

HIGH COURT OF TRIPURA
AGARTALA
W.P.(C) 696/2021

Megha Technical and Engineer Private Limited, A company incorporated under the provisions of the Companies Act, 1956 having its marketing office at C/O R.K. Udyog, Near Ginger Hotel, Khejur Bagan, Agartala, Tripura and its registered office at Lumshnong, P.O. Khaliehriat, District- East Jaintia Hills, Meghalaya and in the present proceedings represented by Sri Sanjib Kumar Saharia, the authorized signatory of the petitioner company.

---- **Petitioner**

Versus

- 1. The State of Tripura**, represented by the Chief Secretary, Government of Tripura, Agartala, New Civil Secretariat, P.O. Kunjaban, P.S. New Capital Complex (NCC), District- West Tripura, PIN- 799006.
- 2. The Commissioner State Taxes**, P.N. Complex, Gurkhabasti, Agartala, District- West Tripura, Pin- 799006.
- 3. Superintendent of State Taxes, Agartala**, Charge-V, Agartala, Tripura (West), 799001.

----**Respondents**

For Petitioner(s)	:	Dr. Ashok Saraf, Sr. Advocate Mr. P. Baruah, Advocate Mr. Kousik Roy, Advocate
For Respondent(s)	:	Mr. K. Dey, Additional GA
Date of hearing and delivery of Judgment & Order	:	14.03.2023
Whether fit for reporting	:	Yes

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH
Judgment & Order (Oral)

14/03/2023

(T. Amarnath Goud, ACJ)

Heard Mr. Ashok Saraf, learned senior counsel assisted by Mr. P. Baruah, learned counsel and Mr. Kousik Roy, learned counsel appearing for the petitioner as well as Mr. K. Dey, learned Additional GA, appearing on behalf of the respondents.

2. By means of filing this writ petition, the petitioner has challenged the impugned show cause notice dated 21.05.2020 (Annexure V to the writ petition) and order dated 10.12.2020 (Annexure II to the writ petition) issued under Section 70(1) of the Tripura VAT Act, 2004 by the respondent no. 2 herein.

3. Briefly stated, the petitioner submitted its returns under TVAT Act, 2004 for the assessment years 2015-16, 2016-17 and 2017-18 (upto June, 2017). The petitioners being insisted by the assessing authority had paid advance tax in the month of March and the assessment was completed by respondent no. 3 vide order of assessment dated 03.05.2019 for the assessment years 2015-16 to 2017-18 under Section 31 of the TVAT Act, 2004 and it was recorded that the petitioner had paid Rs. 33,32,202/- as excess tax amount for the assessment year 2016-17 and a part of the same was adjusted against the tax liability for the year 2017-18. The further case of the petitioner is that after adjustment of the amount of tax refundable for the assessment year 2016-17, the total amount refundable to the petitioner was Rs. 30,25,031/-. Accordingly, the petitioner prayed for refund of the excess amount paid, but he received a notice dated 10.12.2020 from respondent no. 2 in exercise of power under Section 70(1) of the Act wherein it was stated that the petitioner had made excess payment of tax to the tune of Rs. 30,25,031/-. The petitioner submitted his reply dated 11.06.2020, and on receipt of the same, respondent no. 2 issued the impugned notice dated 21.05.2020 upon the petitioner

4. During arguments, Dr. Saraf, learned senior counsel appearing for the petitioner has argued that there was no jurisdictional error in completing the assessment and thus the order dated 03.05.2019 passed by the Commissioner of Taxes is absolutely illegal. Learned senior counsel has further submitted that the Commissioner of Taxes without assuming jurisdiction under Section 70(1) of the Act the order has been passed. Learned senior counsel has further submitted that there is no error in the original assessment done by the assessing officer. Learned senior counsel has also submitted that there was no prejudicial to the interest of the State Revenue. Learned senior counsel has lastly urged this court to set aside the impugned show-cause notice dated 21.05.2020 and the impugned order dated 10.12.2020 passed by the respondent no. 2.

5. Learned Additional GA has submitted that the show-cause notice dated 21.05.2020 and the order dated 10.12.2020 passed by the respondent no. 2 are not illegal and the same had been passed within the ambit of law.

