THE HIGH COURT OF TRIPURA
<u>A G A R T A L A</u>

<u>CRP 44 of 2013</u>

Brite Rubber Processor Private Limited,
Sakuntala Road, Agartala,
West Tripura,PIN- 799001,
Represented by Sri Duli Chand Singhi,
Director of Brite Rubber Processor Private Limited
.... **Petitioner**.

VERSUS

1. **Secretary, Finance Department**,
Government of Tripura, Agartala.
2. **Commissioner of Taxes** (Revisional Authority),
Government of Tripura, Pandit Nehru Complex,
Gurkhabasti, P.O.- Kunjaban, Dist- West Tripura.
3. **Superintendent of Taxes**, Charge-III,
Government of Tripura, Palace Compound,
Agartala, West Tripura.

.... **Respondents**

BEFORE
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U.B. SAHA

For the petitioner	:	Mr. Jaweid Ahmed Khan, Advocate Ms. R. Purkayastha, Advocate
For the respondents	:	Mr. S.Chakraborty, Addl. GA Mr. DC Nath, State Counsl
Date of hearing and delivery of judgment.	:	26.03.2015.
Whether fit for reporting	:	NO

<u>JUDGMENT & ORDER</u>(ORAL)

(Deepak Gupta,CJ)

By means of this petition, the petitioner has prayed for the grant of following main relief:-

> **"(5) That, after hearing the parties would be pleased enough to examine the legality, validity and propriety of the impugned order dated 20.03.2013 passed by the Commissioner of Taxes as well as the impugned order dated 17.06.2009 passed by the Superintendent of Taxes and thereafter further pleased to quash or set aside the**

impugned orders 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."

2. The undisputed facts are that the petitioner Company purchases rubber from local dealers on payment of VAT. He used to file returns adjusting the Input Tax Credit against the Central Sales Tax payable. The first question which arises for consideration is whether the benefit of Input Tax Credit under Section 10 of the Tripura Value Added Tax Act is available in respect of those goods which are dispatched outside the State of Tripura by way of sale in course of Inter State Trade or Commerce.

3. 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."**

4. Learned counsel for the petitioner submits that this judgment requires reconsideration on two grounds. Firstly, that Section 11 of the Tripura Value Added Tax Act has not been considered and, secondly, that the judgment of the Apex Court in ***M/s Onkarlal Nandlal vrs. State of Rajasthan and another*** reported in ***(1985) 4 SCC 404*** has also not been considered.

5. At the outset, before dealing with the arguments, we may observe that we have been informed by the learned counsel appearing for the State that the Special Leave petitions filed against the judgment of this Court in ***Abhisar Buildwell's*** case have been rejected by the Supreme Court.

6. Be that as it may, the first question is whether Section 11 of the Tripura Value Added Tax will have any effect on the decision of the case. We, in our decision in ***Abhisar Buildwell's*** case have clearly held that under Section 10 of the TVAT Act the benefit of Input Tax Credit cannot be claimed in respect of those transactions where the goods are the subject matter of Interstate Sale. Section 11 of the Tripura Value Added Tax reads as follows:

> **"11. Input tax credit exceeding tax liability- (1) If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India determined under section 10 of this Act for a period exceeds the output tax for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under this Act or CST Act,1956.**
> **(2) The excess input tax credit after adjustment under sub-section(1) may be carried over as an input tax credit to the subsequent period or periods but shall not be carried beyond the end of next financial year."**

7. It is contended by learned counsel for the petitioner that reading of Section 11 of the TVAT Act shows that credit of Input Tax can also be claimed against the Central Sales Tax in terms of Section 11 and, therefore, it is contended that this Input Tax Credit can also be availed in respect of Inter State Sales by way of set off. We are unable to agree with this submission. Whether a party is entitled to Input Tax Credit or not has to be decided in terms of Section 10 and Section 11 has no relevance as far as that aspect is concerned.

8. Section 11 of the TVAT Act comes into play only where a party is entitled to Input Tax Credit in terms of Section 10 and avails of the Input Tax Credit and then there is excess lying to its credit even after taking into account the liabilities payable under the VAT Act. In such an eventuality the party is entitled to take benefit of the excess lying to its credit even against CST. However, this does not in any manner mean that under Section 10 the party is entitled to Input Tax Credit in relation to Inter-state transactions. To give an example. Supposing there is a dealer who is manufacturing these rubber products in Tripura, selling them both in Tripura as well as outside the State. If such a dealer in respect of the Input

Tax which is in relating to the goods sold only in the State of Tripura has some excess left over then he can get credit of that against CST because finally CST is also collected by the State.

