
(2006) 06 GAU CK 0002
In the Gauhati High Court

Wood Enterprise	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 20-06-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 3, 4, 5
Constitution of India, 1950 — Article 269, 286, 366

Citation : (2009) 5 GLR 286 : (2006) GLT 100 Supp : (2007) 10 VST 699

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—In the present writ application, the petitioner has challenged not only the legality of the show cause notice, dated March 3, 2006, issued by the Assistant Commissioner of Taxes, Tinsukia, but also the vires and validity of Section 8(3)(iv)(a) of the Assam General Sales Tax Act, 1993 (in short, "the Act of 1993") on the ground that Section 8(3)(iv)(a) is beyond the legislative power and competence of the State.

2. The material facts, in brief, are thus : The petitioner is engaged in sale and supply of electrical goods and it executed various works contract with the railways and other public bodies. The petitioner submitted, under the Act of 1993, its return of turnover, in respect of not only supply of goods and services, but also in respect of works contract for the assessment years 2002-03 and 2003-04. The Superintendent of Taxes, Tinsukia, upon verification of the records of the petitioner, assessed, vide assessment orders, dated October 18, 2004 and March 11, 2005, the tax liabilities of the petitioner for the assessment years 2002-03 and 2003-04, respectively and issued notices of demands accordingly. The petitioner complied with the notices of demands, so issued. However, subsequent thereto, the Assistant Commissioner of Taxes, Tinsukia, vide notice, dated March 3, 2006, informed the petitioner that there was an irregularity in allowing deduction of turnover amounting to Rs. 57,96,189 used in works

contract. The petitioner was, therefore, directed to show cause as to why the assessment for the assessment years 2002-03 and 2003-04 should not be revised and interest should not be levied. Being aggrieved by the said notice, the petitioner has instituted the present writ proceeding challenging, as already indicated hereinabove, the said notice as well as the provisions of Section 8(3)(iv) (a) of the Act of 1993, as the same stands amended with effect from October 19, 2001.

I have heard Mr. K.K. Gupta, learned Counsel for the petitioner and Mr. S. K. Dubey, learned Counsel for the State-respondents.

3. Mr. K.K. Gupta, learned Counsel appearing on behalf of the petitioner, has made two-fold submissions. He submits that the Act of 1993 and the Rules made thereunder have not made any provisions for appointment of Assistant Commissioner of Taxes and, therefore, the respondent No. 2, namely, the Assistant Commissioner of Taxes has no power to revise the assessment made by the competent authority and, hence, issuance of impugned notice by the respondent No. 2 is beyond his power, competence and authority. Mr. Gupta also submits that though a mention has been made in the Assam Value Added Tax Act, 2003 and the Rules made thereunder, about the post of Assistant Commissioner of Taxes, no such power has been delegated by the Commissioner of Taxes as has been exercised by the respondent No. 2 in issuing the impugned notice. The exercise of authority by respondent No. 2, therefore, contends Mr. Gupta, is beyond jurisdiction and the same has been done with mala fide motive to harass the petitioner.

4. In so far as challenge to Section 8(3)(iv)(a) of the Act of 1993 is concerned, Mr. Gupta submits that the amendment made, with effect from October 19, 2001, that the turnover in relation to declared goods purchased locally, in the State of Assam, on payment of tax, are only to be allowed as deduction from gross turnover of works contract is beyond the legislative powers of the State and the same cannot be given effect to. Mr. Gupta submits that since the amendment is ultra vires the Constitution of India, the same is liable to be declared ineffective and the same is liable to be suitably read down. Mr. Gupta, in support of his contention, relies on a decision of this Court in *Blue Star Limited v. State of Assam* W.P. (C) No. 6272 of 2000, decided on April 23, 2003 Reported in [2006] 146 STC 432 (Gau), wherein it has been observed that the absence of power of the State authority to levy tax on goods brought into the State in course of inter-State trade and commerce is not in dispute. Relying on this decision, it is submitted by Mr. Gupta that the amendment made in Section 8(3) (iv)(a) is illegal and ultra vires.

