HIGH COURT OF TRIPURA
AGARTALA

WP(C) 1109 OF 2019

Shri Pankaj Behari Saha
S/o Late Anil Chandra Saha, and carrying on
the business of bonded Warehouse in the name and style of
M/S Udaipur Bonded Warehouse at New Town Road,
near Mahadeb Dighi, Udaipur, Gomati Tripura.

……Petitioner (s)

Vrs.

1. The State of Tripura,
Represented by the Chief Secretary,
Government of Tripura, Agartala,
New Civil Secretariat, PO-Kunjaban,
PS-New Capital Complex (NCC),
District-West Tripura, Pin Code-799006.

2. The Principal Secretary, Finance Department,
Government of Tripura, Agartala,
New Civil Secretariat, PO-Kunjaban,
PS-New Capital Complex (NCC),
District-West Tripura, Pin Code-799006.

3. The Commissioner of Taxes, Government of Tripura,
P.N. Complex, Gurkhabasti, PO Kunjaban,
PS-New Capital Complex (NCC),
District-West Tripura, Pin Code-799006.

4. The Superintendent of Taxes, Charge-Udaipur,
PO- Udaipur, PS- Udaipur, District- Gomati Tripura,
Pin Code -799120.

.....Respondent(s)

WP(C) 1111 OF 2019

Shri Pankaj Behari Saha
S/o Late Anil Chandra Saha, and carrying on
the business of bonded Warehouse in the name and style of
M/S Udaipur Bonded Warehouse at New Town Road,
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PO- Udaipur, PS- Udaipur, District- Gomati Tripura,
Pin Code -799120.

.....Respondent(s)

BEFORE
HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR.JUSTICE ARINDAM LODH

Present:

For the petitioner(s)	:	Mr A.K.Saraf, Sr.Advocate. Mr. Biplabendu Roy, Advocate. Mr. Pritam Baruah, Advocate. Ms. S. Das, Advocate.
For the respondent(s)	:	Mr. D. Bhattacharjee, G.A.
Whether fit for reporting	:	Yes.

JUDGMENT & ORDER (ORAL)

20/01/2020
(A. Kureshi, CJ).

These petitions arise out of common background. They have been heard together and would be disposed of by this common judgment.

2. Facts being similar, we may notice from WP(C) 1109/2019.

3. Petitioner is an individual and is engaged in the business of operating a bonded warehouse at Udaipur, Tripura. The petitioner is a registered dealer under the Tripura Value Added Tax Act, 2004 (TVAT Act, for short). For the assessment period 2010-11 to 2012-13

the petitioner had filed necessary returns under the TVAT Act. It appears that notices for audit assessments in relation to such returns were issued, however, no final orders of assessment were passed before the period of limitation prescribed under the Act. In other words, these assessments became time barred.

4. The Superintendent of Taxes, Udaipur, respondent No.4 herein, issued a notice dated 11th February, 2018 in purported exercise of powers under Section 27 (2) of the TVAT Act calling upon the petitioner to appear before him to show cause why the short payment of tax and applicable interests should not be recovered from him for the said period of the year 2010-11 to 2012-13. He also proposed to impose penalty for such short payments.

5. The petitioner made a detailed written representation to the said show cause notice under his communication dated 26.02.2019. In such reply the petitioner raised several contentions, the principal contention being that the notice was issued without jurisdiction. The petitioner pointed out that the assessments of the petitioner's returns for the said years had become time barred. It was pointed out that no notice under Section 24 of the TVAT act was issued and therefore, the powers under Section 27(2) of the TVAT Act could be exercised.

6. Ignoring such representation of the petitioner, respondent No.4 issued a fresh notice dated 31.01.2019 reiterating the liability of the petitioner to pay deficit amount of tax with interest and penalty. The respondent No.4 eventually passed the impugned order dated 10th of June, 2019, relevant portion of which reads as under:

"…The written submission dated 26.02.2019 of Sri Pankaj Behari Saha is also examined carefully. In his written submission the dealer is silent and most surprisingly he did not spend even a single words about the suppression of actual turnover and short payment of due tax, rather he is firmly stick to the provision of section 33 of the TVAT Act,2005.

Gone thoroughly into the written and verbal submission of the dealer. Despite having ample scope, the dealer neither reflected the amount of discounts in the return(s) nor submitted revised return(s) during the period 2010-11 to 2012-13 mentioning the amount of discount. Generally, sale value is determined after deducting all kinds of allowable discounts to the licensees/consumers/purchasers. In the instant cases, the dealer reflected only the amount of exempted sales in the return(s) which was deducted from the amount of total sales. The total taxable sales is derivable after deducting the exempted sales from the total sales but in the instant cases, it appears that the dealer recorded the total taxable sales lessening the actual. Hence, the submission of Sri Pankaj Behari Saha is not acceptable and maintainable in the light of discussion made above. Therefore, I find no alternative option but to take penal action against the dealer as per provision of the TVAT Act, 2004.

