

**(2018) 04 GAU CK 0078**  
**In the Gauhati High Court**  
**Case No : WP(C) 239 of 2018**

|                                   |    |            |
|-----------------------------------|----|------------|
| M/S INDUSTRIAL TRADE AND AGENCIES | Vs | APPELLANT  |
| THE STATE OF ASSAM                |    | RESPONDENT |

---

**Date of Decision :** 12-04-2018

**Acts Referred:**

Assam Value Added Tax Act, 2003 — Section 4, 75(6), 79, 80, 81  
Assam Goods and Services Tax Act, 2017 — Section 174, 174(2)(f)  
Andhra Pradesh Value Added Tax Act, 2005 — Section 80(3)  
Andhra Pradesh General Clauses Act, 1891 — Section 8  
General Clauses Act, 1897 — Section 6  
Assam General Clauses Act, 1915 — Section 26

**Citation :** (2018) 04 GAU CK 0078

**Hon'ble Judges :** ACHINTYA MALLA BUJOR BARUA

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

1. Heard Mr. OP Bhati, learned counsel for the petitioner. Also heard Mr. D Saikia, learned Senior Additional Advocate General, Assam assisted by

Mr. B Gogoi, learned Standing counsel, Finance Department.

2. The petitioner, a partnership firm, having its principal place of business at A.T. Road Guwahati was registered as a registered dealer under the

Assam Value Added Tax Act, 2003 (for short, AVAT Act of 2003) as well as the Central Sales Tax of 1956 (for short, CST Act of 1956). In course

of their business, the petitioner carried a consignment of electrodes through Truck No.MP17HH2994 dispatched by M/s. Esab India Ltd., Nagpur

against Tax Invoice No.301303765 dated 21.03.2014 which was valued at Rs.13,96,684/-. The said vehicle was subjected to verification of documents

by the Boxirhat Check Post in the first week of April, 2014. Thereafter, a show cause notice dated 07.04.2014 was issued against the petitioner under

Section 75(6) of the AVAT Act of 2003. Accordingly, in terms of the proceeding drawn up, a tax liability Rs.69,834/- was determined @ 5% of VAT

with a penalty of 3 times thereof, totaling to Rs.2,79,336/-. Against the said determination, an appeal under Section 79 of the AVAT Act of 2003 was

preferred which was dismissed by the order dated 26.02.2015. Against the order of 26.02.2015, a further appeal under Section 80 of the AVAT Act

of 2003 was preferred before the Assam Board of Revenue which was numbered as Case No.21 STA/2015. The said appeal was dismissed by the

Assam Board of Revenue by its judgment and order dated 08.08.2017.

3. In this writ petition, the order of the Assam Board of Revenue dated 08.08.2017 along with the earlier orders of 17.04.2015 of the Superintendent of

Taxes, Boxirhat and the dated 26.02.2015 of the Deputy Commissioner of Taxes (Appeal), Guwahati are assailed.

4. Mr. D Saikia, learned Senior Additional Advocate General for the State of Assam has raised a preliminary objection on the maintainability of the

writ petition. By referring to Section 81 of the AVAT Act of 2003 it is submitted that against the decision of the Appellate Tribunal, a revision is

maintainable before the High Court and, accordingly, as a statutory revision is provided, therefore, this writ petition does not lie.

5. Mr. Saikia, also refers to Section 4 of the AVAT Act of 2003, which, inter alia, provides that the Government shall by notification w.e.f., the date

specified therein constitute an appellate tribunal to exercise the power conferred on the Tribunal by or under the AVAT Act of 2003. It is stated that

by an appropriate notification the Assam Board of Revenue has been designated as the Appellate Tribunal for the purpose of AVAT Act, 2003.

Accordingly, the judgment and order dated 08.08.2017 of the Assam Board of Revenue has to be construed to be a Judgment and Order by the

Appellate Tribunal under Section 80 of the AVAT Act, 2003. Therefore, as the said Judgment and Order dated 08.08.2017 is a judgment by the

Appellate Tribunal under the provision of Section 81 of the AVAT, Act of 2003, a statutory revision is maintainable to the High Court. Accordingly, as

a statutory alternative remedy in the form of revision is applicable, therefore, a writ petition against the said Judgment and Order is not maintainable.

