THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Writ Appeal Nos.3, 4 and 5 of 2010

A) *Writ Appeal No.3 of 2010*.

M.s. Freight Carriers, a partnership firm, being duly constituted by the partners, namely :-

1. **Sri Sushil Kr. Khaitan,**
   S/o. of Late Ratan Lal Khaitan.
2. **Sri Bimal Kumar Bajaj,**
   S/o. of Late Moliram Bajaj,
3. **Sri Sajjan Kumar Bajaj,**
   S/o. Late Moliram Bajaj,

having its registered office at 47A,
Zakaria Street, Kolkata – 73,
Represented by its Manager & duly constituted attorney,
Sri Sanjib Roy, son of Late Saroj Roy, Son of Late Saroj Roy,
resident of Colonel Chowmuhani, P.S. – West Agartala,
Agartala, District – West Tripura.

………………… *Appellants.*

– Vs –

1. **The State of Tripura,**
   represented by the Secretary to the Government of Tripura, Finance Department, Agartala, West Tripura.
2. **The Commissioner of Taxes,**
   Government of Tripura, Agartala, West Tripura.
3. **The Superintendent of Taxes,**
   Kailashahar, North Tripura.

……..………… *Respondents.*

B) *Writ Appeal No.4 of 2010*.

M.s. Freight Carriers, a partnership firm, being duly constituted by the partners, namely :-

1. **Sri Sushil Kr. Khaitan,**
   S/o. of Late Ratan Lal Khaitan.
2. **Sri Bimal Kumar Bajaj,**
   S/o. of Late Moliram Bajaj,

3. **Sri Sajjan Kumar Bajaj,**
S/o. Late Moliram Bajaj,
having its registered office at 47A,
Zakaria Street, Kolkata – 73,

Represented by its Manager & duly constituted attorney, Sri Sanjib Roy, son of Late Saroj Roy, Son of Late Saroj Roy, resident of Colonel Chowmuhani, P.S. – West Agartala, Agartala, District – West Tripura.

………………… *Appellants.*

– Vs –

1. **The State of Tripura,**
represented by the Secretary to the Government of Tripura, Finance Department, Agartala, West Tripura.
2. **The Commissioner of Taxes,**
Government of Tripura, Agartala, West Tripura.
3. **The Superintendent of Taxes,**
Kailashahar, North Tripura.

……..………… *Respondents.*

4. Writ Appeal No.5 of 2010.

M.s. Freight Carriers, a partnership firm, being duly constituted by the partners, namely :-

1. **Sri Sushil Kr. Khaitan,**
S/o. of Late Ratan Lal Khaitan.
2. **Sri Bimal Kumar Bajaj,**
S/o. of Late Moliram Bajaj,
3. **Sri Sajjan Kumar Bajaj,**
S/o. Late Moliram Bajaj,
having its registered office at 47A,
Zakaria Street, Kolkata – 73,

Represented by its Manager & duly constituted attorney, Sri Sanjib Roy, son of Late Saroj Roy, Son of Late Saroj Roy, resident of Colonel Chowmuhani, P.S. – West Agartala, Agartala, District – West Tripura.

………………… *Appellants.*

– Vs –

1. **The State of Tripura,**
   represented by the Secretary to the Government of Tripura, Finance Department, Agartala, West Tripura.
2. **The Commissioner of Taxes,**
   Government of Tripura, Agartala, West Tripura.
3. **The Superintendent of Taxes,**
   Kailashahar, North Tripura.

…..………….. *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S C DAS

For the appellants	:	Mr. B N Majumder Advocate.
For the respondents	:	Mr. S Chakraborty, Addl.G.A.
Date of hearing & judgment	:	11.02.2015.
Whether fit for reporting	:	No.

JUDGMENT & ORDER (ORAL)

(*Deepak Gupta, CJ*)

These three writ appeals are being disposed of by a common judgment since the basic ground on which we propose to dispose of the three appeals is identical.

