

(2005) 09 GAU CK 0034

Gauhati High Court

Case No: WP (C) No. 5003 of 1999

Porcelain India (P.) Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Sept. 1, 2005

Acts Referred:

- Assam Finance (Sales Tax) Act, 1956 - Section 3B, 3B
- Assam Industries (Sales Tax Concessions) Act, 1986 - Section 3

Citation: (2006) 1 GLR 708 : (2005) GLT 292 Supp

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: O.P. Bhati, M.K. Jain and A. Biswas, for the Appellant; K.N. Choudhury, for the Respondent

Final Decision: Allowed

Judgement

Ranjan Gogoi, J.

The writ petitioner, a Private Limited Company, is a dealer registered under the Assam Finance (Sales Tax) Act, 1956 (since repealed). Claiming to be an exempted unit under the 1982 Industrial Policy promulgated by the Government of Assam, the petitioner has challenged a common revisional order dated 14.6.1999 dismissing the revision applications filed by the petitioner against the orders of assessment for the periods ending 30.9.1985, 31.3.1986, 30.9.1986, 31.3.1987, 30.9.1987, 31.3.1988, 30.9.1988, 31.3.1989 and 30.9.1989.

2. Under the 1982 Industrial Policy in force in the State of Assam during the relevant period, exemption from payment of sales tax was granted to eligible industries both in respect of purchase of raw materials for manufacture of the finished goods as well as on the sale of the finished goods by such an eligible unit. To give effect to the exemptions from payment of sales tax as contained in the Industrial Policy, the Assam Industries (Sales Tax Concessions) Act, 1986 (Assam Act 1 of 1987) was

enacted. Section 3 of the Act visualises exemption of sales tax to a dealer in respect of sales made by him of any goods to a person possessing a valid authorization certificate provided such goods are specified in such certificate to be intended by the holder thereof for use as raw materials in the manufacture of the finished goods. Insofar as finished goods are concerned, by Chapter III of Assam Act 1 of 1987, amendment of existing sales tax laws, by incorporation of, amongst others, Section 3B in each of such sales tax laws was contemplated. Section 3B which was incorporated in all such sales tax laws by Chapter III of Assam Act 1 of 1987, being *peri materia*, the provisions of Section 3B may be usefully extracted herein under :

3B. Exemption for new industrial units, - Notwithstanding anything contained in this Act the State Government may, by notification in the Official Gazette and subject to such conditions as may be specified therein, direct that no, dealer shall be liable to pay tax under this Act in respect of sales of such goods produced by him in any such new industrial unit as may be specified in the notification for a period of five years from the date of commencement of production in such new industrial unit :

Provided that exemption under this section shall not be granted in respect of any sale where the dealer has collected any amount by way of sales tax in any form or manner in respect of such sale.

Insofar as the Assam Finance (Sales Tax) Act is concerned, a notification as visualised by Section 3B was published on 30.7.1988. By the said Notification the liability of a dealer to pay tax under the Act in respect of sale of goods produced by him for a period of five years from the date of commencement of production was exempted subject to the following conditions :

- (i) The dealer had not collected any amount by way of tax on the sales made.
- (ii) For the period 15th October, 1982 to 31st July, 1988 the dealer was holding an eligibility certificate.
- (iii) For the period with effect from 1.8.1988 the dealer was holding an authorisation certification granted u/s 4 of Assam Act 1 of 1987.

It must be noticed, at this stage, that the petitioner was granted an eligibility certificate dated 27.6.1987 certifying that the petitioner would be entitled to exemption from sales tax for the period with effect from 15.11.1984 to 14.11.1989. The petitioner, however, was not granted an authorisation certificate under the provisions of Assam Act 1 of 1987 on the ground that the requisite forms and other documents were not furnished by the petitioner.

In the above facts, by separate assessment orders passed for the periods, as already noticed, exemption from sales tax on raw materials purchased by the petitioner was refused on the ground that the petitioner did not hold a valid authorization certificate. Insofar as the finished goods are concerned, what is noticeable from the assessment orders is that the petitioner was issued a show cause notice dated

12.12.1997 wherein it is, inter alia, stated that the petitioner had realized sales tax on certain transactions of sale made by it. The petitioner did not reply to the aforesaid show cause notice dated 12.12.1997, whereafter, the assessing authority proceeded to complete the assessment as per his best judgment.

3. The petitioner filed separate revision applications against each order of assessment for the periods in question. All the revision applications filed by the petitioner were disposed of by a common order dated 14.6.1999 whereby the revisional authority after recording the finding that the petitioner had collected sales tax on its sale transactions took the view that the petitioner, therefore, was not eligible for exemption from payment of tax on sales of its finished products. Accordingly, the revision applications were dismissed giving rise to the present writ petition.

