

**HIGH COURT OF TRIPURA**  
**\_A\_G\_A\_R\_T\_A\_L\_A\_**  
**WP(C)No.853 of 2021**

***Dayamay Enterprise***

***.....Petitioner***

**\_V\_E\_R\_S\_U\_S\_**

***The State of Tripura & Others.***

***.....Respondents***

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|                   |   |                                                      |
|-------------------|---|------------------------------------------------------|
| For Appellant(s)  | : | Ms. M. Chakraborty, Advocate.                        |
| For Respondent(s) | : | Mr. D. Bhattacharjee, G.A.<br>Mr. S. Saha, Advocate. |

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**Order dated 25<sup>th</sup> of January, 2023**

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

Heard Ms. M. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharjee, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the respondents.

The petitioner has prayed for the following reliefs:

*“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 other writ of like nature, should not be issued declaring notice No.889 dated 27.08.2020 (Annexure-5) and Notice No.974 dated 11.02.2021 (Annexure-6) issued under Section-31 of the Tripura Value Added Tax Act, 2004 and show cause notice No.1047 dated 03.03.2021 (Annexure-7) issued under Section-3(5) of the Tripura Value Added Tax Act, 2004, Note Sheet dated 16.03.2021 (Annexure-8), Note Sheet dated 24.03.2021 (Annexure-9), order of assessment dated 30.03.2021 passed under Section-31 of the Act and Notice of demand (Annexure-11) issued in pursuance thereof by the respondent No.4 for the period 2015-16 to be illegal and without jurisdiction 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 dated 22.07.2021 (Annexure-15), order of Assessment dated 30.03.2021 and the notice of demand (Annexure-11) 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 dated 30.03.2021 and the notice of demand (Annexure-11) issued in pursuance thereof, notice dated 22.07.2021 (Annexure-15) 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.”*

The fact of the present case is that the present petition has been filed by the petitioner challenging ex-parte order of assessment dated 30.03.2021 (Annexure-11) passed by the Superintendent of Taxes, Charge-IV, Agartala (respondent No.4) without serving any notice under the purported exercise of powers under Section-31 of the Tripura Value Added Tax Act, 2004 [for short, TVAT Act, 2004] and notice of demand dated 30.03.2021 issued in pursuance thereof for the assessment periods 2015-16.

From the records supplied by the respondent No.4 on 07.10.2021 (Annexure-4) it reveals that to complete the assessment in the instant case for the period of 2015-16, the respondent No.4 has taken the shelter of a stranger whom he served notices (Annexures-5, 6 & 7) and also obtain signature upon the note sheet (Annexures-8 & 9) and thus, the order of assessment is high handed as well as palpable illegal and it's made in total violation of the principles of natural justice. The said stranger was not authorized by the petitioner nor was from XL under Section-54(1) of Tripura VAT Act, 2004 read with Rule-17(2) of Tripura VAT Rules, 2005 furnished to the respondent No.4 in the name of the said stranger.

In serving the notices the respondent No.4 violated the rule-46 of Tripura VAT Rules, 2005. Even the respondent No.4 did not communicate the said ex-parte order of assessment but, supplied on 07.10.2021 upon an application dated 23.09.2021 (Annexure-2). After completion of the assessment, a notice under Section-37(5) of TVAT Act, 2004 was also served (Annexure-15). The petitioner is also challenging the levy of interest violating the provision of Section-45(6) of TVAT Act, 2004 and penalty in the said order

of assessment without the issuance of any notice and thus, the same being absolutely illegal and without jurisdiction and violation of principles of natural justice.

The petitioner submitted an application on 16.10.2021 for cancellation of the ex-parte order of assessment dated 30.03.2021 but, the Superintendent of Taxes, the respondent No.4 kept pending the said application. Further, the petitioner submitted application on 27.10.2021 for immediate hearing of the application submitted on 16.10.2021 but, in vain. Hence, the present writ petition has been filed by the petitioner.

In view of above discussions and averments made by the learned counsel appearing for the parties, this Court without going into the merits of the case, is of the opinion that the impugned orders need to be set aside for the ends of justice and thus ordered. The respondents have not served the notice of hearing before passing the assessment orders; accordingly, the assessment orders are set aside. The matter is remitted back to the respondents and also directed to serve a fresh notice of hearing and also giving an opportunity of personal hearing to the petitioner, the assessment order would be passed. This exercise shall be completed as expeditiously as possible. As a sequel, miscellaneous applications pending, if any, shall stand closed.

**JUDGE**

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**CHIEF JUSTICE (ACTING)**

*A. Ghosh*