HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) No.316/2016

Sri Hemendra Lal Roy

.....Appellant(s)

Versus

The State of Tripura and others

.....Respondent(s)

For Petitioner(s) : Mr. S.M. Chakraborty, Sr. Advocate.

For Respondent(s) : Mr. A. Nandi, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Date of hearing and judgment : 21.12.2020

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

(Akil Kureshi, CJ).

This Writ Petition is filed by a dealer to challenge an order dated 10.05.2007 passed by the competent authority under the erstwhile Tripura Sales Tax Act raising a demand of unpaid sales tax of Rs.1,00,674.97. The petitioner was a registered dealer. The authorities issued notices and examined the petitioner's tax liability for the period during assessment year 1993-94 till A/Y 2004-05. In all years except the period during

A/Y2000-01, the competent authority assessed no tax or negligible tax. It is only for the period of year 2000-01 that the tax liability of Rs.1,00,674.97 paisa has been raised by the impugned order of assessment. The case of the petitioner is that he is aged over 80 years. He had stopped the business since long. No notice of the assessments was served on him. The order of assessment is, thus, an *ex parte* order. Even the order of assessment was not served on him. It is only when the revenue authorities sought to recover the tax through coercive measures and for which the notice was issued, the petitioner learnt about the said proceedings and therefore, rushed before this Court.

2. The respondents have appeared and filed reply in which the stand taken is that all notices for assessments were duly served on the petitioner at the relevant time. In fact, the petitioner and/or his representatives remained present before the assessing officer and prayed for time on multiple occasions. Order of assessment was thus passed after *by parte* hearing.

3. The petitioner has not filed a rejoinder disputing the averments made in the reply. In absence of any denial to the assertions of the respondents about service of the notice and participation of the petitioner during assessment proceedings, the petitioner's ground of lack of service of notice must be turned down. All other grounds, need to be examined in an Appeal

if, the petitioner so chooses to file. We have noticed that the assessing officer has raised tax demand only for the period of A/Y2000-01 by passing the impugned order in the year 2007. There is no document showing that the order of assessment was duly served on the petitioner. Even the order of assessment records that upon inquiry it was found that the establishment of the petitioner is closed and no business was being transacted at that time.

4. Under the circumstances, even if we relegate the petitioner to file an Appeal, he must get reprieve from the period of limitation. Additionally, we have noticed that the petitioner is an aged person. There is no clarity about the order of assessment being served on the petitioner at the relevant time. This petition is pending before the High Court since four years in which by interim order, the petitioner is protected against recoveries. Considering these circumstances, petition is disposed of by following directions:

(i) The petitioner's challenge to the impugned order on the ground of no hearing or non-service of notice before passing the order of assessment is turned down.

(ii) All other grounds that the petitioner may have at his command to challenge the order of assessment can be raised in an Appeal. If, petitioner files such Appeal within a period

of 4 (four) weeks from today, the same shall be entertained on merits without reference to delay.

(iii) Till the appeal is disposed of, there shall be no coercive recovery of the tax dues pursuant to the impugned order of assessment.

5. Petition disposed of accordingly. Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J **(AKIL KURESHI), CJ**

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HIGH COURT OF TRIPURA
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