IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR BENCH

W.A.NO.15(AP) OF 2010.

1. The State of Arunachal Pradesh,
Represented by the Secretary,
Tax & Excise, Govt. of
Arunachal Pradesh, Itanagar.

2. The Commissioner,
Tax & Excise, Government of
Arunachal Pradesh, Itanagar.

3. The Assistant Commissioner,
(Legal), Tax & Excise, Government of
Arunachal Pradesh, Itanagar.

4. The Deputy Commissioner,
Tax & Excise, Government of
Arunachal Pradesh, Papumpare
District, Itanagar.

5. The Additional Deputy Commissioner
-cum-Superintendent of Tax & Excise,
Government of Arunachal Pradesh,
Yupia, Papum Pare District.

6. The Assessing Officer, Office of the
Deputy Commissioner, Papum Pare
District, Yupia, Arunachal Pradesh. - **APPELLANTS**

-Versus-

M/S Buishi Yada Motors,
'A' Sector, Naharlagun,
Arunachal Pradesh,
Represented by its Proprietor
Shri Ralom Borang.

- **RESPONDENT/PETITIONER**

P R E S E N T

THE HON'BLE MR.JUSTICE K. MERUNO.

THE HON'BLE MR. JUSTICE A.C. UPADHYAY.

For the appellant	:	Mr. K. Ete, Addl. Advocate General, Arunachal Pradesh, Advocate
For the respondent	:	Mr. S. Saikia, Mr. A. Hazarika, Mr. D. Panging, Advocates.
Date of hearing & judgment and order	:	**17.11.2011**.

JUDGMENT AND ORDER (ORAL)

(A.C. UPADHYAY,J.)

This writ appeal is directed against the judgment and order passed by the learned Single Judge on 22.07.2003 in W.P (C) No.281(AP) of 2002, whereby the impugned order/direction/ instructions contained in the letters dated 7.2.2002 (Annexure-B to the writ appeal), dated 27.2.2002 (Annexure-C to the writ appeal), dated 14.3.2002 (Annexure-F to the writ appeal),dated 7.5.2002 (Annexure-G to the writ appeal) and the impugned notice dated 27.5.2002 (Annexure-H to the writ appeal) were set aside.

2. The facts leading to filing of this writ appeal may be summarized, in brief, as follows :-

The respondent/petitioner is an authorized dealer of Maruti Udyog Limited at Naharlagun, in the State of Arunachal Pradesh. As a dealer of the Maruti Udyog Ltd., the petitioner/respondent carries on the business of selling and servicing of motor vehicles of the said company. The respondent sells motor vehicles of the said company to the customers in the State of Arunachal Pradesh, as well as in the other States in the course of inter-State trade and commerce.

3. The sales of motor vehicles within the State of Arunachal Pradesh are taxable at the rate of 12% under the Arunachal Pradesh Sales Tax Act, 1999 (hereinafter referred to as "the Act of 1999").

4. In the meantime, the State Government, in exercise of its powers under Section 8(5)(b) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act of 1956") directed, vide notification No.TAX/436/95/Part III, dated 2.5.2001 (Annexure-A), that Central Sales Tax in respect of motor vehicles sold to any person, in course of inter-State trade and commerce by any dealer having his place of business in the State of Arunachal Pradesh and dealing with such motor vehicles, shall, with immediate effect, be calculated at the rate of 2% on the turnover of such sale.

5. The respondent/petitioner accordingly, in course of inter-State trade and commerce, charged, in the light of the aforesaid notification dated 2.5.2001 (Annexure-A) central sales tax at the rate of 2%, on

the basis of motor vehicles sold to various persons outside the State of Arunachal Pradesh. Subsequently, by letter No.S-TAX-2-2000 dated 7.2.2002 (Annexure-B), the respondent/petitioner was specifically directed by the appellant No.5, namely, the Addl. Deputy Commissioner-cum-Superintendent of Tax and Excise, Papumpare district, to stop selling motor vehicles to the customers outside the State of Arunachal Pradesh with immediate effect. From the said letter dated 7.2.2002, it was made clear that the notice was issued in pursuance of another letter dated 6.2.2002, bearing No.Tax-16/2001/411, issued by the appellant No.2, namely, Commissioner of Taxes and Excise, Government of Arunachal Pradesh, to the appellant No.5.

6. The respondent/petitioner vide letter dated 25.2.2002 (Annexure-C) requested the appellant No.5 to review and re-examine the directions issued to stop sale of motor vehicles to customers outside the State. Similar letter (Annexure-D) was also addressed to the appellant No.2. Thereafter, by letter dated 27.2.2002 (Annexure-E) the appellant No.5 informed the respondent/petitioner that he was only the implementing agency and not the policy maker and directed the petitioner to write to the appellant No.2 namely, Commissioner, Taxes and Excise, for re-examination of the matter and for necessary action, whereupon the appellant No.3 namely, Assistant Commissioner (Legal) Tax and Excise vide letter dated 14.3.2002 (Annexure-F) directed the appellant No.5 namely, Addl Deputy Commissioner-cum-Superintendent

of Taxes, Tax & Excise to inform the motor vehicle dealers of his district that the inter-State sale of motor vehicles at the rate of 2% would not be allowed, pending decision of the Government in the matter.

