

(2002) 06 GAU CK 0029

Gauhati High Court

Case No: Writ Appeal No. 178 of 2000 in Civil Rule No. 569 of 1993

Mahabir Coke Industries Pvt. Ltd.

APPELLANT

Vs

Commissioner of Taxes and
Others

RESPONDENT

Date of Decision: June 6, 2002

Acts Referred:

- Assam Sales Tax Act, 1947 - Section 30, 31, 31(1), 31A
- Central Sales Tax Act, 1956 - Section 9(2)

Citation: (2003) 1 GLR 167

Hon'ble Judges: N. Surjamani Singh, J; Amitava Roy, J

Bench: Division Bench

Advocate: A.K. Saraf, S.K. Agarwal, D. Baruah and S. Saikia, for the Appellant; K.N. Choudhury and N. Moral, for the Respondent

Judgement

N. Surjamani, J.

1. Heard Dr. A. K. Saraf, learned senior counsel, assisted by Mr. S. K. Agarwal, Mr. Debashish Barua & Mr. Saumitra Saikia, appearing for the appellant, and Mr. K. N. Choudhury, learned senior counsel, assisted by Ms. N. Moral, learned counsel, appearing for the respondents.
2. The Judgment and order dated 29.3.2000 passed by a learned Single Judge of this court in Civil Rule No. 569/1993 is the subject-matter under challenge in this writ appeal.
3. The writ petitioner/appellant herein questioned the validity of a notice dated 1.3.1993 issued by the Superintendent of Taxes, Jalukbari Check Post, Jalukbari, Guwahati and the order dated 28.3.1993 issued by the Assistant Commissioner of Taxes, Guwahati, coupled with a prayer for a directions to the respondents not to take any action pursuant to the aforesaid impugned notice and orders by

contending, *inter alia*, that the products of the writ appellant is exempted from levy of sales-tax under the Sales Tax Act, 1947, (for short "the Act, 1947").

4. It is an admitted fact that at the time of hearing of the writ petition, being Civil Rule No. 569/1993, filed by the writ petitioner/appellant herein, the writ petitioner was not heard at all as it was not represented by its conducting lawyer due to absence of the latter before the court at the time of hearing of the case.

5. The learned Single Judge opined that the order of assessment of tax passed by the Superintendent of Taxes is an appealable order as required u/s 30 of the Assam Sales Tax Act, 1947, and that appealable order, if any, is also revisable by the Commissioner of Sales Tax u/s 31 of the Act, 1947, and in these circumstances, the writ petition was not maintainable, and, accordingly, dismissed the writ petition.

6. At the hearing, Dr. Saraf, learned senior counsel, appearing for the appellant, contended that the Superintendent of Taxes, Jalukbari Check Post, Guwahati, had been directed to make fresh assessment levying due tax and interest for the period from 31.3.1986 to 31.3.1988 under Sales Tax Act, 1956, in respect of the writ appellant on the basis of a *suo motu* revision order passed by the Assistant Commissioner of Taxes, Zone-B, Guwahati on 28.1.1993 u/s 31(1) of the Act, 1947 read with Section 9(2) of the Central Sales-tax Act, 1956. According to Dr. Saraf, *suo motu* revision order passed by the Assistant Commissioner of Taxes virtually amounts to an order passed by the Commissioner of Taxes and, as such, no appeal or revisions as required under Sections 30 or 31 of the Act, 1947, lies. Mr. K. N. Choudhury, learned senior counsel, appearing for the respondents, on the other hand, submitted that an appeal lies to the Board of Revenue against such order u/s 31A of the Act, 1947.

7. Be that as it may, we are not entering into the merit of the case at this juncture as we are of the view that in this sputnik world the courts are now so conscious of natural justice that the court may well extend its scope, and it is also well-established principle of law that justice should not only be done but it should be seen to have been done. In the instant case, also as the writ petitioner/appellant was not heard at all while passing the impugned judgment and order by the learned Single Judge, we are further of the view that to secure the ends of justice the main writ petition, being Civil Rule No. 569/ 1993, should be remanded to the file of the learned Single Judge for decision afresh in the matter by affording reasonable opportunity of being heard to the parties concerned. Accordingly, the judgment and order dated 29.3.2000 passed by the learned Single Judge of this court in Civil Rule No. 569/1993 is hereby set aside thus remanding the writ petition to the file of learned Single Judge who shall hear the writ petition afresh and dispose of the same within a period of one month from today in accordance with law. We made this observation keeping in view the fact that the writ petition is of the year 1993. As agreed to by the learned counsel for both the parties, Civil Rule No. 569/1993 be listed for hearing on 17.6.2002.

8. Writ Appeal is accordingly disposed of in terms of the above order. There shall be no order as to costs.

9. Registry is directed to do the needful in terms of this judgment and order.