(2003) 08 GAU CK 0043

In the Gauhati High Court

Case No : Civil Rule No. 5835 of 1997

R.N. Omprakash Anand and Another — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Citation : (2005) 1 GLR 363 : (2004) 138 STC 407

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : G.K. Joshi, R.K. Joshi and V. Chakraborty, for the Appellant; K.C. Mahanta, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—Heard Mr. G.K. Joshi, learned Senior Advocate for the petitioner and Mr. K.C. Mahanta, learned Government Advocate.

2. The petitioner is a dealer, dealing in crockery, etc., and for the period ending March 31, 1994 he submitted his return under the Assam General Sales Tax Act, 1993, for short "the AGST Act". Thereafter, vide the assessment order dated June 27, 1995 the assessing authority raised further demand of Rs. 62,121 and levied penal interest to the extent of Rs. 28,545. The petitioner filed a revision before the Additional Commissioner of Taxes but the revisional authority vide the order dated May 31, 1997 dismissed the revision. Hence, the present writ petition.

3. The case of the petitioner is that vide, annexure-I, dated January 28, 1993, the Superintendent of Taxes directed the petitioner to make a payment of security money u/s 7(1) of the Assam Finance (Sales Tax) Act, 1956 to the tune of Rs. 3,00,000 and another sum of Rs. 25,000 under the Central Sales Tax Act. The petitioner filed objections and subsequently, as claimed by the petitioner, the petitioner was allowed to make adjustable security of Rs. 75,000 under the Assam Finance (Sales Tax) Act and a sum of Rs. 5,000 under the Central Sales

Tax Act. The petitioner filed his return in time and prayed for adjustment of the above security amount against dues under the Assam General Sales Tax Act, which came into force on July 1, 1993.

4. Shri Joshi, learned Senior Counsel has submitted that notices similar to annexure-1 were issued to the numerous dealers. The matter was considered by this Court in the case of Lallamookh Tea Company (P) Ltd. v. Commissioner of Taxes and the batch of writ petitions were disposed of vide order dated May 27, 1993 reported in [1995] 98 STC 531 : 1993 (1) GLR 467. This Court held that the assessing authority is required to mention the reasons and grounds and the material facts on the basis of which the security is demanded and such reasons and grounds must be disclosed in the show cause notice itself and it was further held that the notice that does not disclose such grounds, is bad in law. Admittedly, the two notices in annexure A do not disclose any grounds or reasons why the security was demanded. We have also perused the application filed by the petitioner. The plea taken by the petitioners that the respondent authority had agreed for payment of adjustable security, we find that there is no written document to that effect. Further, there is nothing on record to show that the original demand of Rs. 3,25,000 was persisted upon or that no action was taken by the petitioner for non-furnishing of the said security. Moreover, the petitioner has filed copies of challans, annexure 3 which show the deposit of the security and in both the challans it is clearly stated that the payment has been made on account of adjustable security under the Assam Finance (Sales Tax) Act/Central Sales Tax Act. The amount was deposited after the challans were passed by the concerned authority and this goes to show that the plea raised by the petitioners were merely adjustable security so accepted by the respondent authority.

5. In this case we find that the revisional authority dismissed the revision on the following plea :

"On examination I found that as per provisions of Section 15 of Assam General Sales Tax Act security already furnished by an assessee couldn''t be adjusted by the assessee himself against his liability of tax. It could only be forfeited by the Assessing Officer if so required to meet up his demand. The whole meaning and purpose of security will be defeated if it is adjusted by an assessee against his tax liability."

6. Shri Joshi has submitted that the revisional authority has not applied his mind in the facts of the case as the petitioner never asked for adjustment of security made by him under the Assam Finance (Sales Tax) Act after the A.G.S.T. Act came into force. Petitioners had deposited a security of Rs. 5,000 vide annexure 4 and the same was not sought to be adjusted by the petitioner. The revisional authority has failed to examine the plea that the security deposit made by the petitioner was under the Assam Finance (Sales Tax)/Central Sales Tax Act and the Assam Finance (Sales Tax) Act has ceased to exist.

7. In view of the materials available on record, we have no hesitation to hold that

the amount of Rs. 70,000 and Rs. 5,000 deposited by the petitioner on April 7, 1993 and April 27, 1993 were additional adjustable security under the Assam Finance (Sales Tax)/Central Sales Tax Act, as were applicable under the relevant time and the petitioner was entitled to adjust the above amount against the sales tax paid by him for that period. As the said amount was already lying with the concerned department, the petitioner is also not liable to pay interest as demanded by the respondent-authority. The writ petition is allowed. The impugned order passed by the assessing authority in levying interest and the subsequent order of rejection of the revision petition are hereby set aside. The assessing authority shall allow the adjustment of the security of Rs. 75,000 as claimed by the petitioner. It is submitted that the balance amount of tax has already been paid in terms of the order passed by this Court. The assessing authority is however at liberty to examine the matter and if found true the same may be released. The petitioner shall however will not be liable to pay interests. Assessment order shall be reframed accordingly.