tax up to the quarter ending December 31, 1993. It is the stand of the petitioner that it was stated before the Inspector of Taxes that the admitted taxes have been paid in full and the quarterly statement of return up to December 31, 1993 would be submitted on the following day, i.e., March 11, 1994. The Inspector of Taxes issued notice dated March 10, 1994 u/s 44(1) of the Act on the spot directing the petitioner to produce the other account, purchase voucher, sales memos and other documents for his verification then and there itself on the same date at 2.30 p.m. for the purpose of computation of the tax involved. However, the representative of the petitioner expressed his inability to produce the same in the absence of the petitioner.

4 It is the further stand in the petition that the petitioner submitted quarterly statement of turnover in the prescribed form for the quarter ending September 30, 1993 and December 31, 1993 on March 11, 1994. The statement of sales in respect of the said period was also submitted on the same date by letter dated March 11, 1994. The total sales and taxes paid as per the said return was Rs. 7,193. The respondent No. 1 passed an order of assessment dated March 11, 1994 determining the alleged total sale proceeds of the periods July 1, 1993 to February 28, 1994 at Rs. 10,00,000 which according to the petitioner would grossly showing "I" on mere estimate in consideration of the report dated March 10, 1994 as indicated in the assessment order.

5 It is the legality and validity of the said assessment order dated March 10, 1994 which is under challenge in this writ petition. I have heard Mr. G.K. Joshi, learned Senior Counsel appearing for the petitioner and Mr. B.J. Talukdar, learned State counsel. Mr. Joshi submits that on the very same day the impugned assessment order dated March 11, 1994 was passed by the Superintendent of Taxes, Guwahati Unit-A, the petitioner had submitted return sale statement. However, the said authority without taking into account the said return passed impugned order dated March 11, 1994. He further submits while passing the impugned order the said authority took into account the report submitted by the Inspector of Taxes dated March 10, 1994 estimating the monthly sale of the petitioner. Mr. B.J. Talukdar, learned State counsel, on the other hand, submits that there being statutory remedy by way of appeal against the order of assessment, writ petition is not maintainable. He further submits that there is nothing wrong on the assessment order dated March 11, 1994 as narrated in the writ petition. He further submits that the Superintendent of Taxes was within his competence and jurisdiction to take note of the report submitted by the Inspector of Taxes.

6. I have considered the rival submissions made by the learned Counsel for the parties and I have perused the materials on record. There is no dispute that on the date of passing the impugned order dated March 11, 1994 the petitioner submitted his returns of sale statement. However, same was not taken into

consideration while passing the said order. The authority who passed the impugned assessment order on March 11, 1994 also took into account the purported report submitted by the Inspector of Taxes dated March 10, 1994 by which the monthly sale of the petitioner was purportedly estimated. However, the petitioner was not provided with any copy of the said report but the same was taken into account by the Superintendent of Taxes behind the back of the petitioner. Thus, on both count, i.e., (1) non-consideration of the returns submitted by the petitioner along with the sale statement and (2) consideration of the report of the Inspector of Taxes without furnishing the copy of the same to the petitioner, in my considered opinion, the impugned assessment order dated March 11, 1994 is not sustainable.

7. In such a situation this court is left with no option than to set aside the impugned assessment order dated March 11, 1994 and consequential action and payment of tax. The Superintendent of Taxes, Guwahati Unit-A to take fresh decision on the basis of the available materials on record by giving adequate opportunity to the petitioner in the matter. This shall be done within a period of 3 months from the date of furnishing the certified copy of this order by the petitioner to the said authority.

8. Writ petition stands allowed to the extent indicated above.

