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**(2005) 05 GAU CK 0027**

**Gauhati High Court (Agartala Bench)**

**Case No:** None

Electric House

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

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**Date of Decision:** May 26, 2005

**Acts Referred:**

- Central Sales Tax Act, 1956 - Section 9
- Constitution of India, 1950 - Article 226

**Citation:** (2007) 7 VST 93

**Hon'ble Judges:** R.B. Misra, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

R.B. Misra, J.

These three writ petitions under article 226 of the Constitution have been filed against the impugned orders dated November 25,1995 and November 27,1995 passed by the Commissioner of Taxes, Government of Tripura, Agartala, in revision case No. 7/Charge-III/95, in revision case No. 8/ Charge-III/95 and in revision case No. 9/Charge-III/95, respectively, in connection with the impugned order of assessment dated March 31, 1995 passed by the Superintendent of Taxes, Charge III, Government of Tripura, Agartala (annexure A) creating a demand of Rs. 77,582.20 for the assessment year 1986-87, Rs. 86,813.91 for the assessment year 1987-88 and Rs. 1,43,910.56 for the assessment year 1988-89. Since these cases are all identical and issues involved are same, all these three petitions are taken up for hearing and are disposed of by this common judgment.

2. The petitioner, namely, Electric House, Central Road, Agartala, is registered sales tax dealer under the Tripura Sales Tax Act, 1976 (for short, "the Act of 1976") vide registration certificate No. SDR/ST/03210/76 and deals its business in agripump sets and its parts, accessories, equipment, tools, machinery parts and accessories, and

electrical goods which are taxable at different rates under the Act of 1976. According to the petitioner-dealer, he had sold out the taxable items and had shown its turnover for different years, namely, for the assessment years 1986-87, 1987-88, 1988-89, and had deposited sales tax on the taxable turnover at different rates after taking benefits of form C issued to him for different years. But after examining the books of account for different years, the assessing officer, i.e., the Superintendent of Taxes, Charge-III, Agartala vide his order dated March 31, 1995 has passed the assessment orders u/s 9(3) of the Act of 1976 enhancing the taxable total turnover for the assessment years 1986-87, 1987-88 and 1988-89 and creating extra demand of sales tax and interest payable thereon for these three consecutive years on the ground that the turnover returned does not tally with the sales shown in the ledger account by the petitioner. Thereafter, an application u/s 21(2) of the Act of 1976 has been filed before the Commissioner of Taxes, who is the revisional authority, Government of Tripura, Agartala, in respect of the above three assessment orders. While disposing of the revision petitions, the revisional authority, i.e., the Commissioner of Taxes, has noted in his order that the petitioner had not maintained the books of account like cash book, ledger, sale register, purchase register, etc., properly and also held that the dealer could not produce the actual figures of purchase and sale, also the opening and closing stock for the purpose of assessment. The petitioner-dealer was given opportunity to reconcile the turnover returned with the sales registers and the trading account figure, but he could not do the same. Under these circumstances, the Commissioner of Taxes has noted that the assessing authority had rightly enhanced the taxable turnover and had rightly rejected the account books, etc., by passing his best judgment assessment order. The Commissioner has also noted that the works contracts were also not explained properly and material was also taken as sale-supply of taxable goods. The Commissioner has further noted that the assessment orders were passed at the last stage after several years and has also acknowledged that the demands of sales tax on enhanced turnover as well as that of interest thereon were genuine. The Commissioner has analysed the assessment order and has found that at different heads and items, the assessment orders were justifiable.

3. Against the assessment order dated March 31, 1995 passed in reference to the assessment year 1988-89, the petitioner preferred revision u/s 21(2) of the Act of 1976, but did not deposit the statutory amount necessary for entertaining the revision petition. Therefore, for lack of not depositing the statutory amount, the Commissioner has not entertained the revision petition and rejected the same.

4. Section 20 of the Act of 1976 deals with the provisions of appeal and Section 21 deals with the revision by the Commissioner and Section 22 deals with the appeal to the Tribunal. According to the learned Counsel for the petitioner, the petitioner had approached the Commissioner by filing the revision petition u/s 21(1) of the Act of 1976. Against the order of revision by the Commissioner, no appeal could be entertained by the Tribunal u/s 22 of the Act of 1976. On the other hand, Sri U.B.

