
(2009) 12 GAU CK 0039

Gauhati High Court

Case No: None

Industrial Carriers

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Dec. 23, 2009

Acts Referred:

- Assam General Sales Tax Act, 1993 - Section 17(6), 46(15), 5A, 64(15)

Citation: (2010) 2 GLR 51 : (2010) 34 VST 470

Hon'ble Judges: Amitava Roy, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amitava Roy, J.

In challenge is the assessment order dated 22.3.2001 of the Superintendent, of Taxes, Damra Check Post, Shrirampur, Assam as well as the order dated 12.9.2008 passed by the Additional Commissioner of Taxes, Assam sustaining the same. By the aforementioned assessment, the petitioner has been saddled with a tax liability of Rs. 15,89,419 realizable under the Assam General Sales Tax Act, 1993 (hereinafter for short referred to as the Act).

2.1 have heard Mr. G.K. Joshi, learned senior Counsel for the petitioner and Mr. D. Saikia, learned standing Counsel for the Revenue Department, Government of Assam.

As final argument have been advanced on behalf of the parties at the motion stage based on the materials available on record, this petition is being disposed of hereby.

3. The petitioner claims itself to be a proprietorship firm engaged in the business of carrying Maruti Vehicles from Gurgaon (Haryana) to different places in the North-Eastern States including the State of Mizoram as an approved carrier of M/s. Maruti Udyog Limited, Gurgaon (Haryana). According to it, the trailer carrying such

Maruti vehicles from Gurgaon (Haryana) to the destination as above located in the States of Meghalaya, Nagaland, Manipur, Tripura, Mizoram and Arunachal Pradesh have to cross the territory of Assam through the Damra Check Post of the Taxation Department of the State of Assam, at Srirampur which is the entry point for such vehicles. To facilitate the transit, the driver or the person incharge of the vehicle obtains a transit pass from the Superintendent of Taxes, Damra Check Post, Srirampur at the entry point u/s 46(15)(a) of the Act and is Supposed to surrender the said document at the entry check post within thirty days of the date of issue thereof after obtaining necessary endorsement from the concerned authority of the exit check post of the State of Assam as a proof of movement of the vehicle outside Assam. In terms of Section 64(15)(d) a presumption that the vehicles had been sold within the state of Assam is available in law in case such a transit pass is not surrendered at the entry point within the period of 30 days without any reasonable cause.

4. The petitioner has asserted that during the year 2000-01, it carried consignments of Maruti vehicles from Gurgaon (Haryana) by trailers to transshipment point at Guwahati and thereafter the said vehicles were transported to Aizawl (Mizoram) on trucks. The transit passes obtained from the Superintendent of Taxes, Damra Check Post, Srirampur (hereinafter for short referred to as the respondent No. 2) used to be duly surrendered with necessary endorsement as required under the Act. In connection with the impugned consignments, the petitioner amongst others, submitted 11 numbers of transit permits duly countersigned at the entry check post of Mizoram along with certificates, in support of the fact that those had crossed the exit check post of the State of Assam and had entered the state of Mizoram. This was in response to notice(s) issued by the respondent No. 2 requiring it to submit the transit passes relatable to the said consignments issued at the entry point of the check post as required u/s 46(15)(d) of the Act. The said revenue authority, however, did not consider the said documents and rendered its assessment u/s 17(6) of the Act raising a demand of Rs. 15,89,419 computed on the basis of the value of the Maruti vehicles covered by the connected 11 transit passes amounting to Rs. 1,20,41,063. Being aggrieved, the petitioner filed a revision petition before the Commissioner of Taxes on 30.4.2001 and on a summary rejection thereof, an appeal was filed before the Board of Revenue, Assam which remanded the matter to the said Revisional Authority for a fresh disposal. By the impugned order dated 12.9.2008, the aforementioned assessment has been sustained.

5. Mr. Joshi has argued that the presumption envisaged in Section 46(15)(d) of the Act being obviously rebuttable in nature and the petitioner having produced reliable and dependable evidence to neuter the same, the impugned assessment of the Superintendent of Taxes, Assam and as well as the decision of the Revisional Authority are grossly illegal and are liable to be interfered with.

