

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

CRP No.44 of 2023

CRP No.45 of 2023

CRP No.46 of 2023

CRP No.47 of 2023

Sahajahan Majumdar Prop. of M/S Sahajahan Majumdar, Durgapur, P.O. Sonamura, P.S. Sonamura, District- Sepahijala, Tripura, Pin-799131 having registration TVAT (TIN) 16130094028 represented by the dealer-petitioner, Sahajahan Majumder aged about 57 years.

..... Petitioner(s)

V E R S U S

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 Secretary, Finance Department, Government of Tripura, 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 (Revisional Authority), Government of Tripura, P.N. Complex, Gurkhabasti, P.O. New Capital Complex (NCC), P.S. New Capital Complex (NCC), Agartala, District- West Tripura, Pin-799006.

4. The Superintendent of Taxes, Government of Tripura, Charge-Bishalgarh, P.O. Bishalgarh, P.S. Bishalgarh, District- Sepahijala, Pin-799102.

..... Respondent(s)

For Petitioner(s) : Mr. Biplabendu Roy, Advocate.

For Respondent(s) : Mr. K. De, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE BISWAJIT PALIT

Date of argument and delivery of Judgment & Order : 6th February, 2025.

Whether Fit for Reporting : YES.

JUDGMENT & ORDER (ORAL)

Heard Mr. Biplabendu Roy, learned counsel appearing for the petitioner and also heard K. De, learned Additional Government Advocate appearing for the respondent-State.

[2] The present revision petition (CRP No.44 of 2023) under Section 72 of the TVAT Act, 2004 relates to the assessment year 2017-2018 (i.e. April, May and June 2017). By the common impugned order dated 15th

October, 2022, the learned Commissioner of Taxes, respondent No.3 herein has decided the revision petitions in respect of assessment years 2014-15, 2015-16, 2016-17 and 2017-18. The matter was earlier remanded for the petitioner to avail alternative remedy vide order dated 7th March, 2022 passed in WP(C) No.221 of 2022. The Assessing Authority had by the order dated 29.07.2019 imposed tax, interest and penalty upon the petitioner which was challenged in revision under Section 70(2) of the TVAT Act, 2004 before the learned Commissioner of Taxes after liberty granted by this Court. The revision petitions have been decided vide order dated 15th October, 2022 by remanding the matters relating to A.Y. 2015-16, 2016-17 & 2017-18 on the question of imposition of penalty after due notice whereas the matters relating to the period 2014-15 was remanded to the Assessing Authority to take a fresh decision after due notice. Thereafter, the petitioner preferred a review petition under Section 74 of the TVAT Act, 2004 which was dismissed on 11th May, 2023. Petitioner has approached this Court through the instant revision petition under Section 72 of the TVAT Act, 2004 and also invoking Article 227 of the Constitution of India. By order dated 24th January, 2024, delay of 239 days in preferring the instant revision petitions was condoned in terms of Section 5 of the Limitation Act, 1963 relying upon the decision rendered by the Apex Court in case of *Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and another versus Excise and Taxation Officer, Sunder Nagar/Assessing Authority*, reported in (2020) 17 SCC 692.

[3] CRP No.45 of 2023 relates to the assessment year 2016-17; CRP No.46 of 2023 relates to the assessment year 2015-16 and CRP No.47 of 2023 relates to the assessment year 2014-15. Counter affidavit has been filed by the respondents though no rejoinder has been filed. When the matter was heard on 28th November, 2024, learned Additional Government Advocate was asked to show as to whether notice under Section 31(1) of TVAT Act, 2004 for the relevant tax period 2014-15 had been issued by the Assessing Authority since a common assessment order was passed on 29th July, 2019 covering periods 2014-15 to 2017-18 (up to June, 2017). Notice under Section 31(1) for the tax periods 2015-16 to 2017-18 (up to June, 2017) is dated 13th February, 2019 (Annexure-3 to CRP No.44 of 2023) i.e. the present revision petition. The Commissioner of Taxes has by the common impugned order dated 15th October, 2022 remanded the matter for passing fresh assessment order in respect of tax period 2014-15 whereas remitted the matter for the remaining years 2015-16 to 2017-18 on the question of imposition of penalty after due notice. Learned counsel for the revenue was also asked to obtain the assessment records for the relevant assessment years as certified to be true for assistance to the Court on the next date.

