(2000) 01 GAU CK 0018

In the Gauhati High Court

Case No : Writ Appeal No. 197 of 1996 and C.R. No''s. 2555 and 3250 of 1993

State of Assam and Another APPELLANT

Vs

A.B.C. (I) Ltd. RESPONDENT

Date of Decision : 04-01-2000

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 14, 3, 3(1), 42, 42(1)
Constitution of India, 1950 — Article 301
Tripura Sales Tax Act, 1976 — Section 2, 29, 30, 32, 36A

Citation : (2001) 1 GLT 25

Hon'ble Judges : Brijesh Kumar, C.J;D. Biswas, J

Bench : Division Bench

Advocate : P.G. Baruah, A.G. and A. Sharma, for the Appellant; R. Gogoi, A.K. Saraf, K.K. Gupta and R.K. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—This writ appeal has been preferred against the judgment and order dated February 20, 1996 passed by the learned Single Judge in Civil Rule Nos. 2555 of 1993 and 3250 of 1993. By the aforesaid judgment, the learned Single Judge held that the provisions contained under Sections 42 and 44 of the Assam General Sales Tax Act, 1993 in so far they relate to the transporters, are bad in law and ultra vires. By means of the provisions referred to above, a transporter of goods is under obligation to furnish to the prescribed authority true and complete particulars and information regarding documents of title to the goods which he handles during the course of his business. He is also required to maintain true and complete accounts and registers in respect thereof. Such accounts can be demanded and produced before the prescribed authority. Section 44 of the Assam General Sales Tax Act provides for seizure of accounts and documents and search of premises. The learned Single Judge also held that the order requiring the Petitioners to produce the books of account for the period prior to 1.7.1993 is illegal as the new provisions contained under Sections 42 and 44 of the Assam General Sales Tax Act had come into force with effect from

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1.7.1993. The State felt aggrieved by the judgment and order of the learned Single Judge. Hence this appeal.

2. On behalf of the Appellants we have heard Shri P.G. Baruah, learned Advocate General for the State of Assam and Shri R. Gogoi for the Respondent.

3. At the very outset we may point out that the learned Advocate General in all fairness and rightly so, did not dispute the validity of that part of the order of the learned Singe Judge by which it was held that the order for production of documents and books of account for the period prior to 1.7.1993 is bad in law for the obvious reason that the two provisions referred to above under the Assam General Sales Tax Act became effective only with effect from 1.7.1993. Hence there was no occasion to require the transporters to produce the documents pertaining to the period prior to 1.7.1993 during which period it was not obligatory for them to maintain any such registers and documents

4. So far the question of validity of Sections 42 and 44 of the Assam General Sales Tax Act, 1993 is concerned, learned Advocate General submits that since tax is levied under the aforesaid Act and whatever is ancillary or subsidiary provision necessary for achieving the object of such legislation would be covered by Entry 54 of list II of the VIII Schedule to the Constitution. It is further submitted that the entries in the Legislative List should not be read in a narrow or pedantic sense, but must be given their fullest meaning and widest amplitude and be held to be extending to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them. It is submitted that Tripura Goods Transport Association had challenged similar provisions contained in Tripura Sales Tax Act, 1976 on similar grounds that the transporters were not the dealers, hence such obligations and restrictions could not be imposed upon them, nor any provision imposing panalty and punishment could be made and different provisions would be beyond legislative competence. It is submitted that the validity of such provisions have been upheld by this Court and the Hon''ble Supreme Court considered the matter and upheld the validity of different provisions of the Tripura Sales Tax Act, namely, Sections 29, 30, 32, 36A, 38B and 2(b) of the Tripura Sales Tax Act. The submission is that the Hon''ble Supreme Courts decision as indicated above, reported in Tripura Goods Transport Association and Another Vs. Commissioner of Taxes and Others, squarely covers the controversy raised in the present case.

5. A perusal of the order passed by the learned Single Judge indicates that the above noted two provisions have been held to be ultra vires in view of the decision of the Hon''ble Supreme Court reported in State of Haryana and Others Vs. Sant Lal and Another,

6. Section 38 of Haryana General Sales Tax Act, 1973 required clearing or forwarding agent, dalal or any Ors. person transporting goods (manager, agent, driver or employee) within the State, who, during the course of his business, handles documents of title to goods for or on behalf of any dealer to furnish to

