

GAHC010026232017



2026:GAU-AS:331

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

Case No. : WP(C)/3469/2017

M/S. OM TELECOM LOGISTICS PVT. LTD.
FORMERLY KNOWN AS M/S CROSSROAD LOGISTICS PVT. LTD, REGD
OFFICE AT 130 TRANSPORT CENTRE, RING ROAD, PUNJABI BAGH, NEW
DELHI- 110035 AND HAVING ITS PRINCIPAL OFFICE AT AMINGAON, EPIP
COMPLEX, GUWAHATI- 31, ASSAM, REP. BY SRI BINOD KUMAR SARMA

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, MIN OF
FINANCETAXATION DEPPTT., BLOCK-F, DISPUR, GUWAHATI-6, ASSAM

2:THE COMMISSIONER OF TAXES
KAR BHAWAN
DISPUR
GUWAHATI- 06

3:THE SUPERINTENDENT OF TAXES
KHANAPARA CHECK-POST
JORABAT
GUWAHATI
ASSA

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

Advocate for the Respondent : , MR.B GOGOI,SC, FINANCE & TAXATION

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (CAV)

Date : 06-01-2026

Heard Ms. N. Hawelia, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Addl. AG, Assam appearing for all the respondents.

2. The challenge in the present writ petition is to an order dated 27-12-2012 passed by the Superintendent of Taxes, Khanapara Check Post, Guwahati, Assam, compounding the offence involved under Section 85(1)(n) of the Assam Value Added Tax Act, 2003 (in short the Act of 2003), exercising the delegated power under Section 89 of the Act of 2003 and requiring the petitioner to deposit an amount of Rs. 8,99,196/- (Rupees Eight Lakhs Ninety Nine Thousand One Hundred Ninety Six) by way of composition of the said offence as alleged against the it. The challenge primarily is on the ground that under the provision of Section 89 of the Act of 2003, the Superintendent of Taxes is not empowered to compound an offence under the Act.

3. The petitioner/ Company is a transporter and had entered into an agreement with the Bharti Hexacom Ltd., for transportation of its goods within the Northeastern region and also outside the region. In connection with transportation agreement entered into by the petitioner/ Company with the Bharati Hexacom Ltd., two trucks bearing No. AS-01W-6531 and AS-01AC-9308 were loaded with goods of the Bharti Airtel Ltd. purportedly for transportation to Andhra Pradesh on stock transfer basis. The loading of the said truck was made at Meghalaya. While crossing the Khanapara Check Post, the said trucks were come to be detained and the drivers were issued with notices requiring production of supporting documents in connection with the transportation of goods by the said trucks.

The authorized representative of the petitioner/ Company submitted a representation before the Superintendent of Taxes, Khanapara Check Post, Guwahati, Assam, i.e. the respondent No. 3 clarifying the nature of the goods being transported and praying for issue of transit pass. The respondent authorities not being satisfied with the clarification given by the petitioner/ Company, proceeded to issue a show-cause notice to the petitioner/ Company on 19-12-2002, demanding an amount of Rs. 35,96,783/- (Rupees Thirty Five Lakhs Ninety Six Thousand Seven Hundred Eighty Three) being the tax and penalty applicable. The said notice was replied to by the authorized representative of the Company. Thereafter, vide notice dated 28-12-2012, the Superintendent of Taxes, Khanapara Check Post, Guwahati, Assam, by projecting that the two trucks involved coming from the Byrnihat on being intercepted had produced computer printout of "Non-Returnable Gate Pass-cum- Delivery Challan" bearing No. 1245 dated 12-12-2012 showing transportation of equipment involved valued at Rs. 50,000/- (Rupees Fifty Thousand) only (for both trucks) within Assam by Bharti Airtel Ltd., held that the consignment involved was not supported by any tax clearance certificate as required under the provision of Rule 41(9) of the Assam Value Added Tax Rules, 2005 (in short the Rules of 2005). It was further projected that the Bharti Hexacom Ltd. as well as Bharti Airtel Ltd. had given a statement to the effect that the "Non-Returnable Gate Pass-cum-Delivery Challan" produced at the Check Post were not generated by them. It was also projected that the goods under seizure, were dispatched by Bharti Hexacom Ltd. from Meghalaya to Bharti Airtel Ltd. at Andhra Pradesh pursuant to inter-State sale and such transaction was supported by an invoice dated 06-11-2012 for an amount of Rs. 1,79,83,912/- (Rupees