[4] Mr. K. De, learned counsel for the revenue has on the basis of instructions and the records of the assessment proceedings submitted that no notice under Section 31(1) was issued for the tax period 2014-15. The same is also reflected in the revisional order. Therefore, the revisional order so far as it relates to 2014-15 is not sustainable in law as the proceedings for

assessment beyond five years is barred by Section 33 of the TVAT Act, 2004. Section 33 of the TVAT Act is extracted hereunder:

"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."

If the Assessing Authority had not issued any notice before proceeding for assessment for the relevant year 2014-15 and had erroneously assessed the tax returns for the said period by the common impugned order dated 29th July, 2019, the same cannot be reopened on the basis of revisional order dated 15th October, 2022 as it would be barred beyond five years from the relevant date of the tax period 2014-2015. Apart from that, learned counsel for the petitioner and the revenue both have pointed out that as per the common assessment order dated 29th July, 2019 the Assessing Authority has found Nil tax liability. The return filed by the petitioner has been accepted. In that way, the revisional order dated 15th October, 2022 remanding the matter for re-assessment for the year 2014-15 is unsustainable in law and is accordingly set aside.

[5] During course of argument, learned counsel for the petitioner does not press CRP No.45 of 2023 relating to the assessment period 2016-17 and CRP No.46 of 2023 relating to the assessment year 2015-16 as the tax liability even after imposition of penalty under Section 25(4)(d) came to Rs.200/- and Rs.800/- respectively for the relevant assessment years. Learned counsel for the petitioner submits that remanding the matter on the point of penalty would be fruitless as petitioner has already deposited the

total tax liability including interest and penalty. Learned counsel for the revenue has also on the basis of records available with him submitted that the total tax liability for these relevant assessment years have been duly deposited by the petitioner. If that be so, then the order of remand for the A.Y. 2015-16 and 2016-17 on the point of penalty by the common revisional order dated 15th October, 2022 also requires interference as it would be a meaningless exercise. As such, the common impugned order dated 15th October, 2022 passed by the Revisional Authority so far it relates to the assessment years 2014-15 (CRP No.47 of 2023); 2015-16 (CRP No.46 of 2016) are also set aside.

[6] We now proceed to determine the legal issue and the question of law raised in CRP No.44 of 2023 which relates to assessment year 2017-18 (up to June, 2017). Let it be once again indicated herein that by the order dated 29th July, 2019, the Assessing Authority had passed a common assessment order for the years 2014-15 to 2017-18 (up to June, 2017). The relevant part of the common assessment order is extracted hereunder :

“The dealer furnished all returns in the time except for the month of December, 2015, September, 2016, November, 2016, May, 2017 and June, 2017 as under:

Month	Due Date of submission return	Return Submission date	Delay(days)	Penalty liable(Rs.)
December,2015	31/1/2016	02/02/2016	2 days	200/-
September,2016	30/10/2016	05/11/2016	5 days	500/-
November, 2016	31/12/2016	03/01/2017	3 days	300/-
May, 2017	30/06/2017	05/07/2017	5 days	500/-
June, 2017	31/07/2017	31/10/2017	92 days	9200/-
TOTAL			107 Days	10700/-

Regarding late submission of return the dealer is here by asked to show cause as to why penal action should not be taken again you, on the request of Md. Sahajahan Majumder, proprietor of the firm

separate notice is not issued. Md. Sahajahan fails to give any satisfactory reply. So the dealer is liable to given penalty @ 100 per delay u/s 25(4)(d) of the TVAT Act.

During the period of under assessment the dealer did not obtain any statutory permits in form XXIV, form XXVI, form XXVII, “C” form and “F” form. The dealer furnish audited balance sheet for the year 2014-15 to 2017-18 (up to 30th June, 2017)

The facts and figures have been viewed carefully and it appears from the records that the dealer shown huge amount of stock. The dealer has earned margin of profit @ 1.52% for the assessment year 2014-15 to 2015-16 and 1.54% for the assessment year 2016-17 and 2017-18 (up to 30th June, 2017). The dealer is here by asked to explain regarding low profit of margin and variation of profit margin during the period of under assessment. Md. Majumder proprietor of the firm stated that due to tough competition of market and to survive in competition market for wholesale business he had to sold the goods profit margin @ 1.52% for the assessment year 2014-15 to 2015-16 and profit margin @ 1.54% for the assessment year 2016-17 and 2017-18 (up to 30th June, 2017). His explanation is accepted. The dealer shown the sale price of per MT cement of Rs.5417.86 for the financial year 2014-15, Rs.5440 for the financial year 2015-15, Rs.5480 for the financial year 2016-17 and Rs.5500 for the financial year 2017-18 (up to 30th June, 2017). The sale price of the dealer is here by accepted.

