THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 468 of 2005

M/S. North Eastern Electric Power Corporation Ltd.,
(NEEPCO LTD.), Agartala Gas Turbine Power Project,
Ramchandra Nagar, Agartala, West Tripura,
Represented by Shri Bashu Chattacherjee,
Deputy Manager, Finance, M/S, NEEPCO Ltd.

……..…. *Petitioner*

- Vs. –

1. The State of Tripura,
   Represented by the Secretary,
   Department of Finance,
   Government of Tripura, Agartala.

2. The Commissioner of Taxes,
   Government of Tripura, Agartala.

3. The Assistant Commissioner of Taxes,
   Government of Tripura, Agartala.

4. The Superintendent of Taxes,
   Charge-I, Government of Tripura, Agartala.

……..…. *Respondents*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

HON'BLE MR. JUSTICE S.C. DAS

For the Petitioner	:	Mr. S.M. Chakraborty, Sr. Advocate. Ms. P. Sen, Advocate.
For the respondents	:	Mr. S. Chakraborty, Addl. GA. Mr. D.C. Nath, Advocate.
Date of hearing & delivery of Judgment & order	:	21.01.2015.
Whether fit for reporting	:	No

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

By means of this petition, the petitioner has prayed for a Writ for quashing the order of assessment dated 31.08.1998, the Appellate order dated 20.07.2005 and the Revisional order dated 20.09.2005.

2. At the stage of hearing the orders were not challenged but the case set up by the petitioner is that it has paid the entire amount of tax due and payable under the impugned orders. In this behalf, we may point out that on 09.04.2014, we had passed an order wherein it was stated that even if the Appellate order is correct, the tax amount has already been paid to the authorities. We had therefore directed the Commissioner of Taxes to file his reply affidavit. This reply affidavit has been filed and thereafter, certain clarification was sought and now the stand of the State is that the petitioner has deposited Rs.15,01,686/- as money towards the assessment while filing the appeal. It is also stated that the petitioner has deposited sum of Rs.11,75,804/- towards TDS deducted from the various contract. The dispute between the parties is whether the petitioner can be given credit for the deposit of this amount of TDS or not.

3. We are clearly of the view that if TDS is deducted from the bill of the contractor then that deposit of TDS is for the benefit

of the contractor and it is only the contractor who in his returns can take benefit of the same. The deducting authority cannot take benefit of such deposit unless it is shown that this was not TDS deductable under the Act, but was something paid by the assessee on its own. There is also some dispute with regard to an amount of Rs.1,26,868/- which the petitioner claim to have paid, but according to the Revenue, there is no proof of such deposit.

4. At the time of hearing, the petitioner has not actually challenged the correctness of the impugned orders. Therefore, we dismiss this writ petition with liberty reserved to the petitioner to approach the assessing authority within 45(forty five) days from today with complete documents supporting its case that it has paid the amount due under the impugned orders. We make it clear that it is for the petitioner to produce all the documents and no further time shall be granted to the petitioners. The assessing officer shall after giving hearing to the petitioner decide this question and dispose of the matter latest within one month of the representation made by the petitioner. In case the petitioner makes no representation, then the Revenue shall be at liberty to recover of the balance amount due and payable to it.

JUDGE **CHIEF JUSTICE**

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