The learned senior Counsel has urged that the documents furnished to the concerned revenue authority having amply demonstrated that the consignments of the Maruti vehicles involved had moved out of the territory of Assam and delivered to the authorised dealer M/s. H.D. Motors, Aizwal, Mizoram and thereafter sold in the state of Mizoram neither the impugned assessment nor the decision of the Revisional Authority is sustainable in law and is liable to be annulled in the interest of justice. Mr. Joshi has additionally contended that the impugned assessment and the decision of the Revisional Authority are apparently flawed inter alia for the non-consideration of the documentary evidence produced by the petitioner in support of its stand that the consignments concerned had exited from the state of Assam, delivered in the state of Mizoram, sold there and due taxes there for had been realised. In support of his contentions the learned senior Counsel has placed reliance on the decision of the Apex Court in [State of Kerala Vs. M.M. Mathew and Another](#), ; [Sodhi Transport Co. and others Vs. State of U.P. and others](#), ; and of this Court in [Assam Oil Company Limited Vs. Commissioner of Taxes](#),

6. Mr. Saikia, the learned standing Counsel, Revenue Department in reply has questioned at the threshold the maintainability of the instant petition on the ground of non-exhaustion of the alternative remedy of appeal before the Board of Revenue u/s 5A of the Act. Without prejudice to the above, he has further argued that a plain perusal of the documents relied upon by the petitioner in its endeavour to dispel the legal presumption per se cannot be construed to be either dependable or reliable and being contradictory and mutilative of each other, the assessment as well as the impugned order of the Revisional Authority are unassailable. Referring to the inconsistencies in the documents, which according to him are apparent on their face, learned standing Counsel has urged that these by no means could have been legitimately acted upon by the revenue authorities and therefore no interference with the impugned action is called for.

7. The rival arguments of the parties as well as the pleaded averments together with the documents appended to the petition have received the due consideration of this Court. Admittedly, the 11 transit passes issued at the entry check post of the State of Assam covering the consignments of the Maruti vehicles had not been surrendered by the petitioner thereat within the period prescribed together with the endorsement of the concerned revenue authority of the exit check post. The presumption ordained by the statute in Section 46(15)(d) on such failure was, thus, available against the petitioner. In that eventuality, the assessing officer, if satisfied that such omission or failure had been without any reasonable cause could validly imposed upon the petitioner after affording reasonable opportunity to it, tax on the goods involved as prescribed by the Act together with penalty thereon as stipulated.

That this legal presumption is rebuttable had been propounded by the Apex Court in *Sodhi Transport Co. (supra)* while analysing Section 28B of the Uttar Pradesh Sales Tax Act, 1948 which in substance is in parimateria with Section 46(15)(d) of the

Assam General Sales Tax Act, 1993. Their Lordships enunciated that the statutory provision involved created a rebuttable presumption as regards the proof of a set of circumstances which would make a transaction liable to tax with the object of preventing evasion thereof, but could not be considered as conferring on the authority concerned, the power to levy a tax which the Legislature could not otherwise levy. It was held that in such an eventuality the transporter concerned was not shut out from producing reliable evidence that the goods had not been actually sold inside the State, but disposed of in a different way and that it is only where the presumption is not successfully rebutted that the authorities concerned were required to rely upon the rule of presumption. The decision in *State of Kerala v. M.M. Mathew and Anr.* (supra) has been pressed into service to underline that strong suspicion, strange co-incidence and grave doubts cannot take the place of legal proof.

8. There is no wrangle at the Bar that the legal presumption enshrined in Section 46(15)(d) is rebuttable by adducing reliable and dependable evidence to the contrary and, thus, cannot be considered to be in absolute terms to empower the concerned revenue authority to impose tax as well as penalty without affording a reasonable opportunity to the dealer, transporter etc. of producing such testimony. The documents relied upon on behalf of the petitioner in course of the arguments are-

(1) a certificate dated 24.2.2001 issued on behalf of M/s. H.B. Motors, Aizawl certifying that the consignments named therein had been transported from Maruti Udyog Limited, Gurgaon (Haryana) to its transshipment yard at M/s. Adhinath Auto Transport Company located at Lokhra, Guwahati, Assam through the Maruti carrying vehicles of M/s. Industrial Carriers and that these new Maruti vehicles had been later on driven to Aizawl (Mizoram) by road;

