

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.399/2021

OPC Assets Solutions Pvt. Ltd., having its Registered Office at Door No. 5, 7th Floor, ALSA Tower, No. 186/187, Poonamallee High Road, Kilpauk, Chennai-600010 & Corporate Office at Unit No. 202, A-Wing, 2nd floor, Natraj by Rustomjee, Sir M.V. Road, Western Express Highway, Andheri (East), Mumbai-400069 and present principal place of business at House No. 324389, Ward No. 32, Holding No. 386 Netaji Subhash Road Near HDFC bank Agartala Branch Post, Agartala-799001, having GSTIN. 16AAACO7555K1Z4, represented by its Authorized Signatory Mr. Rahul Tiwari (Manager-Accounts & Finance), S/o Ramashankar Tiwari, residing at Building No. 1B/I-305, Gokuldham Society, Adivali-Dhokali Talav Malang Road, Kalyan East, Near Namaskar Dhaba, Pisawaji (N.V.), Pisavli, Thane, Maharashtra-241306, camped at Room No.304, Hotel Polo Towers Agartala, VIP road, Kunjaban, Agartala, Tripura (W)-799006.

----Petitioner(s)

Versus

1. THE STATE OF TRIPURA Represented by the Principal Secretary, Finance Department- Government of Tripura, Civil Secretariat, New Capital Complex, P.O. Kunjaban, Agartala, West Tripura, PIN:799010.

2. THE CHIEF COMMISSIONER OF STATE TAX, Tripura Goods & Service Tax Department, O/o The Commissioner of Taxes and Excise, Government of Tripura, 3rd Floor, Khadya Bhavan, Pandit Nehru Complex, Gurkhabasti, Agartala, West Tripura-799006.

3. THE SUPERINTENDENT OF STATE TAX, Sales Tax Officer, Class II, Level-1, Charge-IV, Agartala, Tripura Good and Service Tax Department, Kar Bhavan, Palace Compound, Agartala, West Tripura, PIN-799001.

-----Respondent(s)

For Petitioner(s)

: Mr. B.L. Narsimhan, Advocate,
Mr. T.K. Deb, Advocate,
Mr. N. Pal, Advocate,
Mr. R. Tangri, Advocate,
Mr. V. Jain, Advocate.

For Respondent(s)

: Mr. Debalay Bhattacharjee, G.A.,
Mr. K. De, Addl. G.A.

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

Date of hearing : 17th August, 2021.
Date of judgment : 31st August, 2021.
Whether fit for reporting : NO.

JUDGMENT & ORDER

(Akil Kureshi, C.J.)

The petitioner has challenged 5 summary demand orders produced at Annexure-P/22 collectively passed by the Superintendent of Taxes on 23.04.2021 (which are based on a common assessment order dated 23.4.2021) raising demands of Central as well as GST and IGST from the petitioner with penalty for the tax periods 2017-18 to 2020-21.

2. Brief facts are as under:

Petitioner is a company registered under the Companies Act and is engaged in the business of providing goods on rental basis to its customers across the country including in the State of Tripura. For the purpose of its business the petitioner enters into a rental agreement with the customers and provides capital goods and machinery to such customers on lease. In the State of Tripura the petitioner had provided such goods to M/S Reliance Retail Limited, Tripura (RRL, for short). The petitioner had taken premises on rent from one Rinku Dey under a lease agreement in the year

2018, however, subsequently the petitioner was compelled to obtain another premises on rent for its business purposes. On 06.09.2020 the petitioner received a notice from the Superintendent of Taxes under Section 61 of the CGST Act pointing out certain discrepancies in the returns furnished by the petitioner. The petitioner made a detailed representation in response to the said notice under a communication dated 16.01.2021. In the meantime, the Superintendent of Taxes had issued a notice on 06.12.2020 to the petitioner for cancellation of the registration. This is subject matter of a separate petition being WP(C) No.401 of 2021 and which we will deal with separately.

