

**HIGH COURT OF TRIPURA
AGARTALA**

W.P. (C) 424/2023

Sri Shambhunath Paul

----Petitioner(s)

Versus

The State of Tripura and ors.

----Respondent(s)

For Petitioner (s)	:	Mr. Biplabendu Roy, Advocate
For Respondent(s)	:	Mr. K. De, Addl. GA

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

13/12/2023

The petitioner has filed an amended writ petition *inter alia* seeking the following reliefs:

“In the premises aforesaid, it is therefore most respectfully prayed that Your Lordships’ may graciously be pleased to issue Notice, call for the Records, issue Rule, calling upon the Respondents to show cause as to why a writ in the nature of Certiorari and/or any other writ of like nature, should not be issued declaring Order of Assessment/Adjudication Order under Reference No.ZD161221000 608X dated 31.12.2021 (Annexure-8) passed under Section 73(9) of TSGST Act, 2017 charging tax, interest and imposing penalty without serving any Notice for the AY 2020-21 and the Orders dated 09.01.2023 and 02.01.2023 (Annexure-10 & 11) for recovery through specified Officer under Section 79 of the TSGST Act, 2017 and the impugned Order dated 25.04.2023 passed in APPEAL Case No. 03/CH-BLG of 2023 (Annexure-15) by the Respondent No.4 to be illegal and without jurisdiction and violative of principles of natural justice and consequently liable to be set aside and/or quashed and as to why a writ in the nature of Mandamus and any other writ of like nature should not be issued directing the respondent authorities and each and every one of them to restrain, refrain and forbear from giving effect to the impugned Notice of Demand issued in pursuance thereof after hearing cause and causes as may be shown and after hearing the parties be pleased to make the Rule absolute and/or pass such further or other Order(s) as Your Lordship’s may deem fit and proper.

-AND-

Pending disposal of the instant Writ Petition, your Lordships may further be pleased to stay the operation of Order of Assessment/Adjudication Order and notice of Demand (Annexure-8) issued in pursuance thereof and the Orders dated 09.01.2023 and 02.01.2023 (Annexure-10 & 11) for recovery through specified Officer under Section 79 of the TSGST Act, 2017 and all other proceedings in pursuance thereto and/or pass any such further Order/Orders as Your Lordships may deem fit and proper in the ends of justice so that the business of the petitioner may run to maintain the livelihood.”

The writ petitioner has in the amended writ application laid challenge to the Order of assessment/adjudication dated 31.12.2021 (Annexure 8); the summary of the Order in Form GST DRC-07 passed under Section 73(9) of the TSGST Act, 2017 in connection with the Tax Period 2020-21; the Orders dated 09.01.2023 and 02.01.2023 (Annexures 10 & 11) for recovery through special

procedure; and also the impugned appellate Order dated 25.04.2023 (Annexure 15) passed by the respondent no. 4.

The appeal was dismissed on the ground of delay as it was not filed within the period of limitation prescribed under Section 107(4) of the TSGST Act, 2017.

The petitioner seems to have taken number of grounds to assail the impugned Orders in the present writ petition. However, today learned counsel for the petitioner has produced the notification dated 04.11.2023 issued by the Government of Tripura, Finance Department (Taxes & Excise) whereby the State of Tripura has provided an opportunity to prefer an appeal even after rejection of the appeal on grounds of limitation subject to the conditions laid down therein. The extracts of the notification dated 04.11.2023 is reproduced hereunder:

**“Part—I—Orders and Notification by the Government of Tripura
The High Court, Government Treasury etc.**

**GOVERNMENT OF TRIPURA
FINANCE DEPARTMENT
(TAXES & EXCISE)**

1-11(91)TAX/GST/2023(Part-III)

Dated, Agartala the 4th November, 2023.

NOTIFICATION

In exercise of the powers conferred by section 148 of the Tripura State Goods and Services Tax Act, 2017 (Tripura Act No. 9 of 2017) (hereinafter referred to as the said Act), the State Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:

2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any

authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an under sub-section (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Tripura State Goods and Service Tax Rules, 2017, shall mutatis mutandis, apply to an appeal filed under this notification.

By Order of the Governor,
Signed by Rakhi Biswas
Date: 04-11-2023 16:46:59
Reason: Approved
(Rakhi Biswas, TCS-SSG)
Ex-Officio Additional Secretary
Finance Department
Government of Tripura”

Apparently, the petitioner’s appeal was rejected on the ground of delay as beyond the period of limitation prescribed under Section 107(4) of the TSGST Act.

Learned counsel for the petitioner seeks permission to withdraw the writ petition in order to avail the window of opportunity for preferring a fresh appeal upon compliance of the conditions prescribed under the notification. Such an appeal can be filed on or before 31.01.2024 on fulfillment of the prescribed conditions.

Learned counsel for the State does not object to the prayer as the notification dated 04.11.2023 permits such tax payers/registered persons to prefer an appeal again by 31.01.2024 upon compliance of the prescribed conditions in case the appeal has been dismissed on the ground of delay.

As such, permission to withdraw the writ petition is allowed with liberty to file an appeal in accordance with the notification dated 04.11.2023.

The writ petition stands disposed of with the aforesaid liberty.

(ARINDAM LODH),J

(APARESH KUMAR SINGH), CJ