

THE HIGH COURT OF TRIPURA AGARTALA

WP(C) 336 of 2013

M/S Sherowali Trade & Transport

A sole proprietorship firm
having its registered office at
J.B. Road, near Colonel Chowmuhani,
P.S. West Agartala, District-West Tripura,
Represented by its proprietor
Shri Nilanjan Dutta,
Son of Lt. Poritosh Dutta,
resident of Ramnagar Road No. 5,
P.S. West Agartala,
District-West Tripura.

..... Petitioner

Versus

1. The State of Tripura

Represented by the Secretary
to the Government of Tripura,
Finance Department, Agartala,
West Tripura.

2. The Commissioner of Taxes,

Government of Tripura, Agartala,
West Tripura.

3. The Superintendent of Taxes,

Charge-VII, Agartala,
West Tripura.

..... Respondents

WP(C) 159 of 2009

M/S Ujjyanta Road Service

A Partnership firm constituted of
Sri Dilip Sengupta,
S/O Sri Dhirendra Sengupta
resident of Ramnagar Road No. 2,
P.S. West Agartala,
District-West Tripura.

And

Sri Ratan Kumar Roy,
S/O Late Ashutosh Roy,
Resident of Chandrapur,
P.S. East Agartala,
District-West Tripura
Represented by

Shri Pranab Deb Laskar,
S/O Sri Prafulla Deb Laskar

Resident of Assam-Agartala Road,
Opposite of Math Chowmuhani Bazar,
P.S. East Agartala, District-West Tripura,
Vide General Power of Attorney
Dated 01.06.2009.

..... Petitioner

Versus

- 1. The State of Tripura**
Represented by the Secretary
to the Government of Tripura,
Finance Department, Agartala.
- 2. The Commissioner of Taxes,**
Government of Tripura,
Agartala.
- 3. The Superintendent of Taxes,**
Charge-IV, Govt. of Tripura,
Agartala.

..... Respondents

WP(C) 155 of 2009

M/S Ram Krishna Roadways

A sole proprietorship firm
Of Sri Swapan Kumar Saha,
S/O Sri Manindra Ch. Saha,
Situated at Netaji Subhash Road,
Agartala, P.S. West Agartala,
District-West Tripura.
Represented by Sri Jiban Kumar Saha
Son of Lt. Raiharan Saha
Resident of Nutannagar,
P.S. Airport, Dist-West Tripura,
Manager of the said firm namely,
M/S Ram Krishna Roadways
Vide Power of Attorney authenticated
On 28.05.2009.

..... Petitioner

Versus

- 1. The State of Tripura**
Represented by the Secretary
to the Government of Tripura,
Finance Department, Agartala,
- 2. The Commissioner of Taxes,**
Government of Tripura,
Agartala,
- 3. The Superintendent of Taxes,**
Charge-I, Govt. of Tripura,
Agartala, West Tripura

..... Respondents

WP(C) 158 of 2009

M/S M.S. Freight (India) Private Limited,

A Company incorporated under the Companies Act, 1956 having its Head Office at 47, Zakaria Street, Kolkata-700073, and also having its Branch Office at Motor Stand Road, P.S. East Agartala, Dist-West Tripura, Represented by its Manager and duly constituted Attorney, Sri Sanjib Roy, S/O Late Saroj Roy, Resident of Colonel Chowmuhani P.S. West Agartala, Agartala, District-West Tripura.

..... Petitioner

Versus

1. The State of Tripura

Represented by the Secretary to the Government of Tripura, Finance Department, Agartala,

2. The Commissioner of Taxes,

Government of Tripura, Having his office at Kar Bhawan, Agartala, West Tripura.

3. The Superintendent of Taxes,

Charge-VII, Kar Bhawan, Agartala, West Tripura.

..... Respondents

WP(C) 160 of 2009

M/S Saahra Road Lines,

A partnership firm constituted of

1. Md. Mozir Uddin,

S/O Lt. Suraj Ali, Vill. Lichubagan, P.O. Kathalbagan, P.S West Agartala, C/O Sri Tapan Ghosh.

2. Sri Uttam Saha,

S/O Late Mohanlal Saha Resident of Santipara, P.S. East Agartala, Dist.-West Tripura.

3. Sri Dipankar Bir

S/O Late Ranjit Bir, Resident of 271/6/1, Sahid Hemanta Kumar Bose Sarani, Jawpur, Panchanantala, Kolkata-700074.

Represented by Md. Mozir Uddin,
Son of Md. Suraj Ali vide clause 12 of the
Deed of Partnership dated 16.05.2005.