One Crore Seventy Nine Lakhs Eighty Three Thousand Nine Hundred Twelve) and a No-Objection Certificate of the Meghalaya Sales Tax Authority dated 10-11-2012. The "Non-Returnable Gate Pass-cum-Delivery Challan" as produced having shown "Intra-State" movement of goods within the State of Assam instead of "Inter-State" movement of goods from Meghalaya, an offence was held to have been committed by the petitioner/ Company knowingly preparing/ producing incorrect/ forged documents under the provision of Section 85(1)(n) of the Act of 2003. Accordingly, the petitioner/ Company was directed to show-cause. From the materials on record, it is seen that on receipt of the said show-cause notice, the Vice President of the petitioner/ Company vide communication dated 29-12-2012, prayed for compounding of the offence under Section 89 of the Act of 2003 in lieu of prosecution and offered an amount of Rs. 8,99,196/- (Rupees Eight Lakhs Ninety Nine Thousand One Hundred Ninety Six) being the equivalent amount of the tax, as composition money and requested for acceptance of the composition amount and dropping of the prosecution. On receipt of the said communication dated 29-12-2012, the Superintendent of Taxes, Khanapara Check Post, Guwahati, Assam, i.e. the respondent No. 3 vide order dated 29-12-2012, proceeded to invoke the provision of Section 89 of the Act of 2003 and compounded the offence leveled against the petitioner/ Company under Section 85(1)(n) of the Act of 2003. Accordingly, in exercise of powers delegated upon the respondent No. 3 under the provision of Section 89 of the Act of 2003, proceeded to accept from the petitioner/ Company an amount of Rs. 8,99,196/- by way of composition of the said offence and the amount was directed to be deposited into the designated Bank on or before 07-01-2013. Accordingly, the

petitioner/ Company vide communication dated 31-12-2012 deposited a demand draft dated 31-12-2012 drawn on Axix Bank, Beltola Branch, Guwahati for an amount of Rs. 8,99,196/-, being the composition amount and requested for release of the seized goods and issuance of transit permit. The amount being deposited vide challan dated 31-12-2012, the respondent No. 3 vide order dated 31-12-2012 on acceptance of the composition money, dropped the proposed prosecution proceeding and the offence was compounded and further direction for release of the seized goods was issued. The transaction involved had come to an end with the deposit of the composition amount on 31-12-2012 by the petitioner/ Company. However, vide communication dated 13-03-2013, the authorized representative of the petitioner/ Company submitted a show-cause reply to the notice issued to the petitioner/ Company on 28-12-2012 under Section 85 of the Act of 2003 praying for withdrawing the said notice and to release the composition money deposited or to treat the amount so deposited as security for issuance of Transit Pass for transport of goods from Meghalaya to Andhra Pradesh to the same consignor and consignee. Accordingly, the respondent No. 3 was requested to review the matter on merit. It is seen that the said application for review was rejected by the respondent No. 3 vide order dated 15-03-2013 on merits as well as on the ground of delay. It is seen that the petitioner/ Company, thereafter, had sought for the certified copies of the orders passed in this connection by the respondent No. 3, however, vide subsequent communication dated 18-03-2013 issued by the petitioner/ Company, the application seeking certified copy of the orders passed in the matter by the respondent No. 3 was withdrawn. However, it is seen that thereafter the petitioner/ Company had again

submitted application for furnishing of the certified copy of the orders involved in the matter, passed by the respondent No. 3. The petitioner/ Company being aggrieved by the order dated 27-12-2012 has assailed the same by instituting the present proceeding with a further prayer for refund of the money deposited as security by the petitioner, which was projected to have been adjusted as composition money for compounding the offence.

