(2016) 02 GAU CK 0016

In the Gauhati High Court

Case No : W.P.(C) No. 3034 of 2008

Mukesh Carriers (M/S) and Another APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:
Assam General Sales Tax Act, 1993 — Section 46(15)(a)(d)

Citation : (2016) 3 GauLJ 189 : (2016) 3 GauLR 468 : (2016) 2 GauLT 752

Hon'ble Judges : Hrishikesh Roy;L.S. Jamir, JJ.

Bench : Division Bench

Advocate : S. Saikia, SC, Finance, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J. - Heard Mr. R.K. Joshi, the learned Counsel appearing for the petitioners. The respondents are represented by Mr. S. Saikia, the learned Standing Counsel for the Finance (Taxation) Department.

2. The petitioners assail the order dated 26.2.2008 (Annexure-XI), passed by the respondent No. 3, affirming the assessment orders dated 20.5.2004 and the other one dated 3.9.2004 respectively. The matter, involves the application of Sub-Section 15(d) of Section 46 of the Assam General Sales Tax Act, 1993 (hereinafter referred to as "the AGST Act") relating to the circumstances for drawing deemed sale presumption when the assessee fails to surrender the Transit Pass (T.P) duly endorsed by the Exit Check Gate, within 30 days of the first endorsement at the entry check gate of Assam,. The determination of this issue also involves interpretation of the law laid down in Sodhi Transport Company v. State of U.P. reported in (1986) 62 STC 381.

3. The petitioner is a transporter engaged in the business of carrying Maruti vehicles from the Gurgaon factory to different destinations including the State of Meghalaya. The tailor truck with the loaded Maruti vehicles travelled to Meghalaya through Assam and at the check gate at Srirampur of Assam border,

the trailer driver obtained the T.P from the Superintendent of Taxes (respondent No. 2), under Section 46(15)(a) of the AGST Act. Such T.P. is required to be surrendered at the entry check post within a month of issue, after getting the T.P. endorsed at the State''s exit check post, to prove the exit of the vehicle beyond Assam, as is required under Section 46(15)(a) of the AGST Act. In case of failure to surrender the T.P. within 30 days, legal presumption is drawn under Section 46(15)(a) that the goods were sold within the State of Assam and on that basis, assessment to tax can be made by the authorities.

4. In the present case, the consignment of 10 Maruti vehicles were loaded on the transporters trailer (registration No. HR-0805) from the Gurgaon factory under the consignment Note No. 8215 dated 5.11.2003 for being delivered to the consignee i.e. M/s Rani Motors, who are the authorised dealers of Maruti vehicles at Shillong. The trailer reached the Damra Check Post at the Assam border and the Superintendent of Taxes issued the T.P. bearing No. 0325621 dated 12.11.2003 to the transporter. After obtaining the T.P., the trailer travelled through and exited Assam through the Khanapara Check Post without securing the required endorsement on the T.P., from the officials of the exit check gate. The petitioner''s explanation for absence of endorsement is non-availability of anyone at the late night hours and the reluctance of the trailer driver to wait at the check post, as he feared for his personal safety on account of the prevalent communal tension in the area. Thus the trailer proceeded towards Byrnihat gate on the Meghalaya State''s border during the late night hours itself and the petitioners claim that when the trailer crossed the taxation check gate at Byrnihat, necessary entries on the movement of the trailer with the consignment of Maruti vehicles was made by the office of the Superintendent of Taxes at the Byrnihat check gate of Meghalaya. According to the petitioner, the consignment of Maruti vehicles were delivered to the consignee at Shillong but in the absence of any endorsement of the T.P., at the Assam border''s exit check gate, the same could not be furnished to the authorities at the entry check gate at Damra in Assam.

5. Because of the above lapses, the deemed sale presumption under Section 46(15)(d) of the AGST Act was drawn to the effect that, the consignment of Maruti vehicles were sold within Assam by the transporter and on that basis, assessment was made on 20.5.2004 (Annexure-III) under Section 17(6) of the AGST Act. Since the value of the Maruti vehicles was shown to be Rs. 17,98,920/- taking this as the taxable turnover, tax + additional tax on the said turnover, was determined at Rs. 2,37,460/- and demand notice for realisation of the assessed tax was ordered.

6. The above assessment order came to be challenged by the transporter through the WP(c) No. 5880/2004 which was disposed of on 24.8.2004 (Annexure-VII) by this Court by directing the Superintendent of Taxes to furnish to the petitioners with a copy of the demand notice dated 20.5.2004 (Annexure-VII) and the petitioners were also permitted to respond to the said demand

notice. Moreover the authorities were directed to consider the explanation and pass appropriate orders in respect of the presumptive taxation, assessed on the transporter.

7. Following the High Court''s order, the demand notice dated 20.5.2004 was served upon the petitioners and in their response dated 25.8.2004 (Annexure-VIII) the transporter produced the copy of the certificate issued by the Superintendent of Taxes, Byrnihat dated 24.6.2004 which certified that the trailer vehicle with the consignment of Maruti cars, had crossed the taxation check gate, Byrnihat, Meghalaya on 12.11.2003, as per the records maintained in the said taxation check gate. Additionally the petitioners also furnished the affidavit of the proprietor of M/s Rani Motors where the Maruti dealer as the consignee, acknowledged the delivery of the Maruti vehicles by M/s Mukesh Carriers in November, 2003. The certificate of the Manager of the Maruti dealer at Shillong confirming that 10 Maruti vehicles with their respective chassis numbers were received by the authorised dealer from M/s Mukesh Carriers by truck No. HR-55-805 on 13.11.2003 and that the authorised dealer is liable to pay the sales tax for the Maruti vehicles for the transaction during the scheduled period was also produced, with the written response dated 25.8.2004 (Annexure-VIII) before the taxing authorities.