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the assessing authority the particulars and information in respect of the transactions of the goods and further required to obtain licence from the assessing authority in breach whereof heavy penalty was provided for, were held to be ultra vires and no proximate connection was found to be existing between the transaction of sale and the clearing or forwarding agent, dalal or Ors. transporter. The penalty as provided was also held to be disproportionate to the quantum of escaped assessment. It was also observed in the above noted decision that the legislative entries to be read in a wider sense so as to include all subsidiary and ancillary matters. Provisions by which evasion of tax could be prevented and further providing machinery for the purpose would be within the ambit of the legislative entry. It was further observed that if a clearing or forwarding agent or dalal or a person transporting the goods is indeed reasonably and proximately connected with the sale occasioning in the liability to the sales tax, it would be legitimate requirement for such person to obtain licence and maintain and furnish such information and particulars to the assessing authority as in the course of his business he may come to possess. But while commenting on Sub-section (1) Section 38 of the Haryana General Sales Tax Act if was observed that it was not every clearing or forwarding agent or dalal or person transporting goods who comes into possession of the particulars and information required to be furnished. It is further observed that it is only such clearing or forwarding agents or Ors. persons transporting the goods who can be reacquired to obtain licence and would be liable to penalty for breach of such provisions. The meaning of the words: documents of title to goods" was also held to be not clearly defined. So it was found that provisions of the act cannot have any application to those persons who do not handle documents of title. Thus provisions of the Act cannot have any application to all and the State Legislature will have no power to legislate in respect of such persons. The matters which are not ancillary or subsidiary to the legislative entry cannot be legislated upon under the entry.

7. From a perusal of the decision of the Hon''ble Supreme Court relied upon by Shri P.G. Baruah, learned Advocate General Assam in the case of Tripura Goods Transport Association and anOrs. (supra), we find that the earlier decision of the Supreme Court in the case of State of Haryana v. Sant Lal (supra) was considered and after considering the said decision the provisions of Tripura Sales Tax Act were held to be intra vires. The relevant provisions, namely, Sections 42 and 44 of the Assam General Sales Tax Act, 1993 read as follows:

42. Furnishing of information by clearing and forwarding agent etc.--(1) Every clearing, booking or forwarding agent or any Ors. person transporting goods who during the course of his business handles documents of title to goods for or on behalf of any dealer or a person holding certificate u/s 14 shall furnish to the prescribed authority true and complete particulars and information and shall maintain true and complete accounts, registers and documents in respect thereof, and if the prescribed authority considers that such accounts, registers and documents are not sufficiently clear and intelligible the said authority may

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direct any clearing, booking or forwarding agent or dealer or the persons transporting goods to produce and maintain accounts in such manner as may be required.

(2) Such accounts shall, on demand, be produced before the prescribed authority who may take or caused to be taken such extracts as he may consider necessary.

(3) A person transporting goods shall carry a declaration in such form as may be prescribed by the Commissioner supported by either a cash memo, a bill or a challan, in case the movement is Ors. wise a result of sale, in respect of goods which is being transported on a goods carrier, or a vessel and shall produce such challan, cash memo or bill along with the aforesaid declaration of demand before the prescribed authority.

(4) If any clearing, booking or forwarding agent or dealer or person transporting goods contravenes the provision of Sub-section (1) or (3) in a manner which is likely to lead to evasion of any tax payable under this Act, the prescribed authority may, without prejudice to any action under Sections 61 and 62 of this Act on the charge of abetment, after giving the person concerned an opportunity of being heard in the manner prescribed, direct him to pay by way of penalty, an amount which shall be equal to three times the amount of tax calculated on the value of goods in respect of which no particulars or information or correct particulars of information has been furnished under Sub-section (1) or no cash memo or bill or challan has been produced before the prescribed authority under Sub-section (3) or rupees one thousand whichever is greater:

Provided that notwithstanding anything contained in this sub-section where the circumstances of the case or the checking of the goods carrier or vessels demands any action relating to inspection, search and seizure of the goods loaded on the goods carrier or vessel, by the prescribed authority, the provisions of Sub-sections (3), (5), (6) and (7) of Section 44 shall mutatis mutandis apply.

Explanations: (1) for the purpose of this sub-section--

(i) ''Dealer'' Shall include a person who renders his services for booking of or taking delivery of consignment of goods at a Railway Station, booking agency, goods transport company office, or any place of loading or unloading of goods or contrives, makes and concludes bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or Ors. valuable consideration or Ors. wise.

2(ii) ''person transporting goods'' shall, besides the owner, include the manager, agent, driver, employee of the owner, or person in charge of a place of loading or unloading of goods Ors. than a rail head, or a post office, or of a goods carrier carrying such goods, or a person who accepts consignments of such goods for despatch to Ors. places or gives delivery or any consignment of such goods to the consignee.

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44. Production, inspection, and seizure of accounts documents and goods and search of premises--(1) subject to such rules as may be made by the State Government under this Act, any authority, appointed under Sub-section (1) of Section 3, may either before or after assessment, require any dealer to produce before it or him any accounts, registers or documents or to furnish any information relating to the financial transactions of the dealer, the profit derived from such transactions and the stock of goods produced, raised, processed, manufactured, bought, sold or delivered by such dealer and the dealer shall comply with such requirement.