4. Ms. N. Hawelia, learned counsel for the petitioner after reiterating the facts noticed, hereinabove, has referred to the provisions of Section 89 of the Act of 2003 and has submitted that the same confers the power for compounding an offence under the Act under Section 85 or under the Rules made under the Act only upon the Commissioner of Taxes. She further submits that the Superintendent of Taxes nor being empowered to compound an offence under Section 89 of the Act of 2003, the order dated 27-12-2012 is *non-est* in the eyes of law and the same would mandate interference by this Court. She further contends that the amount of Rs. 8,99,196/- which was deposited by the petitioner/ Company was so deposited as security money under Section 76(4) of the Act of 2003, which was contended to have been illegally adjusted by the respondent No. 3 as the amount for compounding the offence involved. She further submits that the very compounding of the offence being without jurisdiction, the order dated 27-12-2012 passed by the respondent No. 3 is *non-est* in the eyes of law and accordingly the same would mandate interference by this Court with further direction for refund of the money as accepted from the petitioner/ Company towards composition of the offence alleged in the matter. The learned counsel for the petitioner has made further submissions, however, the same is not being noticed at this stage, inasmuch as, main ground projected by the

learned counsel for the petitioner is that the order dated 27-12-2012 is *non-est* in the eyes of law, inasmuch as, the Superintendent of Taxes, Khanapara Check Post, Guwahati, Assam, i.e. the respondent No. 3 was not vested with the jurisdiction under Section 89 of the Act of 2003 for compounding of the offence under the Rules or the Rules framed there-under.

5. Per contra, Mr. B. Gogoi, learned Addl. AG, Assam submits that on a notice for showing cause against the prosecution under Section 85 of the Act of 2003 being issued to the petitioner/ Company for the alleged violation of the provisions of the Rule 49(1) of the Rules of 2005, the Vice-President of the petitioner/ Company vide communication dated 29-12-2012, had requested for compounding of the offence relating to production of forged documents and had made an offer of Rs. 8,99,196/-, being equivalent to the tax amount, as composition money with further request for acceptance of the composition money and dropping of prosecution proceeding. Mr. Gogoi submits that in terms of the provision of the Rule 3 of the Rules of 2005, the Commissioner may, by notification in the Official Gazette, delegate the powers to be exercised by different officers under Section 3 of the Act. He submits that appropriate notifications have been issued in this connection delegating powers under Section 89 of the Act for compounding of the offence and such delegation being permissible to be delegated to Superintendent of Taxes, the respondent No. 3, herein, had not committed any error in proceeding to compound the offence as alleged against the petitioner/ Company by issuance of order dated 29-12-2012. Mr. Gogoi has further dealt with the other submissions made by the learned counsel for the petitioner in the matter, however, the first issue being considered as to whether the

respondent No. 3 had the jurisdiction to compound the offence in the matter, the said submissions are not noticed at this stage.

6. I have heard the learned counsel for the parties and have also gone through the materials available on record.

7. The documents produced after the vehicles in question were detained at Khanapara Check Post, having demonstrated non-compliance of the provisions of Rule 41(9) of the Rules of 2005, a notice for show-cause against the prosecution under Section 85 of the Act of 2003 came to be issued to the petitioner/ Company. The notice had in details set out the offence committed by the petitioner/ Company in relation to the transportation of the goods by the two trucks involved.

8. It is seen that on receipt of the said notice under Section 85 of the Act of 2003, the Vice President of the petitioner/ Company had issued a communication dated 29-12-2012. The said communication being relevant is extracted, here-in-below:

“OM Telecom Logistics Pvt. Ltd.