6. Considered the submission of learned counsel appearing for the parties. We have also perused the record.

7. From the Assessment Order dated 03.05.2019 issued by the respondent no. 3, it is evident that the petitioner has paid tax for the year 2017-18 (upto 30.06.2017) to the tune of Rs. 33,32,202/-. The computation is reproduced here-in-below:

"COMPUTATION

Assessment Years	2015-16	2016-17	2017-18 (upto 30.06.17)
Rate of Tax	14.5%	14.5%	14.5%
T.O.R.	184348033.08	652525503	2117040
Turnover accepted	184348033.08	652525503	2117040
Tax payable	26730464.80	94616197.94	306970.80
Interest U/s 25(1)	1567.68	0	0
Penalty U/s 25(3)	227.2	0	0
Penalty U/s 25(4)(d)	10000	400	200
Total Payable	26742259.68	94616597.94	307170.80
Tax Paid	2,67,30,461.00	9,46,16,204.00	3332202
Balance Due	11798.68	393.93	-3025031.20
Say	11799	394	3025031 (Excess)

8. From the record, it is evident that, as per assessment dated 03.05.2019 for the assessment years 2015-16 to 2017-18 (upto 30.06.2017), the respondent no. 3 confirmed that the petitioner has paid excess tax amounting to Rs. 33,32,202/- for the assessment year 2016-17 and a part of which was adjusted against tax liability for the year 2017-18 and after adjustment the amount of tax refundable for the assessment year 2016-17 against the tax liability for the assessment year 2017-18 amounting to Rs. 3,06,971/-, the respondent no. 3 determined the total amount refundable to the petitioner was amounting to Rs. 30,25,031/-. Thereafter, the petitioner has submitted an application on 07.02.2020 to the respondent no. 2 wherein he prayed for initiating a refund process of the excess tax paid amount to Rs. 30,25,031/- for the assessment year 2017-18 (upto 30.06.2017) and release the amount in his favour.

9. On 21.05.2020, the respondent no. 2 had issued a show-cause notice upon the petitioner asking him to appear in-person or by authorized representative and explain as to why suitable order shall not be passed which

may include enhancing or modifying/cancelling the assessment order dated 03.05.2019 passed by the respondent no. 3 herein, since as per respondent no. 2 the assessment order dated 03.05.2019 for the year 2017-18 (upto June, 2017) is prejudicial to the interest of State revenue. The order dated 21.05.2020, is reproduced here-in-below:

"ORDER

21.05.2020

Whereas, the assessment of M/s Megha Technical & Engineers Pvt. Ltd. C/O K.R. Udyog, Near Ginger Hotel, Khejur Bagan, Agartala, Tripura for 2015-16, 2016-17 & 2017-18 (upto June, 2017) was completed by the Superintendent of Taxes, Charge-V, Agartala on 03.05.2019

AND

2. Whereas, the Superintendent of Taxes, Charge-V, Agartala assessed the dealer under section 31 of the TVAT Act, 2004 for the years 2015-16, 2016-17 & 2017-18 (upto June, 2017) and raising demand Rs. 11,799/- & Rs. 394/- for the eyar 2015-16 & 2016-17 respectively and determined excess tax paid Rs. 30,25,031/- for the year 2017-18 (upto June, 2017)

AND

3. Whereas, the Superintendent of Taxes, Charge-V, Agartala on the said assessment order has mentioned that the dealer has made excess tax payment of Rs. 30,25,031/- for the year 2017-18 (upto June, 2017) and the dealer subsequently submitted an application for refund of the said amount of Rs. 30,25,031/-

AND

4. Whereas, in the assessment order of the Superintendent of Taxes, Charge-V, Agartala as per return and payment statement for the year 2017-18 total tax payable and paid for that year is Rs. 3,06,971/- but as per computation tax paid amount is shown as Rs. 33,32,202/- and the payable amount remained unchanged and it is deduced that the tax payer has made excess payment of tax to the tune of Rs. 30,25,031/-

5. Whereas, it was also observed that the Superintendent of Taxes, Charge-V, Agartala has not obtained authorization of the person representing the dealer in the process of assessment and has merely relied upon the claim of the representative that he is the Accountant of the dealer

6. Whereas, on the basis of above facts and circumstances, it appears that the assessment order dated 03.05.2019 for the year 2017-18 (upto June, 2017) is erroneous in so far as it is prejudicial to the interest of state revenue

7. Now, therefore, in exercise of the power conferred upon me U/S 70(1) of the TVAT Act, 2004, the dealer is hereby asked to appear in person or by his authorized representative before the undersigned on the date and time given below and to explain as to why suitable order shall not be passed which may include order of enhancing or modifying the assessment or cancelling the aforesaid assessment order dated 03.05.2019 passed by the Assessing Authority, the Superintendent of Taxes, Charge-V, Agartala for the assessment year 2017-18 (upto June, 2017) with direction for fresh assessment.