Regarding huge stock of goods, Md. Majumder stated that he had already sold the goods. As the dealer already sold the goods but did not deposit the tax, so the dealer violated the provision of u/s 75 A of the TVAT Act, 2004. The dealer is here by asked to show cause as to why penal action should not be taken against you as per u/s 75 A of the TVAT Act, 2004, on request of Md. Majumder separated notice is not issued. Md. Majumder fails to adduce any satisfactory reply. As the dealer already sold the goods so closing stock as on 30-06-2017 is Nil. As the dealer did not deposit the tax so penalty @ 10% u/s 75A of the TVAT Act, 2004 imposed on the dealer. Also imposed interest @ 1.5% per month on balance amount and thus completed the cases as under:

A/Y	2014-15	2015-16	2016-17	2017-18(up to 30 th June, 2017)
TOR	38781382	32993312	17103448	45190069
TOD	38781382	32993312	17103448	118890541 (Cement 118699406 + Stone 191135)
Tax payable	5623300	4784030	2480000	17239128
Tax Paid (-)	5623300	4784030	2480000	6552560
Balance Due	NIL	NIL	NIL	10686568
Add. Penalty u/s 75A @ 10%	NIL	NIL	NIL	1068657
Interest @ 1.5% per month	NIL	NIL	NIL	3847164
Add. Penalty u/s 25(4)(d) of the TVAT Act, 2004	NIL	200	800	9700
Total sum payable	NIL	200	800	15612089

[7] The order of the Revisional Authority for the assessment years 2014-15, 2015-16, 2016-17 have been set aside for the reasons indicated hereinabove. In respect of the assessment for the year 2017-18 up to 30th June, 2017, learned counsel for the petitioner has taken a specific plea that the Assessing Authority has on the one hand not rejected the return filed by

the petitioner in the prescribed form under Schedule-VIII as per Rule 18(1) of the TVAT Rules for the month of April, May and June, 2017 which is to the tune of Rs.4,51,90,069/- but it has proceeded to determine the turnover as Rs.11,88,90541/- which includes sale of cement and stone. If the Assessing Authority has not rejected the return filed for the relevant months of the assessment year 2017-18, this determination of turnover could have been only on the basis of best judgment assessment. However, no such exercise is reflected from the assessment order passed by the respondent No.4. Petitioner has, therefore, raised this ground before the Revisional Authority as well at paragraph (F) and (G) of the present revision petition. The Revisional Authority has completely failed to take note of the plea raised by the petitioner that the determination of enhanced turnover by the Assessing Authority without rejecting the returns for the relevant year 2017-18 is without any materials and, therefore, unsustainable in law. As a result of enhancement of the turnover to Rs.11,88,90541/- the total tax liability payable by the petitioner has risen to Rs.1,72,39,128/- compared to the tax of Rs.65,52,560/- as per the return filed by the petitioner.

[8] It is further submitted that learned Assessing Authority had proceeded to impose penalty under Section 75A and also under Section 25(4)(d) of the TVAT Act, 2004 for delay in filing returns for the month of May and June, 2017 which was also unsustainable in law as no notice to that effect was issued. The learned Revisional Authority has while remanding the matter only on the question of penalty on the ground of non-service of notice under Section 25(4)(d) and under Section 75A of the TVAT Act, 2004 completely failed to take note that determination of turnover by the

Assessing Authority without rejection of the return of the petitioner is unsustainable in law and on facts. Petitioner has in the present revision petition taken such a plea in ground No.(J). He has also raised the question of law as required under Section 72 of the TVAT Act at paragraph 22, sub-paragraph (c) and (d). Learned counsel for the petitioner, therefore, submits that the order of Revisional Authority warrants interference to the extent that the matter be remanded not only on the question of imposition of penalty after issuance of notice upon the petitioner but also for opening of the assessment made by the common assessment order dated 29th July, 2019 otherwise it would lead to miscarriage of justice. Section 25(4)(d) & Section 75A are extracted hereunder:

"25. Return defaults:-

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(4)(d) having paid the tax payable according to a return in time, fails to furnish along with the return proof of payment made in accordance with sub-section (4) of section 24 ; the Commissioner may, after giving the dealer reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty under sub-section (3) payable or paid by him, a penalty of a sum of rupees one hundred per day of default subject to a maximum of rupees ten thousand.

