GAHC010260322018

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

Case No. : WP(C) 8247/2018

1:M/S. SUSHIL TIMBER
A SOLE PROPRIETORSHIP CONCERN HAVING ITS DEPOT AND SIZING UNIT AT R.G.BARUAH ROAD, GHY- 21, KAMRUP (M), ASSAM, REP. BY ITS AUTHORIZED SIGNATORY, MR. P.K. JAIN

VERSUS

1:THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF ENVIRONMENT AND FOREST, DISPUR, GHY-6

2:PRINCIPAL SECY. TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPTT.
DISPUR
GHY-6

3:PRINCIPAL CHIEF CONSERVATOR OF FORESTS (LEGAL) AND HEAD OF FOREST FORCE
ASSAM
PUNJABARI
GHY-36

4:DIVISIONAL FOREST OFFICER
KAMRUP EAST DIVISION
BASISTHA
GHY-29

5:FOREST BEAT OFFICER
KHANAPARA BEAT
GHY-2

Advocate for the Petitioner : MR. D SARAF

Advocate for the Respondent : SC, FOREST

Linked Case : WP(C) 4427/2018

1:S.K.PINE FOREST PRODUCTS
A PROPRIETORSHIP FIRM
HAVING ITS PLACE OF BUSINESS AND PROCESSING UNIT SITUATED AT BARBHUI
BYRNIHAT P INDUSTRIAL ESTATE
PO- BYRNIHAT
PIN- 793101
DIST- RI BHOI
MEGHALAYA
REP. BY ITS PROPRIETOR
SRI SURESH KUMAR KEDIA

VERSUS

1:THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GHY-6
ASSAM

2:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST
DISPUR
GHY-6
ASSAM

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST (LEGAL) AND HEAD OF FOREST FORCE
ASSAM
PUNJABARI
GHY-36
ASSAM

4:THE DIVISIONAL FOREST OFFICER
KAMRUP EAST DIVISION
BASISTHA

GHY-29
ASSAM

5:THE FOREST BEAT OFFICER
JORABAT BEAT AND KHANAPARA BEAT OFFICE
KAMRUP EAST DIVISION
BASISTHA
GHY-29
ASSAM

Advocate for the Petitioner : MR A TEWARI
Advocate for the Respondent : SC
FOREST

Linked Case : WP(C) 4673/2018

1:M/S. TAMLA LAMP CO-OPERATIVE SAW MILL
A PROPRIETORSHIP FIRM
HAVING ITS PLACE OF BUSINESS AND PROCESSING UNIT SITUATED AT INDUSTRIAL ESTATE
TELLULIANG
PO AND PS TEZU
PIN- 792001
DIST- LOHIT
ARUNACHAL PRADESH. REP. BY ITS POWER OF ATTORNEY HOLDER SRI RUKMA HANDIQUE
AGED ABOUT 43 YRS

VERSUS

1:THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GHY-6
ASSAM

2:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST
DISPUR
GHY-6
ASSAM

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST (LEGAL) AND HEAD OF FOREST FORCE

ASSAM
PUNJABARI
GHY-36
ASSAM

4:THE DIVISIONAL FOREST OFFICER
KAKOPATHER FOREST CHECK GATE
DOOM DOOMA DIVISION
DIST- TINSUKIA
ASSAM

5:THE RANGE FOREST OFFICER
KAKOPATHER RANGE BEAT
KAKOPATHER
DOOM DOOMA DIVISION
DIST- TINSUKIA
ASSAM

Advocate for the Petitioner : MR A TEWARI
Advocate for the Respondent : MR. S K MEDHI

Linked Case : WP(C) 4422/2018

1:PORLA PLY PRODUCTS
A PARTNERSHIP FIRM
REGISTERED UNDER THE PROVISION OF THE INDIAN PARTNERSHIP ACT
HAVING ITS PLACE OF BUSINESS AND MANUFACTURING UNIT SITUATED AT NONGSTOIN INDUSTRIAL ESTATE

P.O. NONGSTOIN
PIN - 793119
DIST. WEST KHASI HILLS
MEGHALAYA

REP. BY ITS PARTNER
SRI KRISHNA KUMAR MURARKA

VERSUS

1:THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT.OF ASSAM

DEPARTMENT OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI- 781006

ASSAM

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST
DISPUR
GUWAHATI- 781006
ASSAM

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST (LEGAL) AND HEAD OF FOREST FORCE
ASSAM
PUNJABARI
GUWAHATI - 781036
ASSAM

4:THE DIVISIONAL FOREST OFFICER
KAMRUP EAST DIVISION

BASISTHA
GUWAHATI-29
ASSAM

5:THE FOREST BEAT OFFICER
JORABAT BEAT AND KHANAPARA BEAT OFFICE
KAMRUP EAST DIVISION

BASISTHA
GUWAHATI-29
ASSAM.

