SUPREME COURT OF INDIA

Hardeodas Jagannath

Vs.

State of Assam

C.A.Nos.2403 and 2404 of 1966

(J. C. Shah, V. Ramaswami, G. K. Mitter, K. S. Hegde and A. N. Grover, JJ.)

27.09.1968

JUDGEMENT

RAMASWAMI, J. :-

1. These appeals are brought by certificate from the judgment of the High Court of Assam and Nagaland dated April 4, 1963 in Civil Rule No. 90 of 1960 and Civil Rule No. 382 of 1961, whereby the High Court dismissed the petitions under Articles 226 and 227 of the Constitution filed by the appellant.

2. Messrs. Hardeo Das Jagan Nath (hereinafter called the 'appellant') is a partnership firm carrying on business at Mawkhar Shillong in the District of United Khasi and Jaintia Hills. By a notification issued under Rule 6 of the Assam Sales Tax Rules 1947, the Commissioner of Taxes, Assam fixed May 20, 1948 as the date by which the dealers of Shillong administered area had not make applications for registration under the Assam Sales Tax Act, 1947 (17 of 1947), hereinafter called the 'Act'. By notification dated April 15, 1948, the Government of India had extended the provisions of the Act with slight modifications to the administered area in Shillong under Section 4 of the

Extra Provincial Jurisdiction Act 1947. The appellant got itself registered under the Act. Upto the half yearly return periods ending September 30, 1957, the appellant was assessed to sales-tax and the tax was realised by the Sales Tax Authorities. On March 6, 1950 the Superintendent of Taxes, Shillong, respondent No. 4 raided the business premises of the appellant and seized the account books etc. The appellant filed a petition under Art. 226 of the Constitution in the High Court. By its order dated June 3, 1960, the High Court directed the Deputy Commissioner of Taxes, Assam to return the seized books and documents within three weeks of the date of the order to the appellant. As directed by the High Court, the documents were returned to the appellant but on the basis of the information received from the account books the Superintendent of Taxes issued notices dated April 4, 1950 under Section 19A of the Act for reassessment of the appellant in respect of the half yearly return periods ending on September 30, 1956, March 31, 1957 and September 30, 1957. Thereafter, ex parte reassessment was made for the return period ending September 30, 1956 by an order dated July 8, 1959 and for return periods ending March 31, 1957 and September 30, 1957 by orders dated July 24, 1959 and tax amounting to Rupees 1,22,933/- was levied for these three periods. A further sun of Rs. 47,504.70 was levied in respect of the return period ending March 31, 1958, by an ex parte assessment order dated March 23, 1959. For the other return period ending September 30, 1958, a sum of Rs. 49,427.90 was levied by an ex parte assessment order dated April 8, 1959. For these two return periods a penalty of Rs. 1,000/- in respect of each return was also levied by two separate orders dated June 27, 1959. Thus the total amount of sales-tax and penalty amounting to Rs. 2,19,865.60 in respect of the five return periods was levied. The appellant paid Rs. 20,074.68 at the time of original assessments in respect of the periods ending on September 30, 1956, March 31, 1957 and September 30, 1957.

3. The appellant thereafter filed appeals against all the seven ex parte orders before the Assistant Commissioner of Taxes, Assam. Along with the memoranda of appeals for the periods ending March 31, 1958 and September 30, 1958, two separate applications were made by the appellant alleging that it was not necessary to pay the assessed tax since the provisions of Section 30 of the Act as amended did not apply to the case and it was prayed that appeals should be admitted without payment of the assessed tax. The contention of the appellant was rejected by the Assistant Commissioner though he reduced the amount of deposit for the periods ending March 31, 1958 and September 30, 1958. The appellant moved the Commissioner of Taxes in revision, but the order of the Assistant Commissioner was affirmed by the Commissioner of Taxes though he reduced the amount further. On the application of the appellant the matter was referred to the High Court which held that the amended Section 30 of the Act was intra vires. In the meantime, the appellant also applied in respect of the appeals relating to the periods ending September 30, 1956, March 31, 1957 and September 30, 1957, as well as the penalty appeals of periods ending on March 31, 1958 and September 30, 1958 and prayed for admission of these appeals without payment of the assessed tax. In this case also the amount was reduced by the Assistant Commissioner of Taxes but the matter was kept pending till the disposal of the reference by the High Court. On May 21, 1960, the appellant filed separate petitions before the Assistant Commissioner praying that as the financial condition of the appellant was not good the appellant may be allowed to furnish reasonable security in lieu of cash and the appeal may be admitted on such security. By his order dated May 23, 1960 the Assistant Commissioner of Taxes fixed June 8, 1960 for payment of the amount required for admission of the appeals, failing which the appeals were ordered to be dismissed. The appellant then moved the Commissioner praying that in view of his financial difficulty he should be allowed to furnish reasonable security in lieu of cash to be paid. The application was rejected by the Commissioner on June 21, 1960. Thereafter all the five appeals were rejected by a common order