5. While dealing with the validity of Section 8(3)(iv)(a) of the Act of 1993, it is necessary to take note of the history of levy of tax on works contract. The apex court in *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* reported in [1958] 9 STC 353, held that in the case of building contracts, the property in material used, does not pass to the other party to the contract as a movable

property. The apex court held that it would pass if it is an agreement between the parties; but if there is no such agreement and the contract is only to construct the building, then, the materials used therein would become the property of the other party to the contract only in accordance with the theory of accretion. To avoid misconception, it was clarified that this conclusion has reference to those works, which are entire and indivisible. The apex court, again, in *Pandit Banarsi Das Bhanot v. State of Madhya Pradesh* reported in [1958] 9 STC 388 MP following the decision, in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, , held that in building construction, which is one, entire and indivisible, there is no sale of materials and, hence, it is beyond the powers of the State Legislature to impose tax on supply of those materials, which are used in such works contract.

6. Consequent upon the decisions in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, and *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, , it became impossible for the States to bring the works contract, involving supply of materials, within the State's sales tax enactments. Hence, by the 46th Amendment of the Constitution, powers were given to the State Legislature to impose sales tax on the transfer of property in goods--whether as goods or in some other form--involved in the execution of works contract. Article 366 of the Constitution stood accordingly amended by insertion of Clause (29A). This clause of Article 366 reads as under:

(29A) "tax on the sale or purchase of goods" includes.

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a

purchase of those goods by the person to whom such transfer, delivery or supply is made.

7. Following insertion of Clause (29A) of Article 366, Article 286 was also amended and Clause (3) was substituted therein, which runs as under:

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in Sub-clause (b), Sub-clause (c) or Sub-clause (d) of Clause (29A) of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

8. What is, now, of utmost importance to note is that Article 366(29A) of the Constitution was certainly not enacted to confer larger benefits on the persons engaged in carrying out works contract, who transfer the property and goods used, in such works contract, to the other person to the contract. The object of the amendment was to bring into the tax net of the State Legislature those transactions, which would not have, otherwise, been brought to, or fallen under the State's sales tax enactment. The change, in the form, referred to in Article 366(29A), is not a change in the form of the goods to other commercially distinct and taxable goods. The change of form, referred to therein, is the change in the goods into another form, which by itself would not have been taxable, but because of what Article 366(29A) conveys.

9. Before dealing with the validity of Section 8(3)(iv)(a) of the Act of 1993, it is pertinent to look at Article 286 of the Constitution of India. This article puts restrictions on the State Legislature's power to impose sales tax on sale and purchase of goods. Article 286 runs as under:

Article 286. Restrictions as to imposition of tax on the sale or purchase of goods.-

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place.

(a) outside the State; or

(b) in the course of import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of

special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in Sub-clause (b), Sub-clause (c) or Sub-clause (d) of Clause (29A) of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

10. Article 286 of the Constitution imposes fetters on the powers of the State to impose tax on the sale and purchase of goods, where such sale or purchase of goods takes place outside the State or in course of import of the goods into, or export of the goods out of, the territory of India. By Clause (2) of Article 286, Parliament is authorised to formulate principles for determining as to when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1), namely, outside the State or in the course of import into, or export out of, the territory of India. Clause (3) of the Article 286 provides that any law of the State, in so far as it imposes or authorises imposition of tax on the sale or purchase of goods declared by Parliament by law to be of special importance in the inter-State trade or commerce or a tax on the sale or purchase of goods, being a tax of the nature referred to in Sub-clause (b), Sub-clause (c) or Sub-clause (d) of Clause (29A) of the Article 366, be subject to such restrictions and conditions in regard to the system of levy of rates and other incidence of tax as the Parliament may by law specify. The object of Article 286 of the Constitution is to invest the Parliament with exclusive authority to enact laws imposing tax on sale or purchase of goods, where such sale or purchase takes place in the course of inter-State trade or commerce or in the course of import into, and export out of, the territory of India. It is in exercise of the authority under Article 286 that the Central Sales Tax Act, 1956, has been enacted.

