

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) 574/2021

Sri Pankaj Behari Saha, son of late Anil Chandra Saha carrying on the business of bonded warehouse in the name and style of Udaipur Bonded Ware House at New Town Road, near Mahadeb Dighi, Udaipur, Gomati, Tripura, aged about 60 years

---- **Petitioner**

Versus

1. The State of Tripura, represented by the Chief Secretary, Government of Tripura, Agartala, New Civil Secretariat, P.O. New Capital Complex (NCC), P.S. New Capital Complex (NCC), District- West Tripura, PIN- 799006.

2. The Principal Secretary, Finance Department, Government of Tripura, Agartala, New Civil Secretariat, P.O. New Capital Complex (NCC), P.S. New Capital Complex (NCC), District- West Tripura, Pin- 799006.

3. The Commissioner of Taxes, Tripura, P.N. Complex, Gurkhabasti, P.O. Kunjaban, P.S. New Capital Complex (NCC), Agartala, District- West Tripura, Pin-799006.

4. The Superintendent of Taxes, Charge-Udaipur, P.O. Udaipur, P.S. Udaipur, District- Gomati, Pin Code- 799120.

----**Respondents**

For Petitioner(s)	:	Dr. Ashok Saraf, Sr. Advocate Mr. P. Baruah, Advocate Mr. Kousik Roy, Advocate
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For Respondent(s)	:	Mr. K. Dey, Additional GA
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Date of hearing and delivery of Judgment & Order	:	14.03.2023
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Whether fit for reporting	:	Yes / No
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**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH
Judgment & Order (Oral)**

14/03/2023

(T. Amarnath Goud, ACJ)

Heard Mr. Ashok Saraf, learned senior counsel assisted by Mr. P. Baruah, learned counsel and Mr. Kousik Roy, learned counsel appearing for the petitioner as well as Mr. K. Dey, learned Additional GA, appearing on behalf of the respondents.

2. By means of filing this writ petition, the petitioner has challenged the notices dated 10.07.2020 and 27.10.2020 (Annexure II and IX to the writ petition) and order dated 25.09.2020 (Annexure VI to the writ petition) issued by the respondent no. 3 whereby the respondent no. 3 had set-aside the assessment order dated 24.03.2015 issued by the respondent no. 4.

3. Briefly stated, the respondent no. 4, vide order dated 24.03.2015 had completed the assessment of the petitioner under Section 31(1) of the TVAT Act, 2004. On 10.07.2020 the respondent no. 3 issued a notice under Section 70(1) of the TVAT Act, upon the petitioner whereby he was asked to appear in-person or by his authorized representative before the respondent no. 3 to explain as to why the assessment order dated 24.03.2015 shall not be cancelled or modified. Upon receipt of the notice dated 10.07.2020, the petitioner submitted his reply on 04.08.2020 and 22.09.2020 stating that the notice had been issued basing on the erroneous report of AG Audit and prayed for dropping the suo moto revision. The respondent no. 3 vide order dated 25.09.2020 had set-aside the assessment order dated 24.03.2015 and remanded back for initiating fresh assessment. Thereafter, the respondent no. 3 on 27.10.2020 issued a show-cause notice upon the petitioner as to why a penalty shall not imposed upon him. The petitioner thereafter submitted his reply dated 02.11.2020. Subsequently, thereafter, the respondent no. 3 by its order dated 20.04.2021 had dismissed the revision application of the petitioner without considering the written statement submitted by the petitioner.

4. During arguments, Dr. Saraf, learned senior counsel appearing for the petitioner has submitted that notice dated 10.07.2020 and order dated 25.09.2020 issued by the respondent no. 3 are illegal and passed without applying his mind. Learned senior counsel has also submitted that the suo-moto revision initiated by the respondent no. 3 was much after expiry of the period of limitation as prescribed under Sections 33 and 74 of the TVAT Act, 2004. Learned senior counsel has further submitted that the impugned order dated 20.04.2021 passed by the respondent no. 3 dismissing the revision application of the petitioner is arbitrary and without jurisdiction. Lastly, learned senior counsel has urged this court to set-aside the notice dated 10.07.2020 and the impugned orders passed by the respondent no. 3.

5. Learned Additional GA has submitted that there is no error in the notice dated 10.07.2020 and the orders passed by the respondent no. 3 and the orders have been passed by the revisional authority in accordance with Act and Rules of the TVAT Act. Learned Additional GA has also urged this court to dismiss the writ petition as not maintainable and further contended that appeal lies against the order of revisional authority.