dated June 22, 1960 and the two appeals against the imposition of penalty were also summarily rejected by an order dated June 22, 1960. The appellant was further asked to show cause why penalty should not have been imposed in respect of the periods ending September 30, 1956, March 31, 1957 and September 30, 1957. The appellant filed a petition to the High Court under Article 226 of the Constitution, being Civil Rule No. 90 of 1960 praying for a writ to quash the order of the Commissioner dismissing the appeals in respect of the five periods and for further reliefs. The appellant also filed another petition under Article 226, being Civil Rule No. 382 of 1961 asking for similar reliefs with regard to the periods ending March 31, 1959, September 30, 1959, March 31, 1960, September 30, 1960 and March 31, 1961. The writ petitions were dismissed by the High Court by a common judgment dated April 4, 1963.

4. The first question to he considered in these appeals is whether the provisions of the Act were validly extended to the Shillong Administered Areas. By a notification dated April 15, 1948 the Central Government extended the provisions of the Act to the Shillong Administered Areas including Barabazar in exercise of powers conferred by Section 4 of the Extra Provincial Jurisdiction Act, 1947. It was argued on behalf of the appellant that on April 15, 1948 when the notification was issued the Extra Provincial Jurisdiction Act, 1947 (Act XLVII of 1947) was not applicable to the Shillong Administered Areas as the instrument of accession by which the administration of the State of Mylliem was transferred to the Central Government was accepted by the Governor-General of India on August 17, 1948. The premable to the Extra Provincial Jurisdiction Act, 1947 (hereinafter called the Act of 1947) provides :

"Whereas by treaty, agreement, grant, usage, sufferance and other lawful means, the Central Government has, and may hereafter acquire, jurisdiction in and in relation to areas outside the Provinces of India; It is hereby enacted as follows :- "

The expression "extra provincial jurisdiction" has been defined under Section 2 of the Act of 1947 as meaning

"any jurisdiction which by treaty, agreement, grant, usage, sufferance or other lawful means the Central Government has for the time being in or in relation to any area outside the Provinces."

Section 3 states :

"3. (1) It shall be lawful for the Central Government to exercise extra provincial jurisdiction in such manner as it thinks fit.

(2) The Central Government may delegate any such jurisdiction as aforesaid to any officer or

authority in such manner and to such extent as it thinks fit."

Section 4 provides as follows :

"4 (1) The Central Government may, by notification in the official Gazette, make such orders, as may seem to it expedient for the effective exercise of any extra provincial jurisdiction of the Central Government.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), any order made under that sub-section may provide -

(a) for determining the law and procedure to be observed, whether by applying with or without modifications all or any of the provisions of any enactment in force in any Province or otherwise;

(b) for determining the persons who are to exercise jurisdiction, either generally or in particular cases or classes of cases, and the powers to be exercised by them :

(c) for determining the Courts, Judges, Magistrates and authorities by whom, and for regulating the manner in which any jurisdiction auxiliary or incidental to or consequential on the jurisdiction exercised under this Act is to be exercised within any Province; and

(d) for regulating the amount, collection and application of fees."

Section 5 is to the following effect:

"Every act and thing done, whether before or after the commencement of this Act, in pursuance of any extra provincial jurisdiction of the Central Government in an area outside the Provinces shall be as valid as if it had been done according to the local law then in force in that area."

5. The argument was stressed on behalf of the appellant that the extra provincial jurisdiction could only be exercised by the Central Government if by treaty, agreement, grant, usage, sufferance or other lawful means the Central Government has for the time being in or in relation to any area outside the provinces exercised such jurisdiction. It was contended that after the declaration of

