

GAHC010136922017



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

Case No. : WP(C)/4785/2017

M/S KUMAR TRADERS AND COMPANY and ANR.
A PROP FIRM WITH ITS PROP AS PRIYANKA MAURYA AND HAVING ITS
OFFICE AND PLACE OF BUSINESS SITUATED AT DHUBRI, DIST- DHUBRI,
ASSAM, REP. BY RAMA SHANKAR

2: RAMA SHANKAR
S/O- SRI JAI RAM MOURYA
R/O- MAURYA BARBARI COMPLEX
ABC GALI
ATHGAON
GUWAHATI
ASSA

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
MIN OF FINANCE AND TAXATION, ASSAM SECRETARIAT, DISPUR, GHY- 06

2:THE COMMISSIONER OF STATE TAX
GOVT OF ASSAM
KAR BHAVAN
GS ROAD
DISPUR
GHY- 6

3:THE SUPERINTENDENT OF TAXES
BIEO
ASSAM
GHY-07

4:THE INSPECTOR OF TAXES
BIEO
ASSAM

GHY- 07

5:THE DEPUTY SP
BIEO
GUWAHATI
ASSAM
07

6:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT OF INDIA
MIN OF FINANCE
DEPTT.
OF REVENUE
NORTH BLOCK
NEW DELHI
INDI

Advocate for the Petitioner : MRS.N BORDOLOI

Advocate for the Respondent : SC, FINANCE

Linked Case : WP(C)/4787/2017

M/S MAA KARNI TRADERS and ANR.
A PROP FIRM WITH ITS PROP AS TRILOKI NATH MAURYA AND HAVING ITS
OFFICE AND PLACE OF BUSINESS SITUATED AT DHUBRI
DIST- DHUBRI
ASSAM
REP. BY SRI RAMA SHANKAR

2: RAMA SHANKAR
R/O- MAURYA BARBARI COMPLEX
ABC GALI
ATHGAON
GUWAHATI
ASSAM
VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
MIN OF FINANCE AND TAXATION
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2:THE COMMISSIONER OF STATE TAX
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6:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT OF INDIA
MIN OF FINANCE
DEPTT.
OF REVENUE
NORTH BLOCK
NEW DELHI
INDIA

Advocate for : MR.M L GOPE
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM and 4 ORS.

Linked Case : WP(C)/4789/2017

M/S KUMAR ENTERPRISE and ANR.
A PROP. FIRM WITH ITS PROP. AS BABITA DEVI MAURYA AND HAVING ITS
OFFICE AND PLACE OF BUSINESS SITUATED AT DHUBRI
DIST- DHUBRI
ASSAM REP. BY SRI RAMA SHANKAR

2: RAMA SHANKAR
S/O- SRI JAI RAM MOURYA
R/O- MAURYA BARBARI COMPLEX
ABC GALI
ATHGAON
GUWAHATI
ASSAM
VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
MIN OF FINANCE AND TAXATION
ASSAM SECRETARIAT
DISPUR
GUWAHATI- 781006

2:THE COMMISSIONER OF TAX
GOVT OF ASSAM
KAR BHAWAN
G S ROAD
DISPUR
GHY-6

3:THE SUPERINTENDENT OF TAXES
BIEO
ASSAM
GHY- 07

4:THE INSPECTOR OF TAXES
BIEO
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5:THE DEPUTY SP
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6:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT OF INDIA
MIN OF FINANCE
DEPTT.
OF REVENUE
NORTH BLOCK
NEW DELHI
INDIA

Advocate for : MS.N HAWELIA

Advocate for : SC

FINANCE appearing for THE STATE OF ASSAM and 4 ORS.

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 21-03-2024

1. Heard Ms. N Hawelia, learned counsel for the petitioners. Also heard Mr. B Chowdhury learned counsel for respondent Nos.1 and 2, Mr. D Nath learned senior Government Advocate appearing for respondent Nos.3, 4 and 5 and Mr. D.N. Gogoi learned counsel for respondent No.6.

2. These writ petitions are filed challenging the legality and validity of the seizure dated 27.07.2017 whereby the goods of the petitioners were seized by the seizing authority even after being duly accounted for, though the petitioners are registered under the goods and services Tax Act, 2017.