11. From what has been pointed out above, it is clear that the legislative power of the State, under entry 54 of State List, to impose tax on sale or purchase of goods is subject to two limitations. One limitation, which flows from the entry itself, is that the State's legislative power "is subject to the provisions of entry 92A of List I" and the other one flows from the restrictions contained in Article 286. Under entry 92A of List I, Parliament has the power to make laws in respect of taxes on sales and purchases, which take place in the course of inter-State trade and commerce. The levy and collection of such tax is governed by Article 269. This shows that the State's Legislative powers, under entry 54, do not extend to imposing of tax on sale and purchase of goods, which takes place outside the State or in the course of import or export of goods. In view of these limitations imposed by the Constitution on the legislative power of the State under entry 54 of the State List, it is clear that it is beyond the competence of the State Legislature to make a law imposing tax with the aid of Sub-clause (d) of Clause (29A) of Article 366 in respect of transactions, which take place in course of inter-State trade and commerce, or transactions, which constitute sales outside the State or in course of import or export. Consequently, it is not permissible for State Legislature to make legislative enactments in exercise of its

legislative powers conferred by entry 54, in the State List, in such a manner as to assume power to impose tax on such transactions and thereby transgress the Constitutional limitations.

12. In view of the above, it is also plain that the principles for determining as to when a "sale" takes place in the course of inter-State trade and commerce, embodied in Section 3 of the Central Sales Tax Act, 1956, would apply with equal force to transfer of property in goods involved in the execution of works contract. It is imperative to note that Section 3 of the Central Sales Tax Act explains as to when a sale or purchase of goods takes place in the course of inter-State trade or commerce. Section 4 of the Central Sales Tax Act explains as to when a sale or purchase of goods takes place outside a State and Section 5 explains as to when a sale or purchase of goods takes place in course of import or export. Section 14 of the Central Sales Tax Act enumerates the goods, which are considered by the Parliament to be of special importance in inter-State trade or commerce and Section 15 thereof sets out restrictions and conditions with regard to tax on sale and purchase of declared goods within a State. Section 15 of the Central Sales Tax Act, as the same is in force today, reads thus:

Section 15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.--Every sales tax law of a State shall, insofar as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sales of such goods in course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in Sub-clause (i) of Clause (ii) of Section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

(ca) Where a tax on sale or purchase of paddy referred to in Sub-clause (i) of Clause (i) of Section 14 is leviable under that law and the rice procured out of such paddy is exported out of India, then, for the purposes of Sub-section (3) of Section 5, the paddy and rice shall be treated as a single commodity;

(d) each of the pulses referred to in Clause (via) of Section 14, whether whole or separated, and whether with or without husk, shall be treated as a single

commodity for the purposes of levy of tax under that law.

13. What is, now, of immense importance to note is that Clause (3) of Article 286 is also applicable to a tax on transfers of properties, which are covered by Sub-clause (b) of Clause (29A) of Article 366. Clause (3) of Article 286 consists of two parts. Sub-clause (a) of Clause (3) of Article 286 deals with a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, which is, generally, applicable to all sales including the transfers, supply or delivery of goods, which are deemed to be sales under Clause (29A) of Article 366 of the Constitution. If any declared goods, referred to in Section 14 of the Central Sales Tax Act, 1956, are involved in such transfer, supply or delivery, which is referred to in Clause (29A) of Article 366, the sales tax law of a State, which provides for levy of sales tax thereon, will have to comply with the restrictions mentioned in Section 15 of the Central Sales Tax Act, 1956. Clause (b) is an additional provision empowering the Parliament to impose any additional restriction or condition with regard to levy of sales tax on transactions, which will be deemed to be sales under Sub-clause (b), Sub-clause (c) or Sub-clause (d) of Clause (29A) of Article 366 of the Constitution.