independence on August 15, 1947 the paramountcy lapsed and the State of Mylliem became an independent State and the Central Government could not exercise any extra provincial jurisdiction till the instrument of accession was signed by the Governor-General. It was pointed out that the notification by which the Act applied to Shillong Administered Areas was issued after the lapse of paramountcy and before the instrument of accession was signed by the Governor-General. It was therefore argued that the notification dated April 15, 1948 was not validly issued and the provisions of the Act were not operative in the Shillong Administered Areas. It was said that before the State Mylliem became an independent State on August 15, 1947 there was no treaty, grant, usage or arrangement whereby the British Crown enjoyed any rights to levy taxes on the sale of goods within the Mylliem State or any right to extend to that area any such Act without the express consent or approval of the ruler of that State. The opposite view-point was put forward on behalf of the respondents. It was said that before August 15, 1947 the relations of the Crown Representative with Khasi Hills States were conducted through the Governor of Assam. In practice the administration of the Hill States was in great measure assimilated to that of the Province of Assam partly by the application of the British Indian Laws under the Indian (Foreign Jurisdiction) Order in Council and partly by administrative measures. It was argued that by virtue of the instrument of accession all previous existing arrangements between Khasi Hills States and the Government of India in the Assam Province were continued and the Central Government could therefore exercise extra-provincial jurisdiction by usage. To put it differently, the argument of the respondents was that though the instrument of accession was accepted by the Governor-General on August 17, 1948, it recognised the fact that there was a certain existing arrangement regulating relations between the Government of Indian and the Chiefs of the Khasi Hills States. The Central Government therefore exercised extra provincial jurisdiction by agreement or usage and it cannot therefore be said that the notification of the Central Government dated April 15, 1948 was invalid.

6. When the appeals were originally heard we considered that the material on the record was not sufficient to enable us to determine the disputed question, namely whether the Dominion of India was entitled to exercise extra provincial jurisdiction over the Shillong Administered Areas on April 15, 1948 which was the material date. The question at issue is not purely a question of fact but a question relating to a "fact of State" which is peculiarly within the cognizance of the Central Government (for expression "Fact of State" see Halsbury's Laws of England, 3rd Edn. Vol. 7, p. 285). In view of the insufficiency of material we thought it proper to avail ourselves of the procedure indicated by Section 6 of the Act of 1947 which enacts:

"6. (1) If in any proceeding, civil or criminal, in a Court established in India or by the authority of the Central Government outside India, any question arises as to the existence or extent of any foreign jurisdiction of the Central Government, the Secretary to the Government of India in the appropriate department shall, on the application of the Court send to the Court the decision of the Central Government on the question, and that decision shall for the purposes of the proceeding be final.

(2) The Court shall send to the said Secretary, in a document under the seal of the Court or signed by a judge of the Court, questions framed so as properly to raise the question, and sufficient answers

to those questions shall be returned to the Court by the Secretary and those answers shall on production thereof be conclusive evidence of the matters therein contained."

By an order of this Court dated September 21, 1967 the following two questions were forwarded to the Union of India under the seal of this Court for submission of their answers:

"(1) Whether the Dominion of India exercised extra provincial jurisdiction over the Shillong Administered Area including Bara Bazar, which also included Mawkhar, a part of the erstwhile Mylliem State, on April 15, 1943;

(2) Whether the Dominion of India had extra provincial jurisdiction on April 15, 1948 to extend the Assam Sales Tax Act, 1947 (Act 17 of 1947) to the Shillong Administered Area including Bara Bazar under Section 4 of Extra Provincial Jurisdiction Act (Act 47 of 1947)."

In compliance of that order the Union of India have submitted their answers on January 12, 1968 in the following terms:

"Ministry of Home Affairs."

Replies to the questions mentioned in the order dated September 21, 1967 passed by the Supreme Court of India in Civil Appeals Nos. 2403 and 2404/1966.

(1) The British Government in India had by treaty, grant, usage, sufferance and other means acquired jurisdiction over certain territories of the erstwhile State of Mylliem. The jurisdiction was exercised under the Indian (Foreign Jurisdiction) Order-in-Council, 1902 as amended by the Indian (foreign Jurisdiction) Order-in-Council, 1937. Mawkhar was a part of the territories of Mylliem jurisdiction over which had been agreed to be given by the Siem of Mylliem to the British Government. It was included in those parts of Shillong which came, in course of time, to be called the Shillong Administered Area. It has been reported that on actual survey the small area known as Bara Bazar area comes partly under Mawkhar proper and partly under South East Mawkhar and Garikhana. Bara Bazar area was thus a part of the area belonging to the erstwhile Mylliem State in which the British Government in India exercised jurisdiction under the Indian (Foreign Jurisdiction) Order-in-Council. On the withdrawal of British Rule the jurisdiction over the territories of the erstwhile Mylliem State which had been included in the Shillong Administered Area continued to be exercised with the consent of the Siem and the jurisdiction which was until then exercised in those areas by the British Government in India was assumed by the Dominion of India and it was retained

thereafter by virtue of the instrument of accession signed by the Siem of Mylliem and the agreement annexed thereto. The Dominion of India exercised extra provincial jurisdiction over the Shillong Administered Area including the Bara Bazar which also included Mawkhar a part of the Mylliem State on April 15, 1948.

