

**HIGH COURT OF TRIPURA  
AGARTALA**

**CRP No.39/2021**

Jamal Hossen

----Petitioner(s)

Versus

The Commissioner of Taxes & Excise and others

-----Respondent(s)

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For Petitioner(s) : Mrs. Sujata Deb (Gupta), Advocate,  
Ms. Sulagna Nandy, Advocate.

For Respondent(s) : Mr. K. De, Addl. G.A.

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

**Order**

**06/09/2021**  
(Akil Kureshi, C.J.)

This revision petition is filed by the dealer to challenge an order dated 09.04.2021 passed by the Commissioner of Taxes as a revisional authority dismissing the application of the petitioner for restoration of the revision petition.

2. Brief facts are as under:

The petitioner was engaged in the business of import and sale of material such as, black trap from Bangladesh. The dealer was registered under the Tripura Value Added Tax Act. On 22.02.2013 the Assessing Officer

passed an order levying unpaid tax and penalty of Rs.5.97 lakhs (rounded off), Rs.12.87 lakhs (rounded off) and Rs.19.17 lakhs (rounded off) for the financial years 2008-09, 2009-10 and 2010-11 respectively. This order of assessment records that despite issuance of notices under Section 31(1) of the TVAT Act on several occasions and fixing of date of hearing of the assessment proceedings also on several occasions, neither the dealer nor his representative appeared before the assessing authority. The Assessing Officer, therefore, proceeded to frame ex parte assessment. Taking note of the total imports made by the dealer, he assessed the above amounts of tax with penalty.

3. Against the said order of the Assessing Officer petitioner preferred a revision petition before the revisional authority. On 07.11.2013 the revisional authority passed following order:

**“07.11.2013**

The case was heard on 30.09.2013. Sri A.K. Dasgupta, P.O. is present. The petitioner is absent without any step.

The P.O. submitted that on the last date of hearing also on 07.09.2013 the petitioner without attending before the court prayed for time and the court allowed the petitioner a last and final opportunity to represent his case on 30.09.2013 but the petitioner without availing the said opportunity remained absent without any step which proves that the petitioner is more interested in dragging the case rather than

to dispose of the case and therefore, no further time may be allowed and the case may be dismissed on default.

Heard the P.O. and perused the case records. It appears that the petitioner in order to drag the case remained absent without any step even when he was given the last and final opportunity vide order dated 07.09.2013 copy of which was also received by the petitioner. This proved sufficiently that the petitioner is not interested for disposal of the petition filed and therefore, it is meaning less to allow further time and hence, the petition is dismissed on default.

With the above observation the case is disposed off.”

4. In this order thus the revisional authority recorded that the petitioner is not appearing consistently since long time and dodging the proceedings. He, therefore, formed a belief that the petitioner was not interested in disposal of the petition. He, therefore, dismissed the revision petition for default.

5. According to the petitioner, he thereupon filed a restoration application on 30.12.2013 which assertion the department has strongly denied. In this application, the petitioner had contended that he was not aware of the legal technicalities and he depended on his lawyer. The order dismissing the revision petition for default may be recalled.

6. For several years thereafter nothing happened. According to the petitioner he was served the notices from the department for coercive recoveries only recently upon which he approached the Commissioner again under an application dated 24.03.2021. In this application the petitioner has averred that the revision petition was fixed for hearing on 16.05.2013. He had also made the pre-deposit as required under the law. The petitioner thereafter has stated that:

“3) That after a long time its came to my knowledge from Ld. Superintendent of Taxes that the case was disposed off vide No-21926-28 Dt. 11/11/2013 but unfortunately no communication was receive from Ld Superintended of Tax Ch-VI Agartala.

4) That on receiving such information the petitioner was taken aback and shocked as well.

5) That the petitioner humbly submits that since he could not have the opportunity to place his case before your honour for which he was unable to obtain relief for the ends of justice.

6) That the petitioner humbly requests you to please review the case record and Restore the Case and pass necessary Order/Orders as your Honour deem fit for end of natural Justice and fixed another date for Hearing.”

7. On this application the revisional authority has passed the impugned order on 09.04.2021 dismissing the restoration application

observing that the said order dated 07.11.2013 of the revisional authority was received by the petitioner on 23.11.2013. Therefore, the contention of the petitioner that he had not received such order is baseless. The case of the petitioner was disposed of in November, 2013 which cannot be reopened 8 years later.

8. Appearing for the petitioner, learned counsel Mrs. Sujata Deb (Gupta) submitted that the petitioner had made an application for restoration immediately after dismissal of the revision petition for default. The revisional authority committed a serious error in ignoring such restoration petition. In any case, the petitioner's case needs to be examined on merits.

9. On the other hand, learned Addl. Government Advocate Mr. K. De opposed the petition. Relying on the affidavit-in-reply filed by the Government he submitted that the application dated 01.01.2014 for restoration stated to have been filed by the petitioner is not available on record. Thus, no such petition was ever made. Only application for restoration is one filed by the petitioner on 24.03.2021 which the revisional authority correctly held to be hopelessly belated.

10. In absence of any reliable evidence of the petitioner filing restoration application on 01.01.2014 as stated, in the present case we are

unable to accept the stand of the petitioner in this respect. It is true that the petitioner relies on some stamping purported to be by the departmental authorities of having received the application for restoration on 01.01.2014, however, the respondents have denied any such application being on record. More importantly, if such application was filed on 01.01.2014 as is stated by the petitioner, there was no further requirement of filing a fresh application on 24.03.2021. At best, despite pendency of restoration application the department was proceeding for further recoveries, the petitioner would have reminded the revisional authority about the pendency of the restoration application. At any date he would have mentioned about the restoration application which was made earlier. We have reproduced the relevant portion of the restoration application dated 24.03.2021 in which the petitioner has made no reference to his previous restoration application. In fact, this application is premised on the ground that he had never received the order of dismissal of revision petition and, therefore, he was filing a restoration application several years later. This is in conflict with his stand that he had filed the restoration application way back on 01.01.2014. Even his assertion that he had never received the order of dismissal of revision petition is disputed by the Commissioner while dismissing the application for restoration in which he has recorded that the said order was served on the petitioner on

23.11.2013. Even the assessment order records that despite issuance of several notices and adjournment of the proceedings on various occasions the petitioner did not remain present. Even while dismissing the revision petition of the petitioner, the Commissioner has recorded that he was given sufficient opportunities and all that the petitioner was interested was in prolonging the litigation.

11. Under the circumstances, the petitioner has not showed any serious inclination to pursue his cause on merits. If he accepts that only application for restoration that he had made is one dated 24.03.2021, the same is hopelessly barred by delay and laches and correctly dismissed by the Commissioner.

12. Revision petition is dismissed.  
Pending application(s), if any, also stands disposed of.

**(S.G. CHATTOPADHYAY), J**

**(AKIL KURESHI), CJ**

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