

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 312 OF 2016

M/S Mata Transport Private Limited,
Represented by its Branch Manager,
Shri Uday Shankar Chaubey,
S/o Late Girija Shankar Chaubey, Santipara,
Agartala, PIN 799001, District: West Tripura.

.....Petitioner (s)

Vrs.

1. The State of Tripura, represented by the
Secretary, Finance Department,
Government of Tripura, P.O. Secretariat,
PIN 799010, Agartala, West Tripura.

2. The Commissioner of Taxes,
Government of Tripura, P.N. Complex,
Gurkhabasti, P.O. Kunjaban, PIN:799006,
Agartala, Tripura.

3. The Superintendent of Taxes,
Charge-III, O/o the Commissioner of Taxes,
Palace Compound, Agartala, Tripura West.

4. The Superintendent of Taxes (Registration Cell),
O/o the Commissioner of Taxes, Palace Compound,
Agartala, Tripura West.

.....Respondent(s)

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

Present:

For the petitioner(s) : Mr. C.S. Sinha, Advocate.
Ms. S. Chisim, Advocate.

For the respondent(s) : Mr. A. Nandi, Advocate.

Whether fit for reporting : NO

JUDGMENT & ORDER (ORAL)

18/02/2020
(A. Kureshi, CJ).

Petitioner has challenged a communication dated 20th
May 2016 issued by the Superintendent of Taxes, Government of
Tripura, Charge-III, Agartala which reads as under:-

"As per office records it appears that, till today, you have not deposited security money Rs.12,00,000/- for amendment of your Certificate of Registration by way of inclusion of new Go-down/delivery point at the premises of Smt. Bapita Ghosh(Das), W/o Sri Swapan Kumar Das, Mahesh Smriti Road, Dharmnagar, North Tripura.

Therefore, once again you are hereby asked to deposit security money amounting to Rs.12,00,000/- (Rupees twelve lakh) only through Challan in Form-VXVIII by 6th June,2016 positively to get your Certificate of Registration amended to run the Branch Office in the said premises."

2. Brief facts are as under:

Petitioner is a proprietary concern and is engaged in the business of transportation of goods in the name and style of 'M/S Mata Transport Private Limited'. For the purpose of the business the petitioner maintains several go-downs taken on lease which are treated as delivery point. As per the Tripura Value Added Tax Act, the petitioner was required to obtain a certificate of registration as a transporter which registration would also list the go-downs from where the petitioner would store the goods. The petitioner was granted such registration by the VAT authorities which was renewed from time to time. The initial registration was granted from 27.07.2007. The petitioner has produced Annexure-1, an order extending the validity of such registration till 11.07.2013. This registration certificate enlists the different go-downs with addresses from where it would be permissible for the petitioner to operate the transport business in Tripura relating to taxable goods. Reference has specifically been made to Section 22(3) of the Tripura Value Added Tax Act [TVAT Act, for short].

3. Under a Lease-deed dated 24th June, 2014 the petitioner acquired right to use one more go-down space situated at Dharmanagar, North Tripura. For conducting its business the petitioner required the certificate of registration to be suitably amended so as to include the said go-down in the list of establishments from where the petitioner would carry on the transport business. The petitioner accordingly applied to the Superintendent of Taxes (Registration Cell), Government of Tripura on 07.07.2015. In such application the petitioner pointed out that having acquired the right to use the said go-down the petitioner would use the same as a delivery point for the purpose of delivery of goods to provide better service to its customers. The petitioner, therefore, requested that the fresh registration certificate after amending the existing certificate be issued. It was in response to the said application that the Superintendent of Taxes made the impugned communication, contents of which we have already recorded earlier. As per this communication the petitioner was called upon to deposit a sum of Rs.12,00,000/- (Rupees twelve lakh) by way of security deposit only upon which the certificate of registration would be amended.

4. This order the petitioner has challenged in this petition. Learned counsel for the petitioner took us through the relevant statutory provisions and the circulars issued by the Government and contended that the said demand is wholly unjust. The security deposit of Rs.12,00,000/- is prescribed in case of a branch office of a transporter. The additional go-down of the petitioner cannot be described as a branch office. There is nothing on the record to

suggest that petitioner intended to operate a branch office at the new site.

5. On the other hand, learned Special Counsel for the department opposed the petition contending that the demand raised by the Superintendent was in consonance with the rules, regulations and Government policy. He relied on the following passage of an affidavit-in-reply dated 31st January, 2017 sworn by one Shri Atanu Dewanjee, Under Secretary to the Government of Tripura, Finance Department.

"That in reply to the averments and/or contentions made in Paragraph Nos. 4 to 7 of the rejoinder I state that the petitioner himself declares that he heeds new godown to deliver goods. If he delivers goods from new godown, the records and accounts of the goods will be maintained from this new godown. Therefore, the said go-down will be treated as branch office of the petitioner and therefore, he was/is liable to deposit security money to the extent of Rs.12,00,000/- as per Memo dated 17.11.2011. It is also stated that, the new godown is under the jurisdiction of Suptd. of Taxes, Dharmanagar and since activity of the said new godown is under the jurisdiction of the Supdt. of Taxes, Dharmanagar, the petitioner is bound to submit its accounts to the Supdt. of Taxes, Dharmanagar. Hence, asking of security money is justified."

6. In this affidavit, the reference is also made to an inquiry conducted by the department at the proposed site of the new go-down. A copy of the report submitted by the inquiry officer is also produced. Reference to this report will be made at a later stage.

