

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.06/2016

Shri Ratan Ch. Banik, S/O. Late Kunja Behari Banik, Proprietor of Radio Mechanical Centre, Mantri Bari Road, Agartala, P.O.- Agartala, P.S.- West Agartala, District-West Tripura, Pin-799001.

.... Petitioner(s).

Versus

1. The State of Tripura, Represented by the Secretary to the Government of Tripura, Department of Finance, New Secretariat Complex, Kunjaban, P.O.-New Capital Complex, P.S.-New Capital Complex, District-West Tripura.

2. The Commissioner of Taxes, Government of Tripura, Pandit Nehru Complex, Gurkhabasti, P.O.-Kunjaban, Agartala, West Tripura.

3. The Superintendent of Taxes, Vigilance Cell, Office of the Commissioner of Taxes, Pandit Nehru Complex, Gurkhabasti, P.O.-Kunjaban, Agartala, West Tripura.

---- Respondent(s).

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

For Respondent(s) : None.

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

Date of hearing and judgment: **2nd March, 2020.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

(Akil Kureshi, C.J.)

Petitioner has challenged a revisional order dated 06.11.2015 passed by the Commissioner of Taxes by which he rejected the petitioner's revision petition against a composition order dated 02.09.2014.

2. Brief facts are as under:

Petitioner is an individual. He is engaged in the business of electric items like television, fridge etc. On 02.09.2014 a team of officials of the Value Added Tax Department of the State of Tripura raided one of the establishments of the petitioner and found that 440 pieces of electrical and electronic goods were stored in the godown which was not registered with the VAT authorities. A detention order of such goods was passed on 02.09.2014 relevant portion of which reads as under:

"1. Whereas M/S. Radio Mechanical Centre, Mantri Bari Road, Agartala, West Tripura on 02-09-2014 was found to be carrying taxable goods exceeding the limit fixed under the Rule 47 of the TVAT Rules, 2005 and in violation of the provisions of Section 66(1) of the TVAT Act, 2004, at Mantri Bari Road (place) at 11:15 A.M. on 02-09-2014, vide vehicle No.

2. Whereas, the person failed to produce relevant documents regarding compliance of the Provisions of the TVAT Act in respect of transport of taxable goods to the State/in respect of selling/taking delivery of taxable goods and we are satisfied that M/s. Radio Mechanical Centre, Mantri Bari Road has violated the provision of Section 66(1) of the TVAT Act, 2004, read with sub-rule (8) and (9) of Rule 17 of the Rules made thereunder.

3. Now, therefore, in exercise of the power vested under Section 66(2) of the TVAT Act, 2004 the taxable goods carried in contravention of the provisions of the Act is/are hereby seized along with

the contained and packing material on the ground of detecting one undeclared godown with taxable goods therein which are detailed overleaf.

4. Shri/M/s Radio Mechanical Centre, Mantri Bari Road is hereby directed to appear before the Superintendent of Taxes in charge of the Vigilance Cell, Agartala within 03(Three) days from today for compounding the offence as per the TVAT Act & Rules.”

3. The petitioner appeared before the concerned authority and requested for compounding of the offence. His request was accepted by the Superintendent of Taxes who passed the composition order on 02.09.2014 levying a total sum of ₹2,61,000 (rupees two lakhs sixty one thousand) from the petitioner which included the unpaid tax and composition charges on the basic value of goods of ₹6,00,000 (rupees six lakhs).

4. The petitioner thereafter filed a revision petition against the said order and contended that under Section 66 of the Tripura Value Added Tax Act, 2004 (VAT Act, for short) no penalty for storage of goods even in an undisclosed unregistered godown could be imposed. The revisional authority dismissed this petition recording that the petitioner was bound to declare the godown if it was established after obtaining registration. In the present case, the petitioner had failed to do so and had thereby violated the relevant rules. He also stated that once having compounded the offence the petitioner cannot challenge it on merits.

5. Before us, learned counsel for the petitioner submitted that the Superintendent of Taxes lacked inherent jurisdiction to levy any penalty. Section 66 of the VAT Act would not apply. This being a pure jurisdictional question even though the petitioner might have opted for compounding, revision petition was maintainable.

6. Having heard learned counsel for the petitioner and having perused the documents on record, we have no quarrel with the counsel's legal submission that a pure question of inherent lack of jurisdiction can be raised even where a party has not contested the proceedings before a certain authority. As is often stated, by volition a party cannot vest jurisdiction into an authority which legally he does not possess. However, once the petitioner opted for compounding of offence, all factual submissions would be foreclosed. In the present case, it was not merely a case of the goods being found at an unregistered godown, as can be seen from the detention order the allegations also were that on the date of the raid the petitioner failed to produce relevant documents regarding compliance of the provisions of the VAT Act in respect of transport of taxable goods. Section 75 of the VAT Act makes several acts and omissions by a dealer punishable. Had the petitioner contested the notice on merits and opposed the proposal for imposing penalty or handing down punishment, all aspects could have been gone into. The petitioner instead opted for compounding of offence. Thereupon

the Superintendent of Taxes passed the composition order. Petitioner now cannot challenge it on merits.

7. In the result, petition is dismissed. Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(AKIL KURESHI), CJ

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