(2000) 03 GAU CK 0027

In the Gauhati High Court

Case No : Civil Miscellaneous Application No. 110 of 2000 in Writ Petition (C) No. 114 of 2000

Sri Samir Ghosh APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:
Tripura Sales Tax Act, 1976 — Section 3

Citation : (2000) 3 GLT 366 : (2000) 120 STC 416

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : A.K. Bhowmmik, for the Appellant; U.B. Saha, Government Advocate, for the Respondent

Judgement

D. Biswas, J.—This order relates to an interim prayer made by the writ petitioner of W.P. (C) No. 114 of 2000 for issue of necessary direction calling upon the respondents Nos. 1 to 3 not to charge any tax under the Tripura Sales Tax Act, 1976, on the supply of pea-gravels by the petitioner to the respondent No. 4, the Executive Engineer, in execution of a supply agreement and also to direct the said respondents to release pea-gravels of the petitioner detained at Churaibari Sales Tax Check-post.

2. It would appear from the provisions of Rules 45, 46 and 47 of the Tripura Sales Tax Rules, 1976 that an importer of any taxable goods to the State of Tripura is required to make a declaration in form XVIII in triplicate and a copy thereof will be sent by the Superintendent of Taxes to the check-post/gate for the purpose of allowing the goods to be brought to the State of Tripura. In the instant case, the writ petitioner did not make such a declaration and, as a consequence, the officer-in-charge of Churaibari check-post detained four trucks carrying pea-gravels as per contract referred to above. This rule has been framed in exercise of the rule-making power of the State Government for the purpose of effective implementation of the provisions of sections 37 and 38 of the Act. There

is no challenge to the legality and validity of the aforesaid provisions of law and, therefore, every person including a registered dealer will have to comply with the above requirement of law.

3. Sri A.K. Bhowmik, learned Senior Counsel for the petitioner, has submitted that pea-gravel is not a taxable item as per provision of the Act and, as such, the petitioner is not required to make any declaration as provided in Rules 45 to 47, Elaborating his contention, Sri Bhowmik has submitted that the word "gravel" has been made a chargeable commodity after amendment of the Act with effect from February 28, 2000. His grievance is that the word "gravel" cannot be interpreted so as to include pea-gravel in order to make it chargeable to sales tax. In support of his contention, Mr. Bhowmik has also referred to a decision of a division Bench of this Court in Shri Chitta Ranjan Saha v. State of Tripura 1990 79 STC 51; (1989) 2 GauLR 101.

4. The division Bench in the aforesaid judgment held that a bare reading of entry 29 makes it clear that the entry covers bricks and stones and the products or sub-products thereof and tiles, which are generally used for building or road construction. It has been specifically held that pea-gravel does not satisfy the description of goods given in item 29. The position has now changed after amendment of the Act in 2000 A.D. It is, therefore, necessary now to take a decision as to whether the word "gravel" also means and includes pea-gravel.

5. It would appear that the general specification regarding pea-gravels has been incorporated in the NIT documents. While giving physical characteristics of the pea-gravel, it has also been mentioned that the gravel shall be conforming to grade B specified in 4097--1967 having particle size range over 3.35 mm to 4.75 mm. A general reading of the specification available in the NIT documents indicates that pea-gravel has been distinguished with gravel only in size and gravity. Mr. Bhowmik has referred to the definition of "gravel" as is available in "Engineering materials" by Surendra Singh. The definition reads as follows :

"1.12.12. Gravel. These are water worn pebbles of any kind of stone and are up to 7.5 cm in diameter. Usually found in river beds or in alluvial tracts. These are used for road blindage, surfacing and in concrete."

6. It would appear from the said definition that the gravels are water worn pebbles of any kind of stone up to the size of 7.5 cm in diameter. In the instant case, the NIT documents show that the pea-gravel to be supplied by the petitioner should be of the size "ranging over 3.35 mm to 4.75 mm". A comparative study of the definition as above and the definition and specification of pea-gravel as is found in the NIT documents would show that pea-gravel is a smaller kind of gravel. This is also obvious from the general specification of pea-gravel given as a whole. I am, therefore, of the opinion that the word "gravel" includes "pea-gravel". This conclusion further gains support if we refer to the definition of gravel as is available in Stroud''s judicial dictionary which shows that the gravel consists of "small particles of stone, and the same may be said of

sand". Likewise the definition of gravel available in Laxicom Webster Dictionary also shows that pea-gravels are small stones and pebbles, loosely mixed; small stones and sand combined; small crystals or calculi in the kidneys and bladder.

7. A reading of the definition as narrated above also shows that pea-gravel consists of stone and sand which are also essential components of "gravel". Therefore, the pea-gravel is nothing but smaller specification of gravel.

8. In the circumstances, I am of the opinion that pea-gravel is included within the word "Gravel" and, as such, chargeable to sales tax as per amended provisions of the Tripura Sales Tax Act. Therefore, the question of any direction of the respondents not to levy tax on sale of such product does not arise.

9. Regarding release of the gravels detained by the Churaibari check-post officials, this Court cannot but express its concern. Since the gravels are meant to be used by the State Government for the purpose of filtering of the tubewells in the State of Tripura, delay in releasing the goods detained will eventually affect the interest of the State and the people in general. Before parting with the records, I would again express my desire in the larger interest of the public and also on consideration of the fact that ultimately the tax will be deducted at source by the concerned executive engineer, an endeavour shall be made by all concerned to resolve the matter amicably for release of the vehicles. The petitioner shall also be at liberty, in the event he fails to comply with the above provisions, to make an application to the Commissioner of Taxes and to the concerned executive engineer for resolution of the controversies. This observation, however, will not prejudice the rights of the petitioner, if any, in the main writ petition. Accordingly, the miscellaneous petition stands disposed of.