Advocate for the Petitioner : MR A TEWARI
Advocate for the Respondent : SC
FOREST

Linked Case : WP(C) 3395/2018

1:M/S SHRUTI TIMBER
A SOLE-PROPRIETORSHIP CONCERN HAVING ITS DEPOT AND SIZING UNIT AT A K DEV ROAD
GANESHPARA
GUWAHATI-25
KAMRUP(M)
ASSAM REPRESENTED BY ITS SOLE-PROPRIETOR MR. BIPLAB BHIMSARIA.

VERSUS

1:STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI-781006.

2:PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
DISPUR
GUWAHATI- 781006

3:PRINCIPAL CHIEF CONSERVATOR OF FORESTS (LEGAL) AND HEAD OF FOREST FORCE
ASSAM
PUNJABARI
GUWAHATI-36.

4:DIVISIONAL FOREST OFFICER
KAMRUP EAST DIVISION
BASISTHA
GUWAHATI-29.

5:FOREST BEAT OFFICER
JORABAT BEAT
KAMRUP EAST
GUWAHATI-12

Advocate for the Petitioner : MR. D SARAF
Advocate for the Respondent : SC
FOREST

Linked Case : WP(C) 4674/2018

1:M/S. PARSHURAM SAW MILL
A PROPRIETORSHIP FIRM
HAVING ITS PLACE OF BUSINESS AND PROCESSING UNIT SITUATED AT GUNANAGAR
GUNANAGAR
CHONGKHAM
P.O. CHOWKHAM
PIN 792102
DIST. NAMSAI
ARUNACHAL PRADESH

REPRESENTED BY ITS AUTHORIZED SIGNATORY SRI MOUCHUM SAIKIA AGE ABOUT 41 YEARS.

VERSUS

1:THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI 781006
ASSAM.

2:THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST
DISPUR
GUWAHATI 781006
ASSAM.

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST (LEGAL) AND HEAD OF FOREST FORCE
ASSAM
PUNJABARI
GUWAHATI 781036 ASSAM.

4:THE DIVISIONAL FORST OFFICER
KAKOPATHER FOREST CHECK GATE
DOOM DOOMA DIVISION
DIST. TINSUKIA
ASSAM.

5:THE RANGE FOREST OFFICER
KAKOPATHER RANGE BEAT
KAKOPATHER
DOOM DOOMA DIVISION
DIST. TINSUKIA
ASSAM.

Advocate for the Petitioner : MR A TEWARI
Advocate for the Respondent : SC
FOREST

Linked Case : WP(C) 3379/2018

1:M/S WOODS WORTH

A SOLE PROP CONCERN HAVING ITS DEPOT AND SIZING UNIT AT B R PHOOKAN ROAD
KUMARPARA
GUWAHATI-9
KAMRUP(M)
ASSAM
REP. BY IT SOLE PROP. MR BIJOY KUMAR BHIMSARIA

VERSUS

1:STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI- 781006

2:PRINCIPAL SECRETARY TO THE GOVT OF ASSAM
ENVIRONMENT AND FOREST DEPTT
DISPUR
GUWAHATI- 781006

3:PRINCIPAL CHIEF CONSERVATOR OF FORESTS(LEGAL) AND HEAD OF FOREST FORCE
ASSAM
PUNJABARI
GHY- 36

4:DIVISIONAL FOREST OFFICER
KAMRUP EAST DIVISION
BASISTHA
GUWAHATI- 29

5:FOREST BEAT OFFICER
JORABAT BEAT
KAMRUP EAST
GUWAHATI

Advocate for the Petitioner : MR. D SARAF
Advocate for the Respondent : SC
FOREST

Linked Case : WP(C) 2918/2018

1:P. APEI KONYAK
S/O- PHUHLAO KONYAK

R/O- VILL- SHANGSA
P.O AND P.S- TIZIT
DIST- MON
NAGALAND
PIN- 798602

VERSUS

1:THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI
ASSAM
PIN- 781006

2:THE PRINCIPAL SECRETARY
TO THE GOVT OF ASSAM
DEPTT OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI
ASSAM
PIN- 781006

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST(LEGAL) AND HEAD OF FOREST FORCE
ASSAM
PANJABARI
GUWAHATI
ASSAM
PIN- 781036

4:THE DIVISIONAL FOREST OFFICER(DFO)
SIVASAGAR DIVISION
SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN- 785640

5:THE FOREST BEAT OFFICER
NAMTOLA
SONARI FOREST BEAT OFFICE
SIVASAGAR DIVISION
SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN- 785640

6:THE FOREST BEAT OFFICER
HAULUATING BEAT
SIVASAGAR DIVISION
SIVASAGAR DISTRICT
ASSAM
PIN- 785640

Advocate for the Petitioner : MR. P J SAIKIA
Advocate for the Respondent : GA ASSAM

BEFORE

THE HON'BLE MR JUSTICE PRASANTA KUMAR DEKA
ORDER

07.01.2020

This order is going to be dispose of the above bunch of writ petition on the same issue.