Saha, learned Government Advocate appearing for the respondents, submits that initially, the petitioner was aggrieved by the assessment order dated March 31, 1995 passed in respect of three consecutive assessment years for which he could have approached the appellate authority by way of filing appeal u/s 20 of the Act of 1976 whereupon the appellate authority u/s 20(4)(a) of the Act of 1976 might have applied his mind and confirmed, reduced, enhanced or annulled the assessment or in respect of Section 20(4)(b) could have set aside the assessment order and relegated the matter for a fresh assessment after making such enquiry as may be ordered. However, in spite of available remedy u/s 20 of the Act of 1976, the petitioner was wrongly advised to prefer revision u/s 21(2) of the Act of 1976 before the Commissioner to examine the assessment order in exercise of its revisional power which the appellate authority could have done in exercise of its appellate power u/s 20. Against the order u/s 20 passed by the appellate authority or an order u/s 20(1) passed by the Commissioner, the same could have been tested by the Tribunal both on facts as well as in law in appeal u/s 20. Mr. Saha also submits that this court cannot appreciate the evidences such as entry in the cash books and account books, cannot analyse the purchase and sales, opening and closing stock, cash book, ledger book, sale register and purchase registers or any other entries of accounts book and also cannot go to resolve the controversy of facts as claimed by the petitioner. According to the learned Counsel for the petitioner, the impugned orders dated November 25, 1995 by the learned Commissioner was not passed in consonance with the principle of natural justice and the same was without making any enquiry. Therefore, this court could invoke its jurisdiction under article 226 of the Constitution to test the validity of the impugned orders. Such contentions of the petitioner has been controverted by Sri Saha, the learned Government Advocate, that this court in exercise of its jurisdiction under article 226 of the Constitution is not to work as an appellate authority to analyse the facts and sit over the decision of the Commissioner, Sales Tax, to test the authenticity and validity of the assessment order which the Commissioner himself is not entitled to do in respect of the assessment orders in exercise of his jurisdiction u/s 22(2) of the Act of 1976.

5. It has further been argued on behalf of the petitioner that for the year 1988-89, the revision petition filed by the petitioner u/s 21(2) of the Act of 1976 has been thrown away only on the ground that the petitioner did not deposit 50 per cent of the statutory amount for entertaining revision petition. According to the learned Counsel for the petitioner, in exercise of his power u/s 20(2), the Commissioner could have waived 50 per cent of amount to be deposited to entertain the revision in respect of the assessment year 1988-89. On the other hand, according to the learned Government Advocate, the contention of the petitioner is against the provisions of law as the Commissioner cannot waive the amount to be statutorily deposited, which the petitioner was required to deposit before entertaining the revision petition. In this regard, learned Government Advocate has placed reliance on the decision of this court passed in *Fatikcherra Tea Estate v. State of Trvpura*

reported in [1997] 104 STC 453 SC : [1996] 3 GLT 661 and has drawn my attention to paras 14 and 15 of the said judgment which are reproduced below:

14. At this stage, it shall be relevant to point out that the connected appeals from the assessment order of July 12, 1995 are not yet decided by the appellate authority, i.e., the third respondent, till today. I am of the view that the writ petitioner should exhaust the appellate forum and if the petitioner succeeds in the appeals, the petitioner shall get all the benefits.

15. According to Shri U.B. Saha, learned Counsel for the respondents, the second proviso to Sub-section (1) of Section 20 as well as the proviso to Sub-section (2) of Section 21 of the Tripura Sales Tax Act, 1976 is still valid and the same has statutory force of law in view of the stay order passed by the apex court as discussed above. I am in full agreement with this contention of Shri U.B. Saha. Another contention has been made by Shri U.B. Saha, learned Counsel for the respondents, that relying upon a Madras High Court decision in a case between State of Tamil Nadu v. E.P. Nawab Marakkadai reported in [1996] 100 STC 1 SC, in which the Madras High Court upheld the statutory provisions of law u/s 31 of the Tamil Nadu General Sales Tax Act, 1959 by which particularly the second proviso to Section 31 of the Act places an embargo on the appeal being entertained unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant; if there is no payment of the admitted tax within the period allowed for filing the appeal or within the extended period as specified in the Act for condonation of delay in preferring an appeal, no appeal can be said to have been filed. In other words, the pre-requisite deposits are required before admitting an appeal under the said Tamil Nadu General Sales Tax Act, 1959, Shri Saha contended.

6. According to Mr. Saha, assessing authority has passed order dated March 31, 1995 in exercise of his power u/s 9(3) of the Act of 1976, but he was also empowered to pass the best of his judgment u/s 9(4) of the Act of 1976 in order to determine the tax payable by the dealer/petitioner. According to him, the assessing authority is the appropriate authority to decide in the facts and circumstances as to whether he has to pass the best judgment. In that respect, learned Government Advocate has placed reliance on para 13 of the judgment of Fatikcherra Tea Estate [1997] 104 STC 453 (Gau) : [1996] 3 GLT 661, which is reproduced below:

13. On the other hand in support of his arguments Shri U.B. Saha, learned Counsel for the respondents also relied upon a decision of the apex court rendered in a case between [The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore](#), wherein the apex court held thus:

◆Prima facie, the assessing authority is the best judge of the situation. It is his "best judgment" and not of anyone else. The High Court could not substitute its "best judgment" for that of the assessing authority. In the case of "best judgment" assessments, the courts will have to first see whether the accounts maintained by

the assessee were rightly rejected as unreliable.

