
(2003) 01 GAU CK 0022
In the Gauhati High Court
Case No : Civil Rule No. 3590 of 1994

Shyam Sundar Agarwal

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 36(1)

Citation : (2003) 1 GLR 448

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A. Sarma, for the Appellant; R.K. Bora, GA, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—The petitioner who was at the relevant time registered as the dealer under the Assam Finance (Sales Tax) Act, 1956, was assessed to tax under the aforesaid Act for the period ending 30.9.1971, 31.3.1972, 30.9.1972, 31.3.1973, 31.3.1974, 30.9.1974, 31.3.1975 and 30.9.1975 at nil rate by orders of assessment passed by the competent authority under the Act. Thereafter by eight separate notices dated 14.6.1978 and 15.6.1978, the aforesaid assessments were sought to be reopened by invoking the powers u/s 11 of the Act. As there was some delay on the part of the petitioner in submitting his reply to the aforesaid notices, the concerned authority proceeded to finalize the proposed reassessments and accordingly levied tax on the petitioner. Against the aforesaid orders of reassessment, the petitioner filed appeals under the provisions of the Act and as the appeals were not entertained without necessary pre-deposit of tax, he had invoked the writ jurisdiction of this Court by instituting a "Writ proceeding registered as Civil Rule No 5360/79.

2. On the basis of the orders passed by this Court directing the petitioner to deposit 50% of the tax assessed along with interest, the appeals were entertained by the learned appellate authority and disposed of by judgment dated 23.12.1989 allowing the appeals in question and determining the tax

liability of the petitioner as nil. On the basis of the said order of the appellate authority, fresh assessment orders (seven in number) were passed by the assessing authority on 4.2.92 determining the tax liability of the petitioner as nil. The petitioner, thereafter, prayed for refund of the amount of tax and interest deposited by him pursuant to the orders of this Court in CR No. 5360/79. While the said application for refund was pending, the respondent No. 4, i.e., the Commissioner of Taxes, Government of Assam, issued a notice dated 25.2.1994 under the provisions of Section 36(1) of the Assam General Sales Tax Act, 1993 seeking to revise the appellate order dated 23.12.1989 passed by the Assistant Commissioner of Taxes (Appeals) on the ground that the said order was erroneous and prejudicial to the interest of revenue. The legality of the aforesaid notice dated 25.2.1994 is the subject-matter of challenge in the present proceeding.

3. The power conferred by Section 36(1) of the Assam General Sales Tax Act which evidently would apply to the present case by virtue of Section 74 of the said Act is a suo motu power conferred on the learned Commissioner to revise any order passed by authority appointed under the statute. There are, however, certain preconditions to the exercise of the suo motu powers of revision and insofar as the present case is concerned, the relevant pre-conditions would be that the order sought to be revised in exercise of suo motu power by the Commissioner of Tax must be both "erroneous and prejudicial to the interest of revenue". The expressions "erroneous" and "prejudicial to the interest of revenue" carry a specific and definite connotation which has been interpreted by a Division Bench judgment of this Court in the case of *Shri Rajendra Singh & ors. v. The Superintendent of Taxes and others* (1990) 1 GLR 449. This Court while interpreting the said expressions in the context of the pari materia provisions of the Tripura Sales Tax Act, 1976, has held that to invoke the suo motu power of revision both the conditions precedent, i.e., "erroneous" and "prejudicial to the interest of revenue" must co-exist. Taking into account the expression "erroneous" "erroneous assessment and erroneous judgment" as defined in the Black's Law Dictionary, this Court has held that both the expressions "erroneous" and "prejudicial to the interest of revenue" must reflect a defect which is jurisdictional in nature in the assessment/order which is sought to be revised. The power of suo motu revision, as held by this Court, would not be available to the Commissioner merely because the learned Commissioner disagrees with the views of the authority who had passed the order sought to be revised. Merely because the learned Commissioner is of the view that the order is incorrect or that a higher quantum of tax or penalty should have been levied would not make the order of the lower authority amenable to the suo motu revisional power. The order or decision of the lower authority must disclose some jurisdictional error and it is the aforesaid jurisdictional error that makes the order amenable to correction in exercise of the suo motu power of revision.

4. In the present case an affidavit has been filed by the Joint Commissioner of Taxes, Government of Assam; A perusal of the aforesaid affidavit, particularly,

the averments contained in paragraphs 7 and 11 goes to show that the learned Commissioner appeal's to have issued the impugned notice on the ground that the order dated 23.12.89 passed by the Assistant Commissioner of Taxes (Appeals), Jorhat was in his view not a correct order for which reason the said authority has construed the same to be erroneous. Nothing has been disclosed in the affidavit filed as to what jurisdictional error has crept into the said order dated 23.12.1989 so as to make the same amenable to correction in exercise of suo motu powers u/s 36(1). No record to the above effect has also been placed before the Court. The satisfaction that the order sought to be revised is erroneous and prejudicial to the interest of the revenue has to be reached by the Commissioner and not by this Court. In the absence of any such satisfaction, on the ratio of the law laid down by this Court in the case of Shri Rajendra Singh & ors. v. The Superintendent of Taxes and others (supra), the conclusion that is inescapable is that the necessary conditions precedent to the exercise of power u/s 36(1) of the Act are absent in the present case.

5. For the aforesaid reasons, this writ petition has to be allowed and consequently the impugned notice dated 25.2.1994 shall stand set aside and quashed.