

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.01 of 2024

M/s. Sristi, having its office at Jagannath Bari Road, Agartala, P.O. Agartala, P.S. West Agartala, District- West Tripura, a partnership firm represented by its partner ShriPintuChowdhury, S/o. Late Sudhindra Kumar Chowdhury, resident of Shyamali Bazar, Agartala, P.S. East Agartala, District-West Tripura.

.....Petitioner(s);

Versus

1. The State of Tripura, represented by the Secretary, Finance Department, Government of Tripura, New Secretariat Complex, P.O & P.S New Capital Complex (NCC), Agartala, District- West Tripura-799010.

2. The Commissioner of Taxes, Government of Tripura, P.N. Complex, GurkhaBasti, P.O. Kunjaban, P.S. New Capital Complex, Agartala, District- West Tripura, Pin-799006.

3. The Superintendent of Taxes, Charge-IV, Government of Tripura, Palace Compound, Agartala, District-West Tripura, Pin-799001.

.....Respondent(s).

For Petitioner(s) : Mr. T.K. Deb, Advocate.

For Respondent(s) : Mr. M. Debbarma, Addl. G.A.

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

Order

11/09/2024

Heard Mr. T.K. Deb, learned counsel for the petitioner and Mr. M. Debbarma, learned Additional Government Advocate for the respondents-State.

2. Petitioner admittedly is dealing with Cable TV operating business having a registration under TVAT Act. As per the averments made in the instant petition, petitioner transports electronic goods, TV, spare parts, Set Top Boxes and other electronic peripheries including computer etc. from outside the State. The present revision petition arises out of assessment proceedings for the period 2015-16, 2016-17 and 2017-18 (up to June, 2017) before respondent No.3. Petitioner claims to have produced books of accounts, purchase register, sales register, cash book, ledger audited balance sheet, trading account, 'C'

form, copies of permits in Form XXIV and Form XXVI and sale memo etc. before the assessing officer. Respondent No.3 passed an assessment order on 28.12.2020 levying VAT, penalty and interest of Rs.1,20,82,300/- for the year 2015-16, VAT, penalty and interest of Rs.1,38,80,657/- for the year 2016-17 and Rs.51,42,168/- for the period April, 2017 to June, 2017 [Annexure-2].

3. The matter was taken before the Commissioner of Taxes in revision by the petitioner. The Revisional Authority has, by the impugned order dated 13.10.2022, upheld the order passed by the respondent No.3. Thereafter, the petitioner filed a petition before learned VAT Tribunal under Section 71 of the Tripura Value Added Tax Act, 2004 [Act of 2004, *for short*] which however was disposed of on 21.07.2023 with the observation that the tribunal does not have jurisdiction to entertain the appeal. Thereafter, the present revision petition has been filed under Section 72 of the Act of 2004 with some delay. Upon hearing learned counsel for the parties, delay was condoned vide order dated 01.05.2024 taking into account the judgment rendered by the Apex Court in the case of *Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and another v. Excise and Taxation Officer, Sunder Nagar/Assessing Authority* reported in (2020) 17 SCC 692. Section 72 of the TVAT Act reads as under:

“72. Revision to High Court - (1) A dealer or a transporter who is dissatisfied with the decision of the Tribunal or Revisional Authority may, within sixty days after being notified of the decision, file a revision with the High Court; and the dealer or the transporter so appealing shall serve a copy of the notice of revision on the respondent to the proceeding.

(2) A revision to the High Court may be made on question of law or an erroneous decision or failure to decide a question of law that will be raised in the revision.

(3) The High Court may on application either by the petitioner or by the respondent review any order passed by it provided such application is made within one year from the date of receipt of the judgment.”

