
(2007) 05 GAU CK 0033
In the Gauhati High Court

Shybun Lyngdoh

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-05-2007

Acts Referred:

Assam Value Added Tax Act, 2003 — Section 76, 76(4)
Constitution of India, 1950 — Article 226

Citation : (2007) 4 GLT 255 : (2007) 8 VST 776

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—The petitioner is a registered dealer of coal under the Central Sales Tax Act, 1956, having its registered office in the State of Meghalaya, and procures orders for supply of coal from various customers outside the northeastern region and, then, dispatches, in the course of inter-State trade and commerce, coal from Meghalaya to various other States like U. P., Punjab and others. The coal, which get sold to such customers in the States of U. P., Punjab, etc., are dispatched from Meghalaya by road up to the railway yard, at Jagiroad, for being further carried to its destination by railway for onward dispatch to other States, such as Punjab, Haryana, etc. The writ petitioner's grievance is that while making such sales in the course of inter-State trade and commerce, the petitioner pays necessary sales tax in the State of Meghalaya and also deposits necessary royalty, payable to the Directorate of Mineral Resources, Meghalaya, but respondent No. 3, namely, Superintendent of Taxes, Jagiroad Check-post, which falls in Assam, has not been allowing the petitioner's vehicles, loaded with coal to be carried to the railway yard, at Jagiroad, meant for being transported to other States of the country, to cross the barriers of the check-post, at Jagiroad, without depositing the security in advance. Contending that such demand of security is in violation of the Assam Value Added Tax Act, 2003 (in short, "the said Act"), the petitioner has, with the help of the present writ application made under Article 226 of the Constitution of India, sought for issuance of appropriate writ(s) declaring the demand of security by respondent No. 3, as illegal and

without jurisdiction and commanding the respondents not to insist on deposit of security in respect of the vehicles carrying the petitioner's coal sold to various customers in different parts of the country and passing, in the course of inter-State trade and commerce, through the State of Assam. It is also the grievance of the petitioner that though no written order has been issued to the petitioner as regards the demand of security by respondent No. 3, but on making an inquiry, in this regard, the petitioner has learnt that the demand of security is being made by respondent No. 3 on instructions issued by respondent No. 2, namely, Commissioner of Taxes, Assam, directing the Superintendent of Taxes, Jagiroad Check-post, not to allow vehicles, carrying coal, to cross the barrier of check gate, at Jagiroad, unless and until a bank draft or pay order is deposited, in advance, with the Superintendent of Taxes, at the said check gate, for the coal so carried.

2. While moving this writ petition, the petitioner had also sought for necessary interim directions restraining the respondents from demanding and/or collecting security from the vehicles, which carry the petitioner's coal to Jagiroad railway yard for dispatch by railways to other States of the country.

3. Having heard both sides on the prayer for interim directions, which the petitioner had made, the court, on March 13, 2006, passed, inter alia, interim directions, which read as under:

In the interim, we further provide that in the case of the present petitioner, if the sale or transport of coal in the course of inter-State trade in which the coal is passing through the State of Assam, the respondent authorities shall not insist on security deposit. However, the respondent-State shall be at liberty to examine and verify the documents, transit challan, etc., and in case they find that the same is not in order, they may proceed in accordance with law.

4. As sought for, and agreed to, by the learned Counsel for the parties, this writ petition has been taken up for final disposal at the admission stage itself.

5. I have heard Dr. A. K. Saraf, learned Senior Counsel for the petitioner, and Mr. R. Dubey, learned Counsel appearing on behalf of the respondents.

6. The provisions as regard demand of security under the said Act in respect of goods, which are in transit by road, through the State of Assam, are embodied in Sub-section (4) of Section 76 of the said Act, which states thus:

76(4). Where it appears to the officer-in-charge of the entry check-post or barrier or to the officer empowered by the Commissioner in this regard that the driver or the person-in-charge of the vehicle, or the transporter is not giving, correct and complete documents relating to the consignment of the goods and correct information about the ownership of the goods and their destination and also in a case where the transporter of the goods has no permanent address within the State, the officer-in-charge of the entry check-post or the officer empowered by the Commissioner shall before issuing the transit pass, require

the driver or the person-in-charge of the vehicle, or the transporter to furnish a security equivalent to the amount of tax calculated on the goods at the rate of tax prevailing in the State, in the form of a demand draft, call deposit or guarantee from a Scheduled Bank.

The security so furnished shall be released to the person who furnished the security on submission of the transit pass as per provision of Sub-section (6). If, however, the transit pass is not submitted in time as provided in the said Sub-section or is submitted without due endorsements) as provided in the same Sub-section, the amount of such security shall be adjusted against the amount of tax that may be assessed under Sub-section (6) and shall be deposited into the Government account.

