(2015) 03 GAU CK 0036

In the Gauhati High Court

Case No : Writ Petition (C) No. 3938 of 2009

Tata Tea Ltd. and Others APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Citation : (2015) 81 VST 442

Hon'ble Judges : K. Sreedhar Rao, A.C.J;Prasanta Kumar Saikia, J

Bench : Division Bench

Advocate : Ashok Saraf, Senior Advocate, D. Baruah, N. Hawelia, M.L. Gope, S. Chetia and A. Goyal, for the Appellant; R. Dubey, Advocates for the Respondent

Judgement

K. Sreedhar Rao, Actg. C.J.

1. The petitioner imports tea from outside and blends the same with the local varieties and sells the same in packed condition inside the State and outside the State in course of inter-State trade and commerce. The petitioner sought for opinion of the Commissioner regarding the applicability of the Entry Tax Act to the abovesaid goods. The Commissioner has given an opinion that since the imported tea is not sold in the same form and it is blended with the local varieties; therefore, entry tax attracts and levied the same. The petitioner aggrieved by the same opinion and levy of entry tax, has filed this writ petition against the opinion and levy of entry tax. The relevant provisions of section 3 of the Entry Tax Act are extracted below:

"3. (1) Subject to the other provisions of this Act, there shall be levied and collected an entry tax on the entry of specified goods into any local area for consumption, use or sale therein, at the rates respectively specified against each item in the Schedule. The entry tax shall be leviable on the import value of the specified goods and shall be paid by every importer of such goods:

Provided that no entry tax shall be levied under this section on the entry of specified goods into a local area, if it is proved to the satisfaction of the assessing authority, in such manner as may be prescribed, that such goods have already been subjected to entry tax or that the entry tax has been paid by the importer or any other person under this Act in respect of the same goods.

(2) Notwithstanding anything contained in sub-section (1), and subject to production of documentary proof, no entry tax shall be levied on such specified goods, which are also taxable under the Assam Value Added Tax Act, 2003,--

(i) if such specified goods are brought into any local area by a dealer registered under the Assam Value Added Tax Act, 2003 for the purpose of resale and such goods are sold inside the State and the dealer is liable to pay tax on the sales of such goods under the Assam Value Added Tax Act, 2003;

(ii) if such specified goods are sold in the course of inter-State trade or commerce or in the course of export out of the territory of India or such goods are otherwise despatched outside the State by way of stock transfer by a dealer registered under the Central Sales Tax Act, 1956;

(iii) if such specified goods are imported into a local area in the course of import from outside the territory of India:

Provided that, if any such dealer, after importing the specified goods, consumes such goods in any form or deals with such goods in any other manner, he shall inform the assessing authority before the 21st day of the month, succeeding the month in which such goods are so consumed or dealt with and pay the tax, which would have been otherwise leviable under the provisions of this Act.

(3) Where the specified goods, the sales of which are exempted under the Assam Value Added Tax Act, 2003 for reasons of such goods being included in the First Schedule to the said Act, which after entry into a local area are sold by an importer in the course of inter-State trade or commerce or in the course of export out of the territory of India or are despatched outside the State by way of stock transfer, the import value of such specified goods subsequently sold or sent out in the manner mentioned above shall, subject to production of proof, be deducted from the total import value to determine the taxable import value.

(4) The State Government may, by notification in the Official Gazette, in the public interest or taking into account the infrastructure and amenities provided or to be provided to facilitate trade and commerce, vary the rates of tax of the specified goods and on such notification being issued, the Schedule shall be deemed to have been amended accordingly:

Provided that the rate of tax to be specified or varied by the State Government in respect of any such goods shall not exceed twenty percentum."

Entry 40 of the Schedule discloses that tea is specified goods. Upon reading of sub-sections (1) and (2) of section 2, the view taken by the Commissioner does not appear to be correct. It may be that the petitioner imports the tea from outside and a part of it is sold in Assam by blending and a part of it is sold in other States as inter-State sale. He paid VAT for the sale in Assam and Central sales tax for the sale outside the State.

2. The view taken by the Commissioner that the tea imported should be sold in the same form in order to get exemption of entry tax does not appear to be a correct view. By blending local varieties, there is no change in the nature of the product both for the local sale of local variety and after blending with the imported goods, VAT is paid and for inter-State sale Central sales tax is paid and the tea even after blending very much remains as specified goods. In that view of the matter, the levy of entry tax on the import of tea and local sale and inter-State sale of the blended tea is untenable. The impugned orders passed are quashed.