

GAHC010234372015



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

Case No. : WP(C)/2296/2015

M/S ESSAR OIL LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES
ACT
1956 AND HAVING ITS OFFICE AT COMMERCIAL COMPLEX
1ST FLOOR
TRIBENI
ULUBARI
G.S. ROAD
GUWAHATI
ASSAM
REP. BY SRI SAMARJIT NEOG
SON OF LT. DURGA PRASAD NEOG
R/O LACHIT NAGAR
GUWAHATI
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE AND TAXATION
DISPUR
ASSAM
GUWAHATI- 781006.

2:THE COMMISSIONER OF TAXES

ASSAM KAR BHAVAN
DISPUR

GUWAHATI- 781006.
3:THE SUPERINTENDENT OF TAXES

CENTRAL VAT AUDIT
GUWAHATI
KAR BHAWAN
GUWAHATI
ASSAM.

Advocate for : MS.N HAWELIA
Advocate for : MR.S SAIKIA appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Ms. N. Hawelia, Adv.
For the Respondents : Mr. B. Gogoi, Standing Counsel,.
Date of Hearing : 22.05.2024
Date of Judgment : 22.05.2024

JUDGMENT & ORDER (ORAL)

1. Heard Ms. N. Hawelia, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel for the Finance and Taxation Department, Government of Assam representing the respondent Nos. 1, 2 and 3.
2. The present writ petition is filed under Article 226 of the Constitution of India assailing an order of assessment dated 16.03.2015 passed by the Superintendent of Taxes, Central VAT Audit Team, Guwahati, Assam for the assessment year 2011-12 under Section 40 of the Assam Value Added Tax Act 2003 read with Rule 25 of the Assam Value Added Tax Rules read with Section 9(2) of the Central Sales Tax Act, 1956.
3. Though the aforesaid assessment order has been challenged in the present

writ petition on various grounds touching merit of the determination made, however, Ms. N. Hawelia, the learned counsel for the petitioner has confined her argument only to the point that such assessment order has been passed without giving any reasonable opportunity of hearing.

4. Referring to the Notice dated Nil December, 2014, issued under Section 40 of the Assam Value Added Tax Act, 2003, the learned counsel for the petitioner submits that by the aforesaid notice, the petitioner was asked to explain and to show cause, by appearing personally or through authorized agent, on or before 24.12.2014, as to why the assessment for the period 2011-2012 shall not be completed on the basis of facts and sales as detailed in the aforesaid notice. The petitioner had appeared before the authority sought for an adjournment and prayed to extend time to submit the reply, however, such prayer has been rejected by an order dated 10.03.2015, without any justifiable ground and therefore, according to Ms. N. Hawelia, learned counsel for the petitioner, the opportunity granted cannot be treated as reasonable opportunity of hearing.
5. Accordingly, Ms. N. Hawelia, learned counsel for the petitioner submits that the impugned assessment order has been passed violating the principles of nature justice inasmuch as an assessee is entitled for reasonable time to reply such show cause notice, more particularly, when the assessment relates to a very long period. Accordingly, she submits that the impugned order of assessment dated 16.03.2015 is liable to be set aside and quashed being violative of principles of natural justice and a direction may be issued to make assessment afresh by giving a reasonable opportunity to the petitioner.
6. Per contra Mr. B. Gogoi, learned Standing Counsel for the Finance and Taxation Department, Government of Assam representing the respondent Nos. 1, 2 and 3, submits that several opportunities were given and in spite of such opportunities, the petitioner had failed to reply to the show cause notice and therefore, there

was no wrong in the proceeding ex-parte against the petitioner. Accordingly, no fault can be attributed to the Superintendent of Taxes, Central VAT Audit Team, Guwahati, Assam in proceeding with the matter ex-parte and passing the impugned order of assessment.

7. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
8. Admittedly, after receiving of the notice, the petitioner on 09.02.2015 (Annexure-II) made a prayer before the Superintendent of Taxes, Central VAT Audit Team seeking information which are in the possession of the Superintendent of Taxes, Central VAT Audit Team, in terms of the show cause notice. Thus, such application was filed beyond the stipulated date of appearance i.e. beyond 24.12.2014. Thereafter, by Annexure-III dated 10.03.2015, the petitioner submitted a reply and on the same date i.e. on 10.03.2015, the petitioner represented by their counsels, filed their petition seeking further 2 (two) months time for correction of defective "C" Forms and requested to return back the original "C" Form in question. However, the Superintendent of Taxes, Central VAT Audit Team, by the impugned order dated 10.03.2015 rejected such prayer on the ground that sufficient time was allowed to the petitioner earlier.
9. It is by now well settled that the principles of natural justice have an universal application and constitute an important facet of procedural propriety envisaged under Article 14 of the Constitution of India. It is equally well settled that administrative and adjudicatory proceeding, which entails significant civil consequence must be held in consonance with the principles of natural justice to meet the requirement of Article 14 of the Constitution of India. However, in the case in hand, time was granted to the petitioner inasmuch as admittedly, the petitioner first appeared before the Superintendent of Taxes, Central VAT Audit Team on 09.02.2015 whereas in terms of show cause notice, the date was fixed

on 24.12.2014. Therefore, it cannot be said that no reasonable opportunity was granted to the petitioner to place their defence.

10. That being the position, this Court finds no infirmity in the action of the Superintendent of Taxes, Central VAT Audit Team in rejecting further prayer of the petitioner. Accordingly, the present writ petition stands dismissed.

JUDGE

Comparing Assistant