

THE HIGH COURT OF TRIPURA _A_G_A_R_T_A_L_A_

WP(C) NO.60 of 2010 & WP(C) NO.61 of 2010

A) WP(C) NO.60 of 2010

1. A.B.C.I Infrastructures PVT. Ltd.

A Private Limited Company having its registered office at Vasundhara, 6th Floor, Room No.4, 2/7 Sarat Bose Road, Kolkata - 700 020 and one of its place of business at Banerjee Para, Krishnanagar, Agartala.

2. Sri Budhmal Baid,

Director of A.B.C.I Infrastructures Pvt. Ltd.

..... *Petitioners.*

- Vs -

1. The State of Tripura,

Represented by the Commissioner and Secretary to the Government of Tripura, Department of Finance, Agartala.

2. The Commissioner of Taxes,

Government of Tripura,
Palace Compound, Agartala.

3. The Superintendent of Taxes,

Charge - I, Palace Compound, Agartala.

..... *Respondents.*

B) WP(C) NO.61 of 2010

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A Private Limited Company having its registered office at Vasundhara, 6th Floor, Room No.4, 2/7 Sarat Bose Road, Kolkata - 700 020 and one of its place of business at Bajerjee Para, Krishnanagar, Agartala.

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Charge - I, Palace Compound, Agartala.

..... Respondents.

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

For the petitioner : Mr. S Chetia, Advocate,
Mr. R R Nandi, Advocate.

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

Date of hearing & judgment : 20.4.2015.

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CQ)

Both the petitions are being disposed by a common judgment. The petitioner company is duly incorporated under the Indian Companies Act, 1956.

2. It is not disputed that the petitioner company was engaged in the execution of works contract awarded to it by various parties. It is also not disputed that the work being done by the petitioner company was with government organizations such as the North-east Frontier Railway, Border Roads Task Force, General Reserve Engineer Force and the Indo Bangla Border Fencing Works and similar other. The petitioner's grievance is that it had appeared

before the assessing officer with all relevant books of account and documents but the assessing authority did not examine the books of account to determine the turnover in accordance with the Act. A rectification petition was filed but the same was rejected.

3. According to the petitioner, while executing the works with the Border Roads Task Force(BRTF) bitumen for use in the work was provided by the BRTF authorities and VAT was paid by the said authority. The assessing authority not only imposed tax but also imposed penalty of 150%. This order has been challenged. The grievance of the petitioner is that taxable turnover has not been determined and deductions in accordance with law have not been allowed.

4. We are purposely not going into the merits of the case because of the decision that we propose to take. In ***Biplab Kr. Ghosh Vs. Union of India, (2014) 1 TLR 245*** this Court examined the provisions of the Tripura Value Added Tax Act, 2005 in detail and we have held as follows :

“79. It has been contended by Dr. Saraf that Rule 7A is a procedural Rule and is only a machinery provision providing the manner in which the tax is to be quantified. Therefore, according to him, it can be retrospective. There is no manner of doubt that procedural laws can apply retrospectively, but when even procedural laws affect the Civil rights of the parties, they cannot be treated to be retrospective unless specifically made so. We have a grave doubt whether Rule 7A is only a

procedural Rule. No doubt, it does not lay down rate of tax, but it lays down the maximum rate of deduction which an assessee is entitled to and this affects the Civil rights of the assessee inasmuch as the amount of tax payable by him may increase or decrease on account of the deductions allowed/ disallowed. Therefore, the Rule cannot be said to be wholly procedural. Assuming that the Rule is procedural, then also in our opinion it cannot be given retrospective effect because a party who was not aware that he was bound to maintain accounts to claim deductions is now being told that the assessee cannot get deduction beyond a certain percentage. This Rule, therefore, cannot be made retrospective.

80. Having said so, once we have held that the Act and the Rules are valid, it is for the assessee to prove what deductions he is entitled to. We would expect that an assessee would normally be maintaining books of account because these are necessary in the ordinary course of trade and business. No dealer engaged in a works contract can be expected to carry out his business in a proper manner without maintaining books of account. There are various laws such as Labour Laws, Provident Fund Laws, and Employees Insurance Scheme Laws which statutorily require maintenance of some sort of accounts relating to payments made to labourer. Similarly, the Income Tax Laws also require the assessee to maintain accounts if his turnover is above a certain limit. In those cases, the Assessing Officer would be justified in drawing an adverse inference against the assessee if the assessee does not produce the books of account. However, in case of small contractors who are not statutorily required to maintain accounts, the Assessing Officer may have to be more liberal. Therefore,

we are clearly of the view that in all cases prior to 01-08-2012, the assessment cannot be made on the basis of Rule 7A, but shall have to be made on the basis of best judgment assessment by the Assessing Officer keeping in view the well established principles of making best assessment.

87. In view of the above discussion, we find no merit in the contention of the petitioners that the provisions of the TVAT Act or the Rules are in any way invalid or unconstitutional. The same are legal and valid as held by us above. The only directions which we would like to issue are that the Assessing Officer while considering the value of the transfer of property in goods in a works contract and while calculating the taxable turnover must allow all deductions which flow from the judgment in Gannon Dunkerley's case (supra) and that Rule 7A of the TVAT Rules shall be prospective in nature and will not have retrospective effect. However, as clarified by us in the judgment, this does not mean that the contractor is not required to produce any accounts. If he fails to produce any accounts or the accounts produced by him are not worthy of credence, then the Assessing Officer shall be entitled to make assessment of the deductions to which the dealer is entitled to on best judgment basis."

In view of the judgment passed in **Biplab Kr. Ghosh** case we are clearly of the view that the assessment made by the assessing officer will have to be set aside. He shall have to re-determine the taxable turnover and the tax, if any, payable in view of the law laid down in the aforesaid case.

5. We would also like to make it clear that the assessing officer cannot as a matter of course impose the maximum penalty of 150%. He will have to examine the facts of each case and give reasons why he is imposing the maximum penalty.

6. In this view of the matter, the writ petition is allowed. The impugned order is set aside and the matter is remanded to the assessing authority who shall decide the same by a reasoned order after hearing both the parties within a period of three months from today.

JUDGE

CHIEF JUSTICE