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(2006) 05 GAU CK 0039

Gauhati High Court (Agartala Bench)

Case No: None

Arron Bricks and Another	APPELLANT
Vs	
State of Tripura and Others	RESPONDENT

Date of Decision: May 25, 2006

Acts Referred:

- Tripura Sales Tax Act, 1976 - Section 10, 23, 9, 9(4)

Citation: (2007) 5 VST 163

Hon'ble Judges: A.B. Pal, J

Bench: Single Bench

Judgement

A.B. Pal, J.
The first petitioner, M/s. Arron Bricks, is a partnership firm and the second petitioner, Srimathi Pritha Datta is a partner. The other three partners are pro forma-respondent Nos. 5, 6 and 7. The partnership firm was registered on November 6, 1986. The writ petition is, as a matter of fact, the exposition of the grievances of the second petitioner who received a notice on March 20, 1996 from the Superintendent of Taxes, the third respondent herein, asking her to attend the office of the respondent on March 23, 1996 in order to complete sales tax assessment of the said firm for seven years at a time commencing from 1988-89 to 1994-95. After receiving the said notice, she tried to contact with the other three partners, the pro forma-respondents herein, but failed. As her husband was seriously ill, she sent her agent to appear before the third respondent and made a prayer for time to submit her response. But without disposing of her prayer the said respondent hastily made assessment order u/s 9(4) of the Tripura Sales Tax Act, 1976 (for short, "the Act") ex parte for the aforementioned seven years, though on August 29, 1991 the partnership firm was finally closed and, therefore, there could not be any reason for tax assessment during the period 1991-92 to 1994-95. She made an application on April 22, 1996 u/s 10 of the Act to cancel the ex parte assessment order

whereby she was required to deposit Rs. 4,20,736. After receiving demand notice dated March 27, 1996 u/s 23 of the Act from the said respondent directing her to deposit the said amount of sales tax, she tired her best to contact again with other three partners but failed to locate them. In response to her prayer dated April 22, 1996 she was advised by the said respondent to file an appeal if she felt aggrieved with the order of assessment. Though Section 10 of the Act provides that a petition for cancellation of the assessment is maintainable and requires to be disposed of, the said respondent without taking any action on that petition instituted the certificate proceeding u/s 62 of the Tripura Land Revenue and Reforms Act for realisation of the amount of tax aforementioned. On September 9, 1996 she approached the respondent to realise from her only 25 per cent of the assessed tax as she was one of the four partners and, therefore, the rest part of the tax was to be realised from the other three partners. After receiving the notice of the certified proceeding, she made another attempt to contract with the other partners but again failed. On September 20, 1996 she issued Advocate"s notice upon the said pro forma-respondents asking them to submit all necessary documents including books of account in order to do the needful for rectification for urging the third respondent to reassess the tax liability. But the Advocate"s notice could evoke no response from the said pro forma-respondents. On November 7, 1996 she received a revised notice from the third respondent asking her to deposit the entire amount of tax so assessed absolving thus the other partners from payment of any part of the assessed tax. According to her she was liable to pay only l/4th of the tax and therefore, the revised notice slapping upon her the entire tax liability is illegal and arbitrary. On November 15, 1996 she issued another Advocate"s notice urging the third respondent to stop the illegal proceeding for realisation of the entire amount of tax from her, but there was no action taken on the said notice. Thus, on the ground that the ex parte assessment of tax is bad in law and she is not liable to pay the entire tax assessed, she has approached this Court by means of the present writ proceeding.

2. The State-respondents contested the writ petition contending, inter alia, 2 in the counter-affidavit that the petitioner-firm was duly given notice on July 30, 1991 for the years 1988-89 to 1990-91 and again on August 16, 1991, but there was no response from the petitioner. Similarly, on June 20, 1992 for the same period another notice was given fixing July 2, 1992 for assessment, which also cold evoke no response. On January 24, 1995 and January 7, 1996 notices were given to the petitioner for assessment of tax for the period 1988-1995, but the petitioners refused to make any response. As the said firm did not submit return during all those years for assessment of tax, the assessing authority issued show cause notice on March 20, 1996 and thereafter proceeded to make assessment u/s 9(4) of the Act. Though the second petitioner made a prayer for extension of time on March 25, 1996, after the date of her appearance on March 23, 1996, her prayer was not considered as she was earlier given reasonable opportunity. It is further contended that the assessment for seven years had to be undertaken, as the assessment for all those years had been postponed for failure of the petitioners to submit returns. In response to her letter for cancellation of the assessment order, she was

informed that an appeal would lie against the order of assessment, which she was at liberty to resort to. As regards liability of other partners, the contention is that they had ceased to be partners in 1988 when the second petitioner became the proprietor of the firm with effect from August 3, 1988 and due to that reason the entire liability of the firm had to be saddled with the second petitioner only.

3. The three pro forma-respondents, who were initially partners of the firm brought to light in their counter-affidavit that all of them had retired from the partnership firm in the year 1988 by deed of agreement executed by all the partners including the second petitioner. The copies of the deed of retirement have been enclosed at annexures R/l and R/2. After their retirement, the second petitioner became the sole proprietor of the said firm, which would be evident from her letter dated October 27, 1988 (annexure R/3) to the Superintendent of Taxes (third respondent herein). In that letter, she informed that by a deed of retirement all the three partners ceased to be so and she became the sole proprietor to carry on and continue the business of the said firm.