3. On 10.03.2021 the Superintendent issued a show-cause notice to the petitioner for recovery of unpaid tax and penalty for financial year 2018-19. Along with this the Superintendent also attached an inquiry report essentially conveying that the petitioner had wrongly availed input tax credit in relation to the transactions with RRL by willful misstatement and suppression of facts. The petitioner replied to the show-cause notices resisting the demands and contending that the input tax credit was correctly availed. On 23.04.2021 the Superintendent of Taxes issued the order of cancellation of registration of the petitioner and also issued separate orders confirming the tax and penalty demands against the petitioner for the tax periods 2017-18 till 2020-21. These five orders are produced by the

petitioner at Annexure-P/22 collectively and which are under challenge before us.

4. Appearing for the petitioner learned counsel Mr. B.L. Narsimhan submitted that show-cause notice was issued only for one year whereas the Superintendent of Taxes passed five separate orders for different tax periods which was wholly impermissible. He further submitted that the entire order is passed without following the principles of natural justice. The Superintendent has relied on materials, documents and judgments never discussed with the petitioner. He drew our attention to a rather detailed order passed by the Superintendent of Taxes in which according to the counsel the discussion on merits of the issues was almost non-existent.

5. On the other hand, learned Government Advocate Mr. Debalay Bhattacharjee painstakingly took us through the detailed order passed by the Superintendent of Taxes and contended that this order is sound on merits. It is in any case an appealable order. The petitioner has approached the Court without availing of such appeal. Even on merit no interference is necessary.

6. First and foremost the Superintendent of Taxes has passed five separate orders for different tax periods starting with 2017-18 to 2020-21 raising tax demands with penalty. We have noticed that he had issued show-

cause notice for assessment and penalty on 10.03.2021 only for the assessment period 2018-19. Without any further show-cause notice he could not have assessed the petitioner for remaining years and imposed penalties. His stand that once notice is issued for a particular tax period, no notice is necessary for other tax periods stems from utter ignorance of law. This fundamental breach is sufficient to vitiate the orders of assessment barring one for the period in relation to the year 2018-19.

7. Even otherwise the impugned order cannot sustain. The Superintendent of Taxes has passed an order which runs into close to 150 pages in which he has discussed range of issues completely unconnected to the case on hand. He has referred to the requirement for passing Board resolutions and circulations as flowing from the Company Law. He has discussed the issue of authorisation as referred to in the GST regime. He has entered into the arena of what are the requirements of a valid affidavit, who should sign such affidavit, who should notarise it and who should be the witnesses. He has referred to Section 195 of IPC which provides for punishment for false evidence. He has referred to the concepts of power of attorney and Negotiable Instruments Act. He has discussed a law on Transfer of Property and the essentials of a lease. He has spoken on the remedies available with the lessor. He has also taken note of different kinds of leases. He has reproduced literature from books and presumably from

internet. He has extensively reproduced from judgments of various Courts discussing constitutional principles. All these references are without showing relevance to the issues at hand. The ultimate observations and conclusions in the order are hard to find and more difficult to understand. The task of the reader of this order to fish out the reasons in support of the demand is more difficult than finding a needle from a haystack. Howsoever hard we may try, it is difficult to separate the grain from the chaff.

8. The order passed by the Superintendent and the approach that he has adopted is totally unsatisfactory. To begin with, the order reads more like a thesis in several fields of law in which he has tried to exhibit his half-baked, incomplete and internet acquired knowledge, in the process completely losing sight of the focal issue. He has made his order needlessly verbose, in the process not deciding the vital issues at all. More importantly he has referred to materials, documents and judgments and there is no evidence that he ever shared the same with the petitioner before relying upon them. In the age of internet and availability of information through technology, the Superintendent of Taxes was not precluded from doing his own homework and finding out material which was useful for the purpose of the case that he was deciding. However, any use of such material must precede sharing of it with the person likely to be adversely affected by his order. The basic requirement of principle of natural justice for sharing

adverse material before utilising the same against a person must be observed with greater rigour in the times of availability of information on internet, all of which need not necessarily be accurate at all times. Accurate or otherwise the noticee must have a chance to meet with such adverse material before it is used against him. For each individual reason namely the order being unintelligible, the action failing the test of principles of natural justice and the Superintendent of Taxes exceeding the show-cause notice, the impugned orders must be set aside. For sheer verbosity the orders must go. The same are accordingly set aside. Nothing stated in this order would prevent the Superintendent of Taxes from proceeding against the petitioner afresh for framing proper assessment if so advised and permitted under law.

9. Petition disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J

(AKIL KURESHI), CJ

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