7. Having heard learned counsel for the parties and having perused documents on record, we find that the insistence

on the part of the department to collect security deposit of Rs.12,00,000/- from the petitioner for amending the registration certificate is wholly impermissible. Section 22 of the TVAT Act pertains to registration of transporter. As per sub-section (1) of Section 22 no transporter, carrier or transporting agent is allowed to operate its transport business in Tripura relating to taxable goods without being registered by the Commissioner of Taxes. For such purpose a transporter would make an application to the Commissioner as provided in sub-section (2) of Section 22. Such application would be dealt with by the Commissioner as provided in sub-section (3) to sub-section (5) of Section 22 of the TVAT Act.

8. Rule 17 of the Tripura Value Added Tax Rules, 2005 [here-in-after to be referred to as the Rules of 2005], pertains to registration of transporters, carriers or transporting agent. Sub-rule (1) of Rule 17 provides that every transporter, carrier or transporting agent operating transport business in Tripura relating to taxable goods shall apply to the Superintendent of Taxes for registration under Section 22 of the TVAT Act and that such application would be made in Form-IV. Sub-rule (3) of Rule 17 requires that application for registration under sub-rule (1) would contain details such as the name of the applicant, his status, address of the head office, address of the branch offices and address of all go-downs besides other details. Under sub-rule (4) of Rule 17 the competent authority would issue registration certificate in Form-V.

9. Under Memorandum dated 20th July, 2015 the Commissioner of Taxes in exercise of powers under Rule 12(4) of

the Rules of 2005 has prescribed the security deposit amounts required for different classes of re-sellers, importers, manufacturers and transporters. Relevant portion of this Memorandum reads as under:-

".....(iv)
transporters of all
categories by
whatever name
known Rs.12,00,000.00

(v) Branch office
of Transporters of
all categories by
Whatever name
known Rs.12,00,000.00

(vi) Amendment
of registration
other than
inclusion of
branch office of
transporters as
mentioned at
Sl.No.(v), Nil

This shall come into force with effect from the date of issue of this Memorandum.

This Order is issued in supersession of all earlier Memorandum(s)/Order(s) issued in this regard."

10. As per this Memorandum thus, the Government could insist on collecting security deposit in two cases namely where transporters of all categories by whatever name called seek registration or when branch office of transporters of all categories are to be registered. However, when it comes to amendment of registration other than inclusion of branch office of transporters as mentioned in Clause (v), the amount of security required is nil. In the present case, the petitioner only required amendment of the registration certificate by including a go-down. It's case would therefore fall under Clause (vi) of the said Memorandum. Only if the request of the petitioner was for including the branch office in the registration certificate the security amount of Rs.12,00,000/-

prescribed in Clause (v) of the said Memorandum would have applicability.

11. The respondents have placed reliance on a Memorandum dated 17th November, 2011 in support of the demand. For two reasons this reliance is wholly misplaced. Firstly this Memorandum has been superseded by the later Memorandum dated 20th July, 2015. Secondly, even this Memorandum dated 17th November, 2011 prescribed security deposit of Rs.12,00,000/- only in case of branch office and not for addition of a go-down in the existing registration certificate. We have noticed that sub-rule (3) of Rule 17 of the Rules of 2005 requires a transporter to provide various details in the application for registration which includes the address of all branch offices and address of go-downs. Thus, there is a clear distinction between a branch office and a mere go-down. In the present case there is nothing on the record to suggest that the petitioner intended to use the said additional go-down as a branch office. The averments made in paragraph 5 of the said affidavit which we have reproduced, merely manifests a total misconception of law on the part of the respondents. In the said portion the respondents equated a go-down with a branch office which is clearly not the tenets of law. Even the inquiry report dated 03.07.2013 throws no further light on this aspect. Contents of the report may be reproduced which read as under:-

"In compliance with the order of the Supdt. of Taxes, Registration Cell, Agartala dt. 01/07/2013 paid visit into the above mentioned place in connection with making an enquiry into the above cited subject while Sri U.S. Chaubey to be branch manager of transport was present and represented.

Enquiry it appears from the record that the transport is running and carrying business under Charge-III (at present).

Now he would like to make an amend in TVAT Registration by way of inclusion of a new godown for delivery point at Dharmanagar C/o Sri Ranabir Roy Rajbari (near Sarala Petrol pump) Dharmanagar, North Tripura, Pin:799250 and in this respect Sri Chaubey has submitted a Notarial copy of rent agreement made between Sri Ranabir Roy S/o Lt. Ramani Mohan Roy resident of Raj Bari, Near Sarala Petrol Pump Po+Ps: Dharmanagar, Tripura North Pin:799250 vide no.215/June/2013 dt.10/06/2013. Sri Chaubey also produced and submitted stock statement upto 31/03/2013.

In view of the above the case may be considered if approved by the authority.

Submitted to the Superintendent of Taxes, Registration Cell, Agartala for kind information and doing the needful please."

12. In the result, impugned communication dated 20th May, 2016 is set aside.

13. In view of certain developments the final relief in favour of the petitioner shall have to be moulded. Firstly, we are informed that the petitioner has on account of the said stalemate not yet started using the new go-down. Secondly, we can take judicial notice of the fact that TVAT Act has been superseded by the GST regime. What are the rules and regulations for amendment of a registration certificate of a transporter under the new regime is not brought to our notice. Under the circumstances, we permit the petitioner to make a fresh application for amendment of the registration certificate. If such an application is made, the same shall be examined by the GST authorities on the basis of the presently prevailing rules and regulations. However, while doing so, our conclusions that the said go-down is not intended to be the petitioner's branch office shall hold good. If such an application is

made within a period of four weeks' from today, the same may be disposed of preferably within three months on receipt of the order.

The petition is disposed of accordingly.

(ARINDAM LODH), J

(AKIL KURESHI),CJ.

HIGH COURT OF TRIPURA



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