THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 281 of 2011

Sri Samir Ghosh,
Son of Late Surendra Chandra Ghosh,
Resident of College Tilla, near Post Office,
P.S. – East Agartala,
District – West Tripura and also having his
Office at Surjya Road, Agartala,
P.S. West Agartala, District – West Tripura.

……..…. *Petitioner*

- Vs. –

1. The State of Tripura,
   Represented by the Secretary to the
   Revenue Department,
   Government of Tripura, Agartala,
   Civil Secretariat, PO Kunjaban,
   PS – East Agartala, District – West Tripura.

2. The Commissioner of Taxes,
   Government of Tripura, Agartala,
   Civil Secretariat, PO Kunjaban,
   PS – East Agartala, District – West Tripura.

3. The Assistant Commissioner of Taxes,
   Government of Tripura, Gurkhabasti,
   PN Complex, PO Kunjaban,
   PS – East Agartala, District – West Tripura.

4. The Superintendent of Taxes, Charge-II,
   Agartala, Gurkhabasti,
   PN Nehru Complex, Agartala, PO Kunjaban,
   PS – East Agartala, District – West Tripura.

……..…. *Respondents*

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

For the Petitioner **:** Mr. A.K. Bhowmik, Sr. Advocate.
Mr. R. Datta, Advocate.

For the respondents : Dr. A.K. Saraf, Sr. Advocate.
Mr. D.C. Nath, Advocate.

Date of hearing & delivery of Judgment & order : 07.10.2015.

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

The petitioner is admittedly a dealer in pea-gravel. He filed W.P. (C) No.114 of 2000 in which he claimed that pea-gravel was not an item exigible to tax either under the Tripura Sales Tax Act or under the Tripura Value Added Tax Act. A learned Single Judge of the Agartala Bench of the Gauhati High Court which then exercised jurisdiction over the State of Tripura delivered a judgment on 15.06.2007 holding as follows:-

> ***"That, in view of the above discussions and observations and relying on the ratio of the decisions mentioned above, it is held that the item 'pea-gravel' is taxable under the Tripura Sales Tax Act, 1976 w.e.f. 28.02.2000 onwards but not taxable under the Tripura Value Added Tax Act, 2004."***

2. The learned Single Judge held that though pea-gravel was taxable under the Tripura Sales Tax Act but after 2004 when the Tripura Value Added Tax came into force the said item was not taxable. The State filed an appeal against this judgment which was numbered as Writ Appeal No.79 of 2007. The petitioner also filed Writ Appeal No.59 of 2007 challenging that portion of the judgment of the Single Bench which was against him. Vide

judgment dated 9th September, 2010, a Division Bench of the Gauhati High Court (Agartala Bench) dismissed the Writ Petition filed by the petitioner-assessee and allowed the Writ Appeal filed by the State and held that pea-gravel was exigible to tax both under the Tripura Sales Tax Act as well as the Tripura Value Added Tax Act. This judgment as mentioned above was delivered on 9th September, 2010. The petitioner, thereafter, on 16th September, 2010 sent a communication to the Superintendent of Taxes that according to his estimation he was to pay another sum of Rs.10,04,335/- as tax for the intervening period and submitted that some amount had already been deducted as TDS and that he had deposited a sum of Rs.3,00,000/- and he may be permitted to deposit balance in 7 monthly installments of Rs.1,00,000/-. On 20th September, 2010, this request of the petitioner-assessee was accepted.

3. In the mean time, the petitioner-assessee filed Special Leave Petition against the judgment of the Division Bench before the Apex Court which was also rejected. On 29th October, 2010, the Superintendent of Taxes issued notice to the petitioner under Section 31(1) of the Tripura Value Added Tax Act asking him to produce his books of accounts for the assessment years 2005-06 to the assessment year 2009-10 so that proper assessment could be made of the tax payable by the assessee. The assessee responded vide letter dated 18.11.2010 and stated that he had

filed an appeal against the judgment of the Division Bench before the Apex Court and the matter is subjudice. Thereafter, another notice was issued to him on 12th May, 2011. This time the stand of the assessee was that he had filed Review Petition after dismissal of the SLP before the Division Bench which was still pending. Thereafter, show cause notice was issued to the assessee on 23rd June, 2011 wherein the calculations were made and again the stand of the assessee was that after filing Review Petition the matter is subjudice and the assessing officer should not finalize the assessment. The assessing officer again issued show cause notice but finally, on 30th June, 2011 passed the assessment order wherein he has made assessment of the amount of tax due, amount of interest due and also imposed penalty both under Section 25(4) and 35(4) @ 150% on the assessee under the provisions of the Tripura Value Added Tax Act. The petitioner has challenged this assessment order by filing the present writ petition in this Court.