Read Office: 130,TC, Ring Road, Punjabi Bag, New Delhi-110035

The Superintendent of Taxes

Khanapara Check Post

Dated: 29 December, 2012

Subject: Request for compounding of offences u/s 89 of the AVAT Act, 2003 in lieu of prosecution

Sir,

With reference to the notice for showing cause against prosecution, we admit that we have committed offence by producing forged documents at your check post in respect of transportation of telecom equipments through two vehicles having registration numbers AS-01-W-6531 and AS-01-AC-9308, showing the movement of goods from places within Assam and that too, of a meagre value of Rs. 50,000/- But your honour may kindly appreciate the fact that the consignments have moved from the State of Meghalaya and are bound for Andhra Pradesh and hence there is no tax involvement in the

State of Assam, through which the goods are being transported only. There are valid documents to support this contention. We do not deny the fact that if the goods were transported into and sold in Assam, it would have led to loss of revenue to the State of Assam. The forgery of documents might have been done by drivers in collusion with someone else.

However, we request you to compound our offence relating to the production of forged documents and we hereby make an offer of Rs. 8,99,196/-, being equivalent to tax amount, as composition money and request you to accept the said composition money and drop the prosecution proceedings.

Thanking you,

Yours faithfully,

For, Om Telecom Logistics Pvt. Ltd.

Sign/-

(Ashish Mathur)

Vice-President"

9. A perusal of the said communication would reveal that, therein, it was admitted that the petitioner/ Company had committed an offence by producing forged documents at the Check Post in respect of transportation of equipment by two trucks bearing registration No. AS-01W-6531 and AS-01AC-9308. It was further projected that said goods consignment, in fact, being moved from the State of Meghalaya to Andhra Pradesh and there was no tax involved in the State of Assam, through which the goods were being transported. It was further projected that there were valid documents in support of the said transportation. It was also contended that the forgery of the documents might have been done by the drivers in collusion with someone else. Having made the said contention, the petitioner/ Company requested the respondent No. 3 for compounding their offence pertaining to the production of forged documents and offered Rs. 8,99,196/-, being equivalent to the tax amount, as composition money, with a further request for acceptance of the composition money and dropping of the prosecution. The

Superintendent of Taxes on receipt of the said communication, issued an order dated 29-12-2012 accepting the communication submitted in the matter by the petitioner/ Company and passed an order dated 29-12-2012 is to the following effect:

GOVT. OF ASSAM
OFFICE OF THE SUPERINTENDENT OF TAXES, KHANAPARA CHECK POST::JORABAT
GUWAHATI :: ASSAM

No. KCP/4/2012-13/2302

Dated, the 29th December, 2012

To,

Om Telecom Logistics Pvt. Ltd.
Guwahati

Sub: Intimation regarding the acceptance of composition money under section 89 of the Assam Value Added Tax Act, 2003

Whereas Om Telecom Logistics Pvt. Ltd. Is charged with an offence(s) under section 8511)(n) of the Assam Value Added Tax Act, 2003 and whereas the said Shri Ashish Mathur Vice, President, on behalf of Om Telecom Logistics Pvt. Ltd. requests that the said offences may be compounded under section 89 of the said Act.

Now, therefore in exercise of the powers conferred on / delegated to me by section 89 of the said Act, I accept from Om Telecom Logistics Pvt. Ltd., a sum of Rs. 899,196/- (Rs. Eight lac ninety nine thousand one hundred & ninety six only) by way of composition of the said offences.

Provided that-

(i) the said sum is paid into the Designated Bank at not later than 7/1/2013 and

(ii) the said Om Telecom Logistics Pvt. Ltd. produce before the undersigned the receipted challan in proof of such payment not later than 8/1/2013 and report the fact to me by the 9/1/2013"

10. A perusal of the said communication would go to reveal that the respondent No. 3 in exercise of the power delegated to him under Section 89 of the Act had proceeded to accept from the petitioner/ Company an amount of Rs. 8,99,196/- by way of composition of the said offence. Above being the position, this Court would now examine as to whether the respondent No. 3 had the jurisdiction to issue the order dated 29-12-2012.