..... **Petitioner**

Versus

- 1. The State of Tripura**
Represented by the Secretary
to the Government of Tripura,
Finance Department, Agartala,
- 2. The Commissioner of Taxes,**
Government of Tripura,
Agartala,
- 3. The Superintendent of Taxes,**
Charge-V, Govt. of Tripura,
Agartala.

..... **Respondents**

WP(C) 166 of 2009

M/S Pawan Roadways,
A Sole Proprietorship firm owned by
Sri Mahendra Nath Kapil,
Son of Sri Lamburam Kapil,
24B, New Qutab Road
Delhi-110006.
Represented by :
Sri Ramdhan Choudhary
Son of Sri Nimbaram Choudhary
Having its office at 89, Motorstand
Road, Agartala-799001
Vide Power of Attorney authenticated
On 01.06.2009.

..... **Petitioner**

Versus

- 1. The State of Tripura**
Represented by the Secretary
to the Government of Tripura,
Finance Department, Agartala,
- 2. The Commissioner of Taxes,**
Government of Tripura,
Agartala.
- 3. The Superintendent of Taxes,**
Charge-VIII, Govt. of Tripura,
Agartala.

..... **Respondents**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE UB SAHA

For the petitioners : Mr. SM Chakraborty, Sr. Advocate
Mr. BN Majumdar, Advocate
Ms S Deb Gupta, Advocate
Ms B Chakraborty, Advocate

For the respondents : Mr. S Chakraborty, Addl. GA
Mr. DC Nath, Advocate

**Date of hearing
and delivery of
judgment & Order** : **30.05.2015.**

Whether fit for reporting : **Yes.**

JUDGMENT AND ORDER (ORAL)

(Deepak Gupta, CJ)

All these petitions are being disposed of by a common judgment since the main issues involved in the cases are virtually identical.

2. In all the cases the petitioners are transporters duly registered under the Tripura Value Added Tax Act, 2004 (*hereinafter referred to as, "the TVAT Act,"*). Under Section 22 of the TVAT Act, no transporter, carrier or transporting agency can operate his transporting business in Tripura, if the carrier or transporter carries taxable goods unless he is duly registered with the Commissioner of Taxes. Therefore, it is clear that every transporter must be registered as a dealer under the TVAT Act, if he is transporting goods which are taxable under the TVAT Act. We are not concerned with the other provisions of Section 22 but Section 22(5) empowers the Commissioner of Taxes to suspend or cancel the certificate of registration of a transporter if the transporter, carrier or transporting

agency carries on transport business in contravention of the Act and Rules. This clearly shows that the Commissioner has the power to cancel the registration in favour of the transporter in case it is found that the transporter is violating the rules.

3. Section 67 of the TVAT Act, deals with establishment of check posts for inspection of goods in transport. Section 67(2) provides that the Driver or person in charge of the vehicle or the carrier or goods shall carry with him the record of the goods, including Challan, Bills of Sale or Dispatch Memos and prescribed declaration form duly filled in and signed by the consignee or transporter of goods carrier. The duty of the transporter under this Section is only to carry these documents which are to be supplied by the consignee or the transporter of goods.

4. Section 77 provides for penalty payable by the transporter and reads as follows:-

“77. Penalty payable by the transporters :-

- (1) If the Commissioner is satisfied that any transporter has delivered taxable goods to any person without obtaining from the dealer, copy of the valid permit or has concealed the actual particulars of the consignment transported by him, the Commissioner may direct that such transporter shall pay, in addition to tax, by way of penalty, a sum which may extend to one hundred and fifty percent of the tax involved.***
- (2) No order under sub-section (1) shall be made unless the transporter has been heard or has been given reasonable opportunity of being heard.”***

5. A bare perusal of this Section shows that if the Commissioner is satisfied that the transporter has delivered taxable goods to any person without obtaining copy of the valid permit from the dealer or has concealed the actual particulars of the

consignment transported by him, the Commissioner may direct such transporter to pay tax and penalty which may extend to up to 150% of the tax.

6. Section 80 empowers the Commissioner to compound the offences and it is not disputed that all the transporters in these cases have compounded offences on a number of occasions.

7. Section 87 of the Act empowers the government to frame rules to carry out the purpose of the Act and the rules have been framed thereunder.

8. Rule 17 deals with transporters. Sub-rules (1) to (5) of Rule 17 relates to registration of the transporters. Sub-rule (6) again provides that if the transporter, transporting agency or carrier violates the provisions of the Act or the Rules his registration can be cancelled. Sub-rule (7) mandates that every transporter, carrier or transporting agent shall maintain a register in Form-VII depicting therein a true and correct amount of every consignment of goods transported into Tripura and in Form-VIII for goods transported from Tripura outside Tripura. A transporter is required to fill in a quarterly statement in terms of Form-IX.

