
(2009) 09 GAU CK 0072
In the Gauhati High Court

Zenith Services and Another

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 23-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 2 GLR 843 : (2010) 2 GLT 205 : (2009) 25 VST 37

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

Bench : Single Bench

Judgement

I.A. Ansari, J.—The petitioner, in this writ petition, is in the business of carrying goods of different "dealers", who have been carrying on business, at Agartala and at other places, in the State of Tripura. The persons, who fall within the definition of a "dealer", as given in the Tripura Sales Tax Act, 1976 (in short, "the TST Act"), are required to get themselves registered, in terms of the TST Act, with the Superintendent of Taxes within whose jurisdiction such a "dealer" may be carrying on his business. For the purpose of import of goods from outside the State, the "dealers" are required to be registered under the TST Act and their registration enables the authorities, under the TST Act, to assess and collect taxes from the "dealers" for the goods imported by them into the State of Tripura. Rule 64A of the Tripura Sales Tax Rules, 1976 (in short, "the TST Rules") casts obligation on the "transporters", "carriers" and "transporting agents", who carry/transport taxable goods, in the State of Tripura, to apply for registration in a prescribed format. The petitioner accordingly applied for, and was granted, registration as a "transporter"/carrier of taxable goods in the State of Tripura.

2. Being a registered "transporter", the petitioner is required to obtain form No. XIV from the Superintendent of Taxes concerned in order to enable the petitioner transport goods from one place to another in the State of Tripura. Under the scheme of the relevant statute and the rules framed thereunder, the names of importing "dealer", with the dealer's registration number, place of dispatch,

contents, weight, value, details of consigner's invoice and some other particulars, are required to be filled up by the "transporter" in form No. XIV prior to transacting business as a "transporter". Two copies of such filled up forms are required to be surrendered at the entry point of the sales tax check post at Churaibari. The authorities concerned, upon collecting the form aforementioned at Churaibari, transmit one copy of the form to the respective Superintendent of Taxes, who had issued the form, so as to enable the Superintendent verify the record of transportation of goods by the registered "dealer". Under the scheme of the relevant statute and the rules, a "transporter", "carrier" and "transporting agent", such as, the petitioner-firm, has the obligation to obtain form No. XVIII in respect of taxable goods, which a "transporter" carries, on the "import" of goods into the State of Tripura, from one place to another within the State of Tripura. Form No. XVIII too is issued by the Superintendent of Taxes in favour of the importing "dealer", who "imports" the goods, which a "transporter", "carrier" or "transporting agent", as the case may be, may bring into the State of Tripura and carry the same from one place to another. Amongst other requirements, which rule 64A embodies, it is one of the requirements that the transporter, carrier and transporting agent shall maintain, in a register in form No. XXII, a true and correct account of every consignment of goods transported into the State of Tripura and, in form No. XXIII, of all goods transported outside Tripura.

3. Let me, now, set out the facts of the present writ petition.

4. By two notices, dated August 31, 1998 and August 25, 1998, issued by the Superintendent of Taxes, Charge III, Agartala, the petitioner-firm was called upon to show cause, if any, as to why penal action shall not be taken against the petitioner on the ground that the petitioner had delivered as many as 753 numbers of taxable consignments without obtaining requisite permits in form No. XVIII. Following the show-cause notices, dated August 31, 1998 and August 25, 1998, aforementioned, an order was passed, on September 21, 1998, by the Superintendent of Taxes, Charge III, indicating therein that pursuant to the said two notices, the Branch Manager of the petitioner-firm had appeared, on August 29, 1998, before the Superintendent and submitted that out of 753 numbers of taxable consignments, only about 300 numbers of consignments had been delivered without permit and, in support of this statement, the branch manager had undertaken to produce necessary materials to show that the delivery of consignments of the remaining 453 numbers of taxable consignments had been made by the petitioner-firm on obtaining permits in form No. XVIII. The order, dated September 21, 1998 claims that the branch manager could produce nothing except some materials to show that three of the consignments, out of 753 taxable consignments, had been carried against permits issued in form No. XVIII and that out of 753 such consignments, only two consignments were non-taxable. Thus, the total number of consignments, which according to the order, dated September 21, 1998, were found to have been delivered, were as many as 748 without obtaining requisite permit. The Superintendent of Taxes, Charge III,

Agartala, therefore, treated the remaining consignments, (i.e., 743) as having been delivered without requisite permit. By the order dated September 21, 1998, aforementioned, it is also claimed that the branch manager of the petitioner-firm had undertaken to produce requisite materials as aforesaid on condition that the petitioner-firm shall be deemed to have delivered the taxable consignments, as alleged in the show-cause notice aforementioned, without obtaining permits, if the petitioner-firm had failed to produce the requisite materials to show that only 300 numbers of consignments had been carried without requisite permits. By the order, dated September 21, 1998, it is indicated that the branch manager had confessed to the offence committed by way of delivery of taxable consignments without obtaining requisite permits and opted to take recourse to Section 32 of the TST Act for composition of offences committed by the petitioner-firm instead of undergoing prosecution under the TST Act. In terms of the order, dated September 21, 1998, the taxable liability of the goods carried was Rs. 10,57,257, the composition amount payable was Rs. 21,14,464 and, thus, the total amount payable became Rs. 31,71,696. A demand notice in terms of taxable liability so fixed was issued in form No. X to the petitioner-firm.

