

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

Assam Schedule VII, Form No.132.

HIGH COURT FORM NO.(J)2

HEADING OF JUDGMENT OF APPEAL/ CASE

DISTRICT : DHUBRI.

In the Court of the Civil Judge, Dhubri

Present : Yusuf Azaz, AJS.

Civil Judge, Dhubri.

TITLE APPEAL No: 19/ 2014

Tuesday, the 24th January, 2017

1) M/S DHUBRI TRADING CO

REPRESENTED BY ITS PROPREITOR, SHRI ASHOKE KR AGARWALA

..... APPELLANT (s).

- versus-

1) THE ASSISTANT COMMISSIONER OF TAXES, DHUBRI

2) SUPERINTENDENT OF TAXES, RECOVERY & CERTIFICATE OFFICER,
DHUBRI

3) CERTIFICATE OFFICER, DHUBRI

4) THE STATE OF ASSAM

.....RESPONDENT

This suit coming on this day (or having been heard on) 14/12/2016

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

presence of:

SHRI R.K JAIN, Advocate..... for the appellant(s).

SHRI K.A PRODHANI (G.P), Advocatefor the respondent.

And having stood for consideration to this day, the court delivered the following judgment :

JUDGMENT

1. This first appeal has been preferred by the plaintiff/appellant on being dissatisfied with the judgment & decree dated 30/1/2014 passed by the learned Munsiff No.1, Dhubri in Title Suit No: 546/ 2010 whereby the learned trial court dismissed the suit.
2. Upon admission of the appeal for hearing, the notices were issued to the respondents and the original case record of Title Suit no: 546/ 2010 was called for and received. The respondents contested the appeal.
3. In order to decide the appeal, let me narrate, in brief, the facts leading to this appeal:
4. The plaintiff, M/S Dhubri Trading Co is a proprietorship firm of the proprietor, Shri Ashoke Kr Agarwala and it is registered with the defendant no:1, Asst. Commissioner of Taxes for payment of sales taxes and other taxes bearing registration no: DHU/C/1524 (DBB/CST/0013) under the Central Sales Tax Act (CST Act). The plaintiff firm had alleged that for the financial year (FY) 2005/ 06, it showed GTO amounting to Rs. 11,90,550/- and a total NTO of Rs. 11,02,361/- and paid as advance

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

an amount of Rs. 83, 644/- as security deposit. The plaintiff had alleged that it had submitted the returns in time, but the Assessing Authority issued a notice no:12825 dated 30/8/2007 under section 40 of the Assam Value Added Tax (AVAT) asking the plaintiff to show cause as to why assessment shall not be done. The plaintiff thereafter clarified the matter vide letter no: DTC/ 07-08/ ST/ 01/ DT dated 7/9/2007. The defendants no:1 after receipt of the above letter again issued a letter no:17953 dated 8/11/2007 asking the plaintiff to be present alongwith the books of accounts on 20/1/2007, but the plaintiff could not be present on the said date as his father died on 17/11/2007 and accordingly the plaintiff sought for two months of time from the defendant no:1, but the defendant no:1 had in the absence of the plaintiff assessed the liability of the plaintiff to the tune of Rs. 34, 270/- vide its assessment order no: 20351 dated 6/12/2007 for the FY 2005-06 by illegally fixing the GTO at Rs. 14,89,225/- and NTO at Rs. 13,78,913/-. The plaintiff upon receipt of the assessment order issued letter no: DTC/ 07-08/03 dated 12/12/2007 praying for review of the assessment order and also asked the defendants to adjust the excess security of Rs.20,046, but the defendants never responded to the said letter. The plaintiff had submitted that he is entitled to an excess amount of Rs.20,046/- vide assessment order 5375 dated 18/8/2005 which was not adjusted illegally. The plaintiff further pleaded that another Rs.10,000/- is lying as security which was paid at the time of registration with the defendants and the defendant no:1 ought to have adjusted this amount also, but on the contrary the defendants claimed interest upon the re-assessed amount. The plaintiff thereafter received letter no: 545 dated 6/1/2009 in Bakijai case no: STR/ D-06/CST/2008-