Heard Mr. A. Tewari, the learned counsel, Mr. D. Saraf, the learned counsel and Mr. P. J. Saikia, the learned counsel for the petitioners. Also heard Mr. S. Dutta, the learned Standing Counsel, Forest Department for the respondents.

All the writ petitions challenge legality and correctness of notification dated 06.03.2017, issued by the Principal Secretary to the Government of Assam, Environment and Forest Department, enhancing levy on transportation of Timber, Non-Timber forest produce and minor minerals entering Assam through inter-state boundaries from the neighbouring States as below and the contents and its enhanced rates are reproduced herein below:-

"*GOVERNMENT OF ASSAM*

ENVIRONMENT AND FOREST DEPARTMENT

DISPUR: GUWAHATI

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 6 the March, 2017.

No. FRE-118/2014/201: The Governor of Assam is hereby pleased to publish the enhancement of Levy for transportation of Timber, Non-Timber Forest Produce (NTFP) and Minor Minerals entering Assam through Inter-State boundaries from the neighbouring States as below.

SL No.	Commodity on which levy is to be realised on entering through inter-state boundaries	Rate of levy fixed against the commodity
1	Timber	Rs. 600/- Per Cubic metre
2.	Non-Timber Forest Produce (NTFP)	Rs. 300/- per truck
3.	Stone	Rs.500/- per truck
4.	Sand	Rs. 500/- per truck
5.	Earth	Rs.100/- per truck
6.	Other minor minerals	Rs.500/- per truck.

This has the approval of Cabinet dated 28.02.2017.

This shall come into force with effect from the date of publication in the Official Gazette.

This supersedes all the earlier notifications issued in this regard.

Sd/

(P.K.Borthakur, IAS)

Principal Secretary to the Government of Assam

Environment and Forest Department."

Similar writ petitions were disposed of vide order dated 27.09.2019 in batch of writ petitions with the lead case WP(C) No. 3140/2017 and this court after discussing elaborately the law holding the field held as follows:-

"*25. Therefore, in the aforesaid judgment, Supreme Court has made it abundantly clear that goods imported from other States or Union Territories must be placed at par with similar goods manufactured or produced within the State, vis-a vis, tax or levy on such goods.*

26. If there was any confusion on this point, Supreme Court in Jindal Stainless Limited (Supra), categorically held that a levy that violates Article 304 (a) cannot be saved even if the procedure under Article 304 (b) or the proviso thereunder is satisfied. Clause (a) and (b) of Article 304 have to be read disjunctively.

27. Though the legal issues as extracted and discussed above are well-settled, those have to be applied on facts which are pleaded. Petitioners would have to show what is the rate of levy in the neighbouring States and in the State of Assam; how enhancement of levy by the impugned notification would discriminate against the goods manufactured or produced by them outside the State of Assam and which are transported into the State of Assam through the inter-state boundaries. In the absence of such facts, any adjudication would be on presumption. However, in this regard the letter issued from the office of the Principal Chief Conservator of Forests and Head of Forest Force, Assam, dated 05.07.2017, requesting the State Government to re-examine and revise the rates of levy, as produced by Mr. Mazumdar may be taken note of.

28. Therefore, having regard to the above and on a thorough consideration of the materials on record, Court is of the view that the matter is required to be relooked by the Environment and Forest Department, Government of Assam, taking note of the discussions made above. Let the impugned notification dated 06.03.2017 be looked into afresh by the government of Assam in the Environment and Forest Department, keeping in mind the legal and constitutional appropriate decision may be taken. Let such decision be taken within a period of 4 (four) months from the date of receipt of a certified copy of this order. During this period, restraint orders passed by this Court to the effect that respondents would not insist on the rates indicated in the impugned notification dated 06.03.2017 would hold the field.

29. All the writ petitions are disposed of."

Accordingly, the present writ petitions are disposed of as the same are covered by the aforesaid order dated 27.09.2019, and calling upon the Government of Assam, Forest and Environment Department to look afresh into the notification bearing no. FRE 118/2014/201 dated 06.03.2017 and till a final decision is arrived, the respondents shall not insist on the enhanced rates indicated in the impugned notification dated 06.03.2017 in respect of the commodities referred in the said notification.

Accordingly these writ petitions are disposed of.

JUDGE

Comparing Assistant