THE HIGH COURT OF TRIPURA
<u>A G A R T A L A</u>

<u>WP(C) 361 OF 2008</u>

M/s. Loknath Stores, having its office at
Harish Thakur Road, Krishnanagar,
Agartala, West Tripura,
Represented by its proprietor,
Sri Ashok Saha,
S/O. Sri Krishna Saha,
C/O. I.B. Som, resident of
Village-Joynagar, North Bank Pond,
P.S.-West Agartala, Agartala,
District- West Tripura.

...... <u>Petitioner</u>.

– V e r s u s –

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,
Charge-VII,
Agartala, West Tripura.

..... <u>Respondents</u>.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U.B. SAHA

For the petitioner	: Mr. A. Pal, Advocate.
For the respondents	: Mr. S. Chakraborti, Addl. G.A.
Date of hearing and delivery of judgment and order.	: 29.01.2015.
Whether fit for reporting	: **NO**.

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

The short question which arises in this petition is whether the authorities under the Tripura Sales Tax Act, 1976 (hereinafter referred to as the Sales Tax Act) had the jurisdiction to pass the impugned order or whether only the authorities under the Tripura Value Added Tax Act, 2004 (TVAT Act) had the jurisdiction to decide such an issue.

2. In view of the decision which we propose to take, we are not going into the merits of the case. Suffice to state that on 04-07-2007 the Superintendent of Taxes (the Assessing Officer) issued notice under sections 9(2)/9(4) of the Tripura Sales Tax Act to the assessee informing the assessee that the Assessing Officer had found that the returns furnished by the assessee for the quarter ending 2003-04 and 2004-05 were not correct and complete. Therefore, show-cause notice was issued to the assessee why tax may not be assessed again and why penalty may not be imposed upon him. Another notice was issued to the assessee on 29-08-2008.

3. Mr. A. Pal, learned counsel for the assessee, submits that in view of the provisions of Section 89 of the TVAT Act, the authorities under the Sales Tax Act have no jurisdiction to issue notice after 27-04-2005.

4. The Tripura Value Added Tax Act, 2004 was passed by the Tripura State legislature enforced with effect from 27th April, 2005 as per notification of the said date issued in the Tripura Gazette. The Tripura Value Added Tax repeals the provisions of the Tripura Sales Tax Act, 1976 and the Tripura Additional Sales Tax Act, 1990. We are concerned with Section 89 of the Act which reads as follows:

*"**89. Repeal and Savings** :-*

(1) The Tripura Sales Tax Act, 1976 (Act. No. ll of 1976), and the Tripura Additional Sales Tax Act 1990 (Act 6 of 1990) (hereinafter referred as the repealed Acts) as in force in the State of Tripura are hereby repealed from the date of commencement of this Act.

Provided that such repeal shall not affect the previous operation of the said Acts or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject there to, anything done or any action taken including any appointment, notification, notice, order, rule, form, regulation, certificate, license or permit in exercise of any power conferred by or under the said Acts, shall be valid and always be deemed to have been valid, during the period that Act was in force notwithstanding the repeal of the Act.

(1) A. The Tripura purchase Tax Act 1990 (Act no.9 of 1990) (here in after referred as repealed Act) as in force in the State of Tripura is hereby repealed.

Provided that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject there to, anything done or any action taken including any appointment, notification, notice, order, rule form, regulation, certificate, license or permit in exercise of any power *conferred by or under the said Act, shall be valid and always be deemed to have been valid, during the period that Act was in force notwithstanding the repeal of the Act.*

(2) Notwithstanding the Repeal of the Acts. –

(a) any action or proceedings already initiated under these Acts shall validly be continued under the provisions of this Act which relates to the period prior to the coming into force of this Act.

(b) any person liable to pay any tax, fee, penalty, interest or other amount under that Act for any period before coming into force of this Act, shall be levied, assessed and collected under the provisions of this Act as if this Act were in force during the period.

(3) All arrears of tax, interest, penalty, fee or other amount due at the commencement of this Act, whether assessed or levied before such commencement or assessed or levied after such commencement, may be recovered as if such tax, penalty, interest, fee or other amount is assessed or levied under the provisions of this Act and all methods of recovery including levy of interest, penalty or prosecution provided under this Act, shall apply to such arrears as if such amounts are assessed, levied and demanded under this Act.

(4) Notwithstanding anything contained in sub-section (1), any application, appeal, revision or other proceedings made or preferred to any authority under the said Act, and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if it had been in force on the date on which such application, appeal, revision or other proceedings was made or preferred."

5. These provisions were considered by a Division Bench of this Court in ***Jagannath Trade v. State of Tripura & others, [(2014) 2 TLR 367]*** and these provisions were analysed by the Division Bench in the following manner:-

> *"[4] A bare perusal of Sub-Section (1) of Section 89 shows that the Tripura Sales Tax Act, 1976 and Tripura Additional Sales Tax Act, 1990 have been repealed with effect from 27th April, 2005, the date of commencement of the TVAT Act. The proviso to the section, however, clearly lays down that despite the repeal of the aforesaid Acts, any right, title, obligations or liabilities acquired, accrued or incurred under the previous Acts shall continue to be valid notwithstanding the repeal of the Act.*
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> *[5] Sub-Section (2) of Section 89 can be divided into two parts. Clause (a) of Sub-Section (2) provides that if any action or proceeding has commenced and was initiated under the Tripura Sales Tax Act, 1976 and or the Tripura Additional Sales Tax Act, 1990 prior to 27th April, 2005 the same shall continue under the provisions of the old Act.*
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> *[6] The controversy arises in those cases where the obligations, liabilities, rights and title may have accrued or incurred under the repealed Acts but the action to enforce such obligation, liability, title or interest is initiated after the coming into force of the TVAT Act. In such a case Clause (b) will apply and the assessment has to be done under the provisions of the TVAT Act as if the Act were in force during this period.*
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> *[7] We are aware that Clause (b) uses the words levied, assessed and collected but we are of the considered view that the obligations or rights which are to be assessed and collected have to be assessed and levied in accordance with the repealed Acts because the new Act cannot be retrospective in operation in respect*

of liabilities. Therefore, though the liability may have to be assessed in accordance with Tripura Sales Tax Act, 1976, the same will have to be assessed as per the procedure proscribed under the TVAT Act and the Officers exercising powers under the TVAT Act will have the jurisdiction to make assessment under the Sales Tax Act also.

[8] Sub-Section (3) of Section 89 of the Act also makes it clear that all arrears of tax, interest, penalty, fee or other amount due as on 27th April, 2005 whether assessed or levied before the said date may be recovered, if such tax, penalty, interest, fee or other amount is levied under the new Act. The appellate and revisional authorities shall also be as per the TVAT Act. Therefore, the intention of the legislature is absolutely clear that though the recovery may be made as per the terms of the repealed Acts, the procedure for recovery and adjudication has to be that provided under the TVAT Act."

6. In the present case the notices were issued after the new Act had come into force. Therefore, it is only the Officers under the TVAT Act who had the jurisdiction to exercise the powers under Section 89(2)(b) of the Act and the order passed against the assessee is, therefore, without jurisdiction and it is accordingly set aside.

7. Since we have set aside the order only on the ground of jurisdiction, the State is given liability to start fresh assessment proceedings in accordance with law. We may make it clear that if such proceedings are initiated then the assessee shall have the liberty to raise all objections including the objection that such proceedings are barred by limitation.

8. The writ petition is allowed in the aforesaid terms. No order as to costs.

JUDGE **CHIEF JUSTICE**