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(1999) 01 GAU CK 0022

In the Gauhati High Court

Case No : Civil Rule No. 1199 of 1996

Nibaran G. Momin APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 2, 44, 46, 46(15), 46(2)
Assam General Sales Tax Rules, 1993 — Rule 42, 43, 43(3), 43(7)
Constitution of India, 1950 — Article 304
Garo Hills Forest Act, 1968 — Section 40, 41
Meghalaya Purchase Rules — Rule 39

Citation : (2006) 146 STC 271

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : A.S. Choudhury, R. Mazumder, I. Hussain, S. Seal, A. Maleque and S.I. Rahman, for the Appellant; H.N. Sarma, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This writ application has been filed by the Secretary, Garo Hills, Member Contractor and Veneer cum Saw Mill Owner Association. The grievances of the petitioner-association are:

(1) Illegal and arbitrary use of power u/s 44 of the Assam General Sales Tax Act, 1993 and rules 42, 43(7)(j) of the Assam General Sales Tax Rules, 1993.

(2) Illegal process of demanding security deposit for each consignment from the member mills of the petitioner-association inspite of having all valid documents and even after payment of duties.

2. It is claimed that the mills have the valid permit/permission Under Rule 10 of the Transit Rules framed by the Government of Assam under sections 40 and 41 of the Assam Forest Regulation, 1891 and the Garo Hills Forest Act, 1968. The petitioners claimed to have also the certificate of registration issued under the

Meghalaya Purchase Act read with rule 39 for purchasing logs after payment of royalty as per Meghalaya Government Schedule. They also claimed to have the certificate of registration issued under the Central Sales Tax (Registration and Turnover) Rules, 1957, for carrying out the inter-State sale of their manufactured goods. The member mills of the association of the petitioner in course of its business of sale of commercial veneer is to transport the same by truck, etc., from its factory and deliver the same to the plywood factories of its customers situated in various places of the country. While transporting the veneer for delivery to its various customers it has to cross a number of check-posts in Meghalaya as well as in Assam. The first check-post is at Kabaitari check-post and the last check-post is Srirampur or Boxirhat check-post. Though the member mills of the petitioner''s association have all the valid certificates, the Superintendent of Taxes, Kabaitari check-post while issuing transit pass insists on depositing security deposit at 10 per cent of the value of the goods carried by the truck which the member mills are depositing under compulsion. The respondent No. 3, i.e., the Superintendent of Taxes, Kabaitari Check-post, directed the member mills to get the transit pass counter-signed at the last checkgate either at Srirampur or Boxirhat and when the said counter-signed transit pass is shown at Kabaitari check-post, the security deposit is released/refunded. This has caused harassment to the petitioners and as such the petitioners pray that a mandamus may be issued to stop this illegal process of demanding/obtaining security deposit from the member mills of the petitioner-association for the consignment transported/transshipped by them when they are found carrying properly accounted goods with valid documents, namely, valid transit pass, bill, challan and other documents.

3. Affidavit-in-opposition has been filed. But the original copy is not there. A copy is now furnished by Mr. Choudhury and the same is kept on record. In the affidavit-in-opposition it is stated as follows:

Under Section 46(15) of the Assam General Sales Tax Act, 1993 and Rule 43(7)(j) when a goods vehicle coming from any place outside the State of Assam and bound for any place outside Assam but merely passes through the State of Assam the person-in-charge of such vehicle is required to apply to and obtain a transit pass in form XXV from the officer-in-charge of the entry checkgate and is required to surrender/deliver one copy of such transit pass at the exit checkgate in token of the fact that the consignment that was brought within Assam was actually taken out of Assam and has not been delivered or sold within Assam. In the case of failure to do so, presumption would be drawn that the goods brought in such consignment have been sold within the State of Assam and the person-in-charge/driver of the vehicle shall be a dealer within the meaning of clause (10) of Section 2 of the Assam General Sales Tax Act.

