ss/jks

A.F.R.

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present :
The Hon'ble Justice Surya Prakash Kesarwani
And
The Hon'ble Justice Rajarshi Bharadwaj

MAT 538 of 2016
With
CAN 1 of 2016 (Old CAN 3351 of 2016)
With
CAN 2 of 2016 (Old CAN 6646 of 2016)
Sales Taxes Officer, Siliguri Range & Ors.
Vs.
Saptrishi Infratrade Private Limited

For the appellants	:	Mr. Anirban Ray, GP Md. T.M. Siddiqui, AGP Mr. T. Chakraborty Mr. Saptak Sanyal
For the respondent	:	Mr. Baudhayan Bhattacharyya Ms. Stuti Bansal Ms. Rinki Saha
Heard on	:	20.12.2023 & 21.12.2023
Judgement on	:	17.01.2024

Surya Prakash Kesarwani, J.:

1. Heard Mr. Md. T.M. Siddiqui, learned Additional Government Pleader and Mr. Baudhayan Bhattacharyya, learned counsel for the respondent/writ petitioner.

2. This intra-court appeal has been filed praying to set aside the judgement and order dated 17.02.2016 in WP 641 (W) of 2016

(Saptrishi Infratrade Private Limited Vs. Sales Taxes Officer, Siliguri Range & Ors.) passed by the learned Single Judge, whereby the seizure of books of accounts by the Sales Tax Officer, Siliguir Range has been set aside and it has been held that the Sales Tax Officer has no power under Section 67 of the West Bengal Value Added Tax Act, 2003 (hereinafter referred to "VAT Act") to exercise the powers under Section 67 of the VAT Act. The reasons given by the learned Single Judge in the impugned judgment to come to the aforesaid conclusion of lack of powers of the Sales Tax Officer, is that there is no order of the Commissioner in writing conferring power upon a Sales Tax Officer under Section 3(4) of the VAT Act.

3. Learned counsel for the State refers to the provisions of Sections 3, 6(1)/(2), 67 (1) of the VAT Act, Clause 1(d) of the Notification No.792-F.T. dated 31.03.2005 issued by the State Government under Section 6(1) of the VAT Act and Rule 2 (1)(j) of the West Bengal Sales Tax Rules, 1995. He submits that power has been conferred under Section 6(1) read with Clause 1(d) of the Notification dated 31.03.2005 and Rule 2(1)(j) of the Rules, 1995, to exercise the powers under Section 67 of the VAT Act. Under the circumstances, since specifically power has been conferred upon a Sales Tax Officer to exercise the powers under Section 67 of the

VAT Act, therefore, no delegation of power by the Commissioner is required. He submits that the learned Single Judge has misread the provisions and incorrectly quashed the seizure and allowed the writ petition. He, therefore, submits that the impugned order of the learned Single Judge deserves to be set aside and the writ petition deserves to be dismissed.

4. Learned counsel for the respondent/writ petitioner refers to the provisions of Section 6(1)/(2) and Section 3(4) of the VAT Act and submits that Section 6(2) of the VAT Act itself provides that power may be exercised by an officer appointed under Section 6(1) only if, such power has been conferred or prescribed by the Act or has been delegated to him in writing by the Commissioner under sub-Section (4) of Section 3 read with Rule 3 of West Bengal Value Added Tax Rules, 2005. He submits that since there is no order of the Commissioner in writing as required under sub-Section (2) of Section 6 of the VAT Act, therefore, the Sales Tax Officer who seized the books of accounts, was completely lacking the power to seize the books of accounts. Therefore, the learned Single Judge has lawfully held that the Sales Tax Officer has no power under Section 67 of the VAT Act to seize the books of accounts. He submits that the learned Single Judge correctly passed the impugned judgement which does not suffer from any error of law.

Discussion and Findings :

5. We have carefully considered the submissions of the learned counsel for the parties and perused the records of the appeal.

Before we proceed to consider rival submissions of learned counsel for the parties, it would be appropriate to reproduce the relevant statutory provisions as under :

The West Bengal Value Added Tax Act, 2003

"**Section 3. Commissioner. –** (1) For carrying out the purposes of this Act, the State Government may appoint a person to be the Commissioner of Sales Tax.