To 25.06.2020 at 12.05 P.M. for hearing."

10. On receipt of the said notice dated 21.05.2020, the petitioner has submitted his reply on 11.06.2020 to the respondent no. 2 wherein the

petitioner has prayed for refund of the amount of Rs. 30,25,031 as excess tax paid for the assessment year 2017-18 (upto June, 2017). Surprisingly, without addressing the grievance of the petitioner and without giving any opportunity to the petitioner of being heard personally, the respondent no. 2 under section 70(1) of the TVAT Act, 2004, had passed an order on 10.12.2020 observing that *the petitioner has made excess payment during 2016-17 and there was no payment of tax during 2017-18 (upto June, 2017) but the same has not reflected clearly in the assessment order dated 03.05.2019. Considering the case from all aspects it is remanded to the Superintendent of Taxes, Charge-V, Agartala for making assessment afresh and to record the tax payment, liability etc. year wise and to pass a detailed and reasoned order within next 3 (three) months after providing the dealer reasonable opportunity of being heard.*”

10. Section 70(1) of the TVAT Act 2004 says that *the Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any person appointed under subsection (1) of section 18 to assist him, is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the dealer or transporter an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such orders thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

11. The petitioner in his reply has urged the respondent no. 2 to exempt him or his representative from personal appearance before him since pandemic

situation was prevailing causing him huge business loss and sought for release of the excess amount paid, but the respondent no. 3 acting beyond section 70(1) of the Act has passed the *suo motu* order without any proper explanation or without indicating any error in the assessment of the assessing authority. Moreover, the respondent no. 2, acting as revisional authority without verifying the records had passed a non-speaking order so as to establish that the respondent no. 2 is not convinced with the assessment order.

12. In the case in hand, we are of the considered view that there is no jurisdictional error in the assessment of the assessing authority, and accordingly, the respondent no. 2 has acted beyond section 70(1) of the Act. This casual approach of the respondent no. 2 cannot be permitted since he is trying only to prevent the payment of refund amount to the petitioner.

13. The respondent authorities acting as quasi judiciary authority by invoking the power under statute are expected to act judiciously, but they are not expected to work as money generating authority. Very often it is noticed by this court that the orders are passed by the respondent authorities in an arbitrary manner which is driving the Tax-payers/dealers to file appeals by depositing 50% of the disputed tax while filing statutory appeals. But for the casual approach of the respondent-authorities, a Tax-payer/dealer cannot be put to hardship. Such action of the respondent-authorities cannot be appreciated. The impugned order dated 21.05.2020 is due of its nature. This is nothing else, but a burden on the business class. This court finds that the officers need to be more vigilant and tax-payers friendly. Accordingly, a cost

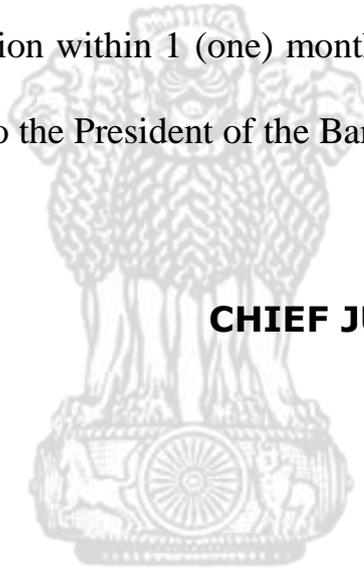
of Rs. 25,000/- is imposed upon the revisional authority, and the said amount to be paid from his salary to the credit of Tripura High Court Bar Association for passing such orders.

14. Accordingly, the writ petition stands allowed of in terms of the above observations and directions. Consequently, the notice dated 21.05.2020 (Annexure V to the writ petition) and order dated 10.12.2020 (Annexure II to the writ petition) issued by the respondent no. 2 stand set-aside. Pending application(s), if any, also stands disposed.

15. The Revisional Authority to pay the cost to the account of Tripura High Court Bar Association within 1 (one) month from today. Copy of this order be communicated to the President of the Bar Association.

JUDGE

CHIEF JUSTICE (ACTING)



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