

**(2005) 03 GAU CK 0007**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 2178 of 2003**

|                           |    |            |
|---------------------------|----|------------|
| Shri Kamal Kumar Sharma   | Vs | APPELLANT  |
| State of Assam and Others |    | RESPONDENT |

**Date of Decision :** 23-03-2005

**Acts Referred:**

Assam General Sales Tax Act, 1993 — Section 2(34), 44(3), 44(5), 46(2)

**Citation :** (2005) 3 GLT 87 : (2006) 144 STC 458

**Hon'ble Judges :** Ranjan Gogoi, J

**Bench :** Single Bench

**Advocate :** A.K. Saraf, D. Baruah, K. Jain and P. Bothra, for the Appellant; K.N. Choudhury, Additional Advocate-General, for the Respondent

**Final Decision :** Allowed

## Judgement

Ranjan Gogoi, J.—The writ petitioner/who is a dealer registered under the provisions of the Assam General Sales Tax Act, 1993 (hereinafter referred to as "the Act") in course of his normal business of sale and supply of "supari" had sent a total of 320 bags of "supari" on March 7, 2003 to its consignment agents in Rajasthan by truck No. RJ-07G-4874. The aforesaid goods while in transit were seized by the Inspector of Taxes of Barpeta Road and as it would be evident from the seizure memo dated March 17, 2003 the grounds of seizure were stated as follows :

1. The dealer was carrying by truck No. RJ-07G-4874 Assam chikni "supari" which costs Rs. 60 per kg. on average whereas, he has shown the same as Assam "supari" in his Bill Nos. 20, 21, 19 dated March 17, 2003 showing the cost at Rs. 12.52 per kg. on average such goods are under-valuation.
2. The dealer claimed that the dispatch note was not compulsory as per judgment given by the honourable Gauhati High Court in which case the road challan should have been duly countersigned by the concerned Superintendent of Taxes and which was absent in this case.

3. Further the dispatch note No. 026685 of Book No. 25068 accompanied with documents was also not duly filled up as to the name of consignee, the place of destination, quantity, value of goods, number of vehicle, the goods carried by the vehicle No. RJ-07G-4874.

Which may cause (leads) evasion of Government revenue.

After seizure of the supari in transit belonging to the petitioner in the manner indicated above, on March 20, 2003 the Superintendent of Taxes, Barpeta Road after recording a finding that the petitioner "had an unaccounted stock of 320 bags of Assam chikni supari" determined an amount of Rs. 1,35,168 as tax payable in respect of the above goods along with penalty of Rs. 4,05,504. The writ petitioner having been called to pay the aforesaid two amounts as a pre-condition for release of the seized goods, the instant approach to this Court has been made wherein by an interim order this Court had stayed the operation of imposition of penalty but had required the petitioner to deposit an amount of Rs. 1,35,168 on account of tax which amount has since been paid.

2. Dr. A.K. Saraf, learned Senior Counsel appearing for the writ petitioner, in support of the challenge made has placed before the court the provisions of Section 44(5)(a), 44(3) and Section 46(2)(b) of the Act as the power to seize the goods of the petitioner as has been sought to be drawn from the aforesaid provisions of law. Pointing the aforesaid provisions of the Act, learned Senior Counsel has contended that the only provision of the Act which could have some nexus with the power of seizure and levy of penalty is to be found in Section 46(2) (b) and (c) of the Act. Reading the provisions of Section 46(2)(b) of the Act, learned counsel has contended that the power of seizure can be exercised only if the goods in question are found not properly accounted for or if the authority has reason to suspect that evasion of tax payable under the Act may take place in respect of the goods. Placing the provisions contained in Sub-clause (2)(c) of Section 46, learned counsel for the petitioner has contended that the power to impose penalty can be exercised after giving of a reasonable opportunity and only in situations where the carrier or the bailee of the goods fail to satisfy the concerned authority regarding the proper accounting of goods. According to Dr. Saraf, learned Senior Counsel for the petitioner, on a conjoint reading of Section 46(2) (b) and (c) of the Act, the power of seizure and the power to levy penalty must be understood to be confined to cases where the goods in question are not properly accounted for giving rise to a satisfaction or a reasonable suspicion in the authority that evasion of tax may take place. According to learned counsel for the petitioner, the details recorded in the seizure memo indicate the total quantity of the goods carried as well as variety thereof and the invoices/bills maintained indicate the total weight of the goods carried. In such a situation, seizure must be understood to have been made for the alleged failure to have the road challans counter-signed by the Superintendent of Taxes as well as the failure of the assessee to fill up the dispatch notes, as mentioned. Yet in the order dated March 20, 2003 it has been mentioned that

the goods are not found accounted for. Pointing out the contents of the order dated March 20, 2003 Dr. Saraf, learned Senior Counsel for the petitioner, has argued that the goods have been referred to as unaccounted for though the total volume of the goods, i.e., 320 bags and the variety of the goods as Assam chikni supari have been clearly mentioned in the order dated March 20, 2003. The argument advanced, therefore, is that the goods having been accounted for by reference to the total quantity as well as the variety thereof, a mere dispute with regard to the prices mentioned in the bills/invoices will not make the same unaccounted for. The necessary conditions precedent to the exercise of power of seizure and levy of penalty, therefore, according to learned counsel for the petitioner, is non-existent in the present case. Learned counsel has further argued that the other grounds mentioned in the seizure memo for taking the view that the goods were not accounted for, i.e., that the road challans and despatch notes were not countersigned and filled up are not valid requirements of the law inasmuch as there is no provision in the Act which requires the road challans to be countersigned and further this Court in a decision reported in 2003 129 STC 229 SC : (2002) 3 GLR 535[Bajrangpur Tea Company (P) Limited v. State of Assam] has held the requirement of form 35 (despatch note) to be ultra vires the provisions of the Rules. In fact, in the said decision, the Rules permitting the authority to insist on despatch notes have been struck down. On the aforesaid basis the eventual argument advanced is that the power of seizure and power to levy penalty has been exercised in a situation which is not contemplated by the statute.

