

GAHC010202212023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5277/2023

AZAD ALI AND ANR
S/O- JAMIR ALI, R/O- VILL.- KACHARIPARA JUNGLE, P.O. AND P.S.
DALGAON, DIST. DARRANG, ASSAM, PIN- 784116.

2: ABUL KALAM
S/O- SAMIRUDDIN
R/O- VILL.- ROHINIKASH
P.O. AND P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, ASSAM, DISPUR,
GUWAHATI-781006.

2:THE DISTRICT COMMISSIONER DARRANG AT MANGALDAI
P.O. AND P.S. MANGALDAI
DIST. DARRANG
ASSAM
PIN- 784125.

3:THE CHIEF EXECUTIVE OFFICER

DARRANG ZILLA PARISHAD
DARRANG AT MANGALDAI
P.O. AND P.S. MANGALDAI
DIST. DARRANG
ASSAM
PIN- 784125.

4:THE PRESIDENT

DARRANG ZILLA PARISAD AT MANGALDAI
P.O. AND P.S. MANGALDAI
DIST. DARRANG
ASSAM
PIN- 784125.

5:ABIRAN NESSA
MAHALDAR OF DALGAON DAILY MARKET
P.O. AND P.S. DALGAON
DIST. DARRANG
ASSAM
PIN- 784116

Advocate for the Petitioner : MR M AHMED

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 03-10-2023

Heard Mr. H.R.A. Choudhury, learned Sr. counsel assisted by Mr. A.T. Sarkar, learned counsel for the writ petitioners. Also heard Mr. P. Handique, learned standing counsel, P&RD Department, Assam appearing for the respondent No. 1 and 3 as well as Ms. S. Baruah, learned Govt. Advocate, Assam appearing for the respondent Nos. 2 and 4.

The writ petitioners herein claim that they are engaged in the business of selling "Broiler Chicken" from shops located in the Dalgaon Daily Market. Aggrieved by the notification dated 28-08-2023 issued by the respondent No. 3 thereby imposing and/or enhancing tax on "Broiler Chicken" up to Rs. 7/- per chicken sold, the instant writ petition has been filed, *inter alia* contending that the impugned notification contravenes the earlier

Govt. notification dated 25-04-2022 issued by the respondent No. 1 exempting imposition of any tax or fee upon the activities included therein which includes trading in "Broiler Chicken" carried out by the writ petitioners.

In support of his arguments, Mr. Choudhury, learned Sr. counsel has invited the attention of this Court to the provision of Section 25(6) of the Assam Panchayat Act, 1994 (in short "the Act of 1994") to contend that once the Govt. has issued a notification suspending levy of any tax or fee, the Zila Parishad would not have any authority or jurisdiction under the law to issue any further notification imposing fresh tax on the same subjects.

Mr. Handique, learned standing counsel, P&RD Department, on the other hand, submits that under Section 25(b) of the Act of 1994, it would be permissible to impose taxes on activities connected with ongoing trade and the impugned notification dated 25-04-2022 only relates to setting up of new business.

Be that as it may, from a reading of the notification dated 25-04-2022, it is not clear as to whether, imposition of tax on ongoing business activities, such as the one carried out by the writ petitioners, would also come within the sweep of the said notification. Unless there is clarity in the matter, it may be difficult for the Court to pass an adjudicatory order on the issues raised by the writ petitioners.

As such, this writ petition is being disposed of by granting a week's time to the writ petitioners to file a proper representation before the respondent No. 1, ventilating their grievance in the matter. If such a representation is filed within a week by enclosing a

certified copy of this order, the same be looked into and be disposed of as expeditiously as possible but not later than 06 weeks thereafter.

Until such time, a final order is passed by the respondent No. 1 on the representation to be filed by the writ petitioners in terms of this order, no coercive action shall be initiated against the writ petitioners for recovery of tax under the impugned notification dated 28-08-2023.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant