

THE HIGH COURT OF TRIPURA

AGARTALA

W. P.(C) No. 117 of 2015

Petitioner :

M/s. Abhisar Buildwell Pvt. Ltd.

(Formerly M/s. Dharampal Satyapal Ltd.

Before demerger),

A company incorporated under the provisions of Companies Act, 1956 and having its Office at Agartala at Zone-1, Bodhjungnagar, Industrial Growth Centre, Agartala and represented by Sri Anand Bagrecha, the Deputy Manager of the petitioner company and resident of Bholananda Palli, Airport Road, Agartala, Tripura-799006.

By Advocates :

Mr. B. Dabey, Adv.

Mr. N. Menon, Adv.

Respondents :

1. The State of Tripura,

Represented through the Commissioner-cum-Secretary, Government of Tripura, Finance Department, Secretariat Building, P.O-Kunjaban.

2. The Commissioner of Taxes,

Gurkhabasti, Pandit Nehure Complex,
P.O. Kunjaban, Agartala, West Tripura, Pin-799006.

3. The Superintendent of Taxes,

Kar Bhavan, Charge-VIII, P.O- Agartala,
West Tripura, Pin-79900.....,

By Advocate :

Mr. D. C. Nath, Adv.

State Counsel.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

THE HON'BLE MR. JUSTICE U.B. SAHA

Date of hearing &
Judgment : **9th April, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (Oral)

By means of this petition the petitioner has sought the following reliefs:

"That, after hearing the parties would be pleased enough to examine the legality, validity and propriety of the impugned order dated 05.02.2015 passed by the Superintendent of Taxes as well as the impugned notice dated 06.02.2015 passed by the Superintendent of Taxes and thereafter further pleased to quash or set aside the impugned order and notice stated above and issue further directions to the respondent either to adjust Input Tax Credit against the CST liable to be paid by the petitioner or to refund it to the petitioner and further allow the petitioner to adjust/set off Input Tax Credit against the CST liable to be paid by the petitioner or to refund it to the petitioner every financial year, for fair ends of justice otherwise the petitioner would be highly prejudiced."

It would be pertinent to mention that the petitioner herein M/s. Abhisar Buildwell Pvt. Ltd. in respect of assessment years 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 had filed writ petitions in this Court being W. P(C) No.127 of 2014, W. P(C) No.128 of 2014, W. P(C) No.129 of 2014, W. P(C) No.130 of 2014 and W. P(C) No.131 of 2014. In these writ petitions the main issue raised was whether the petitioner is entitled to claim benefit of input tax credit and set off the CST against the purchase tax payable by it.

[2] After detailed arguments and dealing with all the points raised in these petitions we had rejected the petitions on all the grounds raised before us and we clearly held that in terms of Section 10 of the TVAT Act, 2004 the petitioners were not entitled to claim any benefit thereof. It would also be pertinent to mention that the judgment passed by this Court in the aforesaid writ petitions on 12.09.2014 was challenged by the petitioners before the Apex Court by filing Special Leave Petitions which Special Leave Petitions were

dismissed by the Apex Court. The Superintendent of Taxes, Agartala following the judgment of this Court issued an Assessment Order on 05.02.2015 and demand notice was issued to the petitioner on 06.02.2015 calling upon the petitioner to pay sum of Rs.1,61,14,106.00. The petitioner contends that after the judgment was passed by this Court and the SLP was dismissed by the Apex Court, the petitioner was made aware of certain contention and issues which go to the root of the matter and, therefore, the present writ petition has been filed.

[3] At the outset, we may state that the same counsel appeared in the petitions earlier and the same counsel is now appearing before us. All the contentions which were made by the petitioner earlier were considered by us and were rejected. Now certain other contentions have been raised. We are not inclined to look into those contentions because of the fact that we had already passed a detailed judgment in the case.

[4] Furthermore, the grounds raised do not appear to be valid to us. The main argument raised by the petitioner is that though by the transactions the goods may have been consumed outside the Tripura the incident of sale took place in Tripura and, therefore, it is entitled to get input tax credit. This argument is totally misconceived. The petitioner is claiming benefit of Central Sales Tax (CST) paid by him. CST is paid only on inter State sales and not on intra State sales.