5. Being aggrieved by the impugned order dated September 21, 1998, aforementioned, the petitioner filed a revision before the Commissioner of Taxes contending, inter alia, that verification of the alleged transportation of taxable consignments had been made after a period of about two years and the records, being too old, could not be properly maintained and produced. Though the petitioner sought for some time to make its submission in support of the revision, which it had filed, the revisional authority passed an order, on December 29, 2000, dismissing the revision. Following the dismissal of the revision, a letter, dated April 27, 2001, was issued by the Superintendent of Taxes concerned, whereby a demand for payment of Rs. 68,95,795 was made assessing the said amount to be the outstanding liability against the petitioner-firm and by the said letter, one of partners of the petitioner-firm was directed to make payment of the said sum of Rs. 68,95,795 within May 15, 2001. A notice of demand was accordingly issued on April 27, 2001.

6. Aggrieved by the dismissal of the revision, the petitioner filed a writ petition under Article 226 of the Constitution of India, which gave rise to W.P. (C) No. 341 of 2001, seeking direction from this Court to be issued to the respondents to give adequate opportunity to the petitioner to produce delivery permits, which, according to the petitioner, were available with the petitioner and to stay the recovery proceeding. In the writ petition, so filed, the petitioner had not challenged the order, dated December 29, 2000, aforementioned. What was challenged was the notice dated April 27, 2001, which was issued pursuant to the order dated December 29, 2000, aforementioned.

7. By order, dated June 22, 2001, the said writ petition was disposed of with direction given to the petitioner to file appropriate representation before the revisional authority seeking re-consideration of the matter. This order was passed

on the ground that the petitioner had claimed to be in possession of requisite permits, whereunder the alleged transportation of consignments had taken place. The representation was directed to be filed within a period of fourteen days from the date of dismissal of the writ petition. It was further directed that the petitioner's representation shall be preceded by a deposit of rupees three lakhs.

8. The petitioner, then, deposited the requisite sum of rupees three lakhs, as had been directed by the court, by its order dated June 22, 2001, in the said writ petition. The representation, which the petitioner submitted to the revisional authority, in terms of the directions given by the court, in the said writ petition, on June 22, 2001, came to be disposed of, on May 27, 2002, by the revisional authority, who took the view that since the delivery of the consignments had taken place prior to August 22, 2000 (when Section 13A of the TST Act had not come into force), no penalty could have been imposed on the petitioner u/s 32A of the TST Act.

9. In short, what the revisional authority decided on May 27, 2002, was that since the delivery of the consignments had taken place prior to August 22, 2000, the provisions of Section 32A of the TST Act was not applicable to such consignments of taxable goods delivered by the petitioner. Notwithstanding the findings of the revisional authority, so reached, as indicated hereinbefore, the Superintendent of Taxes concerned issued yet another notice dated May 12/13, 2004, directing the petitioner to appear before him, on May 12/13, 2004, with materials to show that the consignments had been delivered after obtaining requisite permits. This was followed by an order dated May 14, 2004, whereby the petitioner-firm was directed to make payment of Rs. 63,32,922 by May 30, 2004.

10. By filing this writ petition, under Article 226 of the Constitution of India, the petitioner has put to challenge the various orders, which have been passed and the notices of demand, which have been issued against the petitioner, directing, eventually, the petitioner, on May 14, 2004, to make payment of its outstanding liabilities of Rs. 63,32,922 by May 30, 2004.

11. Resisting the writ petition, the respondents have submitted, in effect, thus : Since Section 32(1)(a) of the TST Act stood inserted prior to the delivery of the consignments, the assessing authority had acted within the ambit of its powers, when it raised the demand for payment on the ground of taxable consignments having been transported without requisite permit and that the order dated May 27, 2002, passed by the revisional authority is wholly contrary to law inasmuch as the revisional authority has incorrectly held that the demand for such payment, raised by the Superintendent of Taxes is illegal on the ground that the demand had been raised in respect of transactions, which had taken place prior to February 28, 2000. This apart, steps for rectification, u/s 12 of the TST Act, was, in this regard, taken by the respondents, but the writ petitioner resisted the proceedings, initiated u/s 12, on the ground of pendency of this writ petition and, hence, the rectification proceeding, u/s 12, has been withdrawn with stipulation

that rectification proceeding would be reopened at the appropriate time.

