(2005) 08 GAU CK 0063

In the Gauhati High Court

Md. Kalim APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:
Central Sales Tax Act, 1956 — Section 9

Citation : (2007) 8 VST 689

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Heard Mr. M.U. Mahmud, learned Counsel for the petitioner and Mr. K.N. Choudhury, learned Additional Advocate-General, Assam, appearing for the State.

2. Two separate orders of assessment dated March 31,1999 determining the liability of the petitioner to tax under the provisions of the Central Sales Tax Act, 1956 and also under the Assam General Sales Tax Act, 1993, is the subject-matter of challenge in the present writ petition. By the aforesaid assessment orders the petitioner-assessee has been found to be liable to payment of tax under the Central Sales Tax Act as well as Assam General Sales Tax Act on the transactions relating to the sale of hides and skins. The assessments in question were completed u/s 17(6) of the Assam General Sales Tax Act, 1993 read with Section 9(2) of the Central Sales Tax Act, 1956 and Section 17(5) of the Assam General Sales Tax Act, respectively.

3. Mr. Mahmud, learned Counsel for the petitioner, in support of the challenge made has submitted that the assessments in question were ex parte assessments and no notice on the petitioner-assessee to file his returns was received by him. Learned Counsel for the petitioner has also denied the transactions for which the petitioner has been made liable and on that basis has contended that the liability sought to be fastened on the petitioner-assessee by

means of the assessment orders is not tenable in law. It is further argued by the learned Counsel for the petitioner that the petitioner had filed an application dated September 6, 1999 for review of the assessment orders and that the said application not having been disposed of by orders passed, the authority is liable to be directed to pass necessary orders on the said prayer of the petitioner. It must also be noticed at this stage that in the writ petition filed, the petitioner by reciting certain antecedent facts had sought to attribute certain ill-motives and mala fide intention on the part of the respondents in making the order of assessments. Not only are the said facts disputed by the respondents in the affidavit filed; the same have not been pressed at the hearing so as to require the court to go into the same.

4. Opposing the contentions advanced on behalf of the petitioner-assessee, Mr. K.N. Choudhury, learned Additional Advocate-General, has placed before the court the counter-affidavit filed by the respondents as well as the records in original to show that the assessments in question were completed on the basis of the best judgment of the assessing officer made on the basis of the report of the Inspector of Taxes submitted with regard to transactions in question which report, in turn was, filed on the basis of entries made in the check-post through which the goods had passed. Mr. Choudhury, learned Additional Advocate-General, has also placed before the court the records in original to contend that three notices dated December 13, 1996, June 27, 1997 and August 5, 1996 were sent to the petitioner-assessee requiring him to file return(s). The petitioner received the notice dated December 13, 1996 and according to the respondents, he had evaded service of the two other notices sent to him. Even after receipt of the notice dated December 13, 1996 the petitioner did not submit any return and in these circumstances, the authority had no option but to proceed to complete the assessments under the relevant provisions of the Act.

5. The rival contentions advanced on behalf of the parties had received the due consideration of the court. That the notice dated December 13, 1996 calling upon the petitioner-assessee to file his return for the period in question, i.e., for the assessment year 1995-96 was received by him is amply borne out by the records. That the petitioner-assessee did not file any return and instead voluntarily deposited a sum of Rs. 5,700 on account of tax payable is also borne out by the records. In a situation where the petitioner-assessee had failed to file his return(s), it was open to the assessing officer to proceed and complete the assessment according to his best judgment. The aforesaid course of action authorised under the provisions of Section 17(5) of the Assam General Sales Tax Act, 1993 was adopted by the assessing officer and in doing so the assessing officer also relied on the report of the Inspector of Taxes with regard to the transactions in question for which the petitioner has been made liable. The said report which is available in the records produced would indicate that the same was submitted on the basis of materials collected from the inter-State check-post.

6. In such circumstances, the assessments made can hardly be faulted with. It

must be recorded at this stage that this Court had proceeded to consider the orders of assessment on merit and recorded its findings as above notwithstanding a preliminary objection raised on behalf of the Revenue that the writ petition would not be maintainable as the petitioner had a remedy by way of an appeal open to him. As the writ petition was admitted as far back as in the year 1999 and had remained pending for a period of 6 years, the court had considered it proper to adjudicate the matter on merit instead of relegating the petitioner-assessee to the appellate forum at this belated stage.

7. The argument advanced on behalf of the petitioner that he had filed an application for review of the order of assessment by means of the representation enclosed as annexure 6 to the writ petition and that no orders on such prayer for review has been passed, which entitles him to a direction from the court for passing of necessary orders on the prayer for review, cannot find acceptance of the court inasmuch as the aforesaid contention advanced at the hearing runs contrary to the tenor of the pleadings made in the writ petition.

8. For all the aforesaid reasons, I do not find any merit in this writ petition. It is accordingly dismissed.

9. The interim order passed earlier is vacated.