(2) Subject as aforesaid, all accounts registers and documents relating to the financial transactions of a dealer, the profit derived from such transactions and all goods kept in any place of business of any dealer shall at all reasonable times, be open for inspection by any authority appointed under Sub-section (1) of Section 3 and the dealer shall render all possible assistance to such authority in carrying out the inspection.

Explanation: Such authority may take or cause to be taken such copies of, or extracts from the accounts, registers or documents as such authority may consider necessary.

(3) If any authority appointed under Sub-section (1) of the Section 3 has reason to suspect that any dealer is to evade the payment of any tax or any clearing or forwarding agent or a person transporting goods or any owner of a warehouse or a godown is keeping or has kept his accounting such a manner as is likely to cause evasion of tax payable under this Act, such authority may for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer or the clearing or forwarding agent or the person transporting goods or the owner of a warehouse or godown as may be, necessary and shall grant a receipt for the same, such seized accounts, registers or documents shall be retained for so long as may be reasonably necessary for examination thereof or for a prosecution u/s 57 and shall thereafter be returned to the person concerned in the prescribed manner:

Provided that if the seized accounts, registers or documents are retained by any authority Ors. than the Commissioner for more than one hundred and twenty days, the reasons for so doing shall be recorded in writing and the approval of the Commissioner shall be obtained by the authority so retaining them.

(4) For the purpose of Sub-section (2) or Sub-section (3), any authority appointed under Sub-section (1) of Section 3 may enter and search any place of business of any dealer.

(5)(a) Any authority referred to in Sub-section (1) shall have the power to enter into and search any office, shop, godown or any Ors. place of business or any building or any place of the dealer, or of a dalal or of an owner of a warehouse, or of a clearing, booking or forwarding agent, or of a person transporting goods or vessels or goods carrier and seize any goods which are found therein but not

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accounted for by the dealer or the dalal, or the owner of the warehouse, or the clearing booking or forwarding agent, or the person transporting goods in his books, accounts, registers and Ors. documents:

Provided that a list of all the goods seized under this sub-section shall be prepared by such officers and be signed by the officer, the dealer or the person in-charge of goods or the person in-charge of the premises and not less than two witnesses.

(b) The authority referred to in Clause (a) shall, in a case where the dealer or the person in charge of goods as mentioned in Clause (a), fails to produce any evidence or satisfy the said authority regarding the proper accounting of goods, impose a penalty, after giving an opportunity of being heard in the prescribed manner to the dealer or such person which shall be equal to three times the amount to tax calculated on the value of such goods and the goods shall be released as soon as the penalty is paid.

(c) If the dealer or the person incharge of goods as mentioned in Clause (a) demands time for production of necessary documents in support of proper accounting, the authority referred to in Clause (a) shall release the goods on the condition that the dealer or such a person deposits a security equivalent to three times the amount of tax calculate on the value of the goods.

(d) If penalty imposed under Clause (b) is not paid forthwith or in security is furnished as provided in Clause (c) or the goods are not claimed by any person, the authority referred to in Clause (a) shall arrange for the safe custody of the goods.

(e) In case the penalty imposed under Clause (b) is not paid or the goods remain unclaimed for a period of fifteen days from the date of seizure, the goods so seized shall be sold by auction in the prescribed manner and the sale proceeds shall be appropriated towards the amount of penalty imposed under Clause (b); the balance of the sale-proceeds if any, shall be deposited in the Government Treasury and shall be refunded to the lawful claimant in the prescribed manner.

(f) In a case where the goods have been released on the deposit of a security as mentioned in Clause (c) and evidence regarding proper accounting of goods to the satisfaction of the authority referred to in said Clause (a) is not produced within fifteen days from the date on which security is deposited, the amount of security shall stand forfeited to the State Government. If, however, evidence or document to the satisfaction of the authority mentioned in Clause (a) regarding the proper accounting of goods is produced within the said period of fifteen days, the security shall be released and the amount shall be refunded in the prescribed manner.

(6)(i) The power conferred by Sub-sections (4) and (5) shall include the power to break open the lock or door of any box or receptacle or any Ors. place or premises where any accounts, registers or Ors. documents or goods may be kept

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or are reasonably suspected to be kept.

(ii) The power conferred by Sub-section (i) shall also include the power to seal any box or receptacle, godown or building where any accounts, registers or Ors. documents or goods may be kept or are reasonably suspected to be kept.

(7) An authority appointed u/s 3 may require the assistance of any public servant or police officer in making search and seizure or for safe custody of goods seized under the Section and such public servant or police officer shall render necessary assistance in the matter.

