(2013) 09 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (C) No. 5625 of 2013

North Eastern Coal Fields Coal India Ltd. APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 45 GST 56 : (2014) 67 VST 287

Hon'ble Judges : A.K. Goel, C.J;A.K. Goswami, J

Bench : Division Bench

Advocate : Ashok Saraf, M.L. Gope, Ms. N. Hawelia, A Goyal, K. Choudhury and P. Baruah, for the Appellant; R. Dubey, for the Respondent

Judgement

A.K. Goel, C.J.—This petition seeks quashing of assessment order dated July 13, 2012, as affirmed by the revisional authority vide order dated August 12, 2013, under the provisions of the Assam Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956. The case of the petitioner is that the assessment has to be completed within five years from the end of the year and the impugned assessment relates to the assessment year 2005-06. In respect of the said assessment year, the assessment has to be completed latest by March 31, 2011. Since the impugned order has been passed after the last date of limitation statutorily provided, the impugned order of assessment is barred by limitation. Section 39 of the Assam Value Added Tax Act 2003 reads as follows:

39. No assessment after five years.--No assessment under the foregoing provisions of this Act, shall be made after the expiry of five years from the end of the year to which the assessment relates:

Provided that in case of offence under this Act for which proceedings for prosecution has been initiated, the limitation as specified in this sub-section shall not apply.

2. The revisional authority dealing with the issue observed:

... It is worthwhile to note that section 39 of the Assam Value Added Tax Act, 2003 uses the word ''made'' and not ''completed'' or ''signed''. In the instant case, the assessment proceedings was initiated on August 11, 2009 and completed on July 13, 2012. Following even the ordinary rules of statutory construction, it must be held that so long as the assessing officer initiate the proceedings of assessment within expiry of five years from the end of the year to which the assessment relates, any subsequent time taken by him passing an order of assessment is immaterial and will not make his order time-barred. In the instant case, the assessment proceedings had been initiated within the stipulated period and therefore, it cannot be said that the assessment was barred by the limitation of time of five years. Furthermore, the dealer himself has taken several adjournments and dates for providing necessary details and evidences. The unusual delay, if any, in completing the assessment is attributable only to the time taking tactic of the dealer and the dealer now cannot be allowed to take the plea that the assessment was barred by limitation of time. No one can be allowed to take benefit of his own mistakes.

3. We have heard learned counsel for the parties.

4. The interpretation placed by the revisional authority is patently unsustainable. Limitation prescribed u/s 39 is as to the "making" of the assessment and not to "initiation" thereof. The observation of the revisional authority that "made" did not mean "completed" or "signed" cannot be accepted. The same is contrary to the plain meaning of the expression "made".

5. In the context of a corresponding provision in section 19 of the Assam General Sales Tax Act, 1993, this court in Writ Petition (C) No. 3322 of 2010 Hindustan Petroleum Corporation Limited Vs. State of Assam and Others, decided on October 3, 2012, observed (page 3 in 57 VST):

From the scheme of the statute it is clear that section 18(1) provides for limitation for initiating the reassessment while section 19(2) prescribes limitation for completing the assessment. In the present case, it is clear that completion of reassessment, i.e., passing of the order of reassessment is beyond the limitation prescribed u/s 19(2).

6. The learned counsel for the Revenue fairly states that the view taken by the revisional authority is contrary to the statutory scheme. In view of the above, we allow this petition and quash the impugned orders.