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

09 demanding Rs.39,870/- from him. The plaintiff thereafter denied his liability and filed petition under section 9 of the Bengal Public Demands Recovery Act. The defendant no:3 upon receipt of the above petition fixed 4/8/2009 for the evidence of the plaintiff but the plaintiff filed prayer for adjournment on that day and the case was adjourned on that day and he fixed the next date as 26/8/2009 for hearing but the Presiding Officer was absent on that day as such the hearing could not be done and thereafter the next date was fixed on 19/8/2010 and accordingly the plaintiff produced his evidence, but the defendant no:2 stated that the plaintiff could not produce anything against the assessment and thus rejected the prayer of the plaintiff; hence this suit praying for a declaration that the plaintiff is entitled to refund of excess security deposit of Rs.20,046 and that the defendants are not entitled to recover any amount and for other reliefs.

5. The defendants did not appear and contest the suit as such the suit proceeded ex-parte against them.
6. No issues were framed by the learned trial Court as there was no pleading of the defendants.
7. After hearing the parties, the learned trial court vide the impugned judgment dated 30/1/2014 dismissed the suit. On being aggrieved by and dissatisfied with the impugned judgment, the plaintiff/appellant preferred the present appeal, amongst others, on the following grounds:

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

(i) That the learned lower trial Court has erred in law and facts in deciding the suit;

(ii) That the court below failed to appreciate the evidence on record in its proper perspective;

(iii) That the defendants failed to file written statement as such the pleading of the plaintiff is deemed to be admitted; hence the suit ought to have been decreed;

(iv) That the learned trial Court ought to have held that the plaintiff produced the books of accounts and other documents before the defendants and also sought for review but no review was done which is illegal;

(v) That the learned trial Court ought to have held that the security deposit lying with the defendants ought to have been adjusted;

(vi) That the learned lower trial court ought to have decreed the suit.

DISCUSSION, DECISION & REASONS FOR THE DECISION

8. I have perused the evidence and materials available in the case record. I have heard the arguments. Now, let me examine the evidence and other materials available in the case record to decide the case at hand.

POINTS FOR DETERMINATION:

Point for determination no:1:Whether the learned trial Court had rightly held that the plaintiff is not entitle to any relief?

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

9. The learned counsel for the appellant/ plaintiff, R.K Jain had contended that the plaintiff had paid an excess amount of Rs.20,466/- for the FY 2004-05 as per assessment order no:5375 dated 18/8/2005 and he had also paid Rs.10,000/- as security at the time of registration as such the defendants ought to have adjusted the above amount before making the demand for recovery of the re-assessed tax.
10. The learned counsel for the respondents/defendants, Shri K.A Prodhani had contended that the defendants had rightly assessed the liability of the plaintiff and that the plaintiff is liable to be pay the assessed amount; as such submitted that the decision of the learned trial Court is not liable to be interfered with.
11. I have perused the impugned judgment and the case record. Let me now discuss the materials on record and try to arrive at a definite finding in respect of the above issues.
12. At the outset I would like to state that the plaintiff had challenged the order of re-assessment by which the defendant no:1 had fixed additional liability to the tune of Rs.34,270/- vide exhibit 9, i.e assessment order 20351 dated 6/12/2007. The plaintiff has submitted that he is not entitled to pay the additional liability fixed after re-assessment because no opportunity was given to him in this regard and he had also prayed for review of the order, but no review was done. In this regard I would like to state that the jurisdiction of the Civil Court is specifically barred under the Assam Value Added Tax Act, 2003 in respect of matters relating to assessment or re-assessment. It is revealed from the scheme

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

of the Assam Value Added Tax Act, 2003 that section 79 and 80 of the said Act provides for an elaborate mechanism to challenge any orders passed under this Act by the authorities therein and it fully empowers the Appellate Authority or the Appellate Tribunal to deal with those orders just as a civil court would have dealt. The section 81 of the said Act further provides that any person aggrieved with the decision of the Appellate Tribunal or Commissioner of Taxes may prefer a revision before the Hon'ble High Court. The section 99 of the Act further bars the jurisdiction of the Civil Court completely in matters relating assessment and other orders passed under the Act. It is evident from the scheme of the Act that the Act provides for a complete mechanism to redress the dispute under the Act and it fully empowers the authorities to deal with the same just as a civil court would have done. The Act further empowers the authorities with the powers of the civil court to take evidence etc. In addition to the above, the section 99 completely bars the jurisdiction of civil courts in such matters; as such it appears that the intention of the legislature is to completely and expressly bar the jurisdiction of the civil Court and while doing so the legislature has also provided for alternative reliefs in the Act itself; as such it is held that the jurisdiction of this Court is barred under section 99 of the Assam Value Added Tax Act, 2003.