14. The apex court in *Builders Association of India v. Union of India* [1989] 73 STC 370, observed as under (page 373):

...It may be that by virtue of Sub-clause (b) of Clause (3) of Article 286 it is open to Parliament to impose some other restrictions or conditions which are not generally applicable to all kinds of sales. That however cannot make the other parts of Article 286 inapplicable to the transactions which are deemed to be sales under Article 366(29A) of the Constitution. All transfers, deliveries and supplies of goods referred to in Clauses (a) to (f) of Clause (29A) of Article 366 of the Constitution are subject to the restrictions and conditions mentioned in Clause (1), Clause (2) and Sub-clause (a) of Clause (3) of Article 286 of the Constitution and the transfers and deliveries that take place under Sub-clauses (b), (c) and (d) of Clause (29A) of Article 366 of the Constitution are subject to an additional restriction mentioned in Sub- Clause (b) of Article 286(3) of the Constitution.

15. What follows from the above discussion is that there is no reason as to why the provisions of Sections 3 and 5 of the Central Sales Tax Act, 1956, should not be made applicable to a contract, which is, though single and indivisible, by legal fiction introduced by the 46th Amendment, has been altered into a contract, which is divisible into one for sale of goods and the other for labour and services. If the legal fiction, introduced by Article 366(29A)(b), is carried to its logical conclusion, it would clearly follow that even in a single and indivisible works contract, there is a deemed sale of goods, which are involved in the execution of a works contract. Such deemed sale has all the incidents of a sale of goods involved in the execution of works contract, where the contract is divisible into one for sale of goods and the other for supply of labour and services. Even in the absence of any amendment having been made in the Central Sales Tax Act (after

the 46th Amendment) expressly including transfer of property in goods involved in the execution of works contract, the provisions, contained in the Sections 3, 4 and 5, would be applicable to such transfers and in consequence thereof, the legislative powers of the State to impose tax on such transfers, under entry 54 of the State List, will have to be exercised keeping in view the provisions contained in Sections 3, 4 and 5. For the same reasons, Sections 14 and 15 would also be applicable to the deemed sale resulting from transfer of property in goods involved in the execution of a works contract and the legislative power, under entry 54 of List II, would have to be exercised subject to the restrictions and conditions, prescribed under Sections 14 and 15 of the Central Sales Tax Act, in respect of goods, which have been declared to be of special importance in inter-State trade or commerce.

16. What emerges from the above discussion is that the fact that the use of materials was made in a works contract or the property, in materials, passed in a State will not affect the inter-State nature of the transaction if the transaction is, otherwise, a sale or purchase in the course of inter-State trade and commerce. Sales tax laws passed by the Legislature of a State levying taxes on the transfer of property in goods, involved in the execution of a works contract, are subject to the restrictions and conditions mentioned in each clause and Sub-clause of Article 286 of the Constitution.

17. Now, let us examine the provisions of Section 15 of the Central Sales Tax Act, 1956. Clause (a) of Section 15 imposes restrictions, on the sales tax laws of the States to the effect that a State is not empowered to impose a tax inside the State on declared goods exceeding four per cent. Clause (a) of Section 15 provides that in case, tax has been levied inside the State in respect of sale and purchase of the declared goods and such goods are sold, in course of inter-State trade and commerce, and tax is paid under the Central Sales Tax Act, on sale of such goods, the tax levied, under the State law, shall be reimbursed to the person making the sale in the course of inter-State trade and commerce. Clause (c), Clause (ca), Clause (d) relate to the levy of tax on paddy, rice and pulses with which we are not concerned in the present case. Thus, the main restriction, on the power of the State to levy tax on the declared goods as provided in Section 15 of the Central Sales Tax Act, is that the rate of tax cannot be levied for more than four per cent and in case the State levies or collects tax on the sales, on the declared goods, both under the local sales tax Act and the Central Sales Tax Act, the tax levied under the local Sales Tax Act shall have to be reimbursed. That being the case the provisions of Section 15(a) makes an inroad into the texture of local law so that the charging provisions of the State law will have to be read subject to, and in conformity with, the provisions of Section 15 and policy, which Clause (a) underlines.

