

GAHC010005732013



2024:GAU-AS:10767

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

Case No. : Crl.Pet./233/2013

HANSRAJ JAIN and 5 ORS.
S/O LT. KESHRIMAL JAIN, 5F, ELECTRONIC CENTRE, 1/1A, BIPLABI
ANUKUL CHANDRA STREET, KOLKATA- 700072.

2: SMTI KANTA DEVI JAIN
W/O SRI HANSRAJ JAIN 34/1/N
BALLYGUNGE CIRCULAR ROAD
KOLKATA- 700019.

3: SMTI MEENU JAIN
W/O SRI SANJAY JAIN 34/A/N
BALLYGUNGE CIRCULAR ROAD
KOLKATA- 700019

4: SMTI MONIKA JAIN
W/O SRI AJAY JAIN 34/A/N
BALLYGUNGE CIRCULAR ROAD
KOLKATA- 700019

5: SMTI CHHAVI JAIN
W/O SRI NAVIN JAIN 34/A/N
BALLYGUNGE CIRCULAR ROAD
KOLKATA- 700019 SL. NO. 1 TO 5 ARE REP. BY THEIR AUTHORIZED
REPRESENTATIVE NAMELY
SRI MOOLCHAND PATNI
S/O SRI RATANLAL PATNI
C/O M/S GANESH MET COKE INDUSTRIES HATKHOWA PARA
AZARA
- 781017
DIST. KAMRUP
ASSAM

6: SRI MOOLCHAND JAIN @ MOOL CHAND PATNI

S/O SRI RATANLAL PATANI
C/O M/S GANESH MET COKE INDUSTRIES
HATKHOWA PARA
AZARA- 781017
DIST. KAMRUP
ASSA

VERSUS

ANANTA GOSWAMI and ANR.
SUPERINTENDENT OF TAXES, UNIT-B, NEW KAR BHAWAN, DISPUR, GHY-
6.

2:THE STATE OF ASSA

Advocate for the Petitioner : MR.K R SURANA, MS.A CHOUDHURY,MR.G KHANDELIA

Advocate for the Respondent : , MR.R DUBEY,PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

05.11.2024

1. None appears for the petitioner on call. However, Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent is present.
2. The present petition under Section 482 of the Cr.P.C. is filed for quashing and setting aside the CR Case No. 1140^C/2011 registered under Section 85(1)(f)(g)(h) (n) and (s) of the Assam Value Added Tax Act, 2003 read with Section 9(2A) of the Central Sales Tax Act 1956 and Section 9 of the Assam Entry Tax Act, 2008 pending for trial before the Court of learned Chief Judicial Magistrate, Kamrup, Guwahati. The further challenge is an order dated 27.04.2011 passed by the learned Chief Judicial Magistrate, Kamrup, Guwahati, whereby cognizance was taken against the petitioners and order dated 13.09.2012, whereby the learned

trial Court rejected the prayer of the petitioners for representation by their advocate.

3. It is on record that a complaint was filed by the Superintendent of Tax, Unit-B, Guwahati under Section 85(1)(f)(g)(h)(n) and (s) of the Assam Value Added Tax Act, 2003 read with Section 9(2A) of the Central Sales Tax Act 1956 and Section 9 of the Assam Entry Tax Act, 2008 against the partners of M/s Ganesh Met Coke Industries, Azara, Kamrup. The present petitioners are the partners of the said M/s Ganesh Met Coke Industries.
4. The C.R. Case No. 1140^c/2011 was registered under Section 85(1)(f)(g)(h)(n)&(s) of the Assam Value Added Tax Act, 2003 read with Section 9(2A) under CST Act, 1956 and Section 9 under AET Act, 2008 inasmuch sanction under Section 87(1) of the Assam Value Added Tax Act, 2003 was accorded for prosecution of the petitioners herein by the Commissioner of Taxes, Assam by an order dated 05.04.2011.
5. The order sheets annexed along with the petitions reflect that by an order dated 27.04.2011, on receipt of the record of the C.R. Case, the learned Chief Judicial Magistrate, Kamrup, Guwahati, issued summons to the accused fixing the matter on 18.07.2011. Subsequently, on 13.09.2012, a petition was filed by the learned counsel on behalf of the accused petitioners seeking another date and accordingly, prayer was allowed. Subsequently, on 13.12.2012, the accused was absent and again time was sought by a petition No. 4002 for appearance which was allowed as a last chance and the matter was fixed for appearance of the accused petitioners on 07.03.2013. Thereafter, on 07.03.2013, accused was again absent with a prayer for adjournment which was also allowed fixing the matter on 06.04.2013 and thereafter, the present applications are filed.
6. This Court under its order dated 29.04.2013, stayed the further proceeding of