7. A microscopic reading of the provisions contained in Sub-section (4) of Section 76 of the said Act makes it clear that where it appears to the officer-in-charge of an entry check-post or barrier or an officer empowered, in this regard, by the Commissioner that the driver or the person-in-charge of the vehicle or the transporter is not giving the correct and complete documents relating to the consignment of the goods and correct information about the ownership of the goods and their destination and also in a case, where the transporter of the goods has no permanent address within the State, the officer-in-charge of the entry check-post or the officer empowered by the Commissioner shall, before issuing the transit pass, require the driver or the person-in-charge of the vehicle or the transporter, as the case may be, to furnish a security equivalent to the amount of tax calculated on the goods at the rate of tax prevailing in the State, in the form of a demand draft, call deposit or guarantee from a scheduled bank.

8. While considering the present writ petition, what needs to be pointed out is that the subject-matter of controversy, raised in this writ petition, has been substantially dealt with by the High Court in W. P. (C) No. 944 of 2007, by judgment and order, dated March 1, 2007¹ the court, while succinctly laying down the parameters of the powers of the authorities concerned under the said Act. The court, in *Salemfort Khonglah* [2007] 7 VST 38 (Gauhati), while dealing with the mutual obligations of the authorities concerned, on the one hand, and the dealer or transporter of the coal, on the other, observed and held as follows (page 40 of VST):

3. The legislative provisions are clear and unambiguous and really require no reiteration or clarification. If the mutual obligations, i.e., of the transporter and the enforcement agencies are performed in the spirit the enactment has visualised, the court sees no room for a possible dispute. It is not the law but human shortcomings, on either side, that has given rise to frictions from time to time. Consequently the courts have to step in to guide such mutual actions to ensure a friction-free social order.

4. u/s 76 of the Act goods carried in the course of inter-State trade and commerce, on its entry into the State of Assam can be carried further on the

basis of the transit pass to be issued at the first check-post (hereinafter referred to as, "the entry check-post") on the inter-State boundary. The Act, inter alia, contemplates that the goods in transit will be accompanied by valid and complete documents on the basis of which an application is required to be made for issue of a transit pass. The authority at the check gate is required by the Act to satisfy itself that the documents as well as the goods actually carried in the truck are in order and thereafter a transit pass is required to be issued to facilitate further movement within the State. At the last check-post within Assam (hereinafter referred as, "the exit check-post") the goods as well as the documents are required to be re-verified in the light of the entries made in the transit pass issued and if everything is in order the goods are to be permitted to leave the territories of the State of Assam. An endorsement to the effect that everything is in order, i.e., goods mentioned in the transit pass have been transported out of the State is required to be made in the transit pass by the authorities of the exit check-post. The transit pass containing such an endorsement is required to be filed before the authorities of the entry check-post so that satisfaction can be derived that none of the goods which are carried in the course of inter-State trade and commerce are actually unloaded within the State of Assam. This is the scheme of the Act which enjoins upon both parties to perform mutual obligations which if carried out in the right earnest can give rise to no possible misgivings. At this stage it must also be noticed that there is a power vested by the Act in the authority of the first check-post, i.e., entry check-post to realise security. Such power, it is contemplated, will be exercised in a situation where there is some doubt or ambiguity with regard to the ownership of the goods carried or the documents accompanying such goods or where the transporter does not have a local permanent address within the State of Assam. Only in such situations security can be levied which is liable to be refunded once the transit pass containing the endorsement to the effect that the goods have moved out of the State is submitted at the entry check-post. It must also be noticed at this stage that there is no power vested in any authority by the Act, as none can be to levy any tax on the goods at the entry check gate.

7. The power to insist on deposit of security is circumscribed by the Act by prescription of certain conditions precedent. The exercise of such power is hedged by the requirement of generation of satisfaction in the check-post authority that the conditions precedent exist in a given case. Though not specifically expressed, communication of the reasons to the concerned person as to why security is being insisted upon will ensure fairness ; act as a check against arbitrariness ; promote good administration and also further the constitutional scheme envisaged by Part XIII of the Constitution. The following observations of Lord Denning in *Seaford Court Estates Ltd. v. Asher* [1949] 2 ALL.E.R. 155 approved by the apex court amongst others in (i) *Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar*, , (ii) *Smt. Pushpa Devi and others Vs. Milkhi Ram (Dead) by his L.Rs.*, and (iii) *N.K. Jain and others Vs. C.K. Shah and others*, , will justify the above

view.

The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this and that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if the Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of Legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

8. The above observations, with due elasticity, the court must add and observe, must apply to myriad situations in the context of the ever-increasing number of legislations that are being attempted to deal with the fast-changing social, political and economic order in our vast country. The court must, however, hasten to add that the view it has taken in the present case must not be understood to be requiring the check-gate authority to pass a detailed and reasoned order. No such requirement can be understood in the absence of any expressed provisions to the said effect under the Act. Also the court must not be oblivious of the ground realities. Reasons for imposition of security have to be formulated on the spot, i.e., at the check-post on the inter-State boundary and in situations where a huge volume of traffic has to be continuously handled. Consequently, a mere formulation indicating how the mind has been applied will suffice. However, how such a formulation can best be made should be left to the administrator to decide.

