

Bikul Das and ors. Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Aug-01-1997

Judge : D.N. Chowdhury, J.

Acts : Assam Excise Act, 1910 - Sections 25 and 32; Assam Excise Rules, 1945 - Rules, 77, 80, 202, 203, 206, 305 and 330; [Income Tax Act, 1961](#) - Sections 44AC and 206C

Appeal No. : Civil Rule Nos. 1033-36 of 1995 and 1423 of 1995

Appellant : Bikul Das and ors.

Respondent : State of Assam and ors.

Advocate for Def. : G.K. Joshi, Adv.

Advocate for Pet/Ap. : C. Baruah and S.K. Kejriwal, Adv.

Prior history : D.N. Chowdhury, J. 1. These writ petitions involved the common question of fact as well as common question of law and, therefore, these petitions are taken up together for disposal. 2. The subject-matter involved here is related to the levy and collection of tax at source under Section 206 of the Income-tax Act in respect of profits and gains of trading in alcoholic liquor. The facts and the legal issues set forth in Civil Rule No. 1423 of 1995 (Hemanta Baruah v. State of Assam) would only b

Judgement :

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1. These writ petitions involved the common question of fact as well as common question of law and, therefore, these petitions are taken up together for disposal.
2. The subject-matter involved here is related to the levy and collection of tax at source under Section 206 of the Income-tax Act in respect of profits and gains of trading in alcoholic liquor. The facts and the legal issues set forth in Civil Rule No. 1423 of 1995 (Hemanta Baruah v. State of Assam) would only be taken up for consideration in adjudicating the issues involved in these cases.
3. The petitioners at all relevant times are/were lessees of country spirit shops under the Assam Excise Act, 1910, and the Assam Excise Rules, 1945. The trade of country spirit is regulated by the Assam Excise Act, 1910, and the Rules framed thereunder.
4. The country spirit (liquor) is first imported in the State as envisaged in rule 77 to rule 80 of the Assam Excise Rules and thereafter those are brought to the excise warehouse owned and controlled by the State Government. The import of spirit (liquor) is settled by the tender system. After the country spirit is brought to the warehouse owned and controlled by the State Government, it is bottled in the specified manner in the warehouse under the supervision of the State Government for supply to the retailers, i.e., the country spirit shops. The bottling contract is also settled by tender system. Under the Act and the Rules, the settlement of the country liquor spirit shops is made by tender system in conformity with the statutory rules made under the Act for a period specified by the competent authority. The lessee of the concerned country spirit (liquor) shop can operate the trade on the strength of licence under the Act on payment of vend fee fixed by the Government for the specified period and subject to restrictions and conditions imposed in the licences. Under the Rules, the holder of licence, permit or pass shall be bound by the conditions specified therein and shall observe all directions, prohibitions and orders of the excise authorities and the directions contained in the excise laws for the time being in force, whether such directions, prohibitions and orders be embodied in the conditions of his licence, permit or pass or not, and all directions, orders and prohibitions contained in the Rules lawfully made under the

excise laws. The rule as well as the licence prescribe the time and conditions for keeping' open the shops in question and the holder of licence, permit or pass on the expiry of the licence is to return to the officer who granted it to the licensee. The Collector will fix the minimum with reference to the average daily consumption and the time required for replenishing the stock from the nearest warehouse. Each retail vendor of country spirit should report to the District Collector or the Excise Superintendent on the first of each month the stock he has in hand. Under rule 305, the holder of licence for the retail sale of country spirit shall not sell-such spirit at prices higher or lower than those specified in the Rules as well as in the licences. The lessee of the country liquor shop shall buy liquor in bottles from the Government warehouse and deposit the cost price fixed by the State Government along with sales tax and excise duty fixed by the same by the treasury challan. The lessees of the country spirit shops then sell the same to the consumers at a price fixed by the State Government under the law for time being in force. As mentioned earlier country liquor shops are settled by the tender system and not auction sale. The duration of acquiring of licence for country liquor shops is three years commencing from the first April or any other date as may be specified by the State Government from time to time. The licence of country spirit shop in Assam can be obtained on fixed vend fees prescribed by the State Government. In case the licensee of country spirit shops fails to sell the total quantity of liquor brought by him under the licence, the same has to be surrendered to the Government on the expiry of his licence.

