**(2014) 02 TP CK 0038**

**In the Tripura High Court**

**Case No :** Writ Petition (C) No. 394 of 2007

**M/s. Sky-Tone, Agartala VsThe State of Tripura**

**Date of Decision :** 26-02-2014

**Acts Referred:**

**Citation :** (2014) 3 GLD 224 : (2014) 2 GLT 512

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

**Bench :** Division Bench

**Advocate :** Somik Deb and Mr. S.B. Debnath, for the Appellant; S. Chakraborty,A.G.A., for the Respondent

# Judgement

Deepak Gupta, C.J.—By means of this petition, the petitioner has challenged the order dated 07.11.2007 passed by the Assistant Commissioner of Taxes dismissing the appeal of the petitioner and upholding the order dated 09.07.2007 passed by the Superintendent of Taxes, Vigilance Cell, whereby tax of Rs. 33,000.87 and penalty of Rs. 49,501.31 were imposed on the petitioner-assessee on account of discrepancy in his stock statement and physical stocks. The admitted facts are that the petitioner-assessee is a dealer of electronic/ goods such as, televisions, etc. On 09.07.2007, a raid was conducted in it''s premises. As per the stock register, goods for a sum of Rs. 6,67,171.00 should have been actually available in the shop but, in fact, the value of the goods physically found in the premises of the petitioner was Rs. 2,22,527.00. Thus, there was a discrepancy between the stocks statement and the physical stocks available. The assessing officer held that the goods valuing the discrepancy must have been sold by the petitioner-assessee and he must have made a profit at the same rate and, thereafter, he assessed the tax liability at Rs. 33,000.87 and imposed penalty of Rs. 49,501.31. This order was upheld in appeal. Hence this petition.

2. Sri Somik Deb has drawn our attention to various provisions of the Act and, especially, Section 24 of the Act and Rules 18 and 20 of the TVAT Rules. We need not quote these provisions in extenso but basically what the law requires is that every registered dealer should file quarterly returns and the returns are required

to be filed within one month of the last date of the quarter. In the present case, we are concerned with the quarter, 1st April, 2007 to 30th June, 2007 and Sri Deb submits that the return could have been filed even by 31st July, and, therefore, there is no delay in filing of the return. In respect of the period from 01.07.2007 to 08.07.2007, the submission of Sri Deb is that the quarter would have ended on 30th September and the last date for submission of returns was 31st October and, hence, the assessment of tax is premature.

3. We are not at all in agreement with this submission. We are not dealing with a case of filing of normal returns. At this stage, we may point out that though the dealer was required to file the return within one month of the end of the quarter, he under law is also required to maintain proper books of account. In this behalf, reference may be made to Chapter VII of the TVAT Act, which makes it incumbent upon every dealer to maintain proper accounts. The accounts are in the nature of purchase vouchers, sale invoices, cash memos., daily cash books, etc. These records are required to be kept in the premises and can be searched by the authorized officer of the revenue at any time. These records are required to be properly maintained. The whole purpose of conducting a raid and of verifying the stock is to see whether the physical stock matches the stock as reflected in the records. Once in the case of a raid, there is variation which is not explained by the assessee, then the assessing officer is duty bound to assess the tax on the discrepancy and this is not dependant on the date of filing of the return. The date of return is meant for those assessees who maintain the records properly and they must file the return within one month of the ending of the quarter and also pay the tax. The benefit of this provision cannot be taken by those assessees whose books are found to be false. Once the books are found to be false then the cause of action arises there and then to the revenue to assess the tax in respect of the false course.

4. The raid was conducted on 09.07.2007 and the record upto 08.07.2007 was inspected. There was a huge discrepancy between the records i.e. the stock statement and the physical stocks. The revenue has come to a pure finding of fact that the assessee had sold goods of the value of the discrepancy and that the tax amount on these sales had been withheld by the dealer. In this situation, the revenue was fully justified in assessing the tax without waiting for the dealer to file a return. Since there was discrepancy in the accounts the revenue was entitled to levy both tax and penalty. Therefore, we find no merit in the writ petition, which is accordingly dismissed.