In so far as the levy of tax by the impugned order dated March 20, 2003 is concerned, the argument advanced is that the statute nowhere contemplates levy of tax at the stage of seizure and therefore the levy of tax amounting to Rs. 1,35,168 is plainly contrary to the provisions of the Act.

3. The Revenue has not filed any counter but the records in original have been placed before the court including the verification note of the Inspector of Taxes on the basis of which the order dated March 20, 2003 has been passed. Mr. K.N. Choudhury, learned Additional Advocate-General, Assam appearing for the State has contended that failure to mention the correct price of the items/goods in transit and a definite under-valuation of the sale price in the invoices must be construed by the court to be an instance where the goods are not properly accounted for. According to the learned Additional Advocate-General, merely because the quantity of the goods and the variety thereof is ascertainable, the same should not lead to an inference that the goods have been properly accounted for, unless the sale price thereof is also correctly mentioned in the invoices. As in the instant case the supari in question was grossly under-valued disclosing an attempt at evasion of taxes, learned Additional Advocate-General has contended that the power of seizure and imposition of penalty has been rightly and correctly exercised.

4. The rival submissions advanced on behalf of the parties have received the due

and anxious consideration of the court. What must be emphasised at the outset is that the Act contemplates exercise of different species of power at different stages leading to the assessment of levy and collection of tax and what is to be exercised by the assessing authority at the stage of final assessment, are powers that are clearly identifiable and distinct from the powers to be exercised at the stage of seizure and imposition of penalty. The petitioner is a registered dealer of goods and therefore would be amenable to the requirement of filing of returns and proper assessment thereof at periods contemplated under the Act. The power of seizure and the power of levy of penalty are drastic powers conferred on the authority by the provisions of the Act with a view to prevent leakage of Government revenue. In so far as a registered dealer is concerned, if goods either in transit or in stock are not properly accounted for, an inference would arise that there is an attempt at evasion of tax and therefore until and unless the identity of the goods is duly verified and provision is made to ensure that tax due will be paid, the goods should remain under seizure. The yardstick that has to be applied while exercising the aforesaid power is to be found within the four corners of Section 46(2)(b) and (c), i.e., that the goods are not properly accounted for. The meaning of the said expression though is capable of being understood in either ways as contended by the learned counsel for the parties, the eventual meaning that should be ascribed will depend on the scheme contemplated by the statute. As already noted, the statute contemplates exercise of different powers at different stages by the various statutory authorities and though all such powers are designed to ensure proper levy and collection of taxes, the manner and extent of such exercise must vary. In case of a registered dealer if the total quantity of goods in stock or in transit are identifiable and the variety thereof is also known, to hold that the goods are not properly accounted for merely because there is a difference of opinion as to the sale price thereof, in the considered view of the court, would be doing violence to the scheme contemplated by the Act. Not only that, it would be inherently dangerous to read any such conferment of power at the stage of seizure in view of the possibility of abuse and misuse and it would be far more reasonable to understand such a conferment of power to have been made by the Legislature; at the stage of completion of the quasi-judicial act of assessment, When effective remedy can be attempted at the stage of final assessment and the object of the Act, i.e., to ensure due and proper collection of tax can be achieved at the stage of assessment, there is no reason why by a process of judicial interpretation such a power should be conferred to the authority at the stage of seizure. The power to determine the sale price for the purpose of assessment of tax under the Act, in case of a dispute, therefore, must be understood to have been vested in the assessing authority and in so far as a registered dealer like the writ petitioner is concerned, if the quantity of the goods in transit and the variety thereof is known what should be the sale price for the purpose of assessment of tax is a question that must be understood to have been relegated by the statute to the stage of final assessment, a conclusion that appears to be fortified by the provisions contained in the proviso section 2(34)(d) of the Act.

5. In view of the foregoing discussions this Court has to come to the conclusion that the total quantity of the goods in transit and the variety thereof being known, merely because a dispute has arisen with regard to the value of the goods would not bring about a situation where the petitioner can be said to have not accounted for the goods in transit. On the view that this Court has taken the inevitable conclusion that has to follow is that the power of seizure and the power to impose penalty was not available to the respondent-authority and therefore this Court must declare the seizure as well as the penalty imposed to be unsustainable in law.

6. In so far as the tax levied is concerned, little argument is required to persuade the court that the stage for levy of tax cannot be the stage of seizure of the goods. For the same reason the levy of tax imposed by order dated March 20, 2003 shall, accordingly, stand set aside.

7. As the petitioner admittedly has paid the amount of Rs. 1,35,168 on account of tax and assessment of tax for the relevant period is yet to be completed, the payment of tax by the petitioner, under orders of this Court, shall be subject to such adjustment as may be found due at the time of completion of the petitioner's assessment to tax by the competent authority.

8. The writ petition shall stand allowed as indicated above.