11. The provision of Rule 3 of the Rules of 2005 being relevant is extracted here-in-

below:

“3. Delegation of powers by the Commissioner.- Subject to the provisions of the Act and rules made there under, the Commissioner may, by notification in the Official Gazette, delegate the powers to be exercised by different officers under section 3 of the Act and shall, by like notification, specify the area in which powers are to be exercised by each of the classes of officers.”

A perusal of the provision of Rule 3 of the Rules of 2005 would reflect that it is permissible that the Commissioner, by way of issuance of a notification in the Official Gazette to delegate the power to be exercised by the different officers under Section 3 of the Act. It is stated at the Bar that such notifications have been issued from time to time in the Gazette, the initial notification was so issued under the provisions of sub-Section (9) of Section 3 of the Rules of 2003 vide a notification bearing No. CTS-2/2005/172 dated 28-04-2005 delegating the powers under various provisions of the Act including the that Section 89, conferred upon the Commissioner, to the Superintendent of Taxes, including the respondent No. 3. The said notification was superseded by similar notification bearing No. CTS-1/2009/Pt./43 dated 19-06-2009 delegating amongst others to the respondent No. 3 w.e.f. 18-05-2009 powers of the Commissioner under various provisions of the Act of 2003 including the power of compounding offences under Section 89 of the Act of 2003.

12. In view of the said position emanating in the matter, the respondent No. 3 cannot be held to have passed the order dated 29-12-2012 compounding the offence alleged against the petitioner/ Company, on acceptance of the composition amount offered by it in the matter, to be an act done without jurisdiction. The provision of sub-Section (2) of

Section 89 mandates that the Commissioner shall not compound an offence under this section and or pass an order for payment of composition money unless the person concerned admitted in writing that he had committed an offence. A perusal of the communication dated 29-12-2012 issued by the Vice President of the petitioner/ Company (extracted hereinabove) would go to reveal that the Company had accepted the commission of an offence of producing forged documents by it in connection with vehicles in question and also of offering an amount of Rs. 8,99,196/- being equivalent to the tax amount, as composition money, with a further request to accept the same and for dropping the prosecution. The order dated 29-12-2012 being in acceptance of such offer made by the petitioner/ Company issued by the respondent No. 3, this Court finds that the provision of Section 89 of the act of 2003 was complied with by the respondent No. 3 before issuing the order dated 29-12-2012.

13. Having drawn the said conclusions, this Court would also examine the contention raised by the learned counsel for the petitioner that the amount in question was offered by the petitioner/ Company not as composition amount but as security deposit for issuance of the Transit Permit for the vehicles in question by the respondent No. 3. The said contention has been considered only to be rejected, inasmuch as, the challan as filed in the matter by the petitioner/ Company clearly reflects that the amount of Rs. 8,99,196/- was so deposited as "composition money" and not as security deposit as projected by the learned counsel for the petitioner and accordingly, the said contention stands rejected.

14. The compounding of the offence being so effected in exercise of the power under

Section 89 of the Act of 2003 by the respondent No. 3 basing on the delegation of the power so made upon him by the Commissioner of Taxes and the composition amount being equivalent to the tax amount as demanded from the petitioner/ Company vide notice dated 19-12-2012, this Court is of the considered view that the no error was committed by the Superintendent of Taxes in compounding of offence and issuing order dated 29-12-2012. The petitioner/ Company having deposited the amount involved as composition money, the subsequent contentions raised by the petitioner/ Company after depositing of such amount on 31-12-2012 without any reservation or protest would not mandate acceptance by this Court.

15. In view of the above discussions, the order dated 29-12-2012 issued by the respondent No. 3 compounding offence as alleged against the petitioner vide notice dated 19-12-2012, would not mandate any interference.

16. The writ petition is accordingly held to be devoid of any merit and the same stands dismissed.

JUDGE

Comparing Assistant