18. From what have been observed above, it is transparent that Clause (3) of 19 Article 286 is also applicable to the tax on the transfer of property referred to in Sub-clause (b) of Clause (29A) of Article 366. As discussed earlier, Clause (3) of

Article 286 consists of two parts. Sub-clause (a) of Clause (3) of Article 286 deals with the tax on the sale or purchase of goods declared by Parliament to be of special importance in the course of inter-State trade and commerce, which is generally applicable to all sales including the transfer, supply or delivery of goods, which are deemed to be sales under Article 366(29A) of the Constitution. If any declared goods, referred to in Section 14 of the Central Sales Tax Act are involved in such transfer, supply or delivery, which is referred to in Clause (29A) of Article 366, sales tax law, in the State, which provides for levy of sales tax thereon, shall have to comply with the restrictions provided for in Section 15 of the Central Sales Tax Act, 1956.

19. Bearing in mind what have been indicated above, when I turn to the 20 facts of the case at hand, I notice that the pleadings, in the writ petition, indicates that the writ petitioner has not made any statement, in the writ petition, to the effect that the goods, procured in the course of inter-State trade and commerce, were utilised by the petitioner in execution of the works contract, in question, and, hence, no tax can be levied on the same. Except making a passing reference to the decision of this Court in *Blue Star Ltd.* [2006] 146 STC 432, wherein it was held that the State has no power to levy sales tax on the goods brought into the State in the course of inter-State trade, the petitioner has not made any statement to show as to how, on the basis of this decision, Section 8(3)(iv)(a) of the Assam General Sales Tax Act, 1993, can be declared to be ultra vires and beyond the competence of the State Legislature.

20. For a proper adjudication of the matter, it is necessary to have a closer look of the provisions of the Assam General Sales Tax Act, 1993. Section 2(33) of the Act of 1993 defines "sales", which includes any transfer of property in goods (whether as goods or in some other form), involved in the execution of the works contract. Section 2(34) defines "sale price". "Gross turnover" has been defined by Section 2(17) of the Act as under:

2(17). "Gross turnover" in respect of any period means the aggregate of the sale prices received or receivable or purchase price paid or payable by the dealer in respect of all sales or purchases of goods effected by him during such period.

21. Section 7 of the Act of 1993 provides that every dealer shall be liable to pay tax under the Act on the sale or purchase of goods other than the goods specified in Schedule I. What is pertinent to note is that Schedule I contains the list of exempted goods. Section 8 is the charging section and the same provides that the tax, payable u/s 7 for any year, shall be charged on the taxable turnover during the year. Sub-section (3) of Section 8 defines "taxable turnover". Clause (iv) of Sub-section (3) of Section 8 deals with the taxable turnover in respect of works contract, which runs as under:

(iv) in respect of goods involved in any works contract specified in Schedule VI.

(a) the turnover relating to the declared goods purchased locally in Assam on payment of tax, and

(b) so much of the labour and other charges incurred by the dealer after the transfer of property in the goods involved in the works contract or at the option of the dealer such percentage towards labour and other charges of the gross turnover after deducting therefrom the turnover relating to declared goods as is specified in that Schedule.

22. From Clause (iv)(a) of Section 8(3) of the Act of 1993, it is clear that in case declared goods are purchased locally in Assam on payment of tax and are used in the execution of the works contract, the same shall be allowed as deduction from the gross turnover for the purpose of levy of tax. From the perusal of the Schedules of the taxable goods, contained in the Act of 1993, I find that the declared goods, as prescribed in Section 14 of the Central Sales Tax Act, have been made taxable at the rate of four paise in a rupee. In fact, Schedule III, attached to the Act of 1993, makes it clear that declared goods, not mentioned in the other Schedules, is taxable at a rate of four paise in a rupee. The petitioner has also not made any grievance to the effect that the declared goods have been made taxable at a rate exceeding four per cent in contravention of Section 15 of the Central Sales Tax Act, 1956. Since the goods used in execution of the works contract also amounts to a sale, the Legislature has, in the present case, taken care that even if the declared goods, purchased within the State of Assam, on payment of tax, are used in the execution of works contract, the same shall not be taxed again. To put it differently, the turnover, relating to such goods, are, in fact, allowed as deduction from the gross turnover of the works contract.