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75A. Notwithstanding anything contained elsewhere in the Act, if the Commissioner, in course of any proceeding under this Act is satisfied that any dealer has evaded in any way the liability to pay tax, he may direct that such dealer shall pay by way of penalty in addition to the tax payable by him, a sum not exceeding one & half time of that amount but which shall not be less than ten percent of that amount. Provided that no order under this section shall be made unless the dealer has been heard or has been given a reasonable opportunity of being heard."

[9] Mr. K. De, learned counsel for the revenue has relied upon the contents of the counter affidavit and supported the impugned order. He, however, has at the outset also averred that reopening of assessment without issuance of notice under Section 31(1) of the TVAT Act for the assessment year 2014-15 beyond the period of five years would not be tenable in law.

[10] So far as the assessment years concerning the tax period 2015-16 and 2016-17 are concerned since both the parties submit that the total tax liability has been deposited including the penalty component. In such circumstances, the impugned revisional order remanding the matter for imposition of penalty after fresh service of notice upon the petitioner for these two years would be meaningless and have been accordingly interfered with in the forgoing part of this order. So far as the tax period 2017-18 concerning the months of April to June, 2017 is concerned, learned counsel for the revenue has not been able to show that the returns for these three months submitted by the petitioner have been rejected. On the other hand, the assessment order dated 29th July, 2019 does not reflect any exercise for determining a turnover of Rs.11,88,90541/- on the basis of best judgment assessment as there is no exercise to that effect undertaken by the Assessing Authority nor are there any materials reflected in the assessment order. In this regard, reliance is placed on the decision of the Apex Court in the case of *The Commissioner of Sales Tax, Madhya Pradesh vrs. M/S. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore* reported in (1973) 2 SCC 137; paragraphs-7 to 9 are extracted hereunder as they provide the principle for any such exercise in cases where the returns filed by the assessee are rejected or no returns have been filed by the assessee:

"7. Before proceeding to examine the contentions advanced on behalf of the parties, it is necessary to clarify certain aspects. It may be noted that the first assessments were made by the Sales Tax Officer primarily on the basis of the returns submitted by the assessee. In the proceedings relating to those assessments, the Sales Tax Officer relied on the books of account of the assessee. While making re-assessments on the basis of the information gathered from the bill book seized, the Sales Tax Officer rejected the accounts maintained by the assessee as unreliable and assessed the assessee on the basis of his "best-judgment". The distinction between a "best-judgment" assessment and assessment based on the accounts submitted by an assessee must be borne in mind. Sometime there may be innocent or

trivial mistakes in the accounts maintained by the assessee. There may be even certain unintended or unimportant omissions in those accounts; but yet the accounts may be accepted as genuine and substantially correct. In such cases, the assessments are made on the basis of the accounts maintained even though the assessing officer may add back to the accounts price of items that might have been omitted to be included in the accounts. In such a case, the assessment made is not a “best-judgment” assessment. It is primarily made on the basis of the accounts maintained by the assessee. But when the assessing officer comes to the conclusion that no reliance can be placed on the accounts maintained by the assessee, he proceeds to assess the assessee on the basis of his “best-judgment”. In doing so, he may take such assistance as the assessee's accounts may afford, he may also rely on other information gathered by him as well as on the surrounding circumstances of the case. The assessments made on the basis of assessee's accounts and those made on “best-judgment” basis are totally different types of assessments.