9. We are mainly concerned with sub-rules (8) and (9) which read as follows:-

“17. Registration of Transporters Carriers or Transporting Agent:-

***.....
(8) No taxable goods shall be delivered by the transporter, carrier or transporting agent unless the requirements laid down in Rule 48 and 51 have been complied with.***

***(9) No delivery of taxable goods shall be given by the transporter without obtaining a copy of permit in Form-XXIV signed by the Superintendent of Taxes/Inspector of Taxes.
.....”***

10. Sub-rule (8) clearly mandates that the transporter, carrier or transporting agent shall not deliver any taxable goods to the consignee or any person unless the requirements of Rules 48 and 51 are complied with. Sub-rule (9) provides that no delivery of taxable goods shall be given by the transporter without obtaining a copy of permit in form XXIV signed by the Superintendent of Taxes. Therefore, it is the duty of the transporter to ensure that before he delivers the goods, rules 48 and 51 are complied with. It is also his duty to ensure that he must obtain the permit in Form-XXIV duly signed by the Superintendent of Taxes before handing over the goods to any person or dealer.

11. Rules 48 and 49 read as follows:-

“48. A registered dealer shall, before taking delivery of or transporting from any place specified in Rule 47, any consignment of taxable goods exceeding the quantities specified in the said rule and dispatched from any place outside Tripura, produced for countersignature before the Superintendent or Inspector the railway receipt, bill of lading or other document required for the purpose of obtaining delivery of such consignment from the carrier. He shall simultaneously make over to the Superintendent of Taxes a written declaration in Form-XXIV in triplicate duly signed.

49. (1) Every declaration to be given under clause (a) of sub-section (2) of section 67 of the Act shall contain a correct and complete accounts of the goods carried by the transporter and shall be in Form-XXV in triplicate and duly signed by him.

(2) The Officer-in-charge, of the checkpoint or the barrier on being satisfied about the correctness of the statements made and particulars contained in the declaration in form-XXV, shall seal it with his official seal and give a permit. The duplicate and triplicate copies of Form-XXV shall thereupon be returned to the Transporter and the original copy shall be retained by the officer-in-charge and the same shall be forwarded to the concerned Superintendent of Taxes after the end of every month.

Provided that a transporter who has obtained a permit at the first check post or barrier under this sub-rule shall not be required to make any further declaration at any other check posts or barriers

in respect of only so much of the consignments to which the permit relates.

(3) Registered transporter, carriers or transporting agent under Sub-rule (1) of Rule 17, shall obtain the Form XXV, subject to the provisions of Rule 50, from the concerned Superintendent of Taxes on payment of such price as may be notified by the Commissioner. The form shall be in triplicate and serially numbered and account shall be maintained in the Office of the Superintendent of Taxes in a register. No form, other than Form XXV supplied from the Office of the Superintendent of Taxes, shall be entertained. Registered transporter shall submit triplicate copy of Form XXV to the concerned Superintendent of Taxes at the time of obtaining further supply of the said form.

Provided that the transporter may be supplied with the Form XXV in case the Superintendent of Taxes is satisfied that due to reasons beyond control of the transporter it is not able to produce the triplicate copy of Form XXV taken earlier and the transporter has submitted an undertaking to produce such triplicate copy within two months.

(4) If the Superintendent of Taxes considers it necessary so to do, he may specify the period on the Form XXV so issued by him, for which it will be valid.

(5) If any Form XXV obtained by a registered transporter under sub-rule (3) is lost or destroyed or stolen, it should immediately report the fact of such loss, destruction or theft to the Superintendent of Taxes concerned.

(6) When the registration certificate of a transporter is cancelled/suspended, such transporter shall forthwith surrender to the concerned Superintendent of Taxes, all unused Form XXV remaining in stock with it and the concerned Superintendent of Taxes shall thereupon cancel and mutilate such form so surrendered."

12. Rule 48 actually is a mandate to the registered dealer and not to the transporter. It requires that before a registered dealer takes delivery of any goods even from a transporter he must submit Form-XXIV out of which one copy has to be submitted to the transporter.

13. Rule 49 provides that the transporter is required to give a true declaration of the goods carried by him in Form-XXV. Form-XXV is made available to the transporter directly by the Superintendent of Taxes and/or his office. When the transporter carries the goods he must correctly depict the goods in the Form-XXV.

