THE HIGH COURT OF TRIPURA
AGARTALA

Rev. Pet. No.19 of 2014

1. The State of Tripura, represented by the Commissioner cum Secretary, Department of Forest, Government of Tripura, Agartala, P.O. Kunjaban P.S. Kunjaban, District – West Tripura
2. The Principal Chief Conservator of Forest, Department of Forest, Government of Tripura, Aranya Bhavan, Pandit Nehru Complex, Gorkhabasti, Agartala, P.O. Kunjaban, P.S. Kunjaban, District – West Tripura
3. The Joint Secretary of Forest, Government of Tripura, Aranya Bhavan, Pandit Nehru Complex, Gorkhabasti, Agartala, P.O. Kunjaban, P.S. Kunjaban, District – West Tripura
4. The Chief Conservator of Forest, Government of Tripura, Aranya Bhavan, Pandit Nehru Complex, Gorkhabasti, Agartala, P.O. Kunjaban, P.S. Kunjaban, District – West Tripura
5. The Divisional Forest Officer, Kanchanpur Division P.O. Kanchanpur, P.S. Kanchanpur, District – North Tripura
6. The Forest Beat Officer, Satnala, Kanchanpur, P.O. Kanchanpur, P.S. Kanchanpur, District – North Tripura

...........Review Petitioners.

– Vs –

Sri Daharam Reang,
son of Shri Bikramjoy Reang,
Resident of Village – Satnala,
P.S. Kanchanpur
District – North Tripura

...........Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the Review petitioners	**:** Mr. S. Deb, Sr. Advocate. Mr. S. Datta, Advocate
For the respondent	**:** None
Date of hearing and delivery of judgment of order	**: 20.01.2015**
Whether fit for reporting	**: NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Deb, learned senior counsel assisted by Mr. Sougata Datta, learned counsel appearing for the review petitioners – the State of Tripura and 5 others. Despite due notice from this Court, none appears for the writ petitioner-respondent.

02. Mr. Deb, learned senior counsel has submitted that for unavoidable circumstances learned Government Advocate who was appearing for the review petitioners could not place the communication dated 25.03.1989 issued by the revenue Secretary which embodied the relevant decision of the Government.

03. From the perusal of the said communication dated 25.03.1989 it appears that the Officers of the Forest Department not below the rank of Forest Beat Officers are authorized to certify challan for deposit of the sales tax realizable on transfer of trees from jote/allotted land in accordance with the decision. The decision includes that :

"(a) the Forest Department would realize sales tax on all transactions regarding transfer of trees from jote/allotted land except in cases of personal use;

(b) the Forest Department would assess the sale price of the trees according to the rate of the Forest Department for standing trees of different species;

(c) the Forest Department would realize the sales tax on behalf of the Sales Tax Organisation in accordance with the procedure it deems proper and

(d) the Forest Department would deduct 15% of such realization as service charges."

04. Mr. Deb, learned senior counsel has further submitted that in the premises that no forest officer has been delegated power to collect the sales tax for transportation of the timber or the trees, the writ petition has been allowed holding that Clause-5 of the notification dated 17.06.2004 as published in the Tripura Gazette dated 04.08.2004 as far as it relates to the realization of the sales tax on the timber at the rate of royalty will have no effect whatsoever. Further the respondents have been directed to refund the entire amount realised as the sales tax from the petitioner with interest @ 6% per annum from the date of realization to the date of payment.

05. Mr. Deb, learned senior counsel has also made a reference to the Clause-5.0 of the detailed procedure for extraction of trees as published in the Tripura Gazette extra-ordinary Issue dated 04.08.2004. For the purpose of further reference, Clause-5.0 is extracted hereunder:

"5.0 Realization of Sales Tax/Income Tax:

(i) The Sales Tax on timber shall be realized <u>after assessment of felled timber calculated at the rate of royalty notified by the Government from time to time for Government timber/forest produce</u>. The Sales Tax on such timber shall be realized at the rate as notified by the State Government from time to time under Tripura Sales Tax Act, 1976.

(ii) The Sales Tax shall be realized by the forest officials in charge of Ranges/Beats who realize the Forest Revenue and at the rates as stipulated above.

> ***(iii) Out of the total Sales Tax so realized in each case, 15% of the amount shall be counted towards service charge of the Forest Department and such amount realized against service charge shall be deposited in the treasury/Sub-Treasury as forest revenue under the appropriate head of account. The balance 85% of the Sales Tax realized in each case shall be deposited in the Treasury/Sub-Treasury under the appropriate head of account as required for depositing the Sales Tax."***

06. In the writ petition the challenge was against the said notification as according to the writ petitioner that was wholly *ultra vires*. From the reading of Clause-5, it appears that it is divided in two parts viz. (1) the sales tax on timber shall be realized after assessment on value of the felled timber and (2) at the rate of royalty notified by the Government from time to time for the Government timber/forest produce, the sale tax on such timber shall be realized, as notified by the State Government from time to time under Tripura Sales Tax Act, 1976 or by the succeeding act. Mr. Deb, learned senior counsel has urged that for not producing the said communication dated 25.03.1989, Annexure-R/1 to this petition, this Court having been under impression that the Government had not authorized any officer for collection of the sales tax, passed the impugned judgment and order. He urged for the review of the said judgment and order in view of the said communication dated 25.03.1989.

07. This Court has no difficulty to hold that if the transaction as covered by the communication dated 25.03.1989 is exigible to the sales tax in terms of the Tripura Sales Tax Act or the Tripura Value Added Tax Act, the delegate officer may realize the sales tax for. But at the same time it is made clear that even in the review petition the State respondents could not make it clear under which authority the sale tax to be calculated at the rate of royalty notified by the Government from time to time. The said 'provision' does not emanate from Tripura Sales Tax Act, 1976. Even the said provision comes in conflict with the decision contained in the communication dated 25.03.1989 where it has been provided *"the Forest Department would assess the sale price of the trees according to the rate of the Forest Department for standing trees of the different species and this is not in consonance to the Clause-5 of the said notification dated 27.06.2004 as published in the Tripura Gazette Extra ordinary Issue dated 04.08.2004"*. It is made clear that if the transaction as aforesaid is exigible to tax in terms of the Tripura Sales Tax Act, 1976 or the Tripura Value Added Tax Act, 2004, the authorized officer in terms of the communication dated 25.03.1989 shall be entitled to realise the tax if assessed by the competent authority under the Tripura Sales Tax Act or the Tripura Value Added Tax Act inasmuch as the said communication dated 25.03.1989 cannot provide the power of assessment to the delegate-officers of Forest Department. It is apparently not in terms of the provision of Tripura Sales Tax Act, 1976 or the Tripura Value Added Tax Act, 2004, where exigibility of tax, its assessment and realisation have been dealt with. The communication dated 25.03.1989 cannot substitute the statutory provisions.

08. Thus, this Court does not find any reason to interfere with the finding as reiterated in the para-6 of the impugned judgment. However, it is clarified that if the tax is assessed by the competent authority under the Tripura Sales Tax Act, 1976 or the Tripura Value added Tax Act, 2004, the officer so authorized by the communication dated 25.03.1989 may realize the sales tax or value added tax from the owner of the timbers.

With this observation and modification this review petition stands disposed of.

JUDGE

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