6. Mr. OP Bhati, learned counsel for the petitioner by relying upon Section 174 of the Assam Goods and Services Tax Act, 2017 (for short, the AGST

Act of 2017) submits that under Section 174 (2)(f) thereof, only a proceeding initiated and surviving under the AVAT Act, 2003 is saved under

Section 174 (2)(f).

7. Mr. Bhati, learned counsel contends that in the instant case, the proceeding initiated against the petitioner came to an end after the Judgment and

order dated 08.08.2017 of the Assam Board of Revenue in Case No.21 STA/2015, and, therefore, as the proceeding initiated came to an end and is

not surviving as on date, therefore, there is no further requirement of preferring a revision under Section 81 of the AVAT Act of 2003. By further

referring to Section 174 (2)(f) of the AGST Act of 2017, Mr. Bhati has stated that the petitioner has not instituted any proceeding and, therefore, the

earlier proceeding resulting in the order dated 08.08.2017 does not survive any further in order to invoke Section 81 of the AVAT, 2003.

8. Per contra, Mr. D Saikia, learned Senior Additional Advocate General Assam for the State of Assam relies upon the decision of the Honâ??ble

Supreme Court rendered in Gammon India Ltd. Vs. Special Chief Secretary and Others reported in (2006) 3 SCC 354 wherein in a similar

circumstance as to whether a proceeding initiated under the Andhra Pradesh General Sales Tax Act came to an end or whether the same remains

unaffected by virtue of the repeal and saving clauses under Section 80(3) of the Andhra Pradesh VAT Act as well as under Section 8 of the Andhra

Pradesh General Clauses Act, 1891, the Honâ??ble Supreme Court by discussing the various laws on the subject and also by referring to the

interpretation of statute as contained in Francis Bennionâ??s Statutory Interpretation (2nd Edition), as well as Justice GP Singhâ??s Principles of

Statutory Interpretation, 2006 edition, arrived at a conclusion that whenever there is a repeal of an enactment and simultaneous re-enactment, the re-

enactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus re-enacted continue to remain in force

uninterruptedly unless the re-enacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act.

9. In paragraph 51, 52 & 53 of the said judgment and order in Gammon India Ltd., it has been held as such:-

51. The Court examined the ambit and scope of Section 6 of the General Clauses Act, 1897 in Tulloch's case. According to the ratio of the said

judgment, the principal underlying Section 6 of the General Clauses Act, 1897 is that every later enactment which supersedes an earlier one or puts an

end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment

unless there were sufficient indications expressed or implied in the later enactment designed to completely obliterate the earlier state of the law.

52. In view of the interpretation what follows is absolutely clear that unless a different intention appears in the repealing Act, any legal proceeding can

be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words,

whenever there is a repeal of an enactment the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section

itself says, a different intention appears in the repealing statute.

53. In case the repeal is followed by fresh legislation on the same subject the court has to look to the provisions of the new Act for the purpose of

determining whether they indicate a different intention. The question is not whether the new Act expressly keeps alive old rights and liabilities but

whether it manifests an intention to destroy them. In paragraph 73, it has been concluded as follows:-

73. On critical analysis and scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there is a

repeal of an enactment and simultaneous reenactment, the reenactment is to be considered as reaffirmation of the old law and provisions of the

repealed Act which are thus reenacted continue in force uninterruptedly unless, the reenacted enactment manifests an intention incompatible with or

contrary to the provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration of the relevant provisions of the

reenacted enactment and the mere absence of saving clause is, by itself, not material for consideration of all the relevant provisions of the new

enactment. In other words, a clear legislative intention of the reenacted enactment has to be inferred and gathered whether it intended to preserve all

the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether.

10. Further in Commissioner of Income Tax, UP â€"Vs- M/s Shah Sadiq and Sons reported in (1987) 3 SCC 516 in paragraph 14 and 15 it has been

held as under:-

14. Under the Income Tax Act of 1922, the assessee was entitled to carry forward the losses of the speculation business and set off such losses

against profits made from that business in future years. The right of carrying forward and set off accrued to the assessee under the Act of 1922. A

right which had accrued and had become vested continued to be capable of being enforced notwithstanding the repeal of the statute under which that

right accrued unless the repealing statute took away such right expressly or by necessary implication. This is the effect of section 6 of the General

Clauses Act, 1897.