23. The issue, raised in the present writ application, is as regards the validity of Section 8(3)(iv)(a) of the Act, which has been challenged on the ground that deduction is allowed only on the declared goods purchased within the State of Assam on payment of tax. Section 8(3)(iv)(a) of the Act of 1993, which provides for deduction of turnover with regard to declared goods from the gross turnover, which has been purchased locally within the State of Assam, on payment of tax, is, in fact, in conformity with the provisions of Section 15 of the Central Sales Tax Act, 1956, inasmuch as the State Legislature has taken care that even if declared goods, purchased within the State of Assam on payment of tax, are used in execution of the works contract, the same shall not be taxed again. As held earlier, the only restriction, imposed by Section 15 of the Central Sales Tax Act, is that the tax payable on the sale and purchase of the declared goods inside the State shall not exceed four per cent. Since the declared goods, under the Act of 1993, are taxable at the rate of four per cent only and in respect of payment of the sales tax on purchase of declared goods within the State of Assam and use thereof in the execution of works contract, deduction has been allowed u/s 8(3)(iv)(a), the provisions of Section 8(3)(iv)(a) cannot be said to be beyond the competence of the State Legislature nor can it be said that the provisions of Section 8(3)(iv)(a) contravenes the provisions of the Constitution or of the Central Sales Tax Act, 1956. In fact, the impugned show cause notice, issued by the Assistant Commissioner of Taxes, clearly shows that deduction has been

claimed by the petitioner in contravention of Section 8(3)(iv)(a) of the Act of 1993 meaning thereby that the deductions, in respect of declared goods, have been claimed without the said goods having been purchased within the State of Assam on payment of tax. It is not the case of the petitioner, as revealed from the pleadings made in the writ petition, that the petitioner purchased the goods in the course of inter-State trade and commerce and used the same in the execution of the works contract. If that be the case, the petitioner can certainly place all the materials before the Assistant Commissioner of Taxes and claim exemption from the payment of tax.

24. Situated thus, I hold that Section 8(3)(iv)(a) of the Act of 1993 cannot be said to be ultra vires the Constitution and/or the Central Sales Tax Act, 1956, and the submission of the petitioner, on this score, is wholly without merit. The impugned show cause notice cannot, therefore, be declared illegal on this score, for, there is no jurisdictional infirmity in issuance of the said notice.

25. As regards the petitioner's grievance about the issuance of the impugned notice by the Assistant Commissioner of Taxes, it appears that the petitioner has overlooked the fact that by an amendment made to the Assam General Sales Tax Rules, 1993, the Senior Superintendent of Taxes has been designated as the Assistant Commissioner of Taxes and, hence, the notice, which has been issued, in the present case, is by an assessing authority. Even under the Assam VAT Act, 2003, the Assistant Commissioner of Taxes as well as the Superintendent of Taxes, Tinsukia, have been delegated vide notification, dated April 28, 2005, the power of assessment. The impugned show cause notice appears to be a notice for rectification of mistakes apparent from the records and the same cannot be said to be beyond the jurisdiction of the authority or suffering from any infirmity. The contention of the petitioner, on this score too, therefore, fails. The petitioner shall have the liberty to take any ground, in the reply to show cause notice, in favour of correctness and legality of the assessments, which are sought to be corrected.

26. In the result and for the foregoing reasons, this writ petition fails and the same shall accordingly stand dismissed. No order as to costs.