(2) An affidavit affirmed by the proprietor of M/s. H.B. Motors, Aizawl (Mizoram) confirming the delivery of the new Maruti Vehicles carried by the carrier i.e., M/s. Industrial Carriers (petitioner). While reiterating the contents of the certificate as above, the deponent has further affirmed that these new vehicles had been accounted for in the books of the firm M/s. H.B. Motors and assessment in connection therewith for the period 1.4.2000 to 31.12.2000 had been completed by the Assistant Commissioner of Taxes, Aizawl, North Zone, Mizoram;

(3) A certificate dated 15.12.2001 of the Superintendent of Taxes, Aizawl, North Zone, certifying that the new Maruti Vehicles referred to therein had entered the State of Mizoram and sold by M/s. H.B. Motors, Aizawl and that sales tax for those vehicles had been assessed under the Mizoram sales tax enactment for the period 1st April, 2000 to 31st December, 2000.

Whereas, the document at Sl. No. 1 refers to 10 vehicles with registration in the State of Nagaland associating those with the consignments involved, the affidavit seeks to demonstrate that these vehicles were trucks carrying the new Maruti

vehicles. None of these two documents, however, refer to the number of new Maruti vehicles being transported by these trucks as claimed. Moreover, the affidavit omits to mention the particulars of one consignment. The certificate issued by the Superintendent of Taxes, Aizwal, North Zone, however, while referring to all the (sic) transit passes and the same trucks mentions about the number of new Maruti vehicles being ferried thereby. Both the affidavit and the certificate of the taxing authority of Mizoram, however, indicate sale of the new Maruti vehicles in that State (Mizoram), for which tax had been assessed for the relevant period under the local enactment.

9. Noticeably, the assessing authority in its order dated 22.3.2001 had referred to 11 transit passes without the endorsement of the revenue authority at the exit check post of the State of Assam, but containing the countersignature of the authority at the entry check post of Mizoram, i.e., Vairengte Taxation Check Post, Mizoram. It however, did not accept the same in absence of any entry in the movement registered of vehicles at the exit check post. The Revisional Authority, as the impugned order dated 12.9.2008 would reveal, did not make any endeavour to scrutinise the documents furnished by the petitioner, though admittedly the same had been placed before it. These documents, it is submitted at the Bar include those as alluded hereinabove.

10. The documents relied upon on behalf of the petitioner before this Court, though reveal inconsistencies in the matter of description of the consignments, the certificate of the Superintendent of Taxes, Aizawl, North Zone, per se cannot be disregarded in absence of any material that the same is a held of extraneous or impertinent considerations.

11. Be that as it may, these documents taken together do not unmistakably rule out the possibility of correctness of the stand of the petitioner, if appropriately reconciled to the satisfaction of the revenue authorities of the State. The underlying purpose/objective of Section 46(15)(d), as a whole being to prevent evasion of tax subject, however, to reasonable opportunity to the person concerned to explain his omissions/failure to surrender the transit pass in time by producing reliable evidence, in the estimate of this Court it casts a corresponding obligation on the concerned taxing authority to examine and scrutinise such evidence, if produced by him by way of reasonable cause for his failure. The Revisional Authority, as the impugned order dated 12.9.2008 would reveal, though had acknowledged the presence of the documents furnished by the petitioner in support of its plea, did not at all apply its mind thereto to ascertain the relevance or the probative value thereof, vis-a-vis the legal presumption envisioned in Section 46(15)(d) of the Act. Its decision to sustain the impugned assessment is clearly based on the comprehension that the said legal presumption is absolute in terms and does not admit of any evidence to the contrary to rebut the same. In the opinion of this Court, this approach being apparently erroneous and illegal has vitiated the impugned

order, the same being extinctive of the petitioner's right recognised by Section 46(15)(d) of the Act.

12. In the above view of the matter, the impugned order dated 12.9.2008 is hereby interfered with and is, thus, set aside. The matter stands remitted to the Commissioner of Taxes, Assam, the Revisional Authority for a fresh decision in accordance with law and with particular reference to Section 46(15)(d) of the Act. It is made clear that the learned revisional authority would decide the issue on its independent consideration and analysis of all the materials on record without being influenced by any observation made herein. As the impugned order is determined to be transgressive of Section 46(15)(d) of the Act, the plea against maintainability of the proceeding is not entertained. The petition is, thus, partly allowed. No costs.