7. It was further stated in the said communication that the motor vehicle dealers were free to sell motor vehicles to the outsiders at the rate of 12% local sales tax. The appellant No.3 namely, Assistant Commissioner of Taxes (Legal), Tax and Excise, vide letter dated 7.5.2002 (Annexure-G), communicated to the appellant No.5 namely, Addl. Deputy Commissioner-cum-Superintendent of Taxes and Excise the decision of the Government that the sale of motor vehicles, not being sale in coursed of inter-State trade and commerce, Arunachal Pradesh Sales Tax at the rate of 12% shall be charged from the buyers coming from outside the State.

8. The respondent/petitioner submitted another representation dated 15th May 2002 to the appellant No.4, namely, Deputy Commissioner, Tax and Excise praying for, inter alia, enforcement of the notification dated 2.5.2001 (Annexure-A) in letter and spirit and also not to levy tax at the rate of 12% on the inter-State sale of vehicles. The respondent/petitioner contended that although no express order was passed by the authority rejecting his representation, but it was improperly treated as an appeal. The said representation, according to the respondent/writ petitioner should be deemed to have

been rejected, when the appellant No.5 issued a notice dated 27.5.2002 (Annexure-H) directing the petitioner to show cause as to why local sales tax amounting Rs.2,94,19,896/- only paid in short, should not be recovered within one month therefrom and as to why penalty should not be imposed under Section 22(G) of the Act of 1999.

9. The respondent/petitioner stated that show cause notice dated 27.5.2002, aforementioned was issued mainly on three broad grounds namely, (I) that there must exist a bond between the contract of sale and actual transportation outside the State by way of a specific purchase order, contract or agreement, (II) the sale must be made to the dealers and not to the individual and 'C' form must be produced in support of the sales made in course of inter-State trade and commerce.

10. The respondent/petitioner by filing a application under Article 226 of the Constitution of India challenged the legality of the impugned direction/communications and the show cause notice aforementioned issued by the appellants. The appellant State entered appearance and contested the writ proceeding by filing counter affidavit. On conclusion of the hearing, the learned Single Judge allowed the writ petition by giving the relief as afore-noted, which gave rise to this appeal by the State.

11. Mr. K. Ete, learned Addl. Advocate General for the appellant, State of Arunachal Pradesh contended that the petitioner-respondent,

in order to avoid payment of local tax, sold motor vehicles by showing addresses of persons, who claimed to be the resident of State of Assam. But after the sale of the vehicle, the same vehicle was brought back and registered in Arunachal Pradesh. This gave enough indication to the authority concerned that the respondent was evading payment of sales tax in terms of intra-State sale tax leviable. If the transactions would have been really inter-State sale, as claimed by the respondent/petitioner, the vehicle so sold ought to have been registered in the office of the District Transport Officer, in the addresses mentioned in the sale certificate/invoices. Learned Addl. Advocate General further contended that the petitioner on the pretext of sale of motor vehicles in the inter-State trade and commerce, reduced the sales tax to @ 2% and thereby managed to avoid payment of tax, chargeable on inter-State transaction. Learned Addl. Advocate General, appearing on behalf of the appellant pointed out that the impugned direction/communications dated 7.2.2002 and 14.23.2002 were issued stopping sales of vehicles to the customers outside the State, as a temporary measure, in order to check further evasion of sales tax by the dealer under the pretext of inter-State sale and this embargo on the sale of vehicles to the customers outside the State was a temporary measure adopted by the Government and, therefore, there was no violation of the provisions of Article 301 and 304 of the Constitution of India.

12. Learned Addl. Advocate General further pointed out that the writ petitioner-respondent had preferred an appeal against the order dated 14.2.2002 before the Respondent No.2 i.e. Deputy Commissioner, Tax and Excise, Government of Arunachal Pradesh, in terms of the provisions of Section 33(1) of the Act of 1999. According to the learned counsel for the appellant, since the petitioner-respondent was evading payment of local sales tax, he was served with another notice dated 25.7.2002, asking him to show cause as to why local sales tax paid in short should not be recovered from him. However, instead of submitting reply to the assessing authority, the petitioner-respondent approached the Court by filing writ petition. Learned counsel for the appellant submitted that since the alternative remedy by way of appeal under the appropriate provision of law is available, writ petition seeking similar relief would not be justified.

