

(2014) 02 TP CK 0074

In the Tripura High Court

Case No : Writ Petition (C) No. 513 of 2012

M/s. Krishna Chandra Biswas VsThe State of Tripura

Date of Decision : 17-02-2014

Acts Referred:

Tripura Value Added Tax Act, 2004 — Section 12(8), 31(5)

Citation : (2014) 69 VST 312

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : A Paul, for the Appellant; S. Chakraborty, Additional Government Advocate, for the Respondent

Judgement

Deepak Gupta, C.J.—This writ petition is directed against the assessment order, dated 28.09.2012 and the demand notices issued thereafter. Normally, we would not have entertained a petition against an assessment order without the assessee having approached the appellate authority but since the appeal was already been admitted we propose to decide this petition. The grievance of the assessee is twofold. His first grievance is that the assessing officer has relied upon a DTR report and the attention of the assessee was never drawn to this DTR report. His second contention is that penalty has been imposed without issuing notice as contemplated under the Section 31(5) of the Tripura Value Added Tax Act, 2004.

2. As far as the first contention is concerned, Mr. A. Pal, learned counsel for the petitioner, has relied upon the judgment of the Apex Court in Sales Tax Officer, Ganjam Vs. Uttareswari Rice Mills, . Para. 14 of the said judgment reads as follows:

14. There is nothing in the language of Section 12(8) of the Act which either expressly or by necessary implication postulates the recording of reasons in the notice which is issued to the dealer under the above provision of law. To hold that reasons which led to the issue of the said notice should be incorporated in the notice and that failure to do so would invalidate the notice, would be tantamount to reading something in the statute which, in fact, is not there. We are

consequently unable to accede to the contention that the notice under the above provision of law should be quashed if the reasons which led to the issue of the notice are not mentioned in the notice. At the same time, we would like to make it clear that if the sales tax officer is in possession of material which he proposes to use against the dealer in proceedings for reassessment, the said officer must before using that material bring it to the notice of the dealer and give him adequate opportunity to explain and answer the case on the basis of that material.

A perusal of the judgment of the Apex Court leaves no manner of doubt that the Apex Court has held that in the notice the assessing officer is not required to spell out the reasons for the notice. The notice can be couched in general language and it is not necessary to give all reasoning in the notice.

3. The Apex Court went on to hold that if the sales tax officer is in possession of the material which he proposes to use against the dealer in proceedings for assessment, the said officer must before using that material bring it to the notice of the dealer. In the present case we find that three notices were issued to the dealer but he did not appear before the assessing officer. The receipt of the last notice has also been placed on record which shows that the notice was dispatched on 31st July 2012 within Agartala itself and the next date of hearing was 25th August, 2012. The notices were properly addressed and, therefore, we can draw a legal presumption that notices must have been served upon the assessee.

4. If an assessee after service of the notice does not appear before assessing officer then the assessing officer is not required to send him another notice to apprise him of such evidence. If the assessee appears before the assessing officer then obviously the assessing officer must bring to his notice the material which is sought to be used against him so that he can respond to the same. However, if the assessee chooses not to appear before the assessing officer he is taking a risk and the assessing officer can rely upon the material which he has with him and is not required to send another notice to the assessee specifically bringing to his notice the said material. Therefore the first issue is decided against the petitioner.

5. As far as the second issue is concerned, admittedly, no notice was given to the assessee before imposition of penalty. Section 31(5) of the TVAT Act reads as follows:

(5) If the Commissioner is satisfied that the dealer, in order to evade or avoid payment of tax -

(a) has failed to furnish without reasonable cause, returns in respect of any period by the prescribed date; or

(b) has furnished incomplete and incorrect returns for any period; or

(c) has availed himself of tax credit to which he is not entitled to; or

(d) has followed such method of accounting which does not enable the Commissioner to assess the tax due from him, he shall, after giving the dealer reasonable opportunity of being heard, direct him to pay, in addition to tax and interest payable by him, a penalty not exceeding one and half times of the tax due but which shall not be less than 10% of that amount.

A bare perusal of this provision clearly shows that no penalty can be imposed without first issuing notice. We also find that in the three notices issued earlier there was nothing in the said notices to indicate that the assessing officer also intended to impose penalty.

In view of the above discussion, the petition is partly allowed and the impugned order insofar it imposes penalty upon the petitioner is set aside. The rest of the order is upheld.

The Writ Petition is disposed of.