

M/s. Engineers Construction Vs. The State of Assam and Others

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Court : Guwahati

Decided On : Jul-15-2014

Judge : THE HONOURABLE CHIEF JUSTICE MR. A.M. SAPRE & UJJAL BHUYAN

Appeal No. : WP(C) No. 3342 of 2006

Appellant : M/s. Engineers Construction

Respondent : The State of Assam and Others

Judgement :

A.M. Sapre, CJ.

Heard Mr RK Joshi, learned counsel for the petitioners. Also heard Mr R Dubey, learned counsel for the respondents.

By filing this writ petition under Article 226/227 of the Constitution of India, the petitioner has challenged the constitutional validity of Assam Entry Tax Act, 2001. It is brought to our notice that this Act was declared ultra vires by this Court in a case reported in 2008 (15) VST Page 70 (State of Assam and Ors. -vs- Chota Bhai Jetha Bhai Patel Tobacco Products Company Ltd.) decided on 30.8.2007.

It is also brought to our notice that against the said decision, the State has gone to Supreme Court in SLP being SLP Nos. 24934-25066 of 2007 which are pending for final disposal in Supreme Court.

It may also be pertinent to mention that subsequent to the decision rendered by this Court in Chota Bhai Jetha Bhai Patel Tobacco Products Company Ltd. (supra), the State came out with another legislation on the same subject by removing the defects on which the Assam Entry Tax Act was declared unconstitutional by another Act called - Assam Entry Tax Act, 2008 and made this Act retrospectively applicable with effect from 1.10.2001. The assessee again challenged the constitutional validity of this Act but this time unsuccessfully before this Court in a decision reported in 2009 (1) GLT 427 (Indian Oil Corporation Ltd. -vs- State of Assam and Ors.) decided on 9.1.2009. By this decision, this time High Court upheld the Act and held it as constitutionally valid.

This matter was carried to the Supreme Court at the instance of unsuccessful assessee in SLP against this decision. Both the SLPs i.e. the one arising out of the decision rendered in Chota Bhai Jetha Bhai Patel's case (supra) and other arising out of Indian Oil Corporation's case (supra) are now pending in the Supreme Court and are being heard together by the Supreme Court.

It is with this background, we are of the considered view that this petition can be disposed of with the observation that any decision that will be rendered by the Supreme Court in the aforesaid 2 SLPs arising out of two decisions referred above would also govern the right of the petitioner so far as this writ petition is concerned in relation to subject matter of this writ petition. Indeed, by virtue of Article 141 of the Constitution of India, the law laid down by the Supreme Court is binding on every assessee/State.

It is with these observations, the writ petition stands accordingly disposed of.

No cost.

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