

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.554/2024

M/S. Tripureshwari Udyog, A partnership firm having its office at Baikhora, Jolaibari, Tripura. In the present proceedings, the petitioner is represented by its one of the partner Shri Ajay Kumar Das, aged about 64 years, resident of Baikhora, South Tripura-799141.

..... Petitioner(s).

V E R S U S

1. Union of India, represented by the Secretary, Ministry of Finance, Department of Revenue, North Block, Central Secretariat, New Delhi-781006.

2. The Assistant Commissioner, Central Goods and Services Tax, Tripura-II Division, Agartala having office at Jackson gate building, 3rd Floor, Lenin Sarani, Agartala-799001.

.....Respondent(s).

For Petitioner(s) : Mr. Amit Goyal, Advocate,
Mr. Kousik Roy, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Dy. S.G.I.,
Mr. Soumya Chaudhury, Advocate.

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

Order

28/08/2024

Heard Mr. Amit Goyal, learned counsel for the petitioner, appearing virtually assisted by Mr. Kousik Roy, learned counsel appearing physically.

2. The writ petition is directed against the order in original dated 12.07.2024 passed by the Assistant Commissioner (Adjudicating Officer), CGST, Tripura-II Division under Section 73(1) proviso read with Sections 75 and 77 of the Finance Act, 1994 as amended imposing a tax liability of Rs.40,90,215/- coupled with interest of the equivalent amount thereupon and a penalty of Rs.10,000/- for not obtaining service tax registration as required

under Section 69 of the Finance Act. The impugned order is passed on remand by the appellate authority vide order dated 09.12.2022 (Annexure-V).

3. Learned counsel for the petitioner submits that apart from taking the preliminary objection to the show cause notice on grounds of limitation as according to the petitioner, there was no suppression or fraud practised by him, petitioner has also taken a plea that the contract for road construction awarded to the petitioner is exempted from service tax under Clause-13 of the Notification No.25/2012 dated 20.06.2012.

4. Learned counsel for the petitioner further submits that the impugned order suffers from violation of principles of natural justice as the respondent No.2 failed to consider all the documents on record including the submission made by the petitioner on 22.05.2023. Since the very leviability of the service tax is also in question, petitioner has chosen to invoke the writ jurisdiction of this Court instead of availing the appellate remedy in the second round of litigation. The appeal as yet is, however, not time barred. However, we feel that the grounds urged on behalf of the petitioner relate both to the questions of law and fact which in our opinion are required to be agitated on merits before the appellate authority.

5. Learned counsel for the petitioner then submits that if so directed, the writ petitioner would approach the appellate authority. Petitioner shall also seek stay of recovery proceedings as petitioner has already made the statutory pre-deposit in the earlier round of litigation. He submits that the petitioner may be allowed to raise all available grounds of law and fact before the appellate authority who may be directed to consider it in accordance with law.

6. Mr. Bidyut Majumder, learned Deputy S.G.I. appearing for the respondent-Union of India and Mr. Soumya Chaudhury, learned counsel appearing on behalf of Mr. Paramartha Datta, learned counsel for the respondent-Revenue submit that the writ petitioner has straightway approached this Court against the order in original bypassing the statutory remedy. Therefore, this Court may relegate him to avail the statutory remedy.

7. Having regard to the facts and circumstances noticed above and that the issues raised herein involve consideration on both questions of fact and law and that the petitioner has earlier also approached the appellate forum, we are of the opinion that the petitioner should first exhaust the statutory remedy before approaching this Court.

8. Accordingly, the writ petition is disposed of with liberty to the petitioner to approach the appellate authority within a period of 10(ten) days from today.

Petitioner is at liberty to raise all grounds of fact and law before the Appellate Authority.

Needless to say, the appellate authority would deal with all the grounds of law and fact in accordance with law.

9. Since this is the second round of litigation, the appellate authority would endeavour to decide the appeal within a reasonable time preferably within 3(three) months from the date of filing of the appeal along with a copy of this order.

It would be open for the petitioner to make a prayer for interim protection before the appellate authority which may also be dealt with in accordance with law.

10. The writ petition is disposed of in view of the above terms.

Let it be made clear that we have not gone into the merits of the case of the parties.

Pending application(s), if any, shall also stand disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ



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SIDDHARTHA LODH

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