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

**C.R.P. No. 68 of 2014**

**M/S Tripureswari Brick Field,**
South Shibpur (Ratanpur), Belonia, South Tripura (A Partnership Firm), (represented by its Constituted Attorney, Shri Chirabrota Basu, S/O-Shri Hemanta Basu, resident of village – North Julaibari, P.O. Julaibari, P.S. Baikhora, District – South Tripura

...... **Petitioner**

**– V e r s u s –**

1. **The State of Tripura, Agartala**
   (through the Secretary to the Government of Tripura), Department of Finance, New Secretariat Complex, P.O. Kunjaban, West Tripura, PIN – 799006

2. **The Commissioner of Taxes,**
   Government of Tripura, Gurkhabasti, Pandit Nehru Complex, P.O. Kunjaban, Agartala, West Tripura, PIN No.799006

3. **The Superintendent of Taxes,**
   Charge- Belonia, Government of Tripura, Belonia, P.O. Belonia, District – South Tripura

...... **Respondents**

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

For the petitioner : Mr. T.K. Deb, Advocate

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

Date of hearing and delivery of judgment and order : **20.07.2015**

Whether it is fit for reporting :

| **Yes** | **No** |
|---|---|
| | |

## JUDGMENT & ORDER (ORAL)

***(Deepak Gupta, CJ)***

In view of the order which we proposed to pass, it is not necessary to give all the detailed facts.

**[2]** For the purpose of deciding the present petition, it would be apposite to set out the following facts.

The petitioner is a registered dealer and he purchased one J.C.B. machine and road roller machine. These machines were purchased by him in the year 2009 and 2010. On 7th May, 2014 the Assessing Officer (the Superintendent of Taxes) issued a notice to the petitioner, M/S Tripureswari Brick Field through its proprietor/partner, Sri Nepal Chakraborty in which it was alleged that the 'C' forms had been misused and therefore, the petitioner was liable to pay value added tax on this purchased of the J.C.B. machine and road roller machine from outside the State and also was liable to pay penalty @150% p.a.

**[3]** The case of the petitioner is that this notice was never served upon him but was left with some employee of the brick field. According to the petitioner, on 4th July, 2014 he had gone to the office of the Commissioner of Taxes in connection with some other work and then came to know that this notice has already been issued. He then prayed for 10 days time to file reply. The petitioner alleges that 10 days time was allowed and he filed the reply on 11th July, 2014. The order under challenge has been passed on 7th July, 2014 and the petitioner has been held liable to pay a sum of Rs.9,38,884/- as tax penalty on the aforesaid two transactions.

**[4]** When this petition came before us for hearing for the first time, we had issued notice by passing the following order:

> **Issue notices to the respondents. As this stage notices confined only with regard to the issue as to whether the petitioner was given reasonable opportunity of hearing or not.**
>
> **The respondents shall file short affidavit and produce the entire record including record showing the service of notice upon the petitioner on the next date.**
>
> **List on 22nd September, 2014. Till then the operation of the impugned order is stayed.**

**[5]** We are aware that normally this Court does not entertain petitions against assessment orders but our main concern was whether the petitioner had been given a reasonable opportunity of being heard or not. Despite this order being passed on 8th September, 2014, when the matter came up on 22nd September, 2014, reply had not been filed and the Addl. G.A. sought time till 18th November, 2014 to file reply. On 18th November, 2014 no reply was filed. We could have disposed of the matter on that day itself but we only admitted the matter and call for the records. Today neither the records have been produced nor the reply has been filed.

**[6]** In this view of the matter, we have to accept the averments made in the petition to be correct. It was for the respondents to place material on record to show that the notice was served upon the petitioner well within time. We may point out that we have repeatedly found that the Tax Department in the State of

Tripura is giving notices which give such short time that it is virtually impossible to comply with the notices. Even in the present case, in the notice, only 3(three) days was given to the petitioner to file reply. How can a dealer file reply to a transaction which has taken 4 or 5 years earlier only within a period of 3(three) days? Therefore, we are clearly of the view that the rules of natural justice have not been followed in the case. We accordingly set aside the assessment order.

**[7]** We make clear that we have not said anything on the merits of the case and now the assessing authority shall take into consideration the reply filed by the petitioner which is on record. Thereafter, the assessing officer shall give reasonable opportunity of hearing to the petitioner who shall be heard either in person or through his authorized representative or counsel and thereafter, the assessing officer shall pass a reasoned order on all the grounds raised in the reply to the show cause notice including the ground that the notice was issued beyond the period of limitation.

With these observation and directions, this writ petition is allowed and disposed of.

**JUDGE** **CHIEF JUSTICE**

Sujay