5. The Income-tax Act, 1961, was amended with effect from April 1, 1989, by inserting Sections 44AC and 206C in the Income-tax Act. The methodology was introduced for collecting income-tax at source under Section 206C of the Income-tax Act in respect of profits and gains from the business of trading in alcoholic liquor, forest produce, etc. As per the said Section every person being a seller referred to in Section 44AC shall at the time of debiting of the amount payable by the buyer or at the time of receipt of such amount from the said buyer in cash or issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of the goods of the nature specified, a sum equal to the percentage, as mentioned against each, of such amount as income-tax on the income comprised therein. By the Central Board of Direct Taxes Circular No. 620 (see [1992] 193 ITR

19), dated December 6, 1991, the following clarifications are issued :

'It may be clarified that 'seller' for the aforesaid purpose means the Central Government or a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society. It is also clarified that the provisions of Section 44AC, and, consequently, those of Section 206C will apply only to an assessee being a person (as defined in the Act) other than a public sector company, referred to as 'buyer' of any goods, in the preceding paragraph, at the point of first sale, and not in the case of second or subsequent sale of such goods.

It is further clarified that in the case of goods of the nature of alcoholic liquor for human consumption (other than Indian made foreign liquor), the aforesaid provisions shall not apply to a buyer where such goods are not obtained by him by way of auction and where the sale price of such goods to be sold (further) by the buyer is fixed by or under any State Act. . . '

6. The provision of law was further amended in 1992 by the Finance Act, 1992. By the said amendment, Section 44AC was deleted and Section 206C is inserted which is as follows :

'206. Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.--(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax.

TABLE

Sl No.

Nature of goods

Percentage

(1)

(2)

(3)

(i)..

(ii)..

(iii)

Timber obtained by any mode other than under a forest lease

Five per cent.

(iv)

Any other forest produce not being timber

Fifteen per cent:

Provided that where the Assessing Officer, on an application made by the buyer, gives a certificate in the prescribed form that to the best of his belief any of the goods referred to in the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things and not for trading purposes, the provisions of this sub section shall not apply so long as the certificate is in force.

(2) The power to recover tax by collection under Sub-section (1) shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under Sub-section (1) shall pay within seven days the amount so collected to the credit of the Central Government or as the Board directs.

(4) Any amount collected in accordance with the provisions of this section and paid under Sub-section (3) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected on the production of the certificate furnished under Sub-section (5) in the assessment made under this Act for the assessment year for which such income is assessable.

(5) Every person collecting tax in accordance with the provisions of this section shall within ten days from the date of debit or receipt of the amount furnish to the buyer to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected, and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed.

(5A) Every person collecting tax in accordance with the provisions of this section shall prepare half-yearly returns for the period ending on 30th September and 31st March in each financial year, and deliver or cause to be delivered to the prescribed income-tax authority such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of Sub-section (3).

(7) Without prejudice to the provisions of Sub-section (6), if the seller does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of two per cent. per

month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid.

(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in Sub-section (7) shall be a charge upon all the assets of the seller.

Explanation.--For the purposes of this section,--

(a) 'buyer' means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the

Table in Sub-section (1) or the right to receive any such goods but does not include,--

(i) a public sector company,

(ii) a buyer in the further sale of such goods obtained in pursuance of such sale, or

(iii) a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act ;

(b) 'seller' means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society.'