15. In this case the 'savings' provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute

under which such rights had accrued. In other words, whatever rights are expressly saved by the 'savings' provision stand saved. But, that does not

mean that rights which are not saved by the 'savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute

repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind section

6(c) of the General Clauses Act, 1897. The right to carry forward losses which had accrued under the repealed Income-tax Act of 1922 is not saved

expressly by section 297 of the Income-tax Act, 1961. But, it is not necessary to save a right expressly in order to keep it alive after the repeal of the

Old Act of 1922. Section 6(c) saves accrued rights unless they are taken away by the repealing statute. We do not find any such taking away of the

rights by section 297 either expressly or by implication.

11. In *State of Assam v. Assam Tea Co. Ltd* reported in (1970) 2 SCC 817 in paragraph 3 it has been held as under:-

“(3) It is unnecessary to consider whether, as suggested by counsel for the State of Assam, by virtue of sec. 336 (3) once a notification u/s. 4 of

the Act of 1923 was issued, for all purposes a Town Committee became a municipality and on that account the notification continued to remain in

operation. In our judgment, under the provisions of the Assam General Clauses Act, 1915, sec. 26 saves the notification in question. Section 26

provides, inter alia:

Where any enactment is repealed and re-enacted with or without modification,

then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or, by-law, made or issued under the repealed enactment, shall so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enactedâ??.

There is no express provision in the Act 15 of 1957 which supersedes the notification issued in 1951 under the Act of 1923, nor is the continuance of the notification inconsistent with any provision in the new Act. The notification must, therefore, be deemed to have remained in force and the State

Government was competent in exercise of the power conferred upon it by sec. 4 of Act 15 of 1957 to include within the area of Town Committee any local area contiguous to the same.â??

12. In State of Kerala â?"Vs- N. Sami Iyer reported in AIR 1966 SC 1415 in paragraph 10 it has been held as under:-

10. The next question that arises 18 whether Act 12 of 1957 manifests a different intention. As observed by this court In State of Punjab V/s. Mohar

Singh, 1955 SCR 893: ( (S) AIR 1955 SC 84) ""when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look

to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be not

whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them"". We cannot discern any

intention in Act 12 of 1957 to destroy the rights and Liabilities acquired or incurred under the Madras General Sales Tax Act. The second schedule

reproduced above shows that the intention was to preserve old rights such as registration and licences issued under the old Act. In our opinion, if the

Legislature had the intention to override the right attached to the liability u/s. 3(5) of the Madras General Sales Tax Act, it would have used more clear

and precise words.

13. Further in State of Haryana & Ors., â?"Vs- Hindustan Construction Co. Ltd reported in (2017) 9 SCC 463 in paragraph-11 it has been held as under:-

â??11. The legislature, in its wisdom having noticed the limitation and constraints under Section 61 of the 2003 Act, made necessary amendments to

the same by Act 3 of 2010 on 02.04.2010. Any interpretation saving the

revisional power under Section 40 of the 1973 Act, without any proceedings pending on the relevant date, by resort to Section 4 of the Punjab General Clauses Act, 1858 would render the amendment redundant, and an exercise in futility, something which the legislature never intended to do. Such an incongruous interpretation leading to absurdity has to be avoided.â??

14. From the above propositions of law as regards the savings of a provision of a repealed Act what is discernible is that

i. when the repeal and saving provision in the later enactment specifically provides that all such proceedings shall continue as if the repealed

enactment is still in force, in such event the proceedings so initiated under the repealed enactment would continue to survive and the same be brought

to its logical end by following and subjecting it to all such procedures like appeal, revision, etc., as provided in the repealed enactment.

ii. In the event, such repeal and saving provision in the later enactment is not provided, Section 6 of the General Clauses Act, 1897 would prevail and

in respect of the State of Assam, the provisions of Section 26 of the Assam General Clauses Act, 1915 would also be applicable and all such rights

and liabilities that may have accrued to either of the parties shall continue as if the repealed enactment is still in force and there is no such repeal by

the later enactment.

iii. Unless a different intention appears and there are sufficient indications, either express or implied, in the later enactment designed to completely

obliterate the earlier state of the law, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as

if that Act was in force at the time of the repeal. Any right which have accrued under the repealed Act are saved unless they are expressly taken

away by the later enactment.

iv. Any proceeding which is pending as on the date on which the later enactment came into effect would be saved and be continued to its logical end

upto the stage of appeal or revision as may be provided in the repealed Act, meaning thereby that even if the original proceeding may have come to an

end, but the same can still be carried forward at the instance of either of the parties to the stage of either appeal or revision as may be provided in the

repealed enactment.