In view of the above and after careful examination of the facts covering all aspects and discussion made above, I am of the opinion to levy applicable interest in addition to the balance amount of tax/VAT payable for the period from 2010-11 to 2012-13 and in consideration to the gravity of the consecutive offence committed by the dealer, I am of the opinion to impose penalty at least @10% on the balance amount of tax payable as per provision of the TVAT Act, 2004 and thus the cases are disposed off as per the following computation:-

Computation

Description	***2010-11***	***2011-12***	***2012-13***
	@20%	*@20%*	*@20%*
TOR	*21,79,19,171.00*	*40,00,25,171.00*	*53,69,12,393.00*
VAT Payable	*4,35,83,834.20*	*8,00,05,034.00*	*10,73,82,479.00*
Less,VAT Paid	*4,30,45,488.00*	*7,92,02,789.00*	*10,61,17,753.00*
Balance due	*5,38,346.00*	*8,02,245.00*	*12,64,726.00*
Add, Interest payable	*7,91,368.62*	*10,34,896.05*	*14,03,845.86*
Add, penalty @10%	*53,834.60*	*80,224.50*	*1,26,472.60*
Balance	*13,83,549.22*	*19,17,365.55*	*27,95,044.46*
Rounded off	*13,83,549.00*	*19,17,366.00*	*27,95,044.00*

Issue demand notice accordingly."

7. This order the petitioner has challenged in the present petition. Facts being similar in the connected petition are not separately recorded.

8. In background of such facts learned counsel for the petitioner submitted that the respondent No.4 has wrongly invoked the powers of Section 27(2) of TVAT Act. The petitioner is a registered dealer and has been furnishing his periodical returns regularly. No notice under sub-Section (2) of Section 24 of the Act was ever issued by the Commissioner. In absence of such notice powers under Section 27 of the TVAT Act could not have been exercised. He submitted that the authority had in fact initiated audit assessment of the returns of the petitioner for the period in question. These assessments had become time barred. Only in order to circumvent this difficulty, the respondent No.4 had resorted to Section 27 of the Act.

9. On the other hand, learned Govt. Advocate opposed the petition contending that the respondent No.4 has exercised proper powers after issuing show cause notice to the petitioner. Impugned order is appealable.

10. Chapter V of the TVAT Act pertains to returns and assessment. Section 24 contained in the said Chapter pertains to periodical income and tax. Relevant portion of the Section 24 of the TVAT Act reads as under:-

> ***"24. Periodical returns and payment of tax :*** *(1) Every registered dealer shall furnish return in such form for such period, by such dates and to such authority, as may be prescribed:*

Provided that the Commissioner may, subject to such conditions and restrictions as may be prescribed, exempt any such dealer or class of dealers from furnishing such returns or allow any such dealer –

(a) to furnish them for such different periods; or

(b) to furnish a consolidated return relating to all or any of the places of business of the dealer in the State of Tripura for the said period or for such different periods and to such authority, as he may direct.

(2) If the Commissioner has reason to believe that the turnover of sales of any dealer has exceeded the taxable limit as specified in subsection (3) of section 3, he may, by notice served in the prescribed manner, require such dealer to furnish return as if he were a registered dealer, but no tax shall be payable by him unless his taxable turnover exceeds the taxable limit provided under sub-section (3) of section3."

11. Section 25 pertains to return defaults and provides for the consequences for a dealer required to file return under sub-section (1) or sub-section (2) of Section 24 of the TVAT Act who fails to do so.

12. Section 27 pertains to scrutiny of returns and reads as under:-

"***27.Scrutiny of returns**:- (1) Each and every return in relation to any tax period furnished by a registered dealer to whom notice has been issued by the Commissioner under section 24 shall be subject to scrutiny by the Assessing Authority to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein; and full payment of tax and interest payable by the dealer during such period.*

(2) If any mistake is detected as a result of such scrutiny made as per the provisions of sub-section (1), the Commissioner of Taxes shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax along with the interest as per the provisions of this Act, if it is payable, by a date specified in the said notice."