13. In reply to the above contention, Mr. S. Saikia, learned counsel appearing for the respondent submitted that by the impugned letter dated 7.2.2002 aforementioned, the total ban of sale of motor vehicles outside the State has been imposed, which is wholly contrary to the constitutional scheme of taxation and also in utter violation of the provisions of the Central Sales Tax Act, 1956. Mr. Saikia further pointed out that the State of Arunachal Pradesh made inter-State sale of vehicles easy and available by reducing the tax margin and issued notification dated 2.5.2002, which is why customers from outside the State came to purchase vehicles from the State of Arunachal Pradesh.

Basically, under the constitutional scheme, restricting trade and commerce outside the State by execute fiate is prohibited, therefore, the appellant-authority by issuing subsequent notification dated 7.2.2002 through the Commissioner of Tax and/or Addl. Commissioner of Taxes-cum-Superintendent of Taxes and Excise, could not have issued the Executive Instructions imposing total ban on sale of motor vehicles from Arunachal Pradesh to customers outside the State.

14. Mr. K. Ete, learned Addl. Advocate General pointed out that the State authority in the Tax Department found that the customers claiming to be the residents outside the State purchased vehicles from the State of Arunachal Pradesh and subsequently, after purchase of such vehicles, registered the vehicles in the State of Arunachal Pradesh, implying thereby that in fact, the vehicles were not moved out from the State of Arunachal Pradesh, therefore, in such commercial transactions the inter-State tax could be legally leviable.

15. Per contra, Mr. Saikia in reply to the above contention submitted that a customer from outside the State of Arunachal Pradesh may very well come and purchase vehicle in the State. After having purchased it, once again he may come back to the State of Arunachal Pradesh, for registration of his vehicle, since the tax for registration of the vehicles in the State of Arunachal Pradesh is much lower than the nearby States in the North Eastern region. More so there is no legal bar to a customer who is a resident outside the State to purchase a vehicle and come

once again for registration of the vehicle. Therefore, the petitioner cannot be held liable for having sold vehicles to a customer outside the State and sale of vehicle to the State outside the State of Arunachal Pradesh cannot be deemed to be intra-State sale warranting liability of local sales tax of 12%.

16. Mr. K. Ete, learned counsel for the State appellant submitted that the writ petition filed by the petitioner/respondent challenging the order passed by the appellant department is appellable under the Sales Tax Act. Therefore, the writ petition would not be maintainable when adequate alternative remedy is available by way of filing appeal.

17. In this context, the decision of this Court in ***National Plywood Industries v. Union of India***, reported in ***2007 (1) GLT 584*** would be very relevant, where it was observed that the Apex Court in the decision reported in (1998) 8 SCC 01 (Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai) held that the High Court exercising its power under Article 226 of the Constitution of India, has a discretion to entertain or not to entertain a writ petition and that the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.

18. Again, in the case of State of H. P. Vs. Gujarat Ambuja Cement Ltd. reported in (2005) 6 SCC 499, the Apex Court, while observing

that the power relating to alternative remedy has been considered to be a rule of self imposed limitation and it is essentially a rule of policy, convenience and discretion and never a rule of law. It is within the discretion of jurisdiction of the High Court to grant relief under Article 226 of the Constitution. The Apex Court further observed that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere, if there is an adequate efficacious alternative remedy and if some body approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra ordinary jurisdiction.

19. We may also gainfully quote the observation of the Apex Court in the case of ***Secretary, Minor Irrigation Vs. Sahngoo Ram Arya*** reported in ***AIR 2002 SC 2225***, wherein it was observed :-

> ***"12. Mr. Sunil Gupta, learned counsel appearing for the petitioner, contended that the remedy before the tribunal under the U. P. Public Service Tribunal Act is wholly illusory inasmuch as the tribunal has no power to grant an interim order. Therefore, he contends that the High Court ought not to have relegated the petitioner to a fresh proceeding before the said tribunal. We do not agree with these arguments of the learned counsel. When the statute has provided for the constitution of a tribunal for adjudicating the disputes of a Government servant, the fact that the tribunal has no authority to grant an interim order is no ground to by pass the said***

tribunal. In an appropriate case after entertaining the petitions by and aggrieved party if the tribunal declines an interim order <u>on the ground that it has no such power</u> then it is possible that such aggrieved party can seek remedy under Article 226 of the Constitution but that is no ground to by-pass the said tribunal in the first instance itself. Having perused the impugned order, we find no infirmity whatsoever in the said order and the High Court was justified in directing the petitioner to approach the tribunal."

20. However, Mr. S. Saikia, learned counsel for the petitioner-respondent referring to the decision of ***Tata Iron & Steel Company v. S.R. Sarkar***, reported in ***(1 STC P 665)*** would submit that the Hon'ble Supreme Court has held that the threat by the State to realize, without authority of law, takes away from the citizen by coercive machinery, and infringes the fundamental rights guaranteed under Article 19(g) of the Constitution of India, which gives him a right to seek relief by a petition under the Constitution.

