THE HIGH COURT OF TRIPURA
AGARTALA

CRP 95 of 2014

New Medical (Agartala) Pvt. Limited.
(Incorporated under the Companies Act, 1956),
Having its Branch Office at 8, Ronaldsay Road,
Battala, P.O. – Agartala, P.S. – West Agartala,
District – West Tripura.

……..… *Petitioner*

- Vs. –

1. The Superintendent of Taxes, Charge-VI, P.O. – Agartala, P.S. West Agartala, District – West Tripura, Pin - 799001.

2. The Assistant Commissioner of Taxes, P.O. – Agartala, P.S. West Agartala, District – West Tripura, Pin – 799001.

3. The Tripura Value Added Tax Tribunal, Gorkha Basti, Pandit Nehru Complex, P.O. Kunjaban – 799006, P.S. West Agartala, West Tripura, Tripura.

4. The State of Tripura, represented by the Commissioner & Secretary to the Government of Tripura, Revenue Department, New Secretariat Complex, P.O. Kunjaban – 799006, P.S. East Agartala, West Tripura, Tripura.

……..… *Respondents*

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4. The State of Tripura, represented by the Commissioner & Secretary to the Government of Tripura, Revenue Department, New Secretariat, Capital Complex, P.O. Kunjaban – 799006, P.S. East Agartala, West Tripura, Tripura.

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

For the petitioners **:** Mr. S. Deb, Sr. Advocate.
Mr. B. Debnath, Advocate.
Mr. S. Datta, Advocate.

For the respondents **:** Mr. D.C. Nath, Advocate.

Date of hearing & delivery of Judgment & order **:** 02.03.2015.

Whether fit for reporting **:** Yes.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

Both the revision petitions are being disposed of by a common order.

2. On 03.02.2015, we had passed this following order:-

> ***"The grievance of the petitioner is that it had filed 2(two) separate appeals before the Tripura Value Added Tax Tribunal, Agartala, Tripura but these appeals had been returned to the petitioner without passing any order and***

therefore, he cannot attach any order. Therefore, the objection of the Registry is waived and the Registry is directed to register the two revision petitions.

If the averments made in the petition are correct, then it discloses a shocking state of affairs where in judicial proceedings in an appeal filed by an assesse before the Tripura Value Added Tax Tribunal, the petition has been returned to the petitioner without passing any order.

Mr. S. Deb, learned senior counsel has produced before us the original 2(two) appeals which show that they were filed the appeals in the office of the Tripura Value Added Tax Tribunal on 10.03.2014 against received No.1031 and 1032. There are some initials with the letters of the Registrar, Tripura Value Added Tax Tribunal but there is nothing to show how these appeals have been returned to the petitioner.

The contention of the petitioner is that it was returned by him. If that is correct, then this is a highly improper practice because in any appeal or revision, the appellate or revisional authority must pass an order.

The Tax Tribunal is expected to follow the procedure which is in consonance with law and in accordance with the rules of natural justice.

Therefore, the Registrar of the Tripura Value Added Tax Tribunal is directed to file an affidavit within 2(two) weeks from today stating what is the procedure being followed and shall explain how the appeals were returned to the petitioner.

The two appeals which have been filed be kept in a sealed cover in the revision petition bearing token No.3485/2014.

A copy of this order be handed over to Mr. D.C. Nath, learned counsel in the course of the day.

List on 24th February, 2015."

3. The Registrar of the Tripura Value Added Tax Tribunal, Agartala, Tripura (hereinafter referred to as 'the Tribunal') has filed an affidavit in response to the aforesaid order, relevant portion of which reads as follows:-

"3. That as per Office records it is stated that 2 (two) Appeals were received by the Clerk of Receipt & Despatch Section of Office of the Commissioner of Taxes & Excise vide entry No. 1031 & 1032 dated 11.03.2014 and as per records these appeals were sent to the Office of the Tripura Value Added Tax Tribunal, situated at Office of the Commissioner of Taxes & Excise.

