

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
WP(C) No.710 of 2024

M/S. Sanrak Rubber, represented by its proprietor Sri Santanu Pal, North Badharghat, Agartala, P.S. East Agartala, District- West Tripura.

..... *Petitioner(s)*

V E R S U S

1. The State of Tripura, represented by the Secretary to the Government of Tripura, Department of Revenue, New Secretariat Complex, P.O. & P.S. NCC, Agartala, District-West Tripura.

2. The Commissioner, Sales Tax, “Kar Bhavan”, Gurkhabasti, P.N. Complex, P.O. Kunjaban, P.S. NCC, Agartala, District-West Tripura, 799006.

3. The Superintendent of Taxes, Charge-IV, Agartala, Palace Compound, P.O. Agartala, P.S. East Agartala, District West Tripura, 799001.

4. The Assistant Commissioner of Sales Tax, “Kar Bhavan”, Gurkhabasti, P.N. Complex, P.O. Kunjaban, P.S. NCC, Agartala, District-West Tripura, 799006.

..... *Respondent(s)*

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

For Respondent(s) : Mr. P. Gautam, Sr. G.A.,
Mr. Keneth Debbarma, Advocate.

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

Date of argument and delivery of Judgment & Order : 13th February, 2025.

Whether Fit for Reporting : YES

JUDGMENT & ORDER (ORAL)

Heard Mr. T.K. Deb, learned counsel appearing for the petitioner and also heard Mr. P. Gautam, learned senior Government Advocate appearing for the respondent-State.

[2] The instant writ petition sought to challenge the impugned notice dated 18th October, 2024 issued under Section 36(1) of the Tripura Value Added Tax Act, 2004 (*TVAT Act, 2004, for short*) on the ground that such reopening of assessment beyond a period of three years from the date of the judgment or order is impermissible. The notice for reassessment dated 18th October, 2024 is in respect of financial years 2009-10 and 2010-11

whose assessments were completed on 12th December, 2014. Petitioner contended that pursuant to the Appellate Order dated 28th August, 2015 (Annexure-3) reassessment was done vide order dated 17th March, 2016 finding excess amount paid by the petitioner-assessee. The present proceedings seek to reopen a concluded assessment much beyond the period of three years.

[3] Taking note of the submission of learned counsel for the petitioner vide order dated 28th November, 2024, this Court allowed time to learned counsel for the State Mr. P. Gautam to seek instructions. This Court also persuaded by the legal plea raised by the petitioner of bar of reopening assessment on grounds of limitation, stayed further proceedings pursuant to the impugned show-cause notice dated 18th October, 2024 (Annexure-5) in the meantime. What has come on record by way of counter-affidavit of the respondents No.2 and 3 are quite stark and staring on the face of the pleadings of the writ petition since the writ petitioner has completely suppressed the factum of revisional proceedings initiated by the Commissioner of Taxes under Section 70(1) of the TVAT Act in which the petitioner also appeared and participated. Vide order dated 27th October, 2022, the Revisional Authority disposed of the revision Case No.06/CH-VI/2019 directing the Superintendent of Taxes to reassess the dealer afresh.

[4] The respondents have made categorical statements in reply to the averments made in the writ petition that the order of assessment was passed by the Superintendent of Taxes for the period 2009-2010 to 2013-14 on 12th December, 2014. On 12th December, 2014, the Superintendent of Taxes also passed an order of assessment in respect of the Central Sales Tax

amount. Petitioner challenged the order of assessment before the Appellate Authority under Section 69 of the TVAT Act, 2004 and also the order passed under the Central Sales Tax Act. The Appellate Authority set aside the assessment order dated 12th December, 2014 vide its order dated 28th August, 2015 both under TVAT Act as well as CST Act and remanded the matter to the concerned charge for passing a speaking order. Pursuant to such direction, the Superintendent of Taxes passed a fresh order dated 5th December, 2015. On 24th September, 2019 the statutory Revisional Authority took *suo-moto* cognizance under Section 70(1) of the TVAT Act and the dealer was served notice regarding the revision case bearing Case No.06/CH-VI/2019. The Revisional Authority took *suo-moto* cognizance of the matter on the basis of audit observation by which it was stated that the dealer in his trading account for the year 2009-10 disclosed his purchase turnover of 4% taxable goods as Rs.61,03,899/- and the Assessing Authority accepted it completely. The audit party has also raised other issues in audit inspection report on the basis of which the *suo-moto* revisional proceedings were initiated. The dealer appeared before the revisional authority in the said revision case and submitted appearance slip and adjournment petition.

