(2021) 08 GAU CK 0068

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5623 Of 2017

Narayani Minerals APPELLANT

Vs

State Of Assam And 6 Ors RESPONDENT

Date of Decision : 19-08-2021

Acts Referred:

Citation : (2021) 08 GAU CK 0068

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : A Hassan

Final Decision : Disposed Of

Judgement

1. Heard Ms. M Hazarika, learned senior counsel for the petitioner. Also heard Mr. A Kalita, learned counsel for the respondents No.1, 2, 3, 5 and 6

being the authorities under the Industries & Commerce Department, Government of Assam and Mr. B Gogoi, learned counsel for the Finance and

Taxation Department.

2. The petitioner is engaged in the business of manufacture of fireclay which is stated to be made from raw materials such as non-plastic, clay, semi-

plastic clay, and white plastic clay etc. In course of such activities, the petitioner is subjected to the provisions of the Assam Value Added Tax Act

2003. But the petitioner seeks to avail the benefit for the Industrial Policy of Assam 2008 (for short, the Policy of 2008) wherein various incentives

were provided to the new industries established in the State on or after 01.10.2008.

3. Without going into the details of such claim, what we take note of is that under the Policy of 2008, certain sales tax exemptions were provided for a

period of seven years subject to maximum of 150% of fixed capital investment. The Policy of 2008, inter alia, provides that in order to avail the benefit

under the policy, the industry concerned would have to be engaged in the process of manufacturing. In the event, it is established that the industry

concerned is involved in the process of manufacturing, the necessary exemption for payment of sales tax would be available. In the resultant

circumstance, the question for determination would be the process of manufacturing as recognized under the law is applicable while manufacturing the

product fireclay. If the conclusion to be arrived at is that it conforms to the process of manufacturing as provided under the law, the product

concerned would have to be construed to be a manufactured good and in such process they would be entitled to an exemption from payment of sales

tax under the Assam Industrial Policy of 2008.

4. In the circumstance, the petitioner made an application before the respondents in the Industries Department of the Government of Assam for grant

of an eligibility certificate under the Policy of 2008. When such application for grant of eligibility certificate was not duly entertained by the respondent

authorities, the petitioner approached this Court by way of WP(C)No.7228/2015. The said writ petition was given a final consideration by the order

dated 09.12.2016 requiring the Principal Secretary to the Government of Assam in the Industries and Commerce Department to dispose of the

pending representation of the petitioner dated 03.12.2013 in accordance with law by a speaking order within a period of two months thereof after

receiving the certified copy of the order. Pursuant thereto, the order impugned in this writ petition dated 08.03.2017 was passed by the Additional

Chief Secretary to the Government of Assam in the Industries and Commerce Department. The requirement of the earlier order of this Court dated

09.12.2016 was to pass a speaking order in accordance with law on the claim of the petitioner for grant of an eligibility certificate which would have to

be understood that the authorities while passing the speaking order would have to arrive at a conclusion as to whether the process adopted by the

petitioner for manufacturing the fireclay satisfies the ingredients necessary for a manufacturing process as recognized under the law. The expression

â??in accordance with lawâ?? would have to be understood only from the said perspective.

5. From the aforesaid background, when we look into the order dated 08.03.2017 we take note of that the Additional Chief Secretary to the

Government of Assam in the Industries and Commerce Department had perused the order dated 09.12.2016 passed in WP(C)No.7228/2015, the

representation of the petitioner dated 03.12.2013 was also perused. Apart from the above, the letter dated 06.10.2012 of the Commissioner of Taxes,

Assam as well as another letter dated 27.10.2014 also of the Commissioner of Taxes Assam as well as the minutes of the State Level Committee

meeting dated 05.11.2015 were perused by the Additional Chief Secretary to the Government of Assam in the Industries and Commerce Department

while passing the order dated 08.03.2017. By referring to the aforesaid materials, and without stating as to what the materials contain, the Additional

Chief Secretary to the Government of Assam in the Industries and Commerce Department arrives at his conclusion that he agrees with the views of

the Taxation Department and accordingly concluded that fireclays do not amount to a manufacture.

6. Without going into any other aspect of the matter, we are of the view that the manner in which the order dated 08.03.2017 was passed by the

Additional Chief Secretary to the Government of Assam in the Industries and Commerce Department, the requirement of the earlier order dated

09.12.2016 in WP(C)No.7228/2015 to pass a speaking order in accordance with law had not been duly complied with.

7. As already indicated, in order to pass a speaking order in accordance with law, the authority to pass the order i.e., Additional Chief Secretary to the

Government of Assam in the Industries and Commerce Department would have to first satisfy himself as to what in the procedure adopted to

manufacture fireclay and whether the procedure satisfies the ingredients of a procedure for manufacture as recognized under the law. Upon satisfying

itself as regards, the ingredients of a manufacturing process, the authority concerned would have to examine the procedure adopted by the petitioner

for manufacturing of the fireclay. If the procedure adopted by the petitioner for manufacture of the fireclay is consistent with the requirement of a

manufacturing process as recognised under the law, the Additional Chief Secretary to the Government of Assam in the Industries and Commerce

Department may draw his conclusion on the matter.

8. Accordingly, the order dated 08.03.2017 of the Additional Chief Secretary to the Government of Assam in the Industries and Commerce

Department stands set aside and the matter is remanded back to the authority for a de novo consideration for doing the requirement of the earlier

order dated 09.12.2016 in WP(C)No.7228/2015 for passing of a speaking order in accordance with law.

9. In doing so, the Additional Chief Secretary to the Government of Assam in the Industries and Commerce Department may refer to the relevant

provisions of the law and in doing so may also take the aid and advise of any other department as may be advisable including the taxation department

etc. The petitioner may also submit the relevant proposition of law for facilitating the authority who would pass the speaking order.

10. It is stated by Mr. A Kalita, learned counsel for the Industries and Commerce Department that the Department may not be having the Additional

Chief Secretary at present. If it is so, the requirement of this order be done by any other appropriate officer/authority of the Government of Assam

who may be discharging the duties earlier performed by the Additional Chief Secretary to the Government of Assam in the Industries and Commerce

Department.

11. The requirement of passing the speaking order be done within a period of one month from the date of receipt of a certified copy of this order. Any

order to be passed shall also entail the petitioner the consequential benefits, if otherwise entitled under the law.

12. In terms of the above, this writ petition stands disposed of.