8. Now coming to the facts of this case, it is necessary to remember that at the initial stage, the assessee denied that the bill book seized was his bill book and the entries therein related to his dealings. He asserted that he had nothing to do with the bill book in question and the entries therein do not relate to nil dealings. But at a later stage, he conceded that that bill book was his and the entries therein related to his dealings. It is now proved as well as admitted that his dealings outside his accounts during a period of 19 days were of the value of Rs 31,171.28. From this circumstance, it was open to the Sales Tax Officer to infer that the assessee had large scale dealings outside his accounts. The assessee has neither pleaded nor established any justifiable reason for not entering in his accounts the dealings noted in the bill book seized. It is obvious that he was maintaining false accounts to evade payment of sales tax. In such a situation, it was not possible for the Sales Tax Officer to find out precisely the turnover suppressed. He could only make an estimate of the suppressed turnover on the basis of the material before him. So long as the estimate made by him is not arbitrary and has nexus with facts discovered, the same cannot be questioned. In the very nature of things the estimate made may be an over-estimate or an underestimate. But that is no ground for interfering with his “best-judgment”. It is true that the basis adopted by the officer should be relevant to the estimate made. The High Court was wrong in assuming that the assessing authority must have material before it to prove the exact turnover suppressed. If that is true, there is no question of “best-judgment” assessment. The assessee cannot be permitted to take advantage of his own illegal acts. It was his duty to place all facts truthfully before the assessing authority. If he fails to do his duty, he cannot be allowed to call upon the assessing authority to prove conclusively what turnover, he had suppressed. That fact must be within his personal knowledge. Hence the burden of proving that fact is on him. No circumstance has been placed before the assessing authority to show that the assessee's dealings during September 1, 1950 to September 19, 1960, outside his accounts were due to some exceptional circumstance or that they were proportionately more than his dealings outside his accounts, during the remaining periods. The assessing authority could not have been in possession of any correct measure to find out the escaped turnover during the periods November 1, 1959 to August 31, 1960 and September 20, 1960 to October 20, 1960. The task of the assessing authority in finding out the escaped turnover was by no means easy. In estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the “best-judgment” assessment no doubt should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his “best-judgment” and not of any one else's. The High Court could not substitute its “best-judgment” for that of the assessing authority. In the case of “best-judgment” assessments, the courts will have

to first see whether the accounts maintained by the assessee were rightly rejected as unreliable. If they come to the conclusion that they were rightly rejected, the next question that arises for consideration is whether the basis adopted in estimating the turnover has a reasonable nexus with the estimate made. If the basis adopted is held to be a relevant basis even though the courts may think that it is not the most appropriate basis, the estimate made by the assessing authority cannot be disturbed. In the present case, there is no dispute that the assessee's accounts were rightly discarded. We do not agree with the High Court that it is the duty of the assessing authority to adduce proof in support of its estimate. The basis adopted, by the Sales Tax Officer was a relevant one whether it was the most appropriate or not. Hence the High Court was not justified in interfering with the same.

9. The law relating to “best-judgment” assessment is the same both in the case of Income Tax assessment as well as in the case of sales tax assessment. The scope of “best-judgment” assessment under the Income Tax law came up for consideration before the Judicial Committee as early as 1937 in Commissioner of Income Tax, Central and U.P. v. Laxminarain Badridas. [(1937) 5 ITR 170] Therein Lord Russell of Killowen speaking for the Judicial Committee observed (at p. 180):

“The Officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, Their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate, and though there must necessarily be guess-work in the matter, it must be honest guess-work. In that sense, too, the assessment must be to some extent arbitrary.”

[11] Having considered the submissions of learned counsel for the parties, we are therefore of the considered opinion that the petitioner has been able to make out sufficient grounds to interfere in the matter. The Revisional Authority has also failed to decide the question of law which was raised in the revision petition i.e. determination of a fresh turnover beyond the returns without rejection of the returns of the petitioner for the above periods April to June, 2017 or reflecting any exercise as to whether the turnover was increased relying on the same materials produced by the Assessee along with his returns. The assessment order dated 29th July, 2019 does not reflect any exercise undertaken or any material relied upon to undertake the best judgment assessment for the financial year 2017-18. The

matter therefore, requires to be remanded for a fresh assessment for the relevant year 2017-18 including on the question of penalty. Petitioner has not been able to dispute that notices for assessment proceedings for the relevant year 2017-18 were issued on 13.02.2019 which was well within the period of five years prescribed for assessment under Section 33 of the TVAT Act. In conclusion, the common impugned revisional order dated 15th October, 2022 is set aside so far as it relates to tax periods 2014-15, 2015-16 and 2016-17 whereas the same stands interfered to the extent that the matter is remanded to the Assessing Authority for carrying out a fresh assessment proceeding for the year 2017-18, tax periods April to June, 2017 in accordance with law.

[12] CRP No.45 of 2013, CRP No.46 of 2013 and CRP No.47 of 2023 are accordingly allowed by setting aside the common impugned revisional order dated 15th October, 2022 for the reasons indicated hereinabove. CRP No.44 of 2023 is also allowed in the manner and to the extent indicated above. The records of assessment proceedings as certified to be true produced by the learned counsel for the revenue be kept on record.

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

(BISWAJIT PALIT), J

(APARESH KUMAR SINGH), CJ