[5] On 27th October, 2022, the Revisional Authority passed its final order by disposing the revision case with a direction to the Superintendent of Taxes to reassess the dealer afresh. Accordingly, notice under Section 36 of the TVAT Act was issued by the Superintendent of Taxes, Charge-VI on 18th July, 2023, 30th November, 2023, 28th December, 2023, 16th August, 2024 and the last notice is of 18th October, 2024 which has been challenged by the dealer-petitioner. It is further stated that the notice was not issued

suddenly. Rather it was issued in accordance with the directions of the Revisional Authority as per the order passed in the revision case. The dealer i.e. the writ petitioner had also appeared before the Revisional Authority on few occasions. The notice dated 18th October, 2024 itself reflects that the same was issued as per the order of the Revisional Authority. Copy of the appearance slip and the copy of order dated 27th October, 2022 are annexed to the counter affidavit.

[6] Mr. P. Gautam, learned counsel for the State submits that second reassessment proceedings based on audit report is not illegal. The dealer-writ petitioner was afforded opportunities for hearing by the revisional court. Therefore, the contention of the petitioner is not valid. Moreover, the order dated 27th October, 2022 is not under challenge. Learned counsel for the State vehemently submits that the writ petitioner has completely failed to mention about the *suo-moto* revisional proceedings in which the dealer-petitioner himself participated and the order dated 27th October, 2022 directing the Superintendent of Taxes to undertake reassessment. This amounts to a clear case of suppression of facts. The jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked by a person who does not come with clean hands.

[7] We have considered the submissions of learned counsel for the parties. It is apparent from the narration of facts recorded in the foregoing paragraphs that the writ petitioner approached this Court without making any mention or reference of the *suo-moto* revisional proceedings by raising a plea of time bar under Section 36(1) of the TVAT Act, 2004 for reopening of assessment vide notice dated 18th October, 2024. This Court being

persuaded by the legal plea also passed an interim order staying further proceedings pursuant to the impugned show-cause notice. The petitioner did not even care to challenge the order of the revisional authority dated 27th October, 2022 though it was specifically mentioned in the impugned notice dated 18th October, 2024. Therefore, petitioner has not come with clean hands before this Court. The writ petition is, therefore, fit to be dismissed only on the basis of the principles *suppressio veri; suggestio falsi*. The proceedings under writ jurisdiction of such nature cannot be entertained at the behest of a party who has indulged in suppression of fact.

[8] Reliance is placed on the opinion of the Apex Court in ***K Jayaram and Others Vs. Bangalore Development Authority and Ors.***, reported in (2022) 12 SCC 815, paragraphs 10, 11, 13 & 14 which are quoted hereunder. The Hon'ble Supreme Court has categorically held that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything while invoking the extraordinary, equitable and discretionary remedy of the High Court under Article 226 of the Constitution.

“10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

11. This Court in *Prestige Lights Ltd. v. SBI* [*Prestige Lights Ltd. v. SBI*, (2007) 8 SCC 449] has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus : (SCC p. 461, para 33)

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High

Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

13. In *K.D. Sharma v. SAIL* [*K.D. Sharma v. SAIL*, (2008) 12 SCC 481], it was held thus : (SCC pp. 492-93, paras 34-39)

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commissioners* [*R. v. Kensington Income Tax Commissioners*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)] in the following words : (KB p. 514)

‘... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.’

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, ‘We will not listen to your application because of what you have done.’ The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commissioners* [*R. v. Kensington Income Tax Commissioners*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)], Viscount Reading, C.J. observed : (KB pp. 495-96)

‘... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be

heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.’

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

39. If the primary object as highlighted in Kensington Income Tax Commissioners [R. v. Kensington Income Tax Commissioners, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)] is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”

(emphasis in original)

14. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations were or are pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.”

[9] The writ petition is accordingly dismissed. Interim order dated 28.11.2024 stands vacated.

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

(BISWAJIT PALIT), J

(APARESH KUMAR SINGH), CJ

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