(2) The Commissioner appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

(3) The Commissioner may-

(a) withdraw to himself from a Special Commissioner, or an Additional Commissioner, or any person appointed under section 6 any case or matter which the Special Commissioner or the Additional Commissioner or such person is competent to deal with in exercise or performance of the powers or duties specified under sub-section (2) of section 4 or sub-section (2) of section 5 or sub-section (2) of section 6 respectively; or

(b) transfer any case or matter from a Special Commissioner competent to deal with the same to another Special Commissioner so competent; or

(c) transfer any case or matter from an Additional Commissioner competent to deal with the same to another Additional Commissioner so competent; or

(d) transfer any case or matter from any person appointed under section 6 competent to deal with the same to another person appointed under that section so competent.

(4) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by an order in wiring, delegate any of his powers under this Act except those under sub-section (13) of section 93.

(5) Any person appointed as the Commissioner under the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994), and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be the Commissioner."

"**Section 6. Other persons appointed to assist the Commissioner. –** (1) **The State Government may appoint such other persons to assist the Commissioner as it thinks fit and may specify the area or areas over which such persons shall exercise jurisdiction.**

(2) The persons appointed under sub-section (1) shall exercise such powers as may be conferred or prescribed by this Act or delegated to them in writing by the Commissioner under sub-section (4) of section 3.

(3) Any person appointed to assist the Commissioner, under the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994), and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be the person appointed to assist the Commissioner."

"**Section 67. Seizure of accounts of a dealer or casual dealer or any other person. –** If the Commissioner, a Special Commissioner, an Additional Commissioner **or any person appointed under sub-section (1) of section 6 to assist the Commissioner,** has reason to suspect, upon information or otherwise, that any dealer, casual dealer, or any other person, is evading any tax, or is attempting to evade payment of any tax, or has failed to deposit any tax, as the case may be, he may, for reasons to be recorded in writing, seize such accounts, registers or documents, including those in the form of electronic record, or any computer or electronic media of such dealer or casual dealer or person, as may be necessary, and shall grant such dealer or casual dealer or person, a receipt for such accounts, registers or documents, including those in the form of electronic record, or any computer or electronic media seized by him and shall retain all or any of them only for such period as may be necessary for examination thereof or for prosecution or for any other purpose of this Act:

Provided that –

(a) the Commissioner or the Special Commissioner or the Additional Commissioner shall not retain any of the accounts, registers or documents, including those in the form of electronic record, or any computer or electronic media, seized under this section for a period exceeding one year from the date of the seizure unless he records in writing the reasons therefor, and

(b) any person appointed under sub-section (1) of section 6 to assist the Commissioner shall not retain any of the accounts, registers or documents, including those in the form of electronic record, or any computer or electronic media, seized under this section for a period exceeding one year from the date of the seizure unless he states the reason in writing therefor and obtains sanction of the Commissioner in writing in respect thereof."

"**Notification No.792-F.T., dated 31.03.2005**

In exercise of the power conferred by sub-section (1) of section 6 of the West Bengal Value Added Tax Act, 2003 (West Ben. Act XXXVII of 2003) (hereinafter referred to as the said Act), **the Governor is pleased hereby**

(1) **to appoint the following persons to assist the Commissioner of Sales Tax for carrying out the purposes of the said Act,** -

(a) Senior Joint Commissioners of Commercial Taxes as referred to in clause (qa) of sub-rule (1) of rule 2 of the West Bengal Sales Tax Rules, 1995, as Senior Joint Commissioners of Sales Act;

(b) Joint Commissioners of Commercial Taxes as referred to in clause (g) of sub-rule (1) of rule 2 of the West Bengal Sales Tax Rules, 1995, as Joint Commissioners of Sales Tax;

(c) Deputy Commissioners of Commercial Taxes as referred to in clause (k) of sub-rule (1) of rule 2 of the West

Bengal Sales Tax Rules, 1995, as Deputy Commissioners of Sales Act;

(d) **Commercial Tax Officers as referred to in clause (j) of sub-rule (1) of the rule 2 of the West Bengal Sales Tax Rules, 1995, as Sales Tax Officers**;

(e) Assistant Commercial Tax Officers as referred to in clause (m) of sub-rule (1) of rule 2 of the West Bengal Sales Tax Rules, 1995, as Assistant Sales Tax Officers;

(f) Patrolmen as referred to in clause (n) of sub-rule (1) of the rule 2 of the West Bengal Sales Tax Rules, 1995, as Patrolmen; and

(2) To specify that the area or areas over which the persons mentioned in **clause (1) shall exercise jurisdiction under the said Act and the West Bengal Value Added Tax Rules, 2005 shall be the same as those over which such persons respectively shall exercise jurisdiction under the West Bengal Sales Tax Act, 1994 and the West Bengal Sales Tax Rules, 1995**."