8. In the case of Tripura Goods Transport Association (supra), we find that under different provisions of the Act and the Rules it was made obligatory upon the transporters to maintain a register of accounts of declaration form which was to be submitted with the bills, invoices, consignment note issued by the consignor and documents in support thereof on the basis of which the value is declared. It was also obligatory upon the transporter to furnish and submit the documents and information as may be required by the Assessing Authority. Breach of any provision of the Act and the Rules or failure to produce any account, evidence or document or information would make him liable for penalties as provided u/s 29 of the Act. Section 36A relates to maintenance of accounts by carriers and Section 38-B requires for registration in the prescribed manner. It would, thus, be clear that the provisions of the two Acts, namely that of the Tripura General Sales Tax Act and the provisions impugned in the writ petition, out of which this appeal arises, are in substance similar. They were the provisions which had been considered by the Hon''ble Supreme Court in the case of Tripura Goods Transport Association (supra). In paragraph 22 of he judgment, their Lordships have considered the case of State of Haryana v. Sant Lal (supra). After considering the decision and the observations made in the case of Sant Lal, the Hon''ble Supreme Court observed in the case of Tripura Goods Transport Association that the decision in Sant Lal''s case would be of no help to the Petitioners. The Lordships have also quoted a passage from the judgment in Sant Lal''s case which reads as follows:

If a clearing of forwarding agent or ''dalal'' or person transporting goods is indeed reasonably and proximately connected with the sale occasioning the liability to the sales tax, it is legitimate to require him to licence himself under the Act and maintain and furnish such information and particulars to the assessing authority thereunder as he would in the course of his business come to possess. It is legitimate then to make him liable for such escapement of tax as has resulted form the breach by him of such obligation and to a reasonable penalty.

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However, inasmuch as the said Act does not define what precisely it means by the expression ''documents of title to goods'', it is unclear which class of forwarding or clearing agents or ''dalals'' or persons transporting goods it intends

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to bring within the ambit thereof. To clearing and forwarding agents, ''dalals'' and Ors. persons transporting goods who do not handle documents of title to goods for or on behalf of any dealer, the provisions of the said Act can have no application at all. In respect of such persons the State Legislature has no power of legislation under the Legislative Entry concerned. Qua them the legislation is not in respect of any matter ancillary or subsidiary to the legislative Entry which entitles the State legislature to impose a tax on the sale of goods.

It is observed in the case of Tripura Goods Transport Association (supra) that provisions in the Haryana General Sales Tax Act, were not similar. It has also been noticed that in the Haryana General Sales Tax Act under sub-para (ii) of Explanation to Section 38, a goods carrier carrying such goods had been specifically excluded. Thus on the basis of the observations made by the Hon''ble Supreme Court in the case of State of Haryana v. Sant Lal at pages 389-90, paragraphs 13 and 14 of the judgment as quoted above and finding difference in the provisions of the two acts, their Lordships in the case of Tripura Goods Transport Association held that the decision in the case of State of Haryana v. Sant Lal (supra) would be of no help to the Appellants.

9. Learned Counsel for the Respondent Shri R. Gogoi submits that explanations (1) and (2) of Section 42 of the Assam General Sales Tax Act are somewhat as the provisions contained in Section 38 with Explanation in the Haryana Act. In this connection suffice it to say that under Explanation (2) of Section 42, persons transporting goods have been included as dealer, whereas in the Haryana Act. Explanation sub-para (ii) excludes the transporters as noticed by the Hon''ble Supreme Court in the case of Tripura Goods Transport Association. Once transporters are excluded as provided under sub-para (ii) of Explanation to Section 38 of the Haryana General Sales Tax Act, the Ors. provisions would not be applicable to them. Similar arguments as raised in this case were raised in the case of Tripura Goods Transport Association as would be evident from paragraph 4 of the judgment. First, that such obligations could be made applicable on the transporters only if they were ''dealers'' and since they were neither trading in sale nor purchase of any goods and not being ''dealer'' as defined u/s 2(b) of the Act, the provisions casting obligations upon them and providing for penalty in breach thereof were beyond the legislative competence. The provisions for obtaining a certificate of registration was also challenged as violative of Article 301 of the Constitution. Both these arguments have been repelled by the Hon''ble Supreme Court in the case of Tripura Goods Transport Association.

10. In view of the discussions held above, we are of the view that this case would be covered by the decision of the Hon''ble Supreme Court in the case of Tripura Goods Transport Association (supra), in which case the earlier decision of the Hon''ble Supreme Court rendered in the case of State of Haryana v. Sant Lal (supra) was duly considered. The learned Single Judge had placed reliance upon the decision in the case of Sant Lal. Therefore, the judgment of the learned Single Judge declaring Sections 42 and 44 of the Assam General Sales Tax Act as

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ultra vires is not sustainable.

11. In the result, the appeal is allowed and the judgment and order passed by the learned Single Judge declaring Sections 42 and 44 of the Assam General Sales Tax Act as ultra vires is set aside and the said provisions are held to be intra vires the provisions of the Constitution.

Costs easy.

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