C.R. Case No. 1140^c/2011 pending before the learned Chief Judicial Magistrate, Kamrup, Guwahati.

7. There is undisputed material on record inasmuch as it is the case of the petitioners that a demand notice was issued to the petitioner firm on 06.10.2010 by the Certificate Officer (Taxation) Karmup, Guwahati and by the said demand notice, the petitioners were directed to pay an amount of Rs. 1 Crore per month toward realization of recovery of default amount against certain bakijai cases totaling of Rs. 4,52,67,839/- out of which the petitioners already paid an amount of Rs. 1,27,31,600/-. The balance amount was demanded on monthly installment.
8. Being aggrieved, the petitioner firm namely M/s Ganesh Met Coke Industries preferred a writ petition being WP(C) No.2282/2011 and this Court without interfering such notice directed under its order dated 29.04.2011 that the balance amount should be paid with a monthly installment of least Rs. 20 Lakhs within 15 days of every calendar month. However, it was made clear in the aforesaid order that in case there is default in payment of the installment as directed, the respondents department will be at liberty to take action against the petitioner firm as per existing rules and procedure and it was further provided that demand notice dated 06.10.2010 shall remain suspended subject to payment of monthly installments as fixed by the Court.
9. Subsequently, in another proceeding i.e. WP(C)/2627/2012, the petitioner was directed by a Division Bench under its order dated 04.06.2012 to furnish indemnity bond having immovable property to the extent of demand with an undertaking that such property would be kept unencumbered and in the event demand is upheld, same would be met by the indemnifier and it was further made clear that such interim order passed will be applicable in respect of demand beyond 50 per cent, if more than 50% demand has already been met. However, it was further made clear that the order will not debar the petitioner from

reaching an understanding with the consent of the concerned authorities to make balance payment in installments.

10. As per the pleading of this petition, the petitioner continuously paid the disputed demand as per order dated 29.04.2011 by this Court and in the aforesaid backdrop, the proceeding before the Chief Judicial Magistrate was challenged.
11. None appears for the petitioner or the Taxation department to address the legal issues as well as the factual backgrounds and this matter is pending since the year 2011. In the aforesaid backdrop, this Court has decided to enter upon the merit of the case on the basis of material available on record inasmuch as the fundamental challenge is the proceeding initiated by the Magistrate.
12. From the record of proceeding, it is seen that having registered the C.R. case as recorded hereinabove, a summon has already been issued to the petitioner and the petitioner had entered appearance through the learned counsel before the learned trial Court below. Though it is contended in this petition, the prayer for representation of the petitioner is disallowed, the order sheets annexed along with this petition do not disclose anything to that effect rather the order sheet reflects that the petitioner's application for adjournment and for his absence was duly considered by the learned trial Court below by order dated 13.12.2012. This Court has also perused the complaint filed by the authorities as recorded hereinabove, and reading of the aforesaid materials if taken on its face value discloses the offences as alleged inasmuch as this Court in exercise of its power under Section 482 of Cr.P.C. cannot go into the factual dispute and allegation as raised in the present case more particularly, when such facts are not admitted by the Taxation department.
13. In view of the aforesaid, the criminal petition stands dismissed. Interim order, if

any, passed earlier stands vacated. LCR be returned back.

14. While parting with the record, it is made clear that, if the petitioner files application for being represented through lawyer, the same may be considered as per law.

JUDGE

Comparing Assistant