7. Sub-section (1) of Section 206 enjoins that every person being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table a sum equal to the percentage specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax. Lastly inserted is an Explanation which was mentioned earlier. Parliament by inserting an Explanation explained the term 'buyer' as a person who obtained in any sale, by way of auction, or tender or any other mode, goods of the nature specified in the Table in Sub-section (1) or the

right to receive any such goods but does not include (i) a public sector company (ii) a buyer in the further sale of such goods obtained in pursuance of such sale, or (iii) a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act, vide the Central Board of Direct Taxes Circular No. 654 (see : [1992]197ITR170(Delhi) , dated August 20, 1992, which, amongst others, delineated as follows :

'3.1 Sub-section (1) of the amended Section 206C enjoins that every person, being a seller shall, at the time of debiting of the amount payable by the buyer, to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax :

TABLESI. No.

Nature of goods

Percentage

(1)

(2)

(3)

(i)

Alcoholic liquor for human consumption (other than Indian made foreign liquor)

Fifteen per cent.

(ii)

Timber obtained under a forest lease

Fifteen per cent.

(iii)

Timber obtained by any mode other than under a forest lease

5 per cent.

(iv)

Any other forest produce not being timber

15 per cent.

3.2 The term 'buyer' in Section 206C is defined to mean 'a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table referred to above or the right to receive any such goods but does not include :

(i) a public sector company,

(ii) a buyer in the further sale of such goods obtained in pursuance of such sale, or

(iii) a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act.

3.3 The term 'seller' means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society. . . .

5. It is clarified that the provisions of Sub-section (1) of Section 206C in relation to a buyer will not apply to a public sector company and to any other buyer who obtains the said goods at a second or subsequent sale of such goods. Thus, these provisions will apply only at the point of the first sale of such goods. . . '

8. The scope of the provision is explained in the Finance Bill, 1992. As a sequel to the amendment as cited above, the Assistant Commissioner of Income-tax TDS, by his memo dated August 18, 1994 (annexure-A), brought to the notice about the insertion of Section 44AC in the Income-tax Act, 1961, and also subsequent

deletion of the same by the Finance Act, 1992, and that similar provisions have been made in the new Section 206C of the Income-tax Act, 1961, with effect from April 1, 1992. By the said letter, the Assistant Commissioner of Income-tax, TDS, Panbazar, Guwahati, communicated to the Government that every person being a seller of the specified goods is required to collect income-tax at source from the 'buyer' at the specified rates mentioned in the said communication. The Assistant Commissioner of Income-tax by his letter dated August 18, 1994, vide No. C-I/Act/TDS/94-95 sent the following communication to the Commissioner of Excise :

'It is reported by the Income-tax Officer, Sibsagar, Assam, that income-tax has not been deducted as per provision of Section 206C by the concerned authorities in Sibsagar District, etc., because of non-receipt of direction from your end. In fact, no such direction is required as the deduction is required to be made statutorily under the provisions of the Income-tax Act, 1961. However, two letters were addressed by the Superintendent of Excise and Deputy Commissioner of Sibsagar as on February 24, 1994 and March 5, 1994, respectively (copies of these letters as forwarded by the Income-tax Officer, Sibsagar, are enclosed herewith for ready reference). The delay in deduction will lead to charging of statutory interest under Section 201(1A) of the Income-tax Act, 1961, apart from other consequences. The person responsible for tax at source will have to bear interest on these deductions which is at 15 per cent.

(sic) To)

To avoid such unpleasant consequences any further, I would request you to kindly instruct all the officers working under you to deduct the income-tax as required forthwith for the arrears as well as the current liabilities.

I am also enclosing a separate circular letter highlighting the provisions of Section 206C of the Income-tax Act, 1961. I would like to have a few lines in reply by August 20, 1994 . . . '

9. By a letter dated December 6, 1994, addressed to the respective Deputy Commissioners/Sub-Divisional Officers, the Under Secretary to the Government, Excise Department, issued directions for collection of-income-tax at source under

the provisions of the Income-tax Act from the lessee of country spirit shops on the profit of alcoholic liquor other than Indian made foreign liquor under Section 206C of the Income-tax Act within their respective jurisdiction from 1992-93. Hence, these petitions.

