

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) NO.167 of 2008

Sri Ratan Bardhan,
Son of Late Chandranath Bardhan,
Resident of Tarapur, Shibbari Road,
P.O. & P.S. - Silchar,
District - Cachar, Assam.

..... *Petitioner.*

- *V/s* -

1. **Food Corporation of India,**
Represented by its Managing Director,
Having its Office at 16/20 Barakhamba Lane,
New Delhi - 110001.
2. **Senior Regional Manager,**
Food Corporation of India,
NEF Region,
Shillong, Meghalaya.
3. **District Manager,**
Food Corporation of India,
District Office, Assam - Agartala Road,
Agartala, West Tripura.
4. **The State of Tripura,**
represented by the Secretary to the
Government of Tripura,
Finance Department,
Agartala, West Tripura.
5. **The Commissioner of Taxes,**
Government of Tripura,
Agartala, West Tripura.

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U.B. SAHA

For the petitioner : Mr. S. Bhattacharjee, Advocate.

For the respondents : Mr. P. Chakraborty, Advocate.

Date of hearing and
delivery of judgment : 31.07.2014
& order

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

The sole question which arises for consideration in this writ petition is whether the transaction in question which is only a carriage contract is taxable or not.

2. This question is no longer *res integra* and has been decided by a Division Bench of this Court in ***Namita Paul and others Vs. Food Corporation of India and others, 2008(1) GLT 49*** wherein this Court held as follows :

“35. What crystallizes from the above discussion is that unless the TST Act is suitably amended by either expanding the definition of dealer or by making appropriate changes in the provisions of Section 3, which is the charging section, no person, who transfers the right to use any goods for any purpose, can be held liable to pay sales tax under the TST Act. What also crystallizes for the above discussion is that Rule 3-A(2) is, in the light of the discussion held above, ultra vires the TST Act.

36. *In the result and for the reasons discussed above, while the appeals preferred by the State Government, fail and the same shall accordingly stand dismissed, the appeals, preferred by the writ petitioners, are hereby allowed.*

37. *In view of the fact that Rule 3-A(2) has been held to be ultra vires, no authority rests in the Department of Revenue, Government of Tripura, to either direct payment of, or deduction at source for the purpose of payment of, sales tax from the bills of any person, who transfers the right to use any goods for any purpose.”*

3. In the present case, it is not disputed that the contract is for carriage of food items and, therefore, the contract does not amount to transfer of the right to use property in any goods and therefore not exigible to sales tax or value added tax under the Tripura Sales Tax Act or the Tripura Value Added Tax Act.

4. In this view of the matter, the writ petition is allowed in terms of the judgment passed in ***Namita Paul's*** case.

No order as to costs.

JUDGE

CHIEF JUSTICE

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