15. It is also the settled law that an appeal or a revision is generally considered

to be a continuation of the original suit or proceeding.

16. In the instant case as noticed, the proceeding against the petitioner was initiated by the show cause notice dated 07.04.2014, whereas, the later

enactment being the AGST Act of 2017 came into effect on and from 01.01.2017. Therefore, it is to be concluded that on the date on which the AGST

Act of 2017 came into effect, the proceeding initiated against the petitioner was in place and therefore, such proceeding is saved under Section 174(2)

(f) of the later enactment being the AGST Act of 2017. In the instant case, it is noticed that Section 174 2(f) of the AGST Act of 2017 clearly

provides that on and from the date of commencement of the AGST Act of 2017, amongst others, the AVAT Act of 2003 stood repealed and the

repeal of the said Act shall not affect any proceeding including that relating to an appeal, revision, review or reference instituted before or after the

appointed date which shall be continued under the said amended/repealed Act as if the AGST Act of 2017 had not come into force.

17. In view of the clear provision of Section 174 2(f), a proceeding that was initiated against the petitioner by the Superintendent of Taxes at Boxirhat

Check post, continues to remain under the AVAT Act of 2003 up to the point where the Assam Board of Revenue being the Appellate Tribunal had

given its final consideration. In the event, the petitioner desires the proceeding can be further continued by preferring a revision under Section 81 of

the AVAT Act of 2003 or in the event, the petitioner does not desire to do so, the same comes to an end by attaining finality.

18. In the aforesaid circumstances, the contention of Mr. Bhati, learned counsel for the petitioner that as the writ petitioner had not initiated any

further proceeding, therefore, the proceeding came to an end and as such a revision is not maintainable, cannot be accepted.

19. Mr. Bhati in order to substantiate his submission refers to Paragraph 10 of the pronouncement of the Honâ??ble Supreme Court rendered in

State of Jharkhand and Another Vs. Govind Singh reported in (2005) 10 SCC 437 wherein it is held that when the words of a statute are clear, plain or

unambiguous i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of

consequences. The purport of the above decision relied upon by Mr. Bhati is that words when clear and unambiguous must be given effect in the

same manner as it depicts. In the instant case, the language of Section 174 2(f) is unambiguous and clear that the repeal of the AVAT Act, 2003 by

the AGST Act of 2017 will not effect any proceeding that was initiated under the earlier Act.

20. Mr. Bhati also relies upon a further Judgment of the Honâ??ble Supreme Court rendered in State of Haryana and Others Vs. Hindustan

Construction Company Ltd. reported in (2017) 9 SCC 463 wherein it is held that a show cause notice dated 07.06.2004 was held to be unsustainable,

inasmuch as, the Act under which the same was issued was repealed on 01.04.2003. In the present case, the proceeding against the petitioner having

been initiated under the AVAT Act of 2003, when the same was still in existence, therefore, the proceeding is saved and continues as if the AVAT

Act of 2003 was not repealed. It is distinguishable from the said Judgment of the Honâ??ble Supreme Court to the extent that in the instant case a

proceeding was initiated before the repeal of the AVAT Act of 2003, whereas in the case before the Honâ??ble Supreme Court, the show cause

notice was issued after the repeal of the concerned Act.

21. At the same time, if it is to be construed that the proceeding initiated against the petitioner came to an end and, therefore, the present writ petition

is maintainable, it is noticed that the present writ petition is also against the various orders passed in the proceeding against the petitioner and the law

having provided for a specific statutory remedy against such orders passed, a writ petition cannot be held to be maintainable against the same.

22. In terms of the above, this writ petition being devoid of merit is dismissed.