10. Mr. C. Baruah, learned counsel appearing on behalf of the petitioners, submitted that the initiations of collection of taxes commenced at the instance of the Revenue, through the State agency is unjustified and uncalled for. Mr. Baruah also brought to my attention the provision of the Act, more particularly to the Explanation mentioned in Section 206C of the Act and submitted that the recovery of tax at source can only be made from the person specified in the Act. In support of his conten-

tion, Mr. Baruah cited a decision of the Himachal Pradesh High Court in *Gian Chand Ashok Kumar and Co. v. Union of India*. Mr. Baruah, learned counsel, took me through the provisions of the Excise Acts and Rules to substantiate his point that the lessee of country liquor shop does not come within the purview of Section 206C of the Act, Mr. Baruah, in support of his contention, has drawn my attention to the two decisions, namely, of two different High Courts on the same matter. The High Court in *Gian Chand Ashok Kumar*, observed as follows (page 201) :

'Thus, L-13 licensees take the liquor from the distillery for retail sale to L-14 vendors and in case they fail to supply the same, L-14 licensee can make the purchase from other sources. As per condition No. 51, supply of country liquor to the retail sale licensees has to be as per the rates given in annexure T throughout the excise year 1989-90. Perusal of this document demonstrates that the price of various sizes of bottles of country liquor has to be notified districtwise and their charge mentioned. According to Clause 53, the price of country liquor mentioned in annexure T in respect of L-13 ends is inclusive of all charges, including cost of transportation, establishment, godown, packing material and the existing export fee imposed by the Uttar Pradesh, Punjab and Haryana Governments, etc. No other charges other than mentioned in conditions Nos. 47 and 51 have been made admissible to the L-13 licensees. These rates have been made subject to further revision with the prior permission of the Excise and Taxation Commissioner. The

State admits that as per condition No. 47 of the Annual Excise Announcements (1989-90), the ex-distillery-cum-bottling plant, Mehatpur, price including still head duty for double distilled country liquor in standard, new and recycled (HP excise) bottles for the year 1989-90 have been fixed by the Excise and Taxation Commissioner as under :

50% proof (per dozen)Rs. P.

60% proof (per dozen)Rs. P.

(i)

Quarts

750 mls.

67.00

73.35

(ii)

Pints

375 mls.

44.40

47.05

(iii)

Nips

180 mls.

32.10

It is also admitted that rates of excise duty ex-distillery price and other levies on country liquor are fixed by the Government within the provisions of the Punjab Excise Act, 1914, and the Rules framed thereunder as applicable to the State of Himachal Pradesh.

Examination of the fundamental provisions governing the grant of L-13 licences clearly shows that the provisions of Sections 44AC and 206C were unduly harsh and arbitrary in their application to cases where the transaction was strictly to be carried out in accordance with the specific provisions. It was this mischief which was intended to be eliminated by the new amendment. Otherwise, as calculated by the petitioners, they were to pay much more tax than the expected returns which could not be considered to be the object of the legislation as it originally stood. L-13 licensees appear to be a class which in view of the existing system of the transaction of sale of country liquor, cannot be considered to be a class evading payment of tax and thus falling under the category of others for whom Sections 44AC and 206C were brought into the statute book, history and object and reasons of which we have specifically dealt with quite elaborately in the initial part of this judgment.

The net result of our examination of the matter is that the present petitioners (L-13 licensees) come within the purview of this proviso and the provisions of Section 206C and other parts of Section 44AC(1) do not apply to buyers covered by the proviso.

The demand of tax at the purchase point from the petitioners by the respondents has no authority of law and they are restrained from doing so ...'

11. Mr. Joshi, learned counsel, submitted that the constitutional validity of the provisions of Sections 44AC and 206C was assailed before the Supreme Court in a batch of petitions in *Union of India v. A. Sanyasi Rao* : [1996]219ITR330(SC) .