9. From a dispassionate reading of the above observations made in *Sale-mfort Khonglah* [2007] 7 VST 38 (Gauhati), what clearly emerges is that though no specific or express provision in Sub-section (4) of Section 76 of the said Act has been made necessitating communication of reasons to the concerned person as to why security is being insisted upon, it is nevertheless imperative that the reasons for demanding security be made known, at the check gate itself, so that the person from whom the demand of security is made comes to know as to why such security has been demanded. This will ensure fairness and act as a check against arbitrariness. Viewed thus, it is clear that when an officer-in-charge of the entry check-post or the officer empowered by the Commissioner demands

security by invoking the provisions of Sub-section (4) of Section 76, he shall communicate to the person from whom security is demanded the reason for such demand, though the reasons, to be assigned, need not be elaborate. In other words, howsoever brief, the demand for security has to be accompanied by communication of reason.

10. These provisions, in effect, convey that it is obligatory for the officers aforementioned to require, before issuing the transit permit, the driver or the person-in-charge of the vehicle or the transporter, as the case may be, to furnish a security equivalent to the amount of tax calculated on the goods at the rate of tax prevailing in the State, in the form of demand draft, call deposit or guarantee from a scheduled bank, provided that it appears to the officers aforementioned that the driver or the person-in-charge of the vehicle or the transporter is not giving the correct and complete documents relating to the consignment of the goods and correct information about the ownership of the goods and their destination and also in a case, where the transporter of the goods, has no permanent address within the State. This, in turn, shows that for the purpose of raising demand for security, the conditions precedent, which make an officer demand deposit of such security, must exist or be satisfied. Logically, therefore, demand for security cannot be a routine affair. In fact, in the face of the clear language of Sub-section (4) of Section 76 of the said Act, a demand for security can be made only in exceptional cases, when the conditions, indicating hereinbefore, are fulfilled. In the case at hand, it is an admitted position that for the purpose of raising the demand for deposit of security, the respondents, particularly, respondent No. 3, has assigned no reason and communicated no reason to the petitioner or his authorised representative.

11. I Having clarified the position of law, which shall govern the demand of security in exercise of powers under Sub-section (4) of Section 76 of the said Act, I find that in the present case, no reason has been communicated by respondent No. 3 for making a demand for security. Though it is alleged by the writ petitioner that such demand has been raised not because of the reason that the conditions precedent, specified under Sub-section (4) of Section 76 of the said Act, are satisfied for raising such demand, but because of the general instructions issued by respondent No. 2 that the vehicles, carrying coal, shall not be allowed to cross the barrier of the check gate, at Jagiroad, without payment of security, this court, at this stage, does not deem it proper to express any definite opinion on the correctness or veracity of the allegation, so made, by the petitioner. It is, however, made clear that demand of tax and/or security is a quasi-judicial act and has to be exercised in a quasi-judicial manner in strict compliance with the provisions of the relevant statute. Tax and/or security cannot be demanded and/or collected by an authority without complying with the provisions of the relevant statute. No authority, superior to an assessing authority, can interfere with the quasi-judicial functions of an assessing authority by issuing administrative directions. The apex court, in *Orient Paper Mills Ltd. Vs. Union of India (UOI)*, , made the position of law, in this regard, clear in the

following words:

If the power exercised by the Collector was a quasi-judicial power?as we hold it to be?that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi-judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the appellate authorities are Judges in their own cause ; ,yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others.

12. Because of what has been discussed and pointed out above, it becomes transparent that no demand for security can be raised except for reasons as are mentioned in Sub-Section (4) of Section 76 of the said Act and such demand, if raised, shall be accompanied by communication of reason for raising such a demand howsoever briefly recorded the reasons may be.

13. Considering, therefore, the matter in its entirety and in the interest of justice, this writ petition is disposed of with direction to the respondents, particularly, respondent No. 3, not to demand deposit of security by invoking his powers under Sub-section (4) of Section 76 of the said Act unless the conditions, prescribed in Sub-section (4) of Section 76 of the said Act, are fulfilled. It is also made clear that respondent No. 3 can demand security only on fulfilment of conditions indicated hereinabove and not because of the fact that a general direction has been given by respondent No. 2 not to allow any vehicle, carrying coal, to cross the barrier of check gate, at Jagiroad, without depositing security. It is further made clear that in terms of the observations and directions given hereinabove, the interim directions, passed in this writ petition on March 13, 2006, shall stand modified.

14. With the above observations and directions, the writ petition shall stand disposed of.