4. The relevant part of the said letter reads as follows:

(c) That as a result of retirement of three partners as explained in (a) and (b) hereinabove, I, Srimathi Pritha Datta, W/o. Sri Madhu Sudhan Dutta, Ramnagar, Agartala-799 002 have become entitled to carry on and continue the business as proprietor or in any other manner or under the name and style of M/s. Arron Bricks on and from August 3, 1988.

5. Thus, the three pro forma-respondents have denied liability of paying any tax for any period commencing from 1988-89.

6. I have heard Mr. C. S. Sinha, learned Counsel for the petitioners, Mr. A. Ghosh, learned Counsel for the State-respondents and Mr. P. Datta, learned Counsel for the pro forma-respondents.

7. From the rival pleadings set out above, the challenge to the impugned 7 order of assessment appears to be on two grounds, namely, (1) the second petitioner is liable to pay only l/4th of the tax assessed as the three pro forma-respondents continue to be the partners even after August 3, 1988 and on that ground the revised notice from the official respondent asking her to pay the entire amount of Rs. 4,20,736 is unsustainable in law; and (2) the ex parte order of assessment is bad in law as the same was passed without first disposing of the prayer u/s 10 of the Act for cancellation of the order of assessment. Several other grounds have been taken in order to show infirmity in the impugned order.

8. As regards the first part of the challenge, upon perusal of the deed of 8 retirement as well as the letter of the second petitioner to the Superintendent of Taxes, there remains no doubt in my mind that the said pro forma-respondents have no tax liability for the period from 1988-89 onwards. All her pleas that the retirement was not after two months notice in terms of the partnership deed or even after their retirement they continued to

take part in the business of the firm are not in my view tenable. The parties including the second petitioner herself having executed the deed of retirement, whereafter she claimed to be the sole proprietor of the firm, she is estopped from making such a plea.

9. Adverting to the other aspect of her grievance that the ex parte order of 9 assessment was rendered without affording her reasonable opportunity, it would appear from the pleadings that in several ways the impugned order has been projected to suffer from serious infirmities. Firstly, the order was passed in great haste. The notice was given to her on March 20, 1996 asking her to appear on March 23, 1996. The order of assessment was made on March 25, 1996 though on the said date she filed a prayer for time. Thus, it can be said that reasonable opportunity was not afforded to her as her prayer for time was turned down inspite of her enclosing with the prayer necessary certificates about serious illness of her husband. Secondly, the impugned order of assessment was made on the basis of the report of the Inspector, copy of which was not supplied to her in order to enable her to submit her reply. Thus, the principle of natural justice stood infracted. Thirdly, the assessing authority made the assessment of turnover arbitrarily by increasing the amount without any basis. According to the petitioner, following is the picture of her return and assessment of turnover:

10. It is strongly argued by Mr. Sinha, learned Counsel for the petitioners, that though the firm was closed on August 29, 1991, the official respondents made assessments not only for the years noted in the above table but for seven years from 1988-89 to 1994-95.

11. Section 10 of the Act contemplates a situation when an order of assessment may be cancelled and fresh assessment in accordance with the provisions of Section 9 may be done. The said section provides:

10. Cancellation of assessment.-Where a dealer, in the case of an assessment completed under Sub-section (4) of Section 9, satisfies the Commissioner, within one month from the date of issue of a notice of demand as hereinafter provided, that he was prevented by sufficient cause from making the return required by Section 8 or that he did not receive the notice issued under Sub-section (2) of Section 8, or subsection (2) of Section 9, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying with the terms of the notice, the Commissioner shall cancel the assessment and make a fresh assessment in accordance with the provisions of Section 9.

12. It has been admitted by the official respondents that her prayer for time on the ground of serious illness of her husband was received by them on March 25, 1996 in response to their notice on March 20, 1996. As she was asked to appear on March 23, 1996, but she failed, her request for time was not considered. Apparently, such a short notice without copy of the report of the inspector cannot be said to be consistent with the principles of reasonable opportunity. That apart, the said respondents could not state sufficient reasons why assessment was not done every year or why for a long period of seven

years such an exercise was undertaken, which is undoubtedly an unreasonable burden on any assessee. Though it has been pleaded in the counter-affidavit of the official respondents that as no return was submitted during all those years the authority could not make any assessment, the same does not stand to reason, if looked into from the relevant provisions of the Act. Such a delay is bound to cause enormous disadvantage to the petitioner. The Act clearly provides that if no return is submitted in time the assessing authority may proceed to make its own assessment u/s 9 of the Act, which the said respondent could do for all the years commencing from 1988-89. By not doing so the assessing authority is undoubtedly at default by taking away the opportunity of making response for every year of assessment. It is also not in dispute that the impugned order of assessment was made without disposing of the petition u/s 10 of the Act and in that view of the matter the order of assessment suffers from infirmities.

13. For the reasons and discussions aforementioned, I am of the considered 13 view that the pro forma-respondents having ceased to be the partners of the firm in 1988 have no liability to pay tax in connection with the business of the said firm for the years commencing from 1988-89. The petitioner shall be entirely liable for bearing the tax liability for the period till the firm was closed/wound up. However, as the order of assessment, impugned herein was made not affording reasonable opportunity and without disposing of the petition for cancellation u/s 10 of the Act, the same is hereby quashed. This order notwithstanding, the State-respondents shall be at liberty to proceed to make fresh assessment of tax liability of the said firm after affording the petitioners reasonable opportunity of placing relevant documents in support of the amount of actual turnover shown in the return, which exercise shall be completed within a period of 6 (six) months from the date of passing of this order. There shall be no order as to costs.