

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) NO.117 of 2010

M/s Coal Mines Associated Traders, a partnership firm having it's office at 6 0/1, Stephen House, Lift No.1, 6th Floor, Kollata 700071 and place of business at Sakuntala road, Besides Syandan Patrika office building, Agartala, Tripura West, Pin 799 001, represented through it's partner Shri Sundeep De who is citizen of India.

..... *Petitioner.*

- Vs -

- 1. The Additional Commissioner of Central Excise**
O/o Commissioner of Central Excise,
Morellow Compound, M. G Road,
Shillong, Meghalaya.
- 2. The Additional Commissioner of Central Excise & Service Tax,**
RAP's Mansion, M.G. Road, Shillong, Meghalaya.
- 3. The Commissioner of Central Excise,**
Central Excise & Customs, Morellow Compound,
M.G.Road, Shillong, Meghalaya.
- 4. Union of India, through the Secretary,**
Ministry of Finance Department of Revenue
Having its office at North Block, New Delhi 110 001.
- 5. The Superintendent of Central Excise,**
Agartala Range, Joynagar Lane No.2, Agartala.
- 6. The Superintendent (Tech.),**
O/o Commissioner of Central Excise,
Morellow Compound, M. G. Road, Shillong.

..... *Respondents.*

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

For the petitioner : Mr. S B Sharma, Advocate,
Mr. K Kurmy, Advocate,
Mr. K Roy, Advocate.

For the respondents : Mr. D C Nath, State Counsel.

Date of hearing and
delivery of judgment : **18.6.2015.**

Whether fit for reporting :

Yes	No
	J

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

By means of this writ petition, the petitioner has challenged the notice dated 21st May, 2009 issued by the Additional Commissioner, Central Excise, Shillong (*hereinafter referred to as the 'assessing authority'*) whereby the petitioner has been asked to show cause why action should not be taken against the petitioner for recovery of Rs.25,29,473/- along with Education Cess of Rs.50,590/- and Higher Education Cess of Rs.21,284/-.

2. The admitted facts are that the petitioner company entered into contracts for constructing two commercial complexes within the municipal limits of Agartala.

3. The case of the taxation authorities is that these contracts fall within the purview of Section 65(25b) of Finance Act, 1994. On the other hand, the case of the assessee is that admittedly the contracts amount to '*works contract*' and since service tax was leviable in respect of specific services and not in respect of deemed services at that time the levy, if any, would fall within the purview of Section 65 Clause 105(zzzza) and therefore, would be exigible to tax only after 01.6.2007, if at all. The next issue raised is that the notice is not within limitation and in this respect the petitioner has made reference to Section 73 of the Finance Act, 1994 and the case of the assessee is that there is no intention to evade payment of tax and there is no allegation in the notice of such intention and,

therefore, the demand, if any, should have been raised within one year and the extended period of 5 years is not applicable to the case.

4. We are not going into the merits of the contentions. Both the issues are matters which will have to be decided after going through the terms of the contracts, the nature of services provided by the petitioners and these will obviously involve elements of giving findings on facts. Even with regard to limitation whether the petitioner is guilty of evading tax or had the intention to evade tax is again a question of fact which has to be decided by the assessing officer. It is contended that since the petition has been admitted we should decide the same. We may notice that in fact when notices were sent in the beginning the intention of the Court appeared to be that the petition would be disposed of at the admission stage. Unfortunately, that was not done and finally the petition was admitted but at that stage nobody had decided these issues as to whether these questions should be decided by the assessing officer or by this Court.

5. Normally, this Court in writ jurisdiction does not entertain writ petitions against show cause notices unless it is *prima facie* shown that the authority issuing the notice wholly lacks jurisdiction to issue such notice or it is shown that the demand is so perverse that no reasonable man could raise the demand. As far as the present case is concerned, we do not find that it falls under any

of these two exceptions. The questions raised by the petitioner are interesting. We have, therefore, not commented on the merits of the case but the answers to these questions will lie only on examining not only the contracts but also other material to show how the contracts were actually executed. The contracts may have been entered in 2006 but if the service has been rendered in 2007 or 2008 it is the services which are to be taxed not the contracts. Therefore, what services were rendered at what stage will also be a matter which will have to be assessed by the assessing authority. If the case of the assessing authority is to be accepted then the entire transactions would be exigible to tax.

5. In view of the above discussion, we dispose of this writ petition only on the ground that the appropriate remedy available to the petitioner is to approach the assessing authority and file a reply to the show cause notice. We permit the petitioner to file reply to the show cause notice within 30 days from today and in case reply to the show cause notice is not filed within 30 days the assessing officer shall be entitled to proceed *ex-parte*.

The writ petition is disposed of in the aforesaid terms.

JUDGE

CHIEF JUSTICE

Sukhendu