The West Bengal Sales Tax Rules, 1995

"**Rule 2(1)(j)** "Commercial Tax Officer" means **the person appointed by that designation by the State Government under sub-section (1) of section 3 to assist the Commissioner**;".

The West Bengal Value Added Tax Rules, 2005

"**Rule 2(m) "Sales Tax Officer" means the person appointed** by that designation by the State Government **under sub-section (1) of section 6** to assist the Commissioner;"

"**Rule 3. Restrictions and conditions subject to which power to be delegated by Commissioner. –** (1) **The Commissioner shall not delegate any officer appointed to assist him any power, other than those enumerated below** in respect of the sections mentioned in column (2), nor shall he delegate any power specified in column (3), to any officer below the rank specified in the corresponding entry in column (4) of the Table below : -

Sl. No.	Section	Description of power	Designation of officer
(1)	(2)	(3)	(4)

… …

… …

6. We find that Section 3 of the VAT Act confers powers upon the Commissioner. Sub-Section (4) of Section 3, subject to such restrictions and conditions as may be prescribed, empowers the Commissioner to delegate by an order in writing any of those powers under this Act, except those under sub-Section (13) of Section 93. In the present set of facts we are not concerned with the power confers by the VAT Act upon the Commissioner or **delegation of any of the powers** by the Commissioner. Therefore, Section 3 of the VAT Act has no relevance with respect to the controversy involved in the present appeal.

7. Sub-Section (1) of Section 6 of the VAT Act confers power upon the State Government to appoint such persons to assist the Commissioner as it thinks fit. The State Government has issued a Notification No.792-F.T. dated 31.03.2005 in exercise of powers confered under sub-Section (1) of Section 6 of the VAT Act. By Clause 1(d) of the aforesaid Notification dated 31.03.2005, Commercial Tax Officers as referred to in Clause (j) of sub-Rule (1) of Rule 2 of the West Bengal Sales Tax Rules, 1995 as Sales Tax Officers have been appointed for carrying out purposes of the

Act. Thus Commercial Tax Officers/Sales Tax Officers have been appointed by the State Government to exercise power under Section 67 of the VAT Act and the West Bengal Value Added Tax Rules, 2005. Rule 2(1)(j) of the West Bengal Sales Tax Rules, 1995 defines the words "Commercial Tax Officer" to mean the person appointed by that designation by the State Government under sub-Section (1) of Section 3 to assist the Commissioner. Thus, a Sales Tax Officer appointed by Notification No.792-F.T. dated 31.03.2005 issued under sub-Section (1) of Section 6 of the VAT Act is an officer appointed by the State Government to exercise jurisdiction under Section 67 of the Act.

8. Sub-Section (2) of Section 6 of the VAT Act is in two parts, **firstly** that "the persons appointed under sub-Section (1) shall exercise such powers as may be conferred or prescribed by this Act"; and **secondly**, "or delegated to them in writing by the Commissioner under sub-Section (4) of Section 3". A Sales Tax Officer has been appointed under Section 6(1) of the VAT Act vide Notification No.792-F.T. dated 31.03.2005 and thus he has been empowered to exercise the powers conferred or prescribed by the VAT Act. The power of seizure has been prescribed under Section 67 of the VAT Act. A Sales Tax Officer having been appointed under Section 6(1) of the VAT Act read with the aforestated Notification No.792-

F.T. dated 31.03.2005 is, therefore, fully empowered to exercise the powers of seizure of accounts of a dealer under Section 67 of the VAT Act.

9. So far as the second limb of sub-Section (2) of Section 6 of the VAT Act is concerned, we find that once a Sales Tax Officer has been duly appointed by the State Government to exercise the powers conferred under Section 67 of the VAT Act, no order of delegation in writing by the Commissioner under sub-Section (4) of Section 3 of the VAT Act is required.

10. Since the Sales Tax Officer, who seized the books of accounts, does not lack power or jurisdiction to seize under Section 67 of the VAT Act, therefore, learned Single Judge has committed a manifest error or law to quash the seizure of books of accounts, etc. of the petitioner.

11. For all the reasons aforestated, the judgement and order dated 17.02.2016 passed by the learned Single Judge in WP 641 (W) of 2016, cannot be sustained and is hereby set aside. The writ petition stands dismissed.

12. In result, the appeal is allowed to the extent indicated above. Connected applications are also disposed of.

13. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties after complying with all necessary legal formalities.

(Surya Prakash Kesarwani, J)

I agree.

(Rajarshi Bharadwaj, J.)

A.F.R.