(1993) 06 GAU CK 0004

In the Gauhati High Court

Case No : Civil Rule No. 1343 of 1993

Surya Prakash Maheswari APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 28-06-1993

Acts Referred:

Assam Purchase Tax Act, 1967 — Section 37A(3)(b)(ii), 37A(3)(b)(ii)

Citation : (1996) 2 GLJ 433

Hon'ble Judges : S.K.Homchaudhuri, J

Bench : Single Bench

Advocate : S.A.Laskar, A.K.Maheswari, Advocates appearing for Parties

Judgement

1. Heard Mr. A.K. Maheswari, learned counsel for the petitioner and Mr. S.A. Laskar, learned Senior Govt Advocate.

2. With the consent of the parties, the petition is heard on merit and is disposed of.

3. The petitioner''s case is that he is a registered dealer under the Assam Purchase Tax Act, 1967, hereinafter mentioned as the Act, and he is paying purchase tax regularly which is payable under the Act and the Rules framed thereunder. The petitioner has also been granted for clearance certificate upto 31.7.93, by the assessing authority. Although the petitioner has been paying taxes regularly the petitioner has been asked to pay Rs.2,000/ and subsequently at the revised rate of Rs. 1,300/ on account of purchase tax in advance per truck load of goods purchased before dispatch of the truck with the goods. According to the petitioner there was no such provision in the Act or Rules framed thereunder requiring the assessee to deposit advance tax to the turn of Rs.2,000/ or Rs. 1,300/ per truck load of goods. The petitioner''s further case is that because of such illegal realisation of tax in advance he has already paid tax to the tune of Rs.54,400/ for the return period ending on 31.12.92 and Rs.55,300/ for the quarter ending on 31.3.93, in excess. The petitioner by his

letter dated 5.5.93 requested the Commissioner of Taxes, Assam for refund of the excess amount of Rs.54,400/ and Rs.55,300/ paid by him in respect of return period ending on 31.12.92 and 31.3.93, but the amount have not been refunded. But the illegal realisation of tax in advance @Rs.l,300/ per truck load of goods in advance are being made from the petitioner in spite of the fact that petitioner has been granted tax clearance certificate upto 31.7.93.

4. Mr. AK Maheswari, learned counsel for the petitioner submits that the realisation of tax at the rate of Rs.2,000/ or Rs. 1,300/ per truck load of goods is illegal and without jurisdiction inasmuch as there is no such provision either in the Act or in the Rules framed thereunder to realise tax from a registered dealer in advance @ Rs.2,000/ or Rs.1,300/ per truck load of goods as taxes. Such arbitrary realisation of tax without any authority of law have resulted in deprivation of the petitioner of his property without any authority of law and is therefore violative of the petitioner''s right under Article 300A of the Constitution.

5. Mr. SA Laskar, learned Senior Govt Advocate has placed before me the Assam Purchase Tax (Amendment) Act, 1992 (Assam Act IV of 1992) and submits that advance tax at the check gate is realised under the provision of section 37 (A) (3) (b) (ii) of the amended Act. Section 37 (A) (3) (b) (ii) provides as follows:

"37 (A) (3) (b) (ii): That the sale or purchase of the goods carried has, for the purpose of payment of tax under this Act, not been properly accounted for in the documents referred to in subsection (5) or no correct and complete declaration is given in respect of goods carried and if the said officer is satisfied, after making such enquiry as he deems fit, that with a view to preventing the evasion of tax payable in respect of the sale or purchase of the goods carried, it is necessary to detain the goods and direct the driver or any other person in charge of the goods vehicle or boat, or the consignor or the consignee, to pay such tax, or to furnish adequate security in such form and in such manner and to such authority as may be prescribed on behalf of the person liable to pay such tax."

6. On going through the provisions, 1 do not find any provision authorising the respondent to realise Rs.2,000/ or Rs.1,300/ per truck load of goods in advance from a dealer before despatch of the goods by the truck. What section 37 (A) (3) (b) (ii) contemplates is when during check at the check gate it is found that a dealer does not possess the proper tax clearance certificate and other documents, tax may be realised from such dealer. In case, at the cheek gate, a dealer produces proper tax clearance certificate and other documents, there cannot be any question of realisation of tax at the check gate. It is not disputed that petitioner has been filing return in respect of every return period and is paying taxes as per provisions of the Act, realisation of tax in advance at a rate of Rs.2,000/ or Rs. 1.300/ per truck load of goods before the dispatch of the goods by a truck for the purpose of crossing the barrier is, ex facie arbitrary, illegal and without jurisdiction.

For the reasons slated above, the petition is allowed. The respondents are directed not to realise tax in advance on the basis of per truck load of goods purchased by the petitioner. As regard excess amount of tax realised from the petitioner, the respondents are further directed either to refund the excess amount of taxes so realised or to allow the petitioner to adjust the amount against the taxes payable by the petitioner in future.

I make no order to costs.