4. Mr. O.P. Bhati, learned Counsel appearing for the writ petitioner, in the course of his argument, has submitted that the entitlement of the writ petitioner-assessee to exemption of tax on the raw materials purchased by it which has been refused on the ground that the petitioner did not hold a valid authorization certificate would not be an issue in the present case. The liability to pay sales tax on such transactions is that of the seller of the raw materials and not on the petitioner. Mr. Bhati, therefore, has confined his challenge only in respect of the entitlement of the petitioner to exemption on the sales of its finished goods. Elaborating, learned Counsel has argued that the petitioner being the holder of a valid eligibility certificate issued by the competent authority under the Industrial Policy, would be entitled to exemption from tax on its sales of finished products for the period 15th October, 1982 to 31st August, 1988 in terms of the Notification dated 30.7.1988 issued under the provisions of Section 3B of the Assam Finance (Sales Tax) Act, 1950. Insofar as the period after 1.8.1988 is concerned, the argument advanced is that the provisions contained in the Notification dated 30.7.1988 requiring an eligible unit to hold an authorization certificate for grant of exemption is not valid in law inasmuch as such an authorization certificate would have a reasonable connection in respect of purchase of raw materials and not with the sales of finished products. Relying on the decision of the Apex Court in the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, learned Counsel has further argued that exemption from payment of sales tax on the sale of finished goods having been promised by the Industrial Policy, the Notification dated 30.7.1988 would be null and void being contrary to the terms of the Industrial Policy. Lastly, it has been argued that the findings recorded by the revisional authority that the petitioner had realized sales tax on its sale transactions is without any basis and no material has been disclosed in the revisional order in support of the aforesaid conclusion.

5. Opposing the contentions advanced on behalf of the petitioner, Sri K.N. Choudhury, learned Additional Advocate General, Assam, has argued that the exemption on the sale of finished products to an eligible unit u/s 3B of the Assam

Finance (Sales Tax) Act, 1956 as inserted by the amendment brought into force by Assam Act 1 of 1987, contemplates grant of exemption by a Government notification and such exemption is also subject to the conditions as may be specified in such notification. Accordingly, the notification dated 30.7.1988 issued u/s 3B of the Assam Finance (Sales Tax) Act, 1956 has prescribed certain conditions which must be fulfilled before any assessee can claim the benefit of exemption. In the present case the petitioner was issued a show cause notice 12.12.1987 wherein it was clearly mentioned that the petitioner had collected sales tax on several of its sale transactions. The petitioner did not reply to the said show cause notice and, therefore, the assessment was completed denying exemption as claimed by the petitioner on the ground that the petitioner had collected sales tax on several of its transactions. The aforesaid finding being a finding of fact and the facts stated in the show cause notice dated 12.12.1987 not having been controverted or disputed by the petitioner, according to the learned Additional Advocate General, the petitioner was rightly denied the benefit of exemption on the transactions of sale of its finished products.

6. The rival submissions advanced on behalf of the parties have been duly considered. The only point which would require the consideration of the Court is whether under the 1982 Industrial Policy in the State read with the provisions of Act 1 of 1987 and the notification dated 30.7.1988 issued u/s 3B of the Assam Finance (Sales Tax) Act, 1956 the petitioner is entitled to exemption from payment of sales tax on its finished products.

Though learned Counsel for the petitioner has made an elaborate argument by contending the requirement imposed by the notification dated 30.7.1988 with regard to an authorization certificate so as to be entitled to exemption with effect from 1.8.1988 to be wholly unauthorized, a perusal of the impugned revisional order dated 14.6.1999 would go to show that the only ground on which the claim of the petitioner to exemption has been refused is that during the period in question the petitioner had realised sales tax from the customers on the sale of its finished products. The stipulation that a unit/industry will not be entitled to such exemption on the sale of its finished products if it had levied and collected sales tax is a requirement imposed by Section 3B of the Assam Finance (Sales Tax) Act, 1956 as inserted by Chapter III of Act 1 of 1987. Such a requirement is also a specific condition subject to which exemption has been granted by the notification dated 30.7.1988. The question as to whether sales tax had been collected by the petitioner on the transactions of sale of finished products is essentially a question of fact. In the present case, though the assessing officer had issued a show cause notice dated 12.12.1997 to the petitioner in this regard and the petitioner had not responded to the said notice, in none of the assessment orders the aforesaid question, i.e., whether sales tax had been collected or not had been dealt with by the Assessing Officer. The notice dated 12.12.1997 which has been placed before the Court at the time of hearing of the case would indicate that it was the contention of the

department that the petitioner had, in fact, collected taxes on some of its transactions of sale of finished products. If collection of sales tax by the petitioner formed the basis of the denial of exemption, surely and certainly, there should have been some indication in the assessment orders to the above effect. As already noticed, in none of the assessment orders the matter has been dealt with by the assessing officer. The revisional authority in the order dated 14.6.1999 has recorded the finding that the petitioner had collected sales tax on some of the transactions of sale of its finished products. As to on what basis the said conclusion has been reached has not been disclosed in the revisional order dated 14.6.1999. Whether any reliance was placed by the revisional authority on the show cause notice dated 12.12.1997 has also not been indicated. Whether the transactions referred to in the aforesaid notice dated 12.12.1997 were understood to be exhaustive or illustrative by the revisional authority has also not been disclosed. When the only basis for denying the benefit of exemption to the petitioner is that the petitioner had collected taxes, the revisional authority functioning as a quasi judicial authority is expected to indicate the basis and manner in which the aforesaid conclusion has been reached. As nothing has been disclosed, I am of the view that the aforesaid finding recorded on the basis of which exemption has been refused to the petitioner cannot have the acceptance and approval of the Court. The said question, therefore, should require a redetermination and the findings recorded should require some material and reasoning in support thereof.

7. Accordingly, I allow this writ petition by interfering with the revisional order dated 14.6.1999 and by directing the revisional authority to decide the question as to whether the petitioner had collected any tax on the sale of its finished products during any of the periods of assessment, after giving the petitioner an opportunity of being heard. Orders as may be considered appropriate will now be passed by the revisional authority in accordance with the present directions within such time as may be considered fit and proper. Consequently, the writ petition is allowed to the extent indicated above.