The honourable Supreme Court in Sodhi Transport Co. and others Vs. State of U.P. and others, held that the provisions relating to the issuance of transit pass contained in Section 28-B of the U.P. Sales Tax Act, 1948 is not unconstitutional

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as it is protected by article 304(b) of the Constitution.

To prevent the clandestine selling of the goods in the State, so covered by transit pass and to check the possible evasion of tax, security to the extent of tax element is realised at the entry checkgate in the form of bank guarantee/call deposit receipts as a precautionary measure. Such security is however released when the related transit pass, after being duly counter-signed at the exit checkgate, is returned to the entry checkgate.

In absence of such realisation of security there is every likelihood that the goods shown to be meant for other State, may be unloaded and sold within Assam, depriving the State of its legitimate dues and leaving the State with little scope for realisation of due tax. Security was collected on apprehension of evasion of taxes which could not have been prevented without realising a security which is refundable after the transit pass was counter-signed by the outgoing.

4. I have heard Mr. A.S. Choudhury, learned Counsel for the petitioner and Mr. H.N. Sarma, learned Government Advocate, for the respondents.

5. Mr. Choudhury has drawn my attention to Rule 43(7)(j) of the Assam General Sales Tax Rules, 1993. Rule 43 of the said Rules provides for check-post. Rule 43(3) provides as follows:

(3) No person shall transport goods across or beyond a check-post or barrier except after filing before the officer-in-charge of the check-post, if so directed by him, the documents as referred in Sub-section (2) of Section 46 of the Act. Declarations referred to in Section 46 and Sub-sections (2), (4), (5) and (7) of Section 46 include the bill of sale, delivery note or other documents and particulars mentioned in clause (j) of Sub-rule (7) of this rule.

Section 46(15) provides as follows:

When a goods vehicle or boat coming from any place outside the State of Assam and bound for any other place outside the State and carrying the goods passes through the State, the driver or other person-in-charge of such vehicle or boat shall apply to and obtain a transit pass in such form and in such manner as may be prescribed from the officer-in-charge of the entry check-post or barrier after his entry into the State of Assam and deliver it to the officer-in-charge of the exit check-post or barrier before his exit from the State or any other officer as may be directed, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or the person-in-charge of the goods vehicle or boat. When the goods carried by such goods vehicle or boat are after their entry into the State transported outside the State by any other goods vehicle or conveyance, the onus of proving that goods have actually moved out of the State shall be on the owner or person-in-charge of the goods vehicle or boat and all the provisions of this Act shall so far as may be applicable as if such transporter or carrier or the driver or other person-in-charge of the vehicle were a dealer within the meaning of clause (10) of Section 2.

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Explanation.--In a case where a vehicle owned by a person is hired for transportation of goods by some other person, the hirer of the vehicle shall, for the purposes of this section, be deemed to be the owner of the vehicle.

In order to comply with this provision the security is taken by the officer at the checkgate and it cannot be said that this is illegal and/or violation of law. The validity of this Act was challenged and this Court in (1997) 2 GLR 477 (Federation of Industries North Eastern Region v. State of Assam) has held this Act to be valid and this Court found that Section 46 was enacted with a view to check and prevent evasion of sales tax. It was further pointed out by this Court that in order to enforce section it became necessary by implication of the authority to use all reasonable means to make such grant effective. It was pointed out by this Court that Section 46 is essentially a mechanism for making the legislative measure effective. Section 46 is an economic move to plug evasion of tax payable under the Act. Fiscal adjustment are inherently complex in nature therefore larger latitude are to be given to the Legislature in the matter of formulating the economic measure. In that view of the matter I do not find that the realisation of security amount to be arbitrary, capricious or whimsical. It has been done only as a caution against evasion of tax. Security is refunded as soon as the transit pass duly counter-signed at the last check-post is presented in the first check-post. If that is not so done as pointed out in the affidavit-in-opposition these goods may be sold in Assam itself. If no security is taken, in case of evasion of taxes, there is no way of recovering loss of taxes, resulting in loss of revenue to the Government.

6. In view of the above discussion I do not find any merit in this writ application and the same is accordingly dismissed. However I make it clear that the authority will not resort to undue harassment. No costs.

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