3.1 That the said 2 (two) appeals were not received by the Office of the Tripura Value Added Tax Tribunal because these appeals were not filed by the appellant in accordance with the provision of Section 71 of TVAT Act, 2004 wherein under Explanation it is clearly mandates – "Order passed in appeal or revision mentioned in this subsection shall mean an order passed after an appeal or revision is admitted under section 69 or, as the case may be, sub-section (1) of section 70 of the Act."

3.2 That as per Office records it is stated that the appeals filed by the petitioner before the Appellate Authority were rejected without admission of the same against which the petitioner could not file appeal to the Tripura Value Added Tax Tribunal. Therefore, these 2 (two) appeals were returned to the Receipt & Despatch Section of Office of the Commissioner of Taxes & Excise and on 13.03.2014, one Sri Anup Deb has taken back the said 2 (two) appeals."

4. To say the least, the procedure followed by the Tribunal is wholly alien to law and the rules of natural justice. We expect that Tribunals like the Tripura Value Added Tax Tribunal which are vested with vast powers and are the final Courts in respect of taxation matters will act in a manner which is legal and according to the rule of law.

5. A party aggrieved by the order of a lower authority is entitled to approach the Tribunal. The Tribunal has the authority and right to decide whether such appeal or revision before it is maintainable or not. However, this decision has to be taken by the Tribunal and cannot be taken by the clerk handling dispatch and diary aspects of the Tribunal. Even the Registrar of the Tribunal may form a prima facie view in the matter and raise an objection that an appeal is maintainable or not maintainable. If the assessee

disagrees with the view of the Registrar the final decision has to be given by the Tribunal. The Registrar is only the administrative officer of the Tribunal and he has no powers under the Act to decide any legal issue.

6. In the present case, the stand of the Registrar is that since the appeals filed before the Commissioner were dismissed in limine without issuing notice, no revision was maintainable before the Tribunal. We are not going into the merits of this issue and we are not deciding whether the revision is maintainable or not. That is something which the Tribunal must decide. The Registrar or his office can raise an objection that the revision is not maintainable and it will be for the assessee or his counsel to satisfy the Registrar that such revision is maintainable. Even if the Registrar holds against the assessee, the assessee will still have the right to claim that it is the Tribunal which should decide this issue and thereafter the Tribunal will have to decide that issue in accordance with law.

7. This Court cannot accept the submission of the Registrar that because the petitions were not maintainable they were returned to the assessee-petitioner. Even if they had to be returned there should have been a noting by some competent authority that they are being returned for some specified reason. The only document which has been produced before us is the

receipt and dispatch register which only shows that the revision petitions were returned. There is nothing to show why they were returned.

8. Any judicial or quasi judicial action has to be based on reasons. It is by now well settled law that reasons give the strength and body to an order. If there are no reasons in an order then the order becomes an arbitrary order. From the dispatch register, we cannot fathom why the revision petitions were returned. It is not clear who took the decision to return the revision petitions. Therefore, whenever in future, any such order has to be passed even by the Registrar or his subordinates that order must be in writing and must be conveyed to the assessee so that the assessee knows why his appeal or revision is being returned by the Tribunal. To give an example, suppose there is a defect in affixing the court fees, the party can very well remove that defect and re-file the petition the same day or the next day. If the party is not told what is the defect how will the party ever know why its petition has been returned.

9. As far as the present case is concerned, the revision petitions which were produced before us in a sealed cover are being returned to Mr. S. Datta, learned counsel with a direction to the petitioners to re-file the same before the Tribunal on or before 9th March, 2015 and if they are so filed before 9th March, 2015, the

petitions shall be deemed to have been filed on the date when they were originally filed before the Tribunal. Thereafter, the Tribunal shall act in accordance with the law laid down by us hereinabove.

JUDGE **CHIEF JUSTICE**

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