9. The right of the parties as to whether they are entitled to get benefit or not is not dependent on Section 11 but has to be decided in terms of Section 10 which in ***Abhisar Buildwell's*** case we have decided against the parties and have held clearly that this benefit is not available in respect of Interstate Sale. References made by the learned counsel to the judgments of the Apex Court in ***State, through SP, New Delhi vs. Ratan Lal Arora*** reported in ***(2004)4 SCC 590***; ***N.Bhargavan Pillai and anr. Vs. State of Kerala*** reported in ***(2004)13 SCC 217***; and ***Mayuram Subramanian Srinivasan vs. CBI*** reported in ***(2006)5 SCC 752*** is wholly misconceived. In all the three cases, which have been cited before us, the question was whether benefit of the Probation of Offender's Act could be given when there was a statutory bar in the Probation of Offender's Act or some other law that such benefit is not to be given where the conviction is in regard to certain offences. It was in this context that the Court held that if a decision is given not taking into consideration a statutory bar then that decision is *per incuriam*.

10. Section 11 does not contain any bar, in fact it does not even remotely indicate who is the person entitled to Input Tax Credit. The benefit of Input Tax Credit has to be granted strictly in accordance with Section 10 of the Act and Section 11 only deals with such a situation where even after the Input Tax Credit is availed off there is excess available to the credit of the dealer. Therefore, we find that this argument is wholly without merit.

11. The next argument of learned counsel for the petitioner is based on ***M/s Onkarlal Nandlal vrs. State of Rajasthan and another*** reported in ***(1985) 4 SCC 404*** is also totally misplaced. Para 7 of the judgment reads as follows:-

> **"We may first clear the ground by stating facts which were not in dispute between the parties. There were two basic facts on which there was no dispute. One was that the resales effected by the assessee were sales in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Act. The assessee did not dispute the correctness of this position. The second was that at the time when the contracts of resale were made by the assessee, the goods were specific ascertained goods situate in Bhawani Mandi, that is, within the State and on the principles formulated in sub-section(2) of Section 4 of the Central Act, the resales affected by the assessee were deemed to take place inside the State. The only question is whether by reason of the resales being sales in the course of inter-State trade or commerce, they ceased to be sales inside the State. We do not think the answer to this question admits to any serious doubt. There is, in our opinion, no antithesis between a sale in the course of inter-State trade or commerce and a sale inside the State. Even an inter-State sale must have a situs and the situs may be in one State or another. It does not involve any contradiction in saying that an inter-State sale or purchase is inside a State or outside it. The situs of a sale may fall for consideration from more than one point of view. It may require to be considered for the purpose of determining its exigibility to tax as also for other purposes such as the one arising in the present case. Of course a sale which is in the course of inter-State trade or commerce cannot be taxed by a State Legislature has no legislative competence to impose tax on sale in the course of inter-State trade or commerce. That can be done only by Parliament. If therefore a question arises whether a sale is exigible to tax by the State Legislature, it may have to be considered whether it is a sale in the course of inter-State trade or commerce. The same sale in another context may have to be examined from a different point of view for determining where its situs lies and whether it is a sale inside the State or outside the State. There is therefore no incompatibility in the same sale being both a sale in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Act as also a sale inside the State in accordance with the principles laid down in sub-section(2) of Section 4 of the Central Act."**

12. The judgment of the Supreme Court itself clearly states that in certain cases an Interstate Sale may have the elements of a State sale because the right and title in the goods may have passed within the State. The Apex Court was dealing with a wholly different question. In ***Abhisar Buildwell's*** case we were dealing with the question where the undisputed facts were that the assessees were engaged in Interstate trade and were claiming Input Tax Credit in respect of that. We had, in our decision, held that this benefit is not available.

13. 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 that case including those raised by Ms. R. Purkayastha who was appearing in that case. Now, because some other counsel is also appearing does not mean that fresh arguments with respect to the same cases can be entertained. Furthermore, as held by us above, the two arguments raised before us are without any merit.

14. Therefore, we do not find any merit in the petition which is accordingly dismissed.

JUDGE **CHIEF JUSTICE**

Saikat