
(2018) 02 TP CK 0002
In the Tripura High Court
Case No : 165 of 2018

M/S Loknath Electricals,

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

[Tripura Value Added Tax Act, 2004](#), Section 33, Section 31, Section 69(1), Section 69(1)(ii), Section 69(1)(iii)

Citation : (2018) 02 TP CK 0002

Hon'ble Judges : T.Vaiphei, S.Talapatra

Bench : Division Bench

Advocate : B. Roy, D.C.Nath

Final Decision : Dismissed

Judgement

1. Heard Mr. B. Roy, learned counsel appearing for the petitioner.
2. By means of this writ petition, the petitioner has challenged the notice dated 06.08.2010 issued by the respondent No.4 [Annexure 1 to the writ petition], the order of assessment dated 06.12.2010 levying tax, interest and penalty [Annexure-2 to the writ petition] and the order of the appellate authority dated 25.10.2017 [Annexure 6 to the writ petition].
3. It is apparent on the face of records that on 06.08.2010 the Assessing Officer [the Superintendent of Taxes, Charge-1, Agartala] issued the notice communicating the petitioner that it appeared from the Tax Audit Observation records, the petitioner was liable to be assessed for the period of 2005-2006 and hence the petitioner was asked to appear in person or by a person duly authorised to represent him and further to produce all the relevant records for inspection by the Assessing Officer. On culmination of the said process, the impugned order of the assessment

was passed by the respondent No.4 under Section 31 of the Tripura Value Added Tax Act (for short, TVAT) Act, 2004 dated 04.09.2010

[Annexure-2 to the writ petition] holding inter alia, that the petitioner is liable to pay tax @ 12.5% being Rs.1,03,654/-, interest being Rs.85,516/-

and penalty @ 150% being Rs.1,55,481/- . The total liability was thus assessed @ Rs.3,44,651/-. The petitioner was asked to pay the said

amount by 31.12.2010 by the demand notice dated 06.12.2010 issued by the Assessing Officer. The said demand notice was issued under Rule

27 of the TVAT Rules in Form XV.

4. Being aggrieved thereof petitioner filed a writ petition being WP(C) 68 of 2011. The said writ petition was disposed of by this Court by the

judgment and order dated 19.02.2015 with the direction that the petitioner may file an appeal against the said assessment order within 30 days,

from the date of judgment. If the appeal is filed within 30 days then the same shall be treated to be within limitation as the petitioner had been

pursuing his remedy before this court. It was further observed that since the petitioner had deposited the tax and penalty, the appellate authority

shall not ask for further deposit. The appellate authority shall decide all the questions as would be raised by the petitioner in the memorandum of

appeal in accordance with law.

5. Admittedly, the petitioner did not file the said appeal within the period as stipulated by this court by the judgment and order dated 19.02.2015.

The appeal was filed on 22.09.2017. Thus, there was a total delay of 963 days in filing the appeal from the day when the said judgment was

delivered. But surprisingly, in Para 11 of this writ petition the petitioner has averred that the petitioner filed an appeal under Section 69 (1), (ii) &

(iii) of TVAT Act,2004 challenging the order of assessment dated 06.12.2010 and the notice of demand dated 06.12.2010 in reference to the

judgment and order dated 19.02.2015 on numerous grounds including that the assessment was barred by limitation in terms of Section 33 of the

TVAT Act,2004, which provides that no assessment can be made after expiry of 5(five) years from the relevant assessment year.

6. The appellate authority by the order dated 25.10.2017 delivered in the appeal No.01/Ch-I/2017 [Annexure-6 to the writ petition] has

dismissed the appeal at the threshold in view of the judgment and order dated

19.02.2015 delivered in WP(C) 68/2011 inasmuch as the appellant had failed to present the appeal within 30 days as stipulated thereby. No liberty was granted to the appellate authority to exercise their usual power for condoning the further delay, if the appeal is filed beyond 30 days. Section 69(1) of the TVAT Act, 2004 provides that no appeal can ordinarily be entertained if the same is filed beyond 30 days from the date of service of the order of assessment and/or penalty, however, it has been further provided in Section 69(1) (iii) as follows:

(iii) The authority before whom the appeal is filed may admit it after the expiration of thirty days if such authority is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause it could not be filed within time.

7. While passing the judgment and order dated 19.02.2015, this court had considered the aspect of delay in presenting the appeal and waived the same, subject to condition that the appeal shall be filed within 30 days from the day of the said judgment. In the perspective of the said order, the appellate authority had observed in the impugned order dated 25.10.2017 as follows:

As per direction of the Hon'ble High Court of Tripura the appellant has to file the present appeal within 20th March, 2015 but he

had filed the appeal on 26th September, 2017 i.e. after expiry of 947 days and therefore he did not comply to the direction of the

Hon'ble High Court of Tripura. Moreover, the copies of documents of medical treatment of the appellant submitted along with the

appeal petition have been examined and the following facts are come to light:

(i) During the period from 13.12.2014 to 15.12.2014 the appellant was under medical treatment in ILS Hospital, Agartala. He was

admitted in the said Hospital on 13.12.2014 and discharged on 15.12.2014.

(ii) On 19.12.2014 and on 20.12.2014 the appellant got medical treatment in Futuristic Diagnostic Imaging Centre Pvt. Ltd.,

Bangalore.

(iii) On 18.04.2015 and on 21.04.2015 the appellant got medical treatment under Dr. Atanu Ghosh, MBBS, Dip.Card, Consultant

Cardiologist, Agartala.

(iv) On 25.04.2015 the appellant got medical treatment under Dr. Saumen Chaudhuri, MD (Medicine), Consultant Physician &

Cardiologist, Agartala.

(v) On 16.06.2015 the appellant got medical treatment under Dr. S.B.Datta, M.S. (Ortho), Orthopedic Surgeon, Agartala.

(vi) No reference is found in the documents submitted by the appellant in support of his medical treatment to the effect that he had

been advised by any of the aforesaid Doctors and Hospitals for taking any period of rest.

The medical treatment of the appellant in Bangalore i.e. outside the State and in ILS Hospital, Agartala i.e. inside the State in

December, 2014 was about two months before the Judgment & Order dated 19.02.2015 of the Hon"ble High Court of Tripura and

medical treatment inside the State on 18.04.2015 and on 21.04.2015 under Dr. Atanu Ghosh, Agartala and on 25.04.2015 under

Dr. Saumen Chaudhuri was after about two months from the date of Judgment and Order of the Hon"ble High Court of Tripura.

Therefore, I am of the opinion that the reason adduced by the appellant as well as by the Advocates of the appellant for delay in filing

appeal was not beyond control of the appellant and there was no any sufficient cause for filing appeal beyond the period as

prescribed by the Hon"ble High Court of Tripura.

8. Accordingly, the appeal was dismissed as it was not filed within 30 days from the day of the said judgment. The petitioner has now challenged

the assessment order, the demand notice and the said appellate order.

Having due regard to the submissions made by Mr. Roy, learned counsel of the petitioner, this court is of the view that there is no infirmity in the

order dated 25.10.2017 passed by the appellate authority [the Commissioner of Taxes, Government of Tripura], in appeal case No. 01/Ch-

1/2017 as the appropriate authority has correctly appreciated the scope and ambit of the order dated 19.02.2015 vis-?-vis the jurisdictional

imposition and hence, this court is not inclined to entertain the challenge against the assessment order or the notice of demand.

9. Resultantly, this writ petition stands dismissed right at the threshold. There shall be no order as to cost.