21. In this context, we consider it pertinent to depict hereinbelow the discussion made by the learned Single Judge which is worth quoting in this judgment:-

"The present writ application has been filed challenging not only the show cause notice, dated 27.05.2002, but also the communication, dated 07.02.2002, 27.02.2002,14.03.2002 and 07.05.2002,

aforementioned issued by the respondents. The show cause notice is the cumulative effect of the various notices /letters/circulars issued by the respondent authorities denying the benefit of sales for exemption/concession granted by the notification, dated 02.05.2001 (Annexure-A) by the State Government under Section 8(5) of the Central Sales Tax Act, 1956. Under such circumstances, the show cause notice cannot be read separately, or independent of, the directions contained in the various notices/letters/circulars under challenge. Hence, the legality and validity of this notice has to be examined, tested and adjudged keeping in view the letters/circulars/notices, dated 07.02.2002, 27.02.2002, 14.03.2002 and 07.05.2002 aforementioned issued by the respondents. While considering the above aspect of the matter, it is opposite to refer to Union of India v. Brij Fertilizer, (1993) 3 SCC 564, wherein the Apex Court held as under :-

That though the High Court should normally not interfere at the stage of show cause notice, but where, from the facts it is apparent that there was no material available with the department to doubt the statement on behalf of the respondents and their own officers at every point of time had issued the certificate the correctness of which could not be disputed or doubted except by raising unfounded assumption or drawing imagination it would be failing to exercise jurisdiction if the Court does not discharge its constitutional obligation of protecting the manufacturers who are in perilous condition as they are not able to

meet their liabilities to pay to financial institutions and various other authorities and are facing proceedings on various counts and have virtually closed their unit.'

In Shree Kamrup Industries (Assam) v. State of Assam, reported in 1994 (2) GLR 118, this Court has held that since the writ petition has been filed challenging the very jurisdiction of the sales tax authorities to impose and levy tax, the writ petition under Article 226 is maintainable.

What follows from the above discussions and the position of law as laid down by the Apex Court is that an assessing authority can demand even by way of a notice to show cause payment of alleged unpaid tax only when it is satisfied, on application of its own mind, that such a demand can be raised. This apart, the demand, which is so raised, has to be based on materials, which are prima facie tenable under the law. If the demand raised is contrary to the law or not based on any authority of law, such a demand can be interfered with by the High Court in exercise of its powers under Article 226 of the Constitution of India even at the very initial stage, when such a demand is raised. Viewed from this angle, the show cause notice, which proceeds on the assumptions, namely, (i) that in order to constitute a contract of sale during the course of inter-State trade and commerce, the contract must be supported by materials in writing, (ii) the vehicles, in question, could have been sold to only registered dealers and not to individuals and/or (iii) that a declaration in Form C

ought to have been furnished by the petitioner in respect of each sale of vehicle to enable it (i.e. the petitioner) to claim benefits of the notification (Annexure-'A'), although no such pre-condition is required to be fulfilled by the petitioner to be able to claim the benefits of the notification (Annexure-'A'), the very issuance of the show cause notice is, at its very threshold, being on considerations and assumptions of law, which are extraneous and un-tenable make the notice without jurisdiction and deserves to be interfered with.

In the case at hand, it has already been indicated hereinabove that in the face of the certificates granted by the petitioner in Form-21 of the Central Motor Vehicle Rules, 1989, showing addresses of the buyers located in the State of Assam, the movements of vehicles to the State of Assam for registration at the residential addresses of the buyers from the incident of contract, such movements were necessitated by the contracts themselves and that the movements of the vehicles were inextricably inter-linked with the sale inasmuch as for the transactions to be completed, vehicles were required to be moved to the State of Assam for the purpose of registration in the face of the assertion of the petitioner that the vehicles had moved out in pursuance of the contracts of sale, the onus rested squarely on the respondents to show that contrary to the terms of the agreement of the sales, the vehicles, in question had not moved out of the State of Arunachal Pradesh. Until it is so done, the sales will not be treated as intra-State sale. The mere fact that the vehicles have been subsequently registered in the State of Arunachal Pradesh will not

make the first sale intra-State sale in the absence of any material to show that notwithstanding the terms of the contract of sale between the petitioner and the buyers thereof, vehicles, in question, had not moved at all out of the State of Arunachal Pradesh."

22. Upon hearing the learned counsel for both the parties and on careful appraisal of the discussion made by the learned Single Judge, we are of the considered view that the appeal preferred by the State is devoid of merit and accordingly, it stands dismissed. However, we pass no order as to costs.

JUDGE **JUDGE**

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