2. Writ Appeal No.3 of 2010 arises out of WP(C) No.170 of 2005, Writ Appeal No.4 of 2010 arises out of WP(C) No.159 of 2005 and Writ Appeal No.3 of 2010 arises out of WP(C) No.134 of 2005. WP(C) No.170 of 2005 was filed on 27.4.2005 and basic challenge was to the assessment order passed on 22.10.1998. WP(C) No.134 of 2005 was filed on 31.3.2005 and in this case the assessment order which was the subject matter of challenge was passed on 13.8.1998. WP(C) No.159 of

2005 was filed on 20.4.2005 and in this case challenge was led to the order 23.10.1998. Therefore, the orders of October, 1998 were challenged in the year 2005, seven years after they had been passed.

3. It is not disputed that these orders were passed in presence of the representatives of the assessees and they were aware about the orders. The only ground raised is that since the demand notice pursuant to the said orders was issued in 2005, therefore, the writ petitions filed in the year 2005 are maintainable.

4. We are wholly in disagreement with this submission. The cause of action is not the demand notice but the order of assessment whereby it was held that the petitioner assessee is liable to pay some taxes to the State. The Tripura Sales Tax Act provided for a regular hierarchy whereby appeal, revision etc. could be filed. Like in any other taxing statute the Tripura Sales Tax Act also contained a provision that at the time of filing of the appeal some portion of the assessed amount should be deposited. The assessee cannot bypass the provisions of the appeal and revision and the limitation prescribed under the Tripura Sales Tax Act.

5. It appears that in some other case a revision was filed and the Revenue took a different view on the matter and held that transactions of the nature which are similar to the present petition are not exigible to tax. If a party wants to challenge a decision which has gone against it that party must initiate proceedings against the order and to carry the matter forward by filing appeal, revision, writ petition etc. A finding given in some other revision that too four or five years later cannot be used by the assessee to hold that his order of assessment is bad if he has not challenged the order of assessment within time.

6. In the present case, the writ petitions were filed in the year 2005. The learned single Judge rejected the writ petitions on merits. We are not going into the merits of the case because we are clearly of the view that the petitioner has not approached the Court within a reasonable period. No doubt, in writ petitions no limitation is prescribed but no person can sleep over his rights and come to the Court as and when he feels right. The Apex Court has repeatedly held that where limitation is prescribed in the statute governing the lis in question then normally that limitation should also be taken to be the reasonable time for filing a writ petition. Even if we take a very liberal view of the matter, no writ petition in respect of a money matter would normally be entertained after three years. In the present case, the assessments were made in the year 1998 in presence of the petitioner assessee. He kept quiet and sat over his rights till 2005 and therefore, the petitions were wholly barred by applying the principle of delay and laches.

7. At this stage it would be pertinent to mention that the learned counsel for the petitioner has relied upon a judgment of the Apex Court ***in Salonah Tea Co. Ltd. and Ors. Vs. Superintendent of Taxes, Nowgong and Ors.,(1998) 1 SCC 401.*** At the outset we may state that the facts of that case were totally different. In that case an order in favour of the assessee had been passed holding him entitled to refund of tax. The Apex Court held that in such situation if the writ petition is filed within 3 years for claiming the tax that would be reasonable time. Furthermore, the proceedings before the Supreme Court arose out of proceedings which were initiated prior to the 42nd amendment to the Constitution and at that time, right to property was a '*fundamental right*' and the Apex Court treated the claim for recovery of the amount ordered to be refunded to be a '*fundamental right*' and therefore, proceeded under Article 32 of the Constitution.

8. Right to property is no longer a *fundamental right* though it may be a *Constitutional right*. In any event, here there is no right to property involved because the question is whether the assessment order is right or wrong. When a limitation is prescribed for challenging the assessment order, the said order must be challenged within that period or some reasonable explanation must be given as to why the order could not be challenged within time. In the present case no explanation worth the name is given except for stating that since the demand notice was issued in the year 2005 the petition is maintainable.

9. If we are to accept the contention of the appellants it would lead to an absurd situation. If a decree is passed in a money suit and the period for execution is 12 years, can it be said that the judgment debtor can wait for 12 years for filing an appeal and till he gets notice in the execution proceedings, he has a right to file the appeal? The obvious answer is 'no'.

10. We, therefore, find no merit in the writ appeals which are accordingly dismissed.

JUDGE **CHIEF JUSTICE**