In the said case, viz., [The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore](#), a reference was made by the Board of Revenue, Gwalior, partly at the instance of the assessee and partly at the instance of the Commissioner of Sales Tax, Madhya Pradesh. Four questions of law were referred to the High Court for its decision. They are:

- (1) Whether, on the facts and circumstances of the case, the revised assessment enhancing the taxable turnover under the State law by Rs. 2,50,000 and the taxable turnover under the Central law by Rs. 1,00,000 on the basis of the undisputed escape in the amount of Rs. 31,171.28 by adopting the said amount of escaped turnover as the measure for determining the quantum of enhancement for the whole year was illegal, unjustified or excessive ?
- (2) Whether a best judgment assessment could at all be made u/s 19(1) of the Act or whether revision of the assessment should be confined to the quantum of proved or admitted escaped turnover ?
- (3) If the answer to the previous question is that the revision in the assessment should be confined only to the quantum of proved or admitted escaped turnover, was the penalty of Rs. 2,000 imposed on the footing of the revision of the assessment for the whole year legal and justified ? and
- (4) Whether, on the facts and circumstances of the case, the imposition of a penalty u/s 19(1) of the Madhya Pradesh General Sales Tax Act, 1958, read with section 9(3) of the Central Sales Tax Act was not legal ?

The first three questions were referred to the High Court at the instance of the assessee and the last one was referred at the instance of the Commissioner.

The High Court answered the 1st and 3rd questions in favour of the assessee and the second and the fourth questions in favour of the department.

7. Learned Government Advocate for the respondents has also referred the decision of the Allahabad High Court in Commissioner of Sales Tax, U.P. v. Agrawal Trading Company [1971] 27 STC 390 Gau, and submitted that the amount of interest or demand of interest was not necessary to be indicated in the notice of demand for tax assessed. Relevant portion is necessary to quote here which is given below:

...Now, a Full Bench of this court has held in [Hajilal Mohammad Bidi Works, Allahabad Vs. The State of U.P. and Others](#), that in order to recover interest u/s 8(1-A), U.P. Sales Tax Act, it is not necessary for the Sales Tax Officer to make an assessment order in respect of such interest. Following the view taken by the Full Bench in that case we must hold that it was not necessary for a notice of demand to be issued calling for payment of the interest u/s 8(1-A). We are also of the opinion that it was not necessary that the notice of demand in respect of the tax assessed

should contain the warning that in case the tax assessed was not paid the assessee would become liable to pay interest u/s 8(1-A). The interest payable u/s 8(1-A), as the Full Bench has said in the aforesaid case, commences to run automatically as soon as the conditions set out in the provision are fulfilled. It is not necessary that any notice should be sent to the assessee warning him to pay the tax assessed within time otherwise it would become liable to pay interest u/s 8(1-A). No such warning is contemplated by the statute and, in our opinion, it is wholly unnecessary. Upon this we would answer the question by saying that the assessee was liable to pay interest.

8. I have heard the learned Counsel for the parties. I find force in the contentions of Mr. Saha, the learned Government Advocate and I am of the view that the petitioner has not maintained properly the books of account as indicated above which the petitioner was to maintain and therefore, in the facts and circumstances of the case, the view of the Commissioner in exercise of his revision power that the assessing authority had rightly rejected the account books and had made his best judgment assessment order is a correct view and this court in exercise of its discretionary jurisdiction under article 226 of the Constitution cannot go to test the disputed questions of fact and analyse the different aspects including the quantum of turnover, taxable turnover, rate of tax on the matter towards enhancement of the turnover and imposition of tax as an appellate authority since the Tribunal u/s 22(2) of the Act of 1976 is the final appellate authority and in view of the decision of the Supreme Court in [Hajilal Mohammad Bidi Works, Allahabad Vs. The State of U.P. and Others](#), this court cannot exercise its jurisdiction as an appellate authority to test the validity of the impugned order dated November 25, 1995.

9. In view of the above discussion, this court is not inclined to invoke the extraordinary jurisdiction under article 226 of the Constitution and accordingly these three writ petitions are dismissed. No order as to costs.