8. After the above representation, the Tax Superintendent (respondent No. 2) re-visited the assessment order but observed that, non-endorsement of the T.P. at the exit check gate due to alleged adverse law and order situation is not acceptable as other carriers secured endorsement on the T.Ps, while travelling through the same check gate on that particular date. On this understanding since the transporter failed to surrender the endorsed T.P. within 30 days of the date of issue, the assessment to tax and the demand was found to be valid and accordingly requisite order was passed on 3.9.2004 (Annexure-IX).

9. The aggrieved transporter then filed the Revision Petition under Section 36(2) of the AGST Act and this was considered by the Addl. Commissioner of Taxes through his order dated 26.2.2008 (Annexure-XI). The transporter contended that statutory presumption of the goods having been sold within the State of Assam is being rebutted by tendering reliable documents to project the delivery of the 10 Maruti vehicles to the dealer at Shillong and accordingly the presumption of sale within Assam is contended to be negated, through documents produced by the transporter.

10. By relying on Sodhi Transport Company (supra) the petitioners contended that tax become payable only when it is established that goods were sold within Assam and in the present case, evidence should be taken into account to rule out the rebuttable presumption as the transporter has produced evidence to show that goods were carried beyond and not sold within Assam. However the Revisional Authority opined that the ratio in Sodhi Transport (supra) is distinguishable from the facts in the present case and without referring to the evidence produced by the transporter to rebut the legal presumption, the

assessment order was found to be justified and consequently the Revision Petition was dismissed.

11. The learned Counsel for the petitioners reads Section 46(15)(d) of the AGST Act and the pari materia provision of Section 28-B of the U.P. Sales Tax Act as discussed in Sodhi Transport Company (supra) to contend that, the legal presumption is rebuttable and in the instant case, the petitioners have produced necessary material to disprove the legal presumption and have produced prima facie evidence to show that the Maruti vehicles were delivered to the destined dealer of Meghalaya and were not sold in Assam. Thus it is argued that the authorities should have considered the documents produced by the petitioners to determine whether the legal presumption was justified to be drawn against the transporter.

12. On the other hand, Mr. S. Saikia, the learned Standing Counsel for the Finance (Taxation) Department submits that the rebuttable presumption can be dislodged only by producing clear and convincing evidence to show that what is legally presumed is not a real fact. The Counsel relies on Heinz India Private Limited v. State of Uttar Pradesh reported in (2012) 5 SCC 443 to contend that heightened standard of proof is required to rebut a presumption raised in relation to a fiscal statute and in the instant case the proof of payment of tax by the dealer in the State of Meghalaya would have been such clear and convincing evidence, to rebut the legal presumption drawn by the authorities, under Section 46(15)(d) of the AGST Act.

13. In the case before us, the petitioners have tried to dislodge the legal presumption by producing the certificate of the Meghalaya Superintendent of Taxes at the Byrnihat check gate and also the affidavit and certificate of the consignee i.e. M/s Rani Motors to project that, the consignment of Maruti vehicles transported by the carriers had crossed the taxation check gate on Assam - Meghalaya Border on 12.11.2003. It is also confirmed by the consignee themselves that M/s Mukesh Carrier had delivered the Maruti vehicles and the dealer has also confirmed their own liability to pay the sales tax for the delivered vehicles. But the worth of these documents were never examined by the Assessing Authority or by the Joint Commissioner and the impugned order(s) were passed only because of the legal presumption permitted to be drawn, under Section 46(15)(d) of the AGST Act.

14. In our considered opinion, the worth of the documents produced by the transporter should have been weighed by the authorities to determine whether convincing evidence is brought on record to rebut the legal presumption. But unfortunately neither the Revisional Authority nor the Assessing Authority had carried out any such exercise to weigh the impact of the evidence, on the legal presumption.

15. It is well settled that tax becomes payable only when a taxable transaction is carried out but under the legal presumption a deemed transaction can also be

made liable to tax under the AGST Act. But the issue here is whether the legal presumption of deemed sale drawn by the authorities under Section 46(15)(d) of the AGST Act, was rebutted adequately by the petitioners, through the materials produced by them along with their representation dated 25.8.2004 (Annexure-VIII).

16. We find after careful reading of the order(s) passed by the Assessing Officer and the Revisional Authority that there was no application of mind to determine whether the petitioners have successfully rebutted the legal presumption drawn by the taxation authorities and the assessment to tax is supported only on the basis of the legal presumption. Therefore the authorities according to us, have failed to discharge the obligation under the ratio of Sodhi Transport (supra). Therefore they should now re-consider the worth of the documents produced by the petitioners to determine whether those documents successfully rebut the conclusion drawn by the authorities about goods being sold within the State of Assam, on the basis of legal presumption drawn under Section 46(15)(d) of the AGST Act.

17. Because of above discussion and reasoning, we quash the impugned order dated 26.2.2008 (Annexure-XI) passed by the Addl. Commissioner of Taxes and remand back the matter to the authorities for a fresh revisional exercise in light of the above discussion. The petition stands allowed accordingly to the extent indicated. No cost.