4. Revision before this Court under Section 72 of the Act of 2004 is maintainable on a question of law or on an erroneous decision or failure to decide a question of law. No question of law as required under Section 72 of the Act of 2004 has been framed though several grounds have been raised by the petitioner to assail the impugned order of assessment and the revisional order. The revision petition does not accompany the relevant documents in relation to the business conducted by the petitioner such as the agreement under which the petitioner conducts the cable business with the consumers. The sheet anchor of the petitioner's case as would appear from the grounds urged and also upon hearing learned counsel for the petitioner is that the petitioner has not indulged in sale of Set Top Box to the consumers for which value added tax is leviable. The learned Commissioner of Taxes has however dealt with this contention and held that there is no documentary evidence to support the contention that petitioner has never sold any STB. Moreover he has himself mentioned sale figure in the periodical return. Learned Commissioner has also relied upon the common judgment dated 19.02.2015 rendered by this Court in the cases of *BhartiTelemedia Limited v. The State of Tripura & another*, *BhartiTelemedia Ltd. v. The State of Tripura & others* and *TATA SKY Limited v. The State of Tripura & others* passed in *WP(C) No.563/2010*, *WP(C) No.280/2011* and *WP(C) No.453/2011* respectively wherein the learned Court has, after discussing the provisions of the Act of 2004 and the judgment rendered by the Apex Court in the case of *M/s Gannon Dunkerley & Co. & others v. State of Rajasthan & others* reported in (1993) 1 SCC 364, the amendment to sub-clause (d) of clause (29-A) of Article 366 of the Constitution of India and also the decision rendered by the Apex Court in the case of *Bharat*

Sanchar Nigam Ltd. and another & Union of India and others reported in (2006) 3 SCC 1 came to the conclusion that even in a case of composite contract when the contract can be divided with exactitude and the value of the element of the sales part can be decided, that portion of the contract which amounts to sale of goods can be taxed under the State law. In the said case, the State was assessing the tax solely on the basis of value of the Set Top Boxes as given in the books of accounts of the petitioners. The petitioners claimed depreciation etc. on these Set Top Boxes and the valuation given by the petitioners was the value of goods, the right to use which has been transferred to the customers. This was found to be easily separable and discernible and the State had the full authority to levy value added tax on the sale part of the transaction i.e. value of the STBs.

5. The learned Commissioner, in the present case, has also referred to the element of sale by transfer of right to use any goods for any purpose for cash, deferred payment or other valuable consideration as per definition of “Sale” under Section 2(25)(i)(d) of the Act of 2004. The Commissioner has, therefore, come to the conclusion that even if the claim of the petitioner is not of outright sale to the consumers; but if the effective control of the goods stand transferred to the consumers, that would satisfy the element of sale as defined under Section 2(25)(i)(d) by transfer of right to use any goods to the consumer. Moreover it was observed that as per the terms of the agreement, the companies are responsible for the functioning of STBs only for a period of six months. The warranty is valid only for six months and thereafter there is no warranty. Therefore, if STB of a customer is spoiled after six months, he will have to pay

for repair or replacement of the same. This amounted to transfer of right to use goods. The Revisional Authority, upon consideration of the case of the petitioner, found that the State had assessed the tax solely on the basis of the value of STBs as are given in the books of accounts of the petitioner. The learned Commissioner, therefore, held that the revision petition is similar to the cases of *BhartiTelemedia Ltd.* (supra) and *TATA SKY Ltd.* (supra) and the nature of business is also identical in all the cases. There was no iota of doubt that transactions made by the petitioner are taxable under the Act of 2004. Thus the assessment order dated 28.12.2020 was upheld.

6. The grounds raised on behalf of the petitioner in the present revision petition are in fact questions on fact whether the petitioner had outrightly sold the STBs to the consumers or had effectively transferred the right to use to the consumers or no sale of STBs had been made at all. For appreciation of these factual grounds also, the relevant agreement between the petitioner and the consumers, the documents such as books of accounts, purchase register, sales register, cash book, ledger audited balance sheet and other forms which are primarily to be examined by the Assessing Authority have not been enclosed to the instant revision petition to delve into these questions of fact either. Needless to say, this Court in exercise of the power under Section 72 of the Act of 2004 is only required to enter into questions of law and not questions of fact unless they are decided in a perverse manner. In the present case, learned counsel for the petitioner has repeatedly harped that the STBs were found in the premises of the petitioner and as such, no sale thereof was undertaken. It defies reasoning as to how the business of Cable

would be undertaken without supply of Set Top Box to the consumers. Such question of fact has been gone into by the Assessing Authority and also by the Revisional Authority – both of whom have come to a conclusion that the sale figures submitted by the petitioner in its periodical return do establish “Sale” within the meaning of Section 2(25) of the Act of 2004 of STBs to the consumers over which value added tax has been levied.

7. We, therefore, do not find any question of law involved in the present revision petition calling for interference by this Court under Section 72 of the Act of 2004. The present case appears to be covered by the ratio rendered by this Court in the case of *BhartiTelemedia Ltd.* (supra). As such, it has been rightly relied upon by the learned Commissioner of Taxes. Accordingly, the present revision petition is dismissed.

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

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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