(2003) 08 GAU CK 0001

In the Gauhati High Court

K.N. Traders and Another — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 11 VST 232

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—Heard Mr. G.K. Joshi, learned Senior Counsel for the petitioner and Mr. K.C. Mahanta, learned Additional Senior Government Advocate for the respondent-State.

In this application under Article 226 of the Constitution, the petitioner has challenged the suo motu order of revision passed by the Deputy Commissioner of Taxes, Tinsukia Zone, Tinsukia, u/s 36(1) of the Assam General Sales Tax Act, 1993 vide order dated October 30, 1995.

2. The petitioner is a registered dealer under the Act and he filed his return for the period September 30, 1990 and March 31, 1991 whereupon the Superintendent of Taxes, Tinsukia, made the assessment. Subsequently the suo motu revision was initiated and the orders of assessment were set aside and as per the order passed by the revisional authority, fresh assessments were completed and demands were raised. The petitioner has challenged the order passed by the Deputy Commissioner of Taxes, Tinsukia, on suo motu revision as well as the fresh assessment orders passed by the concerned authority.

3. The law regarding entertainment of suo motu revision u/s 36(1) of the Act has been laid down in a catena of decisions wherein it is held that the revisional authority can revise the order if it is erroneous and prejudicial to the interest of the State. The grievance of the petitioner is that the original assessments are not

prejudicial to the interest of revenue of the State since there is no evasion of taxes and the revisional authority passed the impugned order without considering the documents produced by the petitioner. In a recent case of Santalal Mehendi Ratta (HUF) v. Commissioner of Taxes reported in [2006] 143 STC 511 : [2002] 1 GLR 197, this Court held that suo motu revision cannot be entertained unless the authority comes to a finding that there are jurisdictional errors on the part of the assessing authority. In the present case, there is no allegation, from the respondent side that the assessing authority has no jurisdiction to pass the impugned order.

4. The facts leading to the present writ petition are within the short compass. The case of the petitioner is that they purchased the tea from Padmadhar Tea Co., and the said tea was sent to the Gauhati Tea Auction Center for sale therein through Tea Brokers (P) Ltd., and the sale was completed by them. There is no dispute at the Bar that the tea sold was valued at Rs. 5,51,852 and Rs. 9,74,488 for the two periods ending September 30, 1990 and March 31, 1991. The petitioner claims that he purchased the above tea on submission of "D" forms.

5. The entire dispute arose because of the fact that in the broker''s certificate the name of the petitioner was not recorded and it was issued in the name of Padmadhar Tea Co., from whom the petitioner purchased the tea. It is submitted that the above tea was sold in tea auction center by the petitioner and the matter was brought to the notice of the concerned authority. However, notice was issued to the petitioner and the petitioner subsequently got the broker''s certificate corrected in their name but the revisional authority did not consider the same and under the suspicion passed the impugned order.

6. In this case, there is no finding by the revisional authority that the sale through Tea Broker''s (P) Ltd., was in respect of the tea which was not purchased by the petitioner-firm from Padmadhar Tea Co. It is submitted that the tea was purchased by the petitioner from the above Tea Co., and the petitioner being the owner received the sale price through the Tea Brokers (P) Ltd. It is, therefore, submitted that there is no loss of revenue to the State and there cannot be two different sales in respect of single consignment. The petitioner has also obtained fresh certificate from the Tea Brokers (P) Ltd., issued in their name.

7. On perusal of the records, we find that the revisional authority acted on mere suspicion without making any enquiry into the matter and came to a finding resulting in alleged evasion of taxes by the petitioner which was considered prejudicial to the interest of the State. The suo motu revision cannot be allowed to be entertained on mere suspicion. We, therefore, allow this writ petition and set aside the order passed by the Deputy Commissioner of Taxes, Tinsukia, and subsequent order of reassessment dated August 3, 1996 made by the assessing authority. The matter is remitted back to the Deputy Commissioner of Taxes, Tinsukia Zone, Tinsukia, to make fresh enquiry and consider the documents produced by the petitioner-firm after granting opportunity of hearing to the petitioner. Further, the Deputy Commissioner of Taxes shall find out whether the

tea sold by the Tea Brokers (P) Ltd., for the above periods belong to the petitioner and whether there is evasion of taxes on the part of the petitioner.