3. The interests of the petitioners in all 3 cases are common and similar arguments are advanced by the learned counsel Ms. N Hawelia. The petitioners are registered under the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the CGST Act) and earlier they were registered under the Assam Value Added Tax Act, 2003. The authorities under the VAT Act have certified that the petitioners have cleared their outstanding tax liabilities up till 30.06.2017. Therefore w.e.f. 01.07.2017 when the GST is brought into force, the obligation of the dealers will arise out of the GST Act.

4. The power of inspection, search, seizure etc. is provided under Section 67 of the CGST Act and such power is to be exercised

by an officer, not below the rank of the Joint Commissioner.

5. For the business of Dried Areca Nuts, the dealers are required to comply with the e-way bill system and the Assam Goods and Services Tax Act, 2017 read with the Assam Goods and Service Tax Rules, 2017 provides for the document to be furnished by the dealer, to comply with the requirement of e-way bill system. However at the time of impugned action the new system was still to be made functional and therefore, under the notification of 12.07.2017 issued by the Finance (Taxation) Department, the dealers are required to obtain the GST outward permit for continuing with their business under the GST regime.

6. The grievance of the dealers is the unauthorized inspection, search and seizure of their godown at Amingaon, by the authorities of the Bureau of Investigation for Economic Offences (BIEO) Officers on 27.07.2017, who have seized around 7290 bags of Dried Areca Nuts, under the 2 seizure lists dated 27.07.2017. The seizure party led by the Deputy S.P. of the BIEO have also asked the dealers to submit around 15 documents, which may have no relevance for the business under the GST regime.

7. The petitioners contend that this is an unnecessary intervention by an incompetent authority. In fact, the bonafide of the seizure is also questioned on account of the threat meted out to the petitioners, for their inadequate donation to certain organizations in Assam.

8. The learned counsel Ms. N Hawelia for the petitioners submits that when the GST regime is at a nascent stage and requisite

infrastructure is not yet ready for e-way bill system, the harassment of the bonafide business group is totally unwarranted. The counsel refers to the press note of the Union Finance Minister to project that such harassment cannot be resorted to by visiting the business premises of the dealers, even by the officers, authorised under the GST Act.

9. Mr. D. Nath, learned Senior Government Advocate relying on the affidavit filed by the respondent No.5 submits that following receipt of an information from source regarding stocking of huge quantity of stolen/smuggled dried betel nut in the godown in question, a team of BI(EO) was sent to physically verify the information and when the owner of the godown could not produce any document, the authority suspected the goods to be stolen/smuggled and therefore, search and seizure was carried out in the presence of Magistrate. Therefore, Mr. Nath submits that there is no illegality in such search and seizure inasmuch as the BI(EO) is having authority by virtue of a notification dated 11.09.2003 (Annexure –A) to conduct such search and seizure. Yet another additional affidavit has also been filed by the respondent No.3 which discloses that sample of the areca nuts had also been sent for testing. Such affidavit further reflects that the authority suspected the said areca nuts to be stolen/smuggled goods

10. From the stand of the respondent it is clear that the BI(EO) searched the premises and seized the 7290 bags of areca nuts from the godown in question suspecting it to be smuggled/stolen goods. .

11. Now the question therefore arises whether the BI(EO) is having

any authority to conduct such search and seizure in the given facts of the present case that the search and seizure was conducted on the basis of a suspicion/information that the petitioners are storing “stolen/smuggled areca nuts”.

12. The respondent BI(EO) is relying on a notification issued in the name of Governor of Assam dated 11.09.2003, according to which the BIEO is empowered to make such a search and seizure. As the said notification dated 11.09.2003 is stated to be the source of power of the BI(EO) to conduct the aforesaid search and seizure. Such notification is quoted herein below:

No. HMA.400/2003/12

Dated Dispur, the 11th September, 2003

“In exercise of the powers conferred by clause (s) of the Section 2 of the Code of Criminal Procedure 1973 (Act 2 of 1974), the State Government do hereby declare that the office as specified in column No.(1) of the Schedule No.I below shall be police station and that it shall include within its limits the area as specified in column (2) of the said schedule for the purpose of offences mentioned in Schedule II below.

The notification comes into force with immediate effect.

