

Binod Kumar Agarwal Vs. State of Assam

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Court : Guwahati

Decided On : Oct-11-2001

Judge : P.G. Agarwal, J.

Acts : Assam General Sales Tax Act, 1993 - Sections 26

Appeal No. : C.R. No. 3707 of 1996

Appellant : Binod Kumar Agarwal

Respondent : State of Assam

Advocate for Def. : Bijoy Talukdar, Govt. Adv.

Advocate for Pet/Ap. : O.P. Bhati, M.K. Jain, J.C. Gour and A. Biswas, Advs.

Judgement :

P.G. Agarwal, J.

1. Heard Mr. O.P. Bhati, learned counsel for the petitioner and Sri Bijoy Talukdar, learned Government Advocate.

2. The petitioner, Sri Binod Kumar Agarwal, is a registered dealer under the Assam General Sales Tax Act. For the assessment year ending March 31, 1994, the petitioner has submitted his return and thereafter, the assessing authority passed assessment order dated February 29, 1996. It was found that during the

relevant period, petitioner dealt with vegetable ghee but no tax was paid of sale of vegetable ghee. There is no dispute at the Bar that the sale of vegetable ghee is liable for double point tax for the period from March 1, 1993 to March 31, 1994. Accordingly, assessment order, exhibit B was passed directing the dealer to deposit a sum of Rs. 44,937. The petitioner had challenged the said order before this Court and asked for a direction that the respondent Nos. 4 and 5 may be directed to make payment of the said sum.

3. Sri Bhati, learned counsel has fairly submitted that the legality of the assessment order has not been challenged by the petitioner. Admittedly, tax is liable to be paid for sale of vegetable ghee. The fact is that petitioner sold vegetable ghee which was purchased by them from the Statfed, Assam, but they, i.e., petitioner-firm did not charge any sales tax in view of annexure C dated 25th August, 1993, issued by respondents Nos. 4 and 5. This letter was brought to the notice of assessing authority also. The relevant letter, annexure C reads as follows :

'This is to inform you that the matter of exemption from sales tax on the sale of 'Tripti' vanaspati product manufactured by Statfed vanaspati plant, Amingaon has been taken-up with Government for consideration and the final decision on the matter by the Government is expected early. In view of this no sales tax is being charged on the sale of Tripti vanaspati and the product will continue to be sold in the market as before for the time being.

However pending Government decision, and as verbally communicated earlier, we like to inform you that sales tax liability, if any, arising out of your sale of Tripti vanaspati as distributor of 'Tripti' vanaspati manufactured by Statfed vanaspati plant, Amingaon with effect from July 1, 1993 under the Assam General Sales Tax Act, 1993, will be borne by Statfed vanaspati plant, Amingaon.

This letter will remain valid up to September 30, 1993 or the Government decision in this regard whichever is earlier.'

4. There is no dispute at the Bar that the liability to pay sales tax is on the registered dealer under the Act and the supplier has got no responsibility or liability

to pay the tax. Thus, tax liability is of the registered dealer. As a registered dealer under the provisions of the Act, the petitioner-firm was required to pay sales tax on the vegetable ghee sold by him. Sri Bhati, learned counsel has drawn our attention to the provisions of Section 26 of the Act that provides for special mode of recovery. Sub-clause (1) of Section 26 reads as follows :

'26(1). Notwithstanding anything contained in any law or contract to the contrary, the assessing officer may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last known address require any person including the Government or a local authority,--

(a) from whom any amount of money is due or may become due, to a dealer or person liable on whom notice has been served under Sub-section (1) of Section 25 ; or

(b) who holds or may subsequently hold money for or on account of such dealer or person liable,

to pay to the assessing officer either forthwith upon the money becoming due or being held, or within the time specified in the first mentioned notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due by the dealer or person liable in respect of any amount payable under this Act, or the whole of the money where it is equal to or less than that amount.'

5. This special mode of recovery under Section 26 is meant for enabling the authority to realise the arrear dues or the taxes, in case, they failed to recover the same from the registered dealer. It is not the general mode of recovery of the amount and the provisions are not made for substituting the recovery forum of the dues or the payment from the registered dealer by pointing to third party including the Government, stating that such and such amount is due from the party/Government and as such, assessing authority may realise the same from them/Government instead of dealer.

6. Sri Bhati, further submits that in view of the annexure C, Statfed had promised to reimburse the petitioner and as the Statfed is a 'State' within the meaning of Article 12 of the Constitution, they are bound by the principle of promissory estoppel to pay the amount. The question whether Statfed is bound to reimburse the petitioner is a secondary one. In view of the specific provisions of the Act which provide that liability to pay tax is only on the registered dealer, it is held that the petitioner is liable to pay tax assessed and demanded from him.

7. Now, coming to the question of reimbursement by the Statfed, the petitioner has placed reliance of exhibit C as quoted above, but exhibit 'C' was valid for the period from July 1, 1993 to September 30, 1993 only, whereas, liability of the petitioner is in respect of the period from July 1, 1993 to March 31, 1994, The last part of para of annexure C has categorically stated that 'this letter will remain valid up to September 30, 1993 or the Government decision in this regard whichever is earlier'. In view of the above, no direction as prayed for by the petitioner can be given. The petitioner is liable to pay taxes assessed and demanded from him. The petitioner, however, will be at liberty to approach the competent forum for reimbursement of his liability for the period from July 1, 1993 to September 30, 1993 only as per annexure C. Writ petition stands disposed of. No order as to costs. Interim order, if any, stands vacated.

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