[5] This will depend on the facts of each case. In case the sale had taken place in Tripura then VAT would have been paid on the same in Tripura. If no VAT has been paid then obviously it is an inter-State sale. The petitioner cannot blow hot and cold at the same time. The petitioner has also raised certain other contentions which relate to Section 10 of the TVAT Act. We had

considered a number of contentions earlier and merely because new contentions or new arguments come to the mind of the counsel is not a ground to reopen the matter and refer the same to a larger Bench. By means of filing a fresh writ petition, the petitioner is actually seeking review of the earlier judgment which cannot be permitted.

[6] We are also of the considered view that the petitioner has an adequate remedy of approaching the appellate authority and it is for the petitioner to satisfy the appellate authority that the sales in question were not intra-state sales but were sales within the State of Tripura. We had only held that the claimant cannot get the benefit of input tax credit in respect of inter-state sales on which CST has been paid. In case the petitioner proves that the sales are intra-state sales and not inter-state and TVAT has been paid on the said sales then it would be entitled to the benefit of input tax credit. This has not even been pleaded before us.

[7] The petitioner has referred to two judgments of the Apex Court in ***Bharat Sanchar Nigam Ltd. and Another Vrs. Union of India and Others : (2006) 3 SCC 1*** and ***20th Century Finance Corpn. Ltd. and Another Vrs. State of Maharashtra : (2000) 6 SCC 12*** but these are not relevant for deciding the present case.

[8] A Division of this Court vide detailed judgment dated 12.09.2014 in ***Abhisar Buildwell (P) Ltd. vrs. State of Tripura and Ors., [(2014) 2 TLR 813]*** after considering the entire law on the subject, held as follows:-

"23. A conjoint reading of the provisions of the Act clearly shows that input tax credit can be claimed only in respect of tax paid or payable under the Act. Section 10(3) makes it absolutely clear that input tax credit is permissible only in respect of sales or resales made within the State of Tripura. Section 10(6) is couched in negative language and is in the

nature of an exception or a proviso to sub-section 10(1). We have to read section 10(6) along with section 10(1) and when both of these parts of the section are read harmoniously, then even if a person is entitled to benefit of input tax credit under section 10(1) but is excluded under section 10(6), he would not be entitled to get the benefit of input tax credit. Clause (ix) of section 10(6) provides that input tax credit will not be available in respect of transfer of stock, other than by way of sale outside the State of Tripura. This by no stretch of imagination can be interpreted to mean that under Clause (ix) of sub-section (6), such benefit has been given in respect of inter-State sales. Such an interpretation would defeat the very purpose of the legislation. When the language of the legislation is clear, we cannot do violence to the language and misinterpret it in such a manner that the purport and intention of the legislature is defeated by such interpretation to the Act.

24. On reading all the provisions of the Act, we have no doubt in our mind that benefit of input tax credit is only available in respect of taxes collected and payable under the TVAT Act. The benefit of input tax credit is not available in respect of Central Sales Tax or any other tax which may have been collected or which may be payable under any other law.

26. From a reading of the various provisions of the TVAT Act, we have no doubt in our mind that the intention of the State of Tripura was to give benefit of input tax credit only in respect of sales intended or made within the State of Tripura. There is no doubt in our mind that the Act specifically excludes from its ambit, the inter-State sales and the benefit of tax paid on inter-State sales cannot be availed of by the petitioner to claim input tax credit. There is no ambiguity in the language and, therefore, reliance placed by Sri Dubey on the judgments of the Apex Court in Commissioner of Income Tax, Bombay etc. vs. M/s. Podar Cement Pvt. Ltd. etc., [(1997) 5 SCC 482] and Commissioner of Income Tax, Karnataka, Bangalore vs. M/s. Shaan Finance (P) Ltd., Bangalore, [(1998) 3 SCC 605] is totally misplaced."

[9] Learned counsel for the petitioner submits that the judgment requires re-consideration in view of the new arguments raised by him.

[10] Whether our decision is right or wrong is not for us to comment on. If our decision is wrong it can be set aside by the Apex Court. However, this Court will not reopen its own decisions in each and every case just because a new argument is addressed. We had delivered a judgment after considering all

the arguments which were raised before us in those cases including those raised by Mr. B. Dabey who was appearing in those cases. On merits also we find no force in the plea raised by the petitioner since it is claiming input credit on account of CST paid it. This cannot be permitted.

[11] Whether the sales are inter-state or intra-State is not for the Court to decide and the remedy before the petitioner is to approach the appellate authority. We, therefore, reject the petition with liberty to the petitioner to approach the appellate authority, which shall decide the cases in view of the law laid down by this Court.

No costs.

JUDGE

CHIEF JUSTICE