13. In addition to the above, the learned trial Court had rightly held that the plaintiff had failed to produce any books of accounts or such other documents to prove as to what was the actual turnover of the plaintiff firm during the period under assessment; as such it cannot be held that the assessment was done erroneously.

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

14. The plaintiff had further contended that he had paid Rs.10,000/- as security and Rs.20,466/- was lying as excess refund for the FY 2004-05 as per order of the defendants and this amount is not yet paid to the plaintiff, as such the defendants ought to have adjusted the aforesaid amount and thereafter made the demand. The above contention of the plaintiff is not sustainable because section 50 of the Assam Value Added Tax Act, 2003 specifically prescribes a procedure for refund of excess amount paid and it also deals with adjustment of the excess amount with future liability, but the plaintiff had failed to bring on record any document to show that he had applied as per the prescribed format and rules for receipt of the excess amount as refund or for its adjustment; as such it is held that the plaintiff had failed to prove that the defendants had illegally and erroneously failed to adjust the excess amount with the assessed liability of tax. Moreover, it is already stated above that if the defendants did not refund the excess amount or adjust the same in spite of the plaintiff's prayer in this regard, then the proper remedy would be to apply to the Appellate Authority and such other authorities constituted under the Assam Value Added Tax Act, 2003 and not by a separate suit because the jurisdiction of the Civil Court is specifically barred in this regard as already discussed above.

15. The learned counsel for the plaintiff had further contended that the recovery proceeding against him has been instituted under Bengal Public Demands Recovery Act, 1913 and that section 34 of the aforesaid Act provides for a reference before the Civil Court in case the prayer of the certificate debtor is rejected under section 9 of the said Act. I have

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

perused the scheme of the Bengal Public Demands Recovery Act, 1913 and it appears that the provision for reference to Civil Court by way of suit would be applicable only in those cases falling under section 35 and 36 of the Act, i.e upon fulfillment of the conditions mentioned therein and only when the correctness of the certificate of debt could have been challenged before the Civil Court, but in the instant case at hand, the correctness or otherwise of the assessment order cannot be challenged before the Civil Court as the same is barred under section 99 of the Assam Value Added Tax Act, 2003; as such no suit would lie under section 34 of the Bengal Public Demands Recovery Act, 1913.

16. In view of the above discussions it is held that the suit is not maintainable and that the jurisdiction of this court is barred under the Assam Value Added Tax Act, 2003. It is further held that the plaintiff had failed to show that he is not liable to the assessment of liability made vide the exhibit 9; as such the decision of the learned trial Court is hereby affirmed and it is held that the plaintiff is not entitled to any relief.

17. It is, therefore, held that the plaintiff/ appellant is not entitled to any relief.

ORDER

18. In view of the above discussions, the appeal is dismissed and the impugned judgment and decree passed in Title Suit no:546/ 2010 by the learned Munsiff No:1, Dhubri is hereby affirmed.

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.

TITLE APPEAL NO:19 OF 2014
APPELLANT: M/S DHUBRI TRADING CO Vs
RESPONDENT: THE ASSISTANT COMMISSIONER OF TAXES & ORS

19. Prepare decree accordingly.

20. The appeal is dismissed on contest with cost.

21. Send back the LCR alongwith a copy of the judgment to the learned trial Court.

Given under my hand and the seal of this Court on this the 24th day of January, 2017 at Dhubri.

YusufAzaz,
Civil Judge, Dhubri

TYPED BY ME

YUSUF AZAZ, CIVIL JUDGE, DHUBRI.