12. I have heard Mr. Somik Deb, learned Counsel for the petitioners, and Mr. N.C. Paul, learned Senior Government Advocate, appearing on behalf of the respondents.

13. This writ petition has raised a very simple and short question and the question is : when the revisional authority had already passed, on May 27, 2002, an order holding that since the alleged transportation of taxable consignments had taken place prior to February 28, 2000, was recourse to Section 32(1)(a) not permissible in law? This question, in turn, brings us to yet another question and the question is : When the revisional authority had already held that since the alleged transportation of taxable consignments had taken place prior to February 28, 2000, recourse to Section 32(1)(a) was not permissible in law; whether it was still permissible for the Superintendent of Taxes to pass any order or raise any notice of demand directing the petitioner to pay such sum(s), which have been imposed on the petitioner by taking recourse to Section 32(1A) of the TST Act. In other words, the question is as to whether a Superintendent of Tax is empowered to issue a notice of demand for payment of a sum, which has been held, by the revisional authority, to be not recoverable?

14. Ordinarily, revisional jurisdiction is analogous to the power of superintendence and may, sometimes, be exercised even if not invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction. The conferment of revisional jurisdiction on the Commissioner of Taxes, is, generally, for the purpose of keeping, within the bounds of law, the authorities subordinate to him and to make them act according to the procedures established by law. The power of revision is a quasi-judicial power. Under the scheme of the TST Act, there is an hierarchy of the authorities so that a party, aggrieved by an illegal act or omission of a taxing authority, can seek redressal of his grievances against the wrongful act of the subordinate authorities. Under such hierarchical statutory system, as contemplated under the TST Act, the orders, passed by a subordinate authority, are subject to examination, in exercise of revisional powers, by the Commissioner of Taxes both suo motu and on the application filed by the aggrieved person. From the fact of the conferment of statutory revisional power on the Commissioner of Taxes over the subordinate authorities, certain consequences flow and follow. The revisional authorities shall have jurisdiction to reverse, annul or modify the orders of the subordinate authorities against whose orders a revision has been filed and in the event of remand, such authority shall have to rehear the matter and comply with such directions as may be indicated in the revisional order. The revisional authority has power to issue corrective directions, which will be binding on such subordinate authority; consequently failure, on the part of the subordinate authority, to follow such direction, or disregard such direction, would be destructive of the hierarchical system in the administration of justice.

15. In the case of Union of India and others Vs. Kamlakshi Finance Corporation

Ltd., two Assistant Collectors of Excise Department received severe strictures at the hands of the High Court for not following the orders of the appellate authorities. When the matter was taken to the Supreme Court, the apex court held that in disposing of quasi-judicial issues before them, revenue officers are bound by the decisions of appellate authority. The order of the Appellate Collector is binding on Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors, who function under the jurisdiction of the Tribunal. The principle of judicial discipline requires that the subordinate authorities should follow the orders of the higher appellate authorities unreservedly. The mere fact that the order of the appellate authority is not "acceptable" to the Department or is, in the opinion of the Department concerned, illegal or contrary to law, cannot be a ground to act contrary to the directions given in the appellate order. If this healthy rule is not followed, the result will only be undue harassment of assessee and chaos in the administration of tax laws. Same principle would, undoubtedly, govern exercise of revisional jurisdiction too.

16. What emerges from the above discussion is that an order passed by a revisional authority under the TST Act and the Rules framed thereunder, would be binding on all the authorities subordinate to the revisional authority. The revisional authority's order can be challenged, under the scheme of the TST Act and the Rules framed thereunder, before the Tribunal as envisaged under the statute in question. So long as the order, passed by a revisional authority remains in force, this order would be binding both on the assessee as well as the authorities, who are subordinate to the revisional" authority. If an order passed by a revisional authority is bad in law the remedy lies either in challenging the order before the Tribunal as aforesaid or by taking recourse to rectification proceeding as envisaged by Section 12 of the TST Act.

17. In the light of the law discussed above, when one reverts to the case at hand, it becomes clear that even if the conclusion reached by the revisional authority in its order dated May 27, 2002, was illegal or incorrect, the Superintendent of Taxes concerned could not have passed any order and issue notice of demand, such as the one, which stands impugned in this writ petition, and/or pass any such order, which stands impugned in this writ petition.

18. In the result and for the reasons discussed above, while the notice of demand dated May 12/13, 2004, and also the impugned order dated May 14, 2004, are hereby set aside and quashed, the respondents are left at liberty to take recourse to such provisions of law as may be permissible for the remedy of their grievances.

19. With the above observations and directions, this writ petition shall stand disposed of.

20. No order as to costs.