

**HIGH COURT OF TRIPURA
AGARTALA**

W.P(C) No.390/2015.

Sri Samir Ghosh,
S/o Late Surendra Chandra Ghosh of College Tilla,
near Post Office, Agartala, P.S. East Agartala,
District – West Tripura and also having his office
at Surjya road, Agartala, P.S. West Agartala,
District – West Tripura.

----Petitioner(s)

Versus

1. The State of Tripura,
represented by the Secretary to the Government of Tripura,
Revenue Department, Agartala, West Tripura.
2. The Commissioner of Taxes,
Government of Tripura, Gurkhabasti, P.O. Kunjaban, Agartala,
West Tripura.
3. The Superintendent of Taxes,
Charge – V, Government of Tripura, P.O. Agartala,
West Tripura.

---- Respondent(s)

For Petitioner(s) : Mr. B N Majumder, Advocate,
Mr. R Paul, Advocate,
Mr. R Saha, Advocate.

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

B E F O R E

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing : **27th November, 2018.**

Date of Judgment : **12th December, 2018.**

Whether fit for reporting : **Yes.**

JUDGMENT AND ORDER

(Sanjay Karol, C.J.)

The moot point which arises for consideration is as to
whether the impugned orders dated 11th September, 2015 and

14th September, 2015 passed by the Commissioner of Taxes(Revisional Authority) as well as Superintendent of Taxes, Charge – V, Agartala are *ultra vires* the provisions of Section 33 of the Tripura Value Added Tax Act, 2004 (*hereinafter referred to as the 'TVAT Act'*) or not?

2. It is not in dispute, in fact record reveals that the assessment proceedings pertain to the year 2000-2001 onwards till the year 2004-2005. Section 33 of the TVAT Act lays down the prescription of limitation of 5 years from the end of the tax period to which the assessment relates. Petitioner contends that in view of such prescription, orders of assessment being *ultra vires* need to be quashed and set aside.

3. Since the issue is legal, we need not dwell on the facts, save and except what is extremely relevant and material. For carrying out the assessment with respect to the relevant years, notices were issued to the assessee on 12th January; 12th May and on 23rd May, 2006 respectively. The assessment proceedings concluded with the passing of order dated 30th May, 2006 by the competent authority i.e. Superintendent of Taxes, Charge –II, Agartala established under the provisions of the Tripura Sales Tax Act, 1976 (*hereinafter referred to as the 'repealed Act'*) relevant portion of which reads as follows :

“ **** **** ****

For defaulting in making payment of tax to the tune of 26.26 lakh which was received by the dealer (Samir Ghosh) from the Executive Engineer Rig. Div. Kunjaban against supply of P. Gravels and for deliberately

furnishing of inaccurate particulars of turnover in the return as discussed above, the dealer was asked to show cause as to why penalty under section 13 of the TST Act, 1976 should not be imposed upon him. The dealer fails to adduce any reply on show cause. So I am satisfied that the dealer concealed actual fact of his turnover and submitted false returns and evade tax.

I therefore, after careful consideration of the fact discussed above, decide to impose 150% penalty under section 13(1)(a)(b)(c)(d) of the TST Act'76 in addition to interest charge under section 25 of the said Act 76, read with rule 27 of the TST Rules'76 for concealment of turnover.

For late payment of tax and late submission of returns as detailed above, the dealer was asked to show cause as to why penalty under section 13 of the TST Act'76 should not be imposed upon him. The dealer fails to give any reply on show cause. The delay was for one month in each cases so it is decided to impose 10% penalty for late payment of tax and the submission of returns without reasonable cause under section 13(1)(a) of the said Act in addition to interest charge under section 25 of the TST Act' 76 read with rule 27 of the TST Rules 76.

In the light of above computed the cases as below :-

Computation(in rupees)

A/Y	2000-01 12%	2001-2002 12%	2002-03 12% 4%		2003-04 12%	2004-05 12% 4%	
T.O.D	981380	3786813	4677389	20922	5552080	15127611	27500
Tax payable	117766	454418	561287	837	666250	1815313	1100
Total tax payable	117766	454418	562124	--	666250	1816413	--
Add interest u/s 25 read with rule 27	152114	360627	340440	--	297889	459600	--
Add penalty u/s 13(1)(a)(c)(d)	176649	520717	649346	--	826460	2363582	--
Less paid	Nil	108620	133967	--	117697	241412	--
Balance due	446529	1227142	1417943	--	1672902	4398183	--

Issue demand notice in form X."

