THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P(C) No. 264 of 2014

Petitioners :

LRs of Lt. Paresh Chandra Dey:

1. Smt. Chanu Prabha Dey (wife),

2. Shri Shakti Dey (son)

3. Shri Raju Dey(son)
All, residents of Kalapatti, Maharajganj Bazar, P.O-Agartala, District-West Tripura.

4. Smt. Swapna Dey (Gan)[daughter],
W/o. Shri Pramal Chandra Dey.

5. Smt. Ratna Rani Dey (daughter)
W/o. Shri Kajal Kumar Dey.

Both, (4 & 5) residents of Bhattapukur, P.O-Arundhuti Nagar, District-West Tripura.

By Advocates :

Mr. D. K. Biswas, Adv.
Mr. G. K. Nama, Adv.

Respondents :

1. The State of Tripura,
Represented by the Secretary to the Government of Tripura, Revenue Department, New Capital Complex, P.O-Kunjaban, Agartala, West Tripura.

2. The Commissioner of Taxes,
Government of Tripura, Gurkha Bastee, P.O-Kunjaban, Agartala, West Tripura.

By Advocate :

Mr. D. C. Nath, State counsel.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing &
Judgment & Order : **10th August, 2015.**

Whether fit for reporting :

Yes	No
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JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

The short question involved in this case is whether tobacco leaf which is unmanufactured tobacco is taxable and, if so, from which date?

[2] The assessee who has filed the present writ petition deals in the sell and purchase of tobacco and tobacco products. The item known as "tobacco and tobacco products including cigarette and gutka" fell in Entry No.129 of Schedule II(b) and was exigible to tax @ 13.5%. However, vide notification dated 20th November, 2013 this item has now been brought in a new entry taxable @ 35%.

[3] The petitioner was importing tobacco leaves which according him is not manufactured tobacco and, therefore, the same was exempted from tax. In this behalf the petitioner relied upon the communication of the Assistant Commissioner of Taxes dated 19th December, 2009 wherein it is mentioned that un-manufactured tobacco and tobacco for manufacturing bidi is exempted from tax w.e.f. 01.09.2007. There is another communication of the Addl. Commissioner of Taxes dated 5th May, 2014 in which it is mentioned that "Tobacco & tobacco products including cigarette & gutka" are mentioned in Entry No.1 of list of goods taxable @ 35% and, therefore, taxable @ 35%. The petitioner then filed an application to the Commissioner of Taxes, Govt. of Tripura to clarify the issue. Along with this application he also annexed communication dated 8th October, 2009 sent by the Asstt. Commissioner of Taxes wherein it was also mentioned that un-manufactured tobacco is exempted from Value Added Tax (VAT). Therefore, there is some dispute as to whether un-manufactured tobacco leaves fall within the ambit and scope of tobacco and tobacco products or not?

[4] The State has now clarified the position by issuing notification dated 27th January, 2015 wherein it is mentioned that in Schedule II(b) under Entry No.193 along with the words which earlier read as "Pan masala, pan chutney, scented supari and the like", the words " biri, tobacco for manufacture of biri and any kind of unmanufactured tobacco" have been added. Therefore, unmanufactured tobacco also now fall under Schedule II(b) and would be exigible to tax @ 14.5%. Therefore, the State itself is now clarifying the issue that unmanufactured tobacco does not fall within tobacco and tobacco products.

[5] Therefore, the writ petition is allowed and it is held that unmanufactured tobacco was not exigible to tax up to 26th January, 2015 and w.e.f 27th January, 2015 such un-manufactured tobacco would be covered by the notification of that date.

[6] With this observation, this writ petition is disposed of.

No order as to costs.

JUDGE **CHIEF JUSTICE**