6. Considered the submission of learned counsel appearing for the parties. We have also perused the record.

7. The respondent no. 4 after verification of the relevant documents of the petitioner had completed the assessment by assessment order dated 24.03.2015. From the face of the record, it is apparent that the respondent no. 4 on 10.07.2020 i.e. after elapse of more than five years had issued a

notice under Section 70(1) of the TVAT Act, upon the petitioner wherein the petitioner was asked to appear in person or by his authorized representative and to explain as to why the assessment shall not be cancelled or modified. As per sections 33 of 74 of the TVAT Act, 2004, the issuance of notice after elapse of five years is barred by limitation. For convenience, Section 33 and 74 of the TVAT Act, is reproduced here-in-below:-

“33. No assessment after five years :- (1) No assessment under section 31 and 32 shall be made after the expiry of five years from the end of the tax period to which the assessment relates; Provided that in case of offence under this Act for which proceeding for prosecution has been initiated, the limitation as specified in this subsection shall not apply.

(2) Any assessment made or penalty imposed under this Chapter shall be without prejudice to prosecution for any offence under this Act.

74. Power to Rectify Error Apparent on the Record: (1) An assessing, appellate or revisional authority including the Tribunal may, on an application or otherwise at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record; Provided no such rectification which has the effect of enhancing the liability to pay tax or penalty or penal interest shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard. (2) Where such rectification has the effect of enhancing the tax liability or penalty, the Assessing Authority shall give the dealer or other person a notice of assessment or penalty and the dealer or other person shall pay the tax in the manner prescribed and when such rectification has the effect of reducing the tax liability or penalty, the Assessing Authority shall issue refund of the excess tax paid, if any.”

8. However, in reply to that notice, the petitioner had submitted his reply/objection before the revisional authority, but the revisional authority suo-moto initiated a proceeding revisional proceeding against the petitioner and on 25.09.2020 passed an order setting aside the assessment order dated 24.03.2015 passed by the respondent no. 4 herein and remanded back the matter for initiating fresh assessment. Thereafter, again on 27.10.2020, the respondent no. 3 issued notice to the petitioner directing the petitioner to show-cause as to why a sum by way of penalty shall not be imposed upon the petitioner. Upon receipt of the said notice, the petitioner has submitted

his reply on 02.11.2020 and prayed for consideration of prayers as regard to his reply. On 09.11.2020, the respondent no. 4 had completed the re-assessment of the petitioner and observed as under:

"6. In view of the above discussed facts and figures, taxable turnover is liable to be considered and determined at Rs. 18,77,20,144/- for the year under assessment. As the dealer did not pay the due tax/VAT in due course of time, I am satisfied to charge interest @1.5% per month (@18% per annum) under Section 25(1)(c) of the TVAT Act, 2004 on the balance amount of tax due. I am also satisfied in judicious consideration of the gravity of offence, to impose least penalty @10% under Section 75A of the TVAT Act, 2004, on the balance amount of tax due for concealment of actual taxable sales/turnover and evasion of due tax thereon. Further, I am of opinion to impose penalty a sum equal to 0.1% of the turnover under Section 53(3) of the TVAT Act, 2004."

9. Thereafter, the petitioner submitted written statement before the revisional authority disclosing all his grievances, but the revisional authority without considering his submission had dismissed the revision application filed by the petitioner vide its order dated 20.04.2021, observing that the documents submitted by the petitioner squarely proves that he has not offered any discount and has only inserted some fictitious figure to avoid his actual tax liability. It was further observed that the documents submitted by the petitioner on different dates of hearing evidently proves that he adopted the policy of exhibiting differential liability towards direct tax and indirect tax and hence the learned Assessing Authority has rightly determined the turnover and tax liability of the petitioner on documentary evidence and accordingly the petitioner was rejected and the assessment order dated 09.11.2020 of the respondent no. 4 was upheld.

9. Having heard learned counsel appearing for the parties, this court *prima facie* on perusal of the proceeding dated 27.10.2020, order which is impugned herein, this court expresses its concern that the revisional

authority has not passed any speaking order and has not dealt with the issues allowing the discounts and to say that the amounts discounted are fictitious.

10. Accordingly, without entering into the merit of the case, the case is remanded back to the revisional authority to decide the matter afresh by passing a speaking order. It is also open for the petitioner to raise all his objections including the issue of jurisdiction and also to place any judgment in support of his contentions before the revisional authority. On making of such submission, the revisional authority shall pass a speaking order in accordance with law. This exercise shall be completed as expeditiously as possible. Consequently, the impugned notice dated 27.10.2020 issued by the respondent no. 3 is set-aside.

JUDGE

CHIEF JUSTICE (ACTING)



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