4. Such order was subject matter of challenge before this Court and with a judgment dated 4th August, 2014 passed in

WP(C) No.272/2006 titled as **Samir Ghosh Vs. State of Tripura and Ors.**, the order of assessment was quashed purely on the sole issue of non-compliance of principles of natural justice. Significantly, Court reserved liberty to the State to issue fresh notices in accordance with the provisions of law and to the assessee to raise all objections, including the plea of limitation, if any, so available to him. Pursuant thereto, on 24th December, 2014 itself, fresh notices were issued to the assessee but this was so done under the provisions of TVAT Act. Before the assessing officer, the assessee took objection of limitation which was rejected vide order dated 3rd September, 2015, against which also the assessee took the matter with the revisional authority being the Commissioner of Taxes, who vide impugned order dated 11th September, 2015 only concurred with the same.

5. At this juncture, it be noticed that with the object and purpose of imposing levy and collection of value added tax at different points of sale within the State of Tripura, Act No.1 of 2005, termed as the TVAT Act, was notified and enforced with effect from 27th April, 2005. The relevant provisions of the said Act, necessary for adjudication read 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.

34. Turnover escaping assessment :-

.....
(2) No order of assessment shall be made under sub-section (1) after the expiry of five years from the end of the year in respect of which or part of which the tax is assessable.

35. Exclusion of time period for assessment :-

In computing the period of limitation specified for assessment or reassessment, as the case may be, the time during which any assessment or reassessment proceeding remained stayed under the order of a competent Court shall be excluded.

89. Repeal and Savings :- (1) The Tripura Sales Tax Act, 1976 (Act. No.II of 1976), and the Tripura Additional Sales Tax Act 1990 (Act 6 of 1990) (hereinafter referred as the repealed Acts) as in force in the State of Tripura are hereby repealed from the date of commencement of this Act. Provided that such repeal shall not affect the previous operation of the said Acts or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject there to, anything done or any action taken including any appointment, notification, notice, order, rule, form, regulation, certificate, license or permit in exercise of any power conferred by or under the said Acts, shall be valid and always be deemed to have been valid, during the period that Act was in force notwithstanding the repeal of the Act.

(1) A. The Tripura purchase Tax Act 1990 (Act no.9 of 1990) (here in after referred as repealed Act) as in force in the State of Tripura is hereby repealed. Provided that such repeal shall not

affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject there to, anything done or any action taken including any appointment, notification, notice, order, rule form, regulation, certificate, license or permit in exercise of any power conferred by or under the said Act, shall be valid and always be deemed to have been valid, during the period that Act was in force notwithstanding the repeal of the Act.1

(2) Notwithstanding the Repeal of the Acts. –

(a) any action or proceedings already initiated under these Acts shall validly be continued under the provisions of this Act which relates to the period prior to the coming into force of this Act.

(b) any person liable to pay any tax, fee, penalty, interest or other amount under that Act for any period before coming into force 1 Inserted vide the TVAT (Amendment) Ordinance, 2007 (w.e.f 17-7- 2007) and subsequent legislation vide the TVAT (Amendment) Act, 2007(dt.9-10-2007) 84 of this Act, shall be levied, assessed and collected under the provisions of this Act as if this Act were in force during the period.

(3) All arrears of tax, interest, penalty, fee or other amount due at the commencement of this Act, whether assessed or levied before such commencement or assessed or levied after such commencement, may be recovered as if such tax, penalty, interest, fee or other amount is assessed or levied under the provisions of this Act and all methods of recovery including levy of interest, penalty or prosecution provided under this Act, shall apply to such arrears as if such

amounts are assessed, levied and demanded under under this Act.

(4) Notwithstanding anything contained in sub-section (1), any application, appeal, revision or other proceedings made or preferred to any authority under the said Act, and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if it had been in force on the date on which such application, appeal, revision or other proceedings was made or preferred.”