(2) The jurisdiction exercised by the British Government in India over the Shillong Administered Area was quite extensive. In exercise of that jurisdiction that Government had extended, with appropriate reservations a number of Acts - Central as well as Provincial - to the Shillong Administered Area e. g., the Indian Income-tax Act and the Assam Municipal Act with the consent of the Siem of Mylliem where necessary. On the withdrawal of British rule the Dominion of India acquired the same jurisdiction over the Shillong Administered Area by virtue of the instrument of accession singed by the Siem of Mylliem and the agreement annexed thereto. The Dominion of India therefore had on April 15, 1948 extra provincial jurisdiction in terms of the Extra-Provincial Jurisdiction Act, 1947 (Act 47 of 1947) to extend the Assam Sales Tax Act, 1947 (Act 17 of 1947) to the Shillong Administered Area including Bara Bazar. The Assam Sales Tax Act was actually extended to the Shillong Administered Area including Bara Bazar, after obtaining the consent of the Siem of Mylliem, in the Ministry of States Notification No. 186-IB dated the 15th April 1948.

Sd. L. P. Singh.

Secretary to the Govt. of India.

New Delhi,

January 12, 1968."

It is clear from the letter of the Union Government that it was entitled to exercise extra provincial jurisdiction over Shillong Administered Area on April 15, 1948. The reason is that prior to the date British Government had exercised that jurisdiction under the Indian (Foreign Jurisdiction) Order-in-Council. 1902 as amended by the Indian (Foreign Jurisdiction) Order-in-Council 1937. On the withdrawal of British rule the jurisdiction over the territory of Mylliem State continued to be exercised with the consent of the ruler by the Dominion of India and the jurisdiction was retained thereafter by virtue of the instrument of accession signed by the Siem of Mylliem and the agreement annexed thereto. It is also manifest that the jurisdiction exercised by the British Government over the Shillong Administered Area was quite extensive and in exercise of that jurisdiction a number of Acts - Central and Provincial - were extended to the Shillong

Administered Area, for example the Indian Income-tax Act and the Assam Municipal Act with the consent of the Siem of Mylliem where necessary. On the withdrawal of the British rule the Dominion of India acquired the same jurisdiction which included the extension of the Act to the Shillong Administered Area. Under Section 6 (2) of the act of 1947 the answers of the Central Government to the questions forwarded by this Court shall be treated as conclusive evidence of the matter therein contained. We accordingly hold that the argument of the appellant on this aspect of the case should be rejected.

7. It was then contended on behalf of the appellant that Section 30 of the Act after the amendment was not applicable and the Assistant Commissioner of Taxes had no authority to ask the appellant to deposit the amount of tax assessed before hearing the appeal. Section 30 of the Act, as it originally stood, was to the following effect:

"30. (1) Any dealer objecting to an order of assessment or penalty passed under this Act may, within thirty days from the date of the service of such order, appeal to the prescribed authority, against such assessment or penalty;

Provided that no appeal shall be entertained by the said authority unless he is satisfied that such amount of tax as the appellant may admit to be due from him has been paid;

Provided further that the authority before whom the appeal is filed may admit it after the expiration of thirty days, if such authority is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time.

....."

After the amending Act of 1958 the Section reads as follows:

"30. (1) Any dealer objecting to an order of assessment or penalty passed under this Act may, within thirty days from the date of the service of such order, appeal to the prescribed authority, against such assessment or penalty;

Provided that no appeal shall be entertained by the said authority unless he is satisfied that the amount of tax assessed or the penalty levied, if not otherwise directed by him, has been paid;

Provided further that the authority before whom the appeal is filed may admit it after the expiration of thirty days, if such authority is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time.

....."

8. It was contended that the amendment came into force with effect from April 1, 1958 and it cannot be given retrospective effect so as to apply to assessment periods ending on September 30, 1956,

March 31, 1957 and September 30, 1957. We are unable to accept this argument as correct because the assessments for these three periods were completed after the amending Act came into force i. e., after April 1, 1958. The appeals against the assessments were also filed after the amendment. It is therefore not correct to say that the amending Act has been given a retrospective effect and the Assistant Commissioner of Taxes was therefore right in asking the appellant to comply with the provisions of the amended Section 30 of the act before dealing with the appeals.

9. It was lastly contended on behalf of the appellant that the Sales Tax Authorities were not right in holding that there was no provision under the Act by which security can be accepted in lieu of cash payment. Reliance was placed upon the phrase "otherwise directed" in the amended Section 30 of the Act. In our opinion, there is no substance in this argument. The expression "otherwise directed" only means that the appellate authority can asked the assessee to deposit a portion of the amount and not the whole but the Section gives no power to the appellate authority to permit the assessee to furnish security in lieu of cash amount of tax. We accordingly reject the argument of the appellant on this point.

10. For the reasons expressed we hold that the High Court was right in dismissing the writ petitions and these appeals must be dismissed with costs - there will be one set of hearing fees.

Appeals dismissed.