

GAHC010031452016



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

Case No. : WP(C)/7223/2016

MEGHA ASSAM PVT. LTD. and ANR.
HAVING ITS REGD. OFFICE AT DR. B BARUAH ROAD, ULUBARI, GHY.-
781007, REP. BY ITS DIRECTOR SRI JITENDRA NEWATIA,

2: SRI JITENDRA NEWATIA

S/O. LT. JUGAL KISHORE NEWATIA
DR. B. BARUAH ROAD
ULUBARI
GHY.-781007

VERSUS

STATE OF ASSAM and 4 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, FINANCE
TAXATION DEPTT., DISPUR, GHY.-781006.

2:THE COMMISSIONER OF TAXES

ASSAM
KAR BHAWAN
DISPUR
GHY.-781006.

3:THE JOINT COMMISSIONER OF TAXES

KAR BHAWAN
DISPUR
GHY.-781006.

4:THE DY. COMMISSIONER OF TAXES APPEAL

GOVT. OF ASSAM
KAR BHAWAN

DISPUR
GHY.-781006.

5:THE SUPDT. OF TAXES

CRNTRAL VAT AUDIT CELL
OFFICE OF THE COMMISSIONER OF TAXES
ASSAM
DISPUR
GHY.-781006

Advocate for the Petitioner : MS.N GOGOI, MR.M L GOPE,MS.N HAWELIA,MR.R SINGHA,MS.N BORDOLOI

Advocate for the Respondent : ,,,,SC, FINANCE & TAXATION

BEFORE

THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

Order

02.09.2024

1. Heard Ms. ML Gope, learned counsel for the petitioner. Also heard Mr. B Choudhury, learned standing counsel Finance and Taxation Department.
2. The petitioners were assessed to tax under Assam Value Added Tax for the assessment year 2006-2007, 2007-2008 and 2008-2009. Aggrieved by such assessment, the petitioners challenged the order of original authority before the Commissioner of Taxes (Appeal), Guwahati. In terms of Section 79(5) of the Assam Value Added Tax Act, 2003, an appeal can be entertained by the appellate authority only on deposit of 25% of the disputed tax and interest and after proof of payment thereof.
3. As the petitioners failed to deposit 25% of the assessed amount, all the three appeals preferred by the petitioners as appellant were dismissed by an order dated 13.06.2016. Thereafter, the petitioners from the period of 21.06.2012 to 22.11.2016 on different occasions deposited an amount of Rs. 36305140/- being the 32% of the disputed tax, interest and penalty assessed. Thereafter, the petitioners also approached the Commissioner of Tax requesting to consider the case of the petitioners and to hear the appeal by their

communication dated 23.06.2016, which was duly received in the officer of the Commissioner of Tax and same was rejected by an order dated 13.10.2016. Thereafter, the petitioners have approached this court.

4. Ms. Gope, learned counsel for the petitioner relying on the decision of ***JSB Cement LLP vs State of Assam and Ors*** reported in ***(2019) SCC Online Gau 5983*** and the decision of the Hon'ble Apex Court in ***Tecnimont Pvt. Ltd. vs State of Punjab*** reported in ***(2021) 12 SCC 477*** argues that applying the equitable principle, a direction can be issued to the appellate authority to hear the appeals of the petitioners as the petitioners have already made deposit of 25% as mandated under Section 79(5) of the Act.
5. Per contra, Mr. B Choudhury, learned counsel standing counsel for the respondent Taxation Department submits that the appellate authorities had not committed any illegality and therefore, the decision may not be interfered by this court in exercise of its power under Article 226 of the Constitution of India. Relying to the decision of ***Tecnimont Private Ltd (supra)*** Mr. Choudhury submits that the Hon'ble Apex court in non un-ambiguity held that the appellate authority shall not have power to waive such a statutory prescription of deposit of 25% and therefore, there no illegality has been committed by the authorities and that being the position this court may not like to exercise of its certiorari jurisdiction in interfering with such a decision.
6. I have given due consideration to the argument advanced by the learned counsel. The Hon'ble Apex Court in the case of ***Tecnimont (supra)*** not doubt has laid down the proposition that the appellate authority shall not be within its jurisdiction to give a concession de hors the statutory prescription of deposit as a condition precedent for entertaining an appeal. However, referring to the earlier decision of the Hon'ble Apex Court in the case of ***State of AP vs P Laxmi Devi*** reported in ***(2008) 4 SCC 720 and Har Devi Asnani Vs State of Rajasthan*** reported in ***(2011) 14 SCC 160***, the Hon'ble Apex Court held that in genuine cases of hardship the recourse would still be open to the person concerned. However, it would be completely different thing to say that the appellate authority itself can grant such a relief for the reason that such exercise would make provision itself unworkable and render the statutory intendment nugatory. Such determination was considered by a Division Bench in ***JSB Cement LLP (supra)*** and held that when in case of requirement of

pre-deposit is found to be arbitrary or exorbitant, only then the writ court can interfere and accordingly applying the principle of equity the Division Bench extended time of deposit of 20% of the statutory deposit under Section 79(5) of the Act, 2003 and directed the respondents to hear the appeal on merit.

7. In the considered opinion of this court, the principle of equity as emphasized in the judgment of the Hon'ble Apex Court and Division Bench shall also be applicable in the given facts of the present case more particularly in a situation that in the present case the statutory deposit has already been made. This court though cannot find fault with the appellate authority in non-entertaining the appeal due to non-compliance of Section 79(5), however this court in exercise of its power under Article 226 of the Constitution of India, in the given fact, is inclined to grant the benefit of hearing to the petitioners in the given fact of the case that the statutory deposit has already been made. Accordingly, the present writ petition stands allowed by setting aside and quashing the impugned orders dated 13.06.2012 and 13.10.2016. However, it is made clear that this court has not entered into the merit of such determination rather same is set aside only for a fresh hearing. The petitioners shall appear before the appellate authority on 27.09.2024 along with a copy of this order passed today and on such appearance the appellate authority shall afresh take the matter for hearing on a date, which may convenient to the appellate authority. It is made clear that if the petitioners do not appear on the said date the orders that have been set aside, shall revive.

JUDGE

Comparing Assistant