SCHEDULE – I

| <i>NAME OF THE OFFICE</i> <i>1</i> | <i>JURISDICTION</i> <i>2</i> |
|------------------------------------------------------------------------------------------------------|--------------------------------------|
| <i>Office of the I.G.P. Bureau of Investigation (Economic Offences), Assam, Guwahati</i> | <i>Throughout the State of Assam</i> |

SCHEDULE – II

1. Offences relating to evasion of taxes by forgery.
2. Offences under the E.C. Act.
3. Offences under the Forest/WLP Acts,
4. Offences under the Excise Act.
5. Offences relating to violation of Trade & Merchandise Act.
6. Offences relating to Black-Marketing.

7. Offences under the CopyRight Act.
8. Offences relating to illicit trafficking/sale of Narcotic drugs.
9. Offences relating to Cheating/Forgery/Criminal breach of trust.
10. Offences relating to Printing Circulation of counterfeit currencies.
11. Offences under the category of “White Collar Crime.”
12. Any other particular offences or class of offences that may be specified by the State Government.

Sd/- B.M. Mazumdar,
Secretary to the Govt. of Assam,
Home etc. Department.

13. From a bare perusal of the aforesaid notification it is clear that the said notification was issued in exercise of power under sub-clause (s) of the Section 2 of the Cr.P.C 1973. By virtue of the aforesaid notification it was declared that the office of the IGP, Bureau of Investigation (Economic) Offence, Assam, Guwahati shall be a police station and it shall include within its limit the whole of Assam for the purpose of investigation so far relating to the offences enumerated in the Schedule II of the notification.

14. It is seen from the Schedule II of the notification that the said police station is not empowered to investigate any offence under section 379 IPC inasmuch offences enumerated under the Schedule-II basically relates to Economic offences, such as forgery in connection with evasion of taxes, offences under the Essential Commodities Act, Offences under the Forest and WLP Act and offences under the Excise Act etc.

15. Both these schedule I and Schedule II reflect that the object of issuance of such a notification was to create a special police station having jurisdiction over the whole of Assam for investigation of economic offences relating to different Acts. Therefore, a general

offence under section 379 IPC cannot be investigated by the said police station.

16. Section 2(39) of the Customs Act '1962 defines smuggling, in relation to any goods, to be any act or omission which will render such goods liable to confiscation under section 111 or section 113. Sections 100–110 of the Customs Act of 1962 deals with power and procedure of searches, seizures, and arrests. Section 100 allows an officer designated in this regard to search a person who may have concealed goods or documents that are subject to confiscation

17. In terms of section 110 of the Customs Act, 1962 relates to search and seizure of Goods, documents and things and empowers certain specified customs officers to conduct such search including smuggled goods. Such power is not delegated to BI(EO) either under the Notification dtd.11/03/2003 or by any other notification.

18. It is also well settled that if any jurisdiction is conferred upon an authority to do certain acts or to exercise certain powers, such jurisdiction is to be exercised by the said authority within its limit as conferred. A "jurisdictional fact" is a fact which must exist before such an Authority assumes jurisdiction over a particular matter. In the present case the jurisdictional fact to investigate by BIEO must relate to the offences as enumerated in the Schedule-II of the Notification. If the jurisdictional fact does not exist, the BIEO authority cannot act. If an authority wrongly assumes the existence of such a fact and acts, such action can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon

itself jurisdiction which it otherwise does not possess.

19. Such jurisdictional facts are absent in the admitted background and pleading by the respondent that the seizure was carried out suspected to be stolen/smuggled goods. Therefore, this court is of the unhesitant view that the BI(EO) is not empowered to carry on the search and seizure and it wrongly assumed the existence of such fact to investigate and make search and seizure. Accordingly, the impugned search and seizure dated 27.07.2017 stands set aside.

20. At this stage it is submitted by the learned counsel for the petitioner that though a total of 7290 bags of areca nuts were seized, however, pursuant to the interim order of this court dated 16.08.2017 only 5540 bags were returned to them. It is also stated by the learned counsel for the petitioner that the BI(EO) themselves have lodged an FIR in their police station relating to theft of such areca nuts from their custody.

21. Be that as it may, if there is any shortage in handing over the seized areca nuts bags in terms of this court's earlier order, the petitioner shall be at liberty to approach appropriate forum available under law for redressal of their grievances including for compensation. The bank guarantee furnished by the petitioner in terms of this court order dated 09.08.2017, be released to the petitioner by the respondent No.2 forthwith.

JUDGE