13. Section 29 pertains to Self assessment. Sub-section (1) of Section 29 provides that subject to provisions of sub-section (2), the amount of tax due from a registered dealer or a dealer liable to be

registered under the Act shall be assessed in the manner provided thereafter, for each tax period or tax periods during which the dealer is so liable. Section 30 pertains to provisional assessment which powers will be invoked in case a dealer fails to furnish a return within the prescribed time. Section 31 pertains to audit assessment and provides the detail procedure for carrying out scrutiny assessment of the return of a dealer. Section 33 of the Act provides a time limit for completion of assessments and reads as under:-

> *"**33. No assessment after five years :-** (1) No assessment under section 31 and 32 shall be made after the expiry of five years from the end of the tax period to which the assessment relates;*
> *Provided that in case of offence under this Act for which proceeding for prosecution has been initiated, the limitation as specified in this subsection shall not apply.*
> *(2) Any assessment made or penalty imposed under this Chapter shall be without prejudice to prosecution for any offence under this Act."*

14. Section 34 pertains to turnover escaping assessment authorising the Commissioner to serve a notice to the dealer and to carry out best judgment assessment in case he has reasons to believe that the whole or any part of the turnover of the dealer in respect of any period has escaped assessment or being under assessed or being assessed at a lower rate or wrongly allowed any deduction or the dealer has been allowed wrong credit.

15. All these provisions noted above contained in Chapter V of the TVAT Act pertaining to returns and assessment thus provide for detailed procedure for requiring a dealer to file periodic returns of his turnover, for audit assessment of such returns if so desired and also to address the issues of turnover escaping assessments. The relevant provisions of Sections 24 and 27 need to be looked from the angle of

the scheme contained in Chapter V of the TVAT Act concerning returns and assessments.

16. Sub-section (1) of Section 24 requires every registered dealer to furnish return in such form by such due dates as may be prescribed. A registered dealer thus is obliged to file his return as mandated under sub-section (1) of Section 24 of the TVAT Act. Sub-section (2) of Section 24 on the other hand, refers to a case of a dealer in respect to whom the Commissioner has reason to believe that his turnover of sales has exceeded the taxable limit, the Commissioner would serve a notice in the prescribed manner requiring such dealer to furnish return as if he was a registered dealer. Sub-section (2) of Section 24 thus covers a case of a person who may not be a registered dealer but in whose case the Commissioner has reason to believe that his turnover of sales has exceeded the taxable limit.

17. Section 27 of the TVAT Act pertains to scrutiny returns. Sub-section (1) of Section 27 provides that every return in relation to any tax period furnished by a registered dealer to whom notice has been issued by the Commissioner under Section 24 shall be subject to scrutiny by assessing authority to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein and full payment of tax and interest payable by the dealer during such period. Sub-section (2) of Section 27 provides that if mistake is detected as a result of such scrutiny, the Commissioner of Taxes shall serve a notice in prescribed form on the dealer to make

payment of the extra amount of tax along with interest as per the provisions of the Act if payable.

18. Section 27 of the TVAT Act thus is not a provision for full assessment of the return filed in response to the notice issued by the Commissioner under sub-section (2) of Section 24 of the TVAT Act. It is merely for the purpose of verifying the correctness of necessary details furnished in such return such as calculation, application of rate of tax, interest etc. as well as payment of tax and interest by such dealer. If any error is detected in any of these aspects, under sub-section (2) of Section 27, the Commissioner would issue a notice of recovery demanding payment of extra tax with interest. These powers are essentially in the nature of prima facie adjustments.

19. The provisions contained in Section 27 of the TVAT Act are vastly different from the provisions for self-assessment under Section 29, provisional assessment under Section 30 and most significantly, the audit assessment under Section 31 of the TVAT Act.

20. The special powers can be exercised only in relation to a dealer to whom notice has been issued by the Commissioner under Section 24 of the Act. Section 24 refers to issuance of notice only under sub-section (2) of the Act. Necessarily, therefore, unless and until such notice is issued in terms of sub-section (2) of Section 24 of the TVAT Act, the TVAT authorities cannot invoke the powers under Section 27 of the TVAT Act. Any other view would defeat the very scheme of the said Chapter providing for audit assessment and limitation for completing in such assessment as provided under

Section 33 of the Act. The respondent authorities cannot be allowed to circumvent the limitation provision for completing audit assessment by permitting resort to the powers of summary adjustments under Section 27 which are peculiar in nature and are available only in case where notice under sub-section (2) of Section 24 of the Act has been issued to a dealer.

21. In the result, impugned orders under Section 27 of the TVAT Act are set aside. Any demand notices consequent to such orders shall also stand invalidated.

22. Both the petitions are disposed of accordingly. Pending application(s) if any, shall also disposed of.

(ARINDAM LODH), J **(AKIL KURESHI),CJ.**

HIGH COURT OF TRIPURA
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