12. The vires of any of the provisions of the Act is not under challenge in this case, what is challenged is the legality and validity of the actions of the respondents in collecting tax at source under the provisions of Section 206C. Section 206C is

meant for recovery of tax at source from the class of persons specified in Section 206C itself. Parliament explained and defined the terms 'buyer' and 'seller' in clear and unequivocal terms. All buyers of specified articles do not come within the purview of the provisions. The Legislature in its wisdom explained the provision and exempted the public sector company from the term 'buyer' and those engaged in further sale of such goods obtained in pursuance of such sale ; or a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act. The legislative provisions in this regard are clear. The fiscal measure in imposing liability of tax must be construed

strictly and from a common sense point of view it must be understood. It is required to be understood in conformity with the popular meaning and in commercial parlance. A citizen is not to be taxed without clear mandate of the Legislature to that effect and an Act of Parliament is to be read according to its natural meaning. Words must be ascribed their natural, popular and ordinary meaning which they have in relation to the subject-matter with reference to which and the context in which they have been used.

13. Under the provisions of the Assam Excise Act, 1910, and the Rules 1945, framed thereunder the lessee of country liquor shop is required to obtain a statutory licence to trade (section 25 of the Act). There is no right of renewal of the licence (section 32). Country spirit shops are settled by 'tender' system normally (rules 202, 203, 206 of the Assam Excise Rules, 1945). The licensee for the retail sale of country spirit cannot sell such spirit at prices higher or lower than those specified by the authority (rule 305). Rule 330 of the Rules obligates the lessee to keep and maintain the daily accounts transaction in the prescribed forms of account books. In the State the country spirit (liquor) is not available, those are imported and transported into the State with the permission of the Excise Commissioner under a bond for payment of excise duty in Assam and stocked in the excise warehouses owned and controlled by the State Government (rule 77 to 80 of the Rules). The import of country spirit is caused through a set of contractors arranged through a tender system (Phase-I) ; after the country spirit is imported and transported those are kept stored in the warehouse owned and controlled by

the State Government. Thereafter these liquors are bottled under Government specifications under the control and supervision of the State Government to be supplied to the retailers, i.e., to the country spirit shops (phase two). The bottling contract is also settled by the tender system. The lessee of country spirit shops then shall purchase the bottled spirit from the excise warehouses by depositing the cost price of liquor fixed by the State Government along with the sales tax and excise duty fixed for the same by treasury challan. The lessees of the country spirit shops thereafter sell the same to the individual consumers at prices fixed by the Government. The purchase price as well as the sale price of the liquor is fixed by the Government. The licence for a country spirit shop in Assam is issued on fixed vend fees which is prescribed by the Government. Further, in case the licensee of the country spirit shop fails to sell the total quantity of liquor bought by him under the licence, the same has to be surrendered to the Government on the expiry of the licence.

14. On an overall consideration of the provisions of the Excise Act and Rules framed thereunder along with the provisions of the Income-tax Act more particularly Section 206C of the Act, keeping in mind the background of the introduction of the provision for collection at source from the business of trading in alcoholic liquor, it thus appears that the rigours of the provision contained in Section 206C are not applicable to the lessees of country spirit liquor shops in Assam. In this view of the matter the lessees of the country liquor shops cannot therefore be saddled with the liability imposed in Section 206C of the Act and the said provision will not be applicable to the buyers covered by the Explanation.

15. The impugned direction contained in the communication No. C-1/CTS/ACIY/GHY/94-95 dated August 18, 1994, (annexure 'A'), therefore, will not be applicable to the lessees of country spirit shops and accordingly the impugned communication F. No. C-1/ACIT/TDS/94-95 issued by the Assistant Commissioner of Income-tax (annexure 'B') as well as the communication bearing No. Ex.317/93/24 dated December 6, 1994 (annexure 'C'), are quashed. The writ petitions are accordingly allowed. There shall, however, be no order as to costs.