THE HIGH COURT OF TRIPURA
A G A R T A L A

WP(C) 294 OF 2012

Sri Subhash Chandra Dutta,
S/O. Late Manindra Chandra Dutta,
Resident of village-Ramnagar, Road No.4,
P.O. & P.S.-Ramnagar,
Sub-Division-Sadar,
District- West Tripura.

...... **Petitioner**.

– V e r s u s –

1. The State of Tripura,
represented by the Secretary to the
Government of Tripura,
Finance Department, having his office at
Capital Complex, Gurkhabasti,
PO-Kunjaban, PS-East Agartala,
Sub-Division-Agartala,
District-West Tripura.

2. The Commissioner of Taxes,
Government of Tripura, having his office at
Kar Bhawan, P.S. West Agartala,
Sub-Division-Agartala,
District-West Tripura.

3. Rose Valley Real Estates and Constructions,
Represented by its Chairman having his office at
RB/29 Raghunathpur, VIP Road, Kolkata,
P.O. & P.S.-Lake Town,
Sub-Division-Kolkata,
District-Kolkata, Pin-700059.

4. The Deputy Commissioner,
Central Excise and Service Tax Division,
Having his office at Kiran Medical Hall
Building, 2nd Floor, Old RMS Chowmuhani,
PO-Agartala, P.S. West Agartala,
Sub-Division-Agartala,
District-West Tripura.

5. The Superintendent,
Service Tax Range, having his office at
Joynagar, Middle Road,
P.O.-Agartala, P.S.-West Agartala,
Sub-Division-Agartala,
District-West Tripura.

..... **Respondents**.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. Somik Deb, Advocate.
For the respondent No.3	: Mr. B.N. Majumder, Advocate.
For the respondents 4 & 5	: Mr. P. Dutta, Advocate.
Date of hearing and delivery of judgment and order.	: 30.03.2015.
Whether fit for reporting	: **NO**.

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

The present petition has been filed against the notice dated 05-11-2009 which reads as follows:-

"OFFICE OF THE DEPUTY COMMISSIONER
CENTRAL EXCISE AND SERVICE TAX DIVISION
JOY NAGAR MIDDLE ROAD, AGARTALA-799001
Phone:-2324101, 2304099 FAX:-2329291

C.NO.V(30)5/ST/RV/REA/AGT(R)/2009/ Dated:-

To
Shri Subhas Chandra Dutta,
Ramnagar Road No-4, Cross Road No-2,
(Opposite Bani Vidyapith School)
P/O:Ramnagar,
Agartala, Tripura West.

Dear Sir,

Sub:- Payment of Service Tax on Commercial or Industrial Construction Service

It is on record that you have provided taxable service in the category of Commercial or Industrial Construction Service under sub-clause (zzd) of Section 65(105) Chapter the Finance Act'1994(as amended) to Rose Valley Real Estate & Construction Ltd. 3 M.B. Road, Near Old RMS Chowmuhani, Agartala in connection with execution of civil works for Water Park and

Erection Commissioning of Rides, in the Rose Valley Park at Madhuban, Amtali, Tripura West District and received an amount of Rs.3,16,56,365/- (Rupees three crores sixteen lakhs fifty-six thousand three hundred and sixty-five) only from Rose Valley Real Estate & Construction Ltd. being cost of execution of such commercial or industrial construction service and Erection Commissioning & Installation Service which is taxable as per Section 68 read with Section 66 of the Chapter V of the Finance Act'1994.

On scrutiny of this office records it appears that you have neither obtained Service Tax Registration nor paid Service Tax for the above Commercial Construction which is a gross violation of the provisions of Finance Act'1994 as well as Service Tax Rule'1994.

You are therefore requested to deposit Service Tax amounting Rs.12,53,592/- (twelve lakhs fifty-three thousand five hundred and ninety-two) only Education Cess Rs.25,072/- (twenty-five thousand and seventy-two) only and Secondary and Higher Education Cess Rs.12,536/- (twelve thousand five hundred thirty-six) only along with accrued interest @ 13% per annum on the above amount w.e. from the date of actual receipt of the value of above taxable service from the service receiver, on or before 15th November'2009 positively and inform this office the deposit particulars within seven days of receipt of this letter. You are also requested to apply immediately for Service Tax Registration in Form ST-1, as per the provision of Chapter V of the Finance Act'1994 read with Service Tax Rule'1994.

For further please contact the undersigned or visit please visit our departmental website www.cbec.gov.in.

Thanking you.

Yours faithfully,
Sd/-(SISHIR DEY)
05.11.2009.
Superintendent
Service Tax Range
Agartala."

2. The Contention of the petitioner is that sub-clause (zzq) and (zzd) of clause (105) of Section 65 of the Finance Act have not been enforced till date and, therefore, the Superintendent, Service Tax Range has no jurisdiction or authority to issue the said notice.

3. At the same time, Sri Somik Deb, learned counsel for the petitioner has placed reliance on a notification dated 22-05-2007 exempting commercial or industrial construction service referred to in this very same sub-clause (zzq) in relation to certain contracts.

4. We are clearly of the view that first the petitioner must approach the Assessing Authority and get the dispute decided by the Assessing Authority. There is no inherent lack of jurisdiction. Whether service tax is payable or not has to be decided by the Assessing Authority. Such Assessing Authority can also decide whether the charging provision has, in fact, been enforced or not. The Assessing Authority can also decide whether any exemption has been made and the petitioner is exempted from payment of tax. The Assessing Authority like any other judicial or quasi-judicial authority also has the right to decide on its own jurisdiction.

5. Therefore, we dispose of the petition without going into the merits of the case with a direction that the petitioner should file reply to the notice dated 05-11-2009 within three weeks from today and on such reply being filed the Assessing Authority shall

decide the dispute after hearing the petitioner as early as possible and in any event, not later than three months after the reply is filed.

JUDGE **CHIEF JUSTICE**