14. We can, therefore, summarize the duties of the transporter as follows:-

- I.** The driver or any other agent of the transporter accompanying the goods must carry with him the Challan, Bills of Sale or Dispatch Memos, prescribed declaration form etc. in Form-XXV and XXVI.
- II.** These documents must be carried by the driver or the person accompanying the goods in the vehicle. Form-XXV can only contain the description of the goods entered by the transporter on the basis of the material made available to him by the consignee.
- III.** A transporter cannot be expected to open each and every box and in fact he has no legal authority to open the consignment to check whether they contain what is stated in the Bill of Lading, Sale Memo, etc. However, the description of the goods should match the goods which are being carried in the vehicle of the transporter, meaning thereby that if they are card board cartons the packing should be clearly depicted and if anything is mentioned on the packing that should also be mentioned.
- IV.** Once the goods reach the destination, it is the duty of the transporter to ensure that no delivery is made to the dealer unless the dealer handovers Form-XXIV duly signed by the Superintendent of Taxes.

These are the only duties which are expected of a transporter. If he violates such duties then he is definitely liable to punishment.

15. There is one issue which we are facing time and again in Tripura and that is undervaluation of goods and mis-description of goods, etc. The transporter is not liable for undervaluation of goods or mis-description of goods. How does the transporter know what is the value of the goods which are handed over to him by the Consignor or the Consignee? The transporter is only expected to transport the goods and he has no reason to dis-believe the Bill of Lading, Bill of Sale or any other documents produced by the Consignor or showing the description and value of goods. However, where the description on the face of it does not match the packing then the transporter must explain why there is a discrepancy. Obviously the transporter cannot know what is inside the box but when the goods are in an open condition and are clearly visible then it is the duty of the transporter to ensure that the goods which he transports match the description given in Form-XVI and are duly entered in Form-XXV.

16. We would, however, like to clarify that if the Revenue Department on the basis of cogent materials and evidence before it can establish that the transporter is *hand in glove* with the dealer or that the transporter and the dealer are one and the same person though under different trade names then a presumption can be drawn against the transporter also and in such case the transporter

may face penal proceedings. However, this can only be done if it is clearly shown that the transporter knew that the goods were something else and he has purposely entered something else in Form-XXV.

17. We have clarified the law in detail not because these issues clearly arise in these cases but because lack of clarification is leading to a lot of problem both for the dealers as well as for the department. As far as the present cases are concerned, it is not disputed that the transporters have on a number of occasions compounded the matters and paid the penalty.

18. It has been urged on behalf of the petitioners that there was a practice going on for long in Tripura that the transporters used to deal with the check post and settle the cases with the departments. In case the transporter compounds the matter then the transporter is virtually admitting that he is at fault because compounding can only be done by the person who is at fault or by his representative. However, this position was not clear till now. Therefore, we for the past want to give the transporters one more opportunity. We are also giving this opportunity because we find that in most of the cases the show cause notices issued are very vague and do not clearly depict what are the violations made by the transporter. But in the final order reference has been made to the various violations committed by the transporter and compounded by them. Since the transporters have not denied that they have compounded these matters, it is apparent that they settled the

matters. Whether these matters were settled on behalf of the dealers or not is not for this Court to decide in these proceedings. Therefore, for the future, we make it clear that if the transporter settles the matter and compounds the matter at the check post it shall be deemed that he is the offender and, therefore, he is compounding the matter unless he produces a written authorization from the dealer authorizing the transporter to compound on his behalf when the composition shall be treated to be an offence by the dealer and not by the transporter.

20. In view of the above discussion and in view of the fact that the law in this regard was not very clear and also in view of the fact that in most cases the show cause notices are vague, we set aside the impugned orders. However, we are not oblivious to the fact that in all the cases the transporters have compounded the matters on a large number of occasions and, therefore, we allow the petitions subject to the following conditions:-

1. The transporters, w.e.f. 1st July, 2015 shall strictly comply with the provisions of the Act and Rules as interpreted by this Court in ***M/s Ruchi Soya Industries Ltd., Vs. The State of Tripura and Ors., in CRP 76/2009*** and in this judgment.
2. The transporter must comply with his duties as set out in the judgment hereinabove. In the first case of alleged violation the Commissioner shall issue notice and in case the transporter is finally found guilty the Superintendent of Taxes

shall be entitled to impose maximum penalty even in the case of first violation.

3. On the second violation if the transporter is held guilty by the department then straightaway the department shall be entitled to cancel the registration after giving hearing to the transporter in accordance with law. It is made clear that merely because it is the second penalty will not be a ground in the case of the petitioners to take a lenient view.

With the aforesaid observations and directions all these petitions are disposed of.

JUDGE

CHIEF JUSTICE

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