4. In the mean time, the Review Petition filed by the petitioner was dismissed by this Court on 10th July, 2013. It would be pertinent to mention that after the Division Bench decided the case there was no stay order in favour of the petitioner either by the Apex Court or by the Division Bench merely because the petitioner had filed a Special Leave Petition before the Apex Court or had filed Review Petition before this Court did not give any right

to the petitioner to claim that the assessing officer should not proceed with the assessment proceeding. Either the petitioner should have applied to the High Court for stay of the proceedings but the petitioner cannot himself grant a stay order in his own favour by claiming that since he has filed Review Petition the assessment proceeding against him should be stayed.

5. It has been urged by Mr. A.K. Bhowmik, learned senior counsel for the petitioner that the petitioner remained under the impression that since Review Petition has been filed the assessment proceeding should be stayed and therefore he did not appear before the assessing officer. We are not at all in agreement with this submission. When there was no stay order by any higher authority, it was the duty of the assessee to have appeared before the assessment officer. After the Division Bench delivered its Judgment on 9th September, 2010, the petitioner knew that there was a judgment against him which he very candidly admitted in his communication dated 16th September, 2010. Therefore, he was duty bound to appear before the assessing officer with all his accounts. If he has not done so it is at his own peril and now he cannot turn around and say that he should be granted another opportunity to place his accounts before the assessing officer. We, therefore, reject this prayer of the petitioner and uphold the assessment order in so far as the assessment of the tax is concerned.

6. Next coming to the question of interest. It has been urged by Mr. A.K. Bhowmik, learned senior counsel that the plaintiff did not deposit the tax in view of the judgment delivered by the Court in the year 2006 and therefore, he should not be made liable to pay tax for this period. This is not a case where a person has not paid tax on the basis of some litigation or decision rendered in a case of other parties. It is the petitioner himself who approached this Court. Once a party approaches this Court and gets a stay order or gets an order in his favour the party must be aware that if the stay order is vacated or if the final judgment is set aside or modified all consequences will follow. Interest is statutorily payable and we, therefore, have no hesitation in holding that the petitioner is liable to pay interest on the amount of tax assessed by the assessing officer from the date when the amount fell due till payment of the assessed amount as per the rates fixed in the T VAT Act.

7. Lastly, coming to the issue of penalty. It is urged by Mr. Bhowmik, learned senior counsel that penalty cannot be levied in this case because the petitioner was not trying to evade the payment of tax. We have no doubt in our mind that every citizen has right to approach this Court. The petitioner had approached this Court and a Single Judge had decided the matter in his favour in the year 15.06.2007 that pea-gravel is not exigible to tax.

Therefore, there was no question of the petitioner filing any returns because once this judgment had been passed in favour of the petitioner the petitioner was justified in not submitting returns because no returns are required to be submitted in respect of an item which is not exigiible to tax. Furthermore, penalty under Section 31(5) can only be imposed if the Commissioner is satisfied that the dealer in order to evade or avoid payment of tax has not filed the returns within the prescribed period. As held by us above this is not a case of the dealer avoiding to file returns on this ground. Therefore, for the same reasons penalty under Section 25(4) can also not be imposed because the petitioner had sufficient cause not to file a return during that period.

8. We, therefore, partly allow the Writ Petition. We uphold the assessment of tax and interest but set aside the imposition of penalty both under Section 25(4) and under Section 31(5). The assessing officer after giving the petitioner benefit of all the amounts paid by him and also the amounts which may have been deducted at source shall recalculate the amount of tax and interest as due up to 31st October, 2015. The petitioner is given liberty to appear before the assessing officer on 28th October, 2015 and the petitioner can give documentary proof of all the payments made by him to the assessing officer. Thereafter, the assessing officer shall calculate the amount of tax as well as the amount of interest payable up to 31st October, 2015. The petitioner shall pay

25% of the amount so assessed latest by 30th November, 2015 and the balance amount can be paid by the petitioner in 12 equal monthly installments. It is made clear that the petitioner shall be liable to pay interest at the statutory rate on the said amounts up to the date when it is paid.

9. In case, the petitioner wants to liquidate the liability earlier he can do so. In case, the petitioner fails to pay any one of the installments, the entire amount shall become due and recoverable as arrears of land revenue in accordance with law. After the petitioner has paid a sum of Rs.20,00,000/- whether it is in the first installment of 25% or thereafter the bank guarantee furnished by the petitioner shall be automatically discharged.

10. The petition is disposed of in the aforesaid terms. No costs.

JUDGE **CHIEF JUSTICE**

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