(Emphasis supplied).

6. This Court in **WP(C) No.361/2008** titled as **M/s. Loknath Stores Vs. State of Tripura** and in **WP(C) No.196/2018** titled as **M/s. Joy Udyog Ltd. Vs. The State of Tripura and Ors.** has already interpreted the intent, purpose and scope of Section 89 of the TVAT Act holding that the liability to pay tax, fee, penalty, interest or any amount under the 'repealed Act', prior to the enforcement of the TVAT Act is required to be levied, assessed and collected under the provisions of the TVAT Act. It stood clarified that though the rights and obligations are to be determined/assessed and tax collected in accordance with the repealed Act, but the procedure to be followed is the one prescribed under the TVAT Act.

7. We are conscious that Section 89 deals with other statutes which stood repealed but are not making any reference thereto, for we are only concerned with the levy under the Sales

Tax Act, 1976. In this backdrop, we are called upon to consider as to whether the proceedings of assessment are barred being beyond the period of 5 years or not.

8. After having carefully considered the rival contentions of parties, we are of the considered view that the bar under Section 33 would not apply as there has been no delay on the part of the revenue in initiating the proceedings. It is true that under the 'repealed Act', there is no prescription of limitation but then equally in the attending facts, the prescription under the TVAT Act cannot be allowed to be invoked, for as is evident from record, diligently, the revenue had been pursuing the matter, endeavouring to complete the proceedings expeditiously. The first notice stood issued on 12th January, 2006 itself, the date prior to the expiry of 5 years from the end of the tax period relating to the first year of assessment in question i.e. 2000-2001. The order of assessment was passed on 30th May, 2006 itself. The assessee approached this Court and in an action initiated by the assessee, enforcement thereof stood stayed. The Court in the light of repealing of the statute, solely on the issue of violation of principles of natural justice quashed the order leaving open all issues on merit to be considered and decided by the appropriate authority.

9. Now, in the instant case, the writ petitioner has sought interim protection and got stayed the proceedings. The doctrine *commodum ex-injuria sua Nemo habere debet* is absolutely applicable to the instant case. It means convenience cannot

accrue to a party from his own wrong. The revenue was precluded from completing the assessment proceedings and the doctrine of *actus curiae neminem gravabit* is also squarely applicable. It means, the act of Court shall prejudice no man. In fact, the rules of the Court are intended to secure proper administration of justice. They are meant to serve and are to be subordinate thereto. Procedure is the handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. The maxim *lex non cogit ad impossibilia* is also applicable in the instant case. It means that law does not compel a man to do that which he cannot possibly perform.

10. In fact, the Apex Court in **(2018) 3 SCC 412** titled as ***Indore Development Authority Vrs. Shailendra and Ors.*** was called upon to interpret Section 24 of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 containing the prescription of limitation. The Court framed certain questions for consideration and answered as under:

“Provisions of Section 24(2) do not intend to cover the period spent during litigation and when the authorities have been disabled to act under Section 24(2) due to the final or interim order of a court or otherwise, such period has to be excluded from the period of five years as provided in Section 24(2) of the 2013 Act. There is no conscious omission in Section 24(2) for the exclusion of a period of the interim order. There was no necessity to insert such a provision. The omission does not make any substantial difference as to legal position.”

Thus, in our considered view, the issue is no longer *res integra*.

11. We also notice that Section 35 carves out an exception to Section 33. Writ petitioner wants the Court to hold that this section would be applicable only in those cases where the order of proceedings for assessment or re-assessment are pending and not completed on account of any stop order passed by a competent Court. Well, we are not inclined to accept the same for the view is not only myopic but also against the intent and scope of the Section. Firstly, the writ petitioner got the order of assessment stayed. The Court while quashing the said order, gave liberty to the revenue to initiate fresh proceedings which, in our considered view, was and could have been only for carrying out the proceedings of assessment.

12. As such, we do not find the contention to be acceptable and for all the aforesaid reasons, the writ petition being devoid of merit stands dismissed. Pending application(s), if any, also stand disposed of accordingly.

(ARINDAM LODH),J

(SANJAY KAROL),CJ.