(2003) 03 GAU CK 0042

In the Gauhati High Court

Case No : CR No. 5386 of 1997

Sagar Samrat Gupta — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:
Assam General Sales Tax Act, 1993 — Section 17(5)

Citation : (2003) 3 GLR 42

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A. Biswas, for the Appellant; B.J. Talukdar, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Heard Mr. A. Biswas, learned counsel for the petitioner and Mr. B.J. Talukdar, learned Govt. Advocate, Assam.

2. A best judgment assessment u/s 17(5) of the Assam General Sales Tax Act, 1993 passed on 13.1.1997 has been challenged in the present proceeding along with the order dated 12.9,1997 passed in the exercise of revisional power declining interference with the said assessment order.

3. The petitioner-firm was initially registered as a dealer under the Assam (Finance) Sales Tax Act, 1956 and the Central Sales Tax Act, 1956. After coming into force of the Assam General Sales Tax Act, 1993 with effect from 1.8.1993, the petitioner was registered under the provisions of the said Act, The petitioner-firm persistently failed to file its returns under the Act in force though several notices were issued to the petitioner-firm to file its annual returns. The default continued and eventually, on 28.6.1996, the petitioner firm filed the statement it its turnover for the period ending 30.3.1993 to 28.6.1996 showing the turnover as nil. With effect from the said date i.e., 28.6.1996, the petitioner firm also surrendered its Registration Certificate under the Assam General Sales Tax Act, 1993 and the Central Sales Tax Act by contending that it had wound up its

business without however mentioning any specific date of such winding up.

4. In such a situation, the assessing authority after taking into account the repeated and persistent failure of the petitioner-firm to submit its annual returns, proceeded to finalise the liability of the petitioner-firm for the period from 1.7.1993 to 31.3.1994 by invoking Section 17(5) of the Assam General Sales Tax Act, 1993. In making the assessment of the petitioner-firm to payment of sales tax for the period in question, the assessing authority took note of the Central Sales Tax Act declaration in Form - ''C'' used by the petitioner-firm for importing goods from outside the State for resale in Assam. Taking into account the value of such goods and margin of profit as well as involvement of freight and other expenses, the assessing authority determined the gross turnover of the petitioner-firm at an amount of Rs. 1,75,000 and thereafter, proceeded to levy tax and interest on the said basis. Aggrieved, the instant petition has been filed after the attempted challenge against the said actions before the revisional authority did not bear any fruit.

5. Mr. A. Biswas, learned counsel for the petitioner, in support of the challenge made in the present writ proceeding, has contended that as the petitioner-firm had closed its business in the year 1993, the assessing authority was not correct in invoking Section 17(5) of the Act. Learned counsel contends that the liability of the petitioner-firm should have been determined on the basis of stock as on the date of closure of business by following the provisions of Section 8(5) of the Act of 1993

6. Mr. B.J. Talukdar, learned Govt. Advocate, Assam appearing for the revenue, has placed before the Court the averments made by the authority in the counter affidavit filed on 25.2.2003 wherein it has been stated by the authority that as there was repeated and persistent failure on the part of the petitioner-firm to submit the requisite returns and as there was also no response from the petitioner-firm to the notices sent to it by the assessing authority intimating its decision to finalise the assessment according to its best judgment, the authority had no alternative but to invoke Section 17(5) of the Act to determine the liability of the petitioner-firm. In the counter affidavit filed, it has been also stated that as the date of closure of the business of the petitioner-firm, as claimed by it, has not been specifically mentioned, in such a circumstances the assessment had to be finalised by taking into account the value of the goods imported from outside the State for purposes of resale along with other relevant aspects of the matter like, the value of the stock, the margin of profit etc.

7. The rival submissions advanced on behalf of the respective parties have been duly considered. The materials on record would go to show that the first intimation regarding the alleged closure of the business of the petitioner-firm was addressed to the authority by the petitioner firm on 28.6.1996 (Annexure-''B'' to the writ petition). On what date/dates such closure was effected, is not indicated in the aforesaid communication. If the closure of business was made in the year 1993, as contended oil behalf of the petitioner-

firm, there is no explanation forthcoming as to why the Registration Certificates were not surrendered until 28.6.1996. There is also no explanation whatsoever coming from the petitioner-firm as to why the repeated notices to file its annual return in Form No. VI have not been responded to and further, as to why the annual gross turnover was disclosed as nil without requisite accompanying materials in the prescribed Form No. VI. In such a situation, when the assessment of the petitioner-firm for the period in question was begging to be finalised, the authority cannot be faulted for invoking Section 17(5) of the Act. The records of the case would go to show that the procedural requirement prior to exercise of power u/s 17(5) of the Act i.e., giving of requisite notice was adhered to by the authority and that apart, the best judgment assessment was made upon a consideration of relevant facts as already indicated above. It is, therefore, the considered view of this Court that there is hardly any error either of jurisdiction or of procedure or even on the merits of the assessment made to justify the invocation of powers under Article 226 of the Constitution to interfere with the impugned assessment.

8. For the aforesaid reasons, this writ petition has to fail. It is accordingly dismissed but without any costs.

