

**HIGH COURT OF TRIPURA
AGARTALA**

**WP(C)No.155 of 2022
along with
WP(C)No.156 of 2022
WP(C)No.157 of 2022
WP(C)No.158 of 2022
WP(C)No.159 of 2022
WP(C)No.160 of 2022**

In WP(C)No.155 of 2022

KSS Petron Private Limited

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

In WP(C)No.156 of 2022

KSS Petron Private Limited

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

In WP(C)No.157 of 2022

KSS Petron Private Limited

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

In WP(C)No.158 of 2022

KSS Petron Private Limited

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

In WP(C)No.159 of 2022

KSS Petron Private Limited

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

In WP(C)No.160 of 2022

KSS Petron Private Limited

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

For Petitioner(s)	:	Ms. Nitu Hawelia, Adv. Ms. M.L. Gope, Adv. Ms. H. Jain, Adv. Ms. S. Chakraborty, Adv.
For Respondent(s)	:	Mr. D. Bhattacharya, G.A. Mr. K. De, Addl. G.A.
Date of Hearing of Judgment & Order	:	10.01.2023
Whether fit for reporting	:	YES/NO

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order

[Hon'ble The Chief Justice [Acting]]

Heard Ms. Nitu Hawelia and Ms. Medha Lila Gope, learned counsel assisted by Ms. Simita Chakraborty learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharya, learned G.A. appearing for the respondents.

2. All these writ petitions being WP(C)No.155 of 2022 [KSS Petron Private Limited versus State of Tripura and Others], WP(C)No.156 of 2022 [KSS Petron Private Limited versus State of Tripura and Others], WP(C)No.157 of 2022 [KSS Petron Private Limited versus State of Tripura and Others], WP(C)No.158 of 2022 [KSS Petron Private Limited versus State of Tripura and Others], WP(C)No.159 of 2022 [KSS Petron Private Limited versus State of Tripura and Others] and WP(C)No.160 of 2022 [KSS Petron Private Limited versus State of Tripura and Others] are combined for disposal by a common judgment and order inasmuch as the basic facts of the above cases are identical in nature.

3. The case of the petitioner is that the petitioner is a registered dealer under the previous Tripura Value Added Tax Act, 2004 being TIN NO 16052342060. The petitioner was a works Contractor working under ONGC for the period 2010 to 2016. In respect of the said works contract the ONGC made payment to the petitioner by deducting Tax at source under the said works and deposited the same to the Government Treasury. However, while deducting Tax at source to ONGC deducted tax at full rate on works contract value without deducting labour component, declared goods, goods under inter-state sale etc. as laid down by the Supreme Court in **Gannon Dunkerley versus State of Rajasthan**, reported in **(1993)1 SCC 364**, for determining the value of taxable goods.

4. The petitioner thereafter filed its returns of the turnover for the Assessment year of 2010-11 to 2015-16 whereby the petitioner declared refundable amount due to the petitioner. However, the respondents did not

pass any order of assessment for the said years. The petitioner, thereafter, filed an application dated 17.05.2021 for refund of the amount paid in excess in view of the TDS deducted from the State bills of the petitioner and paid to the State Government. As per the counsel appearing for the petitioner, the petitioner also submitted all documents and papers including invoices, TDS certificates Work orders etc. for the Assessment years of 2010-11 to 2015-16. However, the Respondent Authorities rejected the application of the petitioner vide order dated 31.08.2021. The Respondents have filed an affidavit stating that the refund under section 43 of the Tripura Value Added Tax Act, 2004 have been rejected in view of non passing of the order of assessment orders for the assessment years 2010-11 to 2015-16, within the provisions of Section 29 of the Tripura Value Added Tax Act, 2004.

5. Ms. N. Hawelia, learned counsel appearing for the petitioner have contended that when admittedly huge amount of tax is lying in excess for the assessment year of 2010-11 to 2015-16 as excess tax paid to the Government, the order under Sections 29 and 43 can be passed by the Respondent Authorities.

6. In view of the facts and circumstances of the case as well as the provisions of law under the Tripura Value Added Tax Act, 2004 we are of the opinion that the impugned order dated 31.08.2021 is hereby set aside. The case for the assessment year of 2010-11 to 2015-16 under the Tripura Value Added Tax Act 2004 is remanded back to the Respondent No. 3 for passing the order under Sections 29 and 43 of the Tripura Value Added Tax Act, 2004 after giving the petitioner a reasonable opportunity of being heard. The entire

exercise is to be completed within a period of 3 months from the date of receipt of this order. It is further provided that in case the petitioner is still aggrieved by the order thereafter passed by the Respondent No.3, the petitioner is given a liberty to file petition against the said order before this Hon'ble court.

In terms of the above, this petition is disposed of.

JUDGE

CHIEF JUSTICE (ACTING)

