**(2014) 11 TP CK 0002**

**In the Tripura High Court**

**Case No :** W.P.(C) No. 140 of 2009

Arundhati Cables and Others APPELLANT

Vs

State of Tripura and Others RESPONDENT

**Date of Decision :** 13-11-2014

**Acts Referred:**
Tripura Sales Tax Act, 1976 — Section 28

**Citation :** (2015) 78 VST 351

**Hon'ble Judges :** Deepak Gupta, C.J;Utpalendu Bikas Saha, J

**Bench :** Division Bench

**Advocate :** S. Deb Gupta, Advocates for the Appellant; S. Chakraborty, Additional Government Advocate, Advocates for the Respondent

## Judgement

Deepak Gupta, C.J.—By means of this writ petition, the petitioner has prayed that the amount of sales tax paid by it on purchase of aluminium wire which is used as a raw material by the petitioner-industry be refunded to it in terms of the promise held out to the industry in the Tripura Incentive Scheme of 2002 read with section 28 of the Tripura Sales Tax Act read with rule 37 of the Tripura Sales Tax Rules, 1976. According to the petitioner, in terms of the Tripura Incentive Scheme, 2002, sales tax payable on raw materials used by a small-scale industry in the State of Tripura to manufacture goods was refundable under the Tripura Sales Tax Act. Though the petition was filed five years back, till date, the entire scheme has not been placed on record, but reliance was placed on clause (15) of the definition clause of a Scheme, which read as follows:

"(xv) ''Sales tax payable on raw materials'' means sales tax payable by the unit, to the registered dealer(s) under the Sales Tax Act, as applicable on purchase of raw materials, less set off admissible, if any, under the Tripura Sales Tax Act, 1976."

2. All that the clause states is that sales tax payable on raw material will mean the sales tax payable under the Sales Tax Act less the set off admissible, if any, under the Tripura Sales Tax Act. A petitioner, who relies upon the Scheme to

 

show that a promise was held out to petitioner, must place the complete scheme before the court. The petitioner failed to do so. Not only that, the petitioner-industry was admittedly registered in the year 1990 much prior to the scheme was started and there is not an allegation in the petition that the petitioner on the basis of the promise held out in the scheme took some steps which caused it financial hardship or otherwise.

3. Coming to the statutory provisions, section 28 of the Sales Tax Act read as follows:

"28. Remission.--The State Government may, by rules, provide that in such circumstances and subject to such conditions as may be specified, a draw back, set off, or refund of the whole or any part of the tax paid in respect of any purchase of raw materials under this Act for use by any dealer in the manufacture of goods in Tripura for sale, be granted to such dealer."

4. Rule 37 of the Rules read as follows:

"37. (1) Where a dealer sells taxable goods in the manufacture, making, processing or production of which by him on small-scale within the State he has used raw materials in respect of the sales of which to him or any earlier sale thereon or as the case may be, in respect of the purpose of which, by him or any earlier purchase thereon a tax is payable under the Act, the Superintendent may, subject to sub-rule (3), on application pay to such dealer by way of draw back, set off or refund an amount equal to the tax paid under any of the aforesaid Acts in respect of raw materials so used on production of a certificate in form XVI from the Director of Industries, Government of Tripura or any other officer authorised by him in this behalf to the effect that the raw materials have been used and the tax has been actually paid as aforesaid:

Provided that the concession under this sub-rule shall be admissible only to an industrial unit registered as small-scale industrial unit by the Director of Industries, Government of Tripura.

(2) An application under sub-rule (1) shall be made in form XVI within three months from the date of sale of the taxable goods in the manufacture, making, processing or production of which the raw materials were used as specified in sub-rule (1). Such application shall be accompanied by the certificate mentioned in the said sub-rule.

(3) For the purpose of this rule the State Government may, by notification in the Official Gazette, specified the class or classes of goods which shall be treated as raw materials.

(4) The amount payable under sub-rule (1) shall be paid as if it were a refund and the provisions of rules 33 to 36 shall, to that extent, apply."

5. Under section 28 of the Act, the State Government has been empowered to permit draw back, set off, or refund of the whole or any part of the tax paid in

respect of any purchase of raw materials under the Act when the same are used by any dealer in the manufacture of goods in Tripura. This is an enabling provision which empowers the State Government to grant rebate in taxes either wholly or in part in an eventuality where the dealer pays taxes on purchase of raw material and uses those raw materials for manufacturing goods in Tripura. This does not in any way mean that this is a right of the dealer to claim such benefit. It is for the Government to decide whether this benefit is to be extended or not and in which manner such benefit is to be extended.

6. The State Government has granted this benefit in limited form in rule 37 which we have quoted hereinabove. The first condition is that the concession shall only be admissible to industrial units registered as small-scale industrial units by the Director of Industries, Government of Tripura. The petitioner definitely is a small-scale unit. Sub-rule (1) of rule 37 provides that the Government may permit drawback, set off 6r refund of an amount equal to the tax paid in respect of raw materials used in production. Sub-rule (3) clearly provides that the State Government may, by notification in the Official Gazette specify the class or classes of goods which are to be treated as raw materials. Therefore, the benefit under sub-rule (1) will only be in respect of those goods which are notified under sub-rule (3). The State Government has only issued notification under sub-rule (3) in respect of "paraffin wax" and not in respect of aluminium wire. No doubt the Additional Secretary of the Department of Industries and Commerce has recommended vide his communication dated 31st December, 2004 that aluminium wire of less than 3 mm should also be included and notification in this regard should be issued but till such notification is issued by the State Government, the benefit cannot be given. Therefore, we find no merit in the petition, which is accordingly dismissed.