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**(2000) 07 GAU CK 0022**

**In the Gauhati High Court**

**Case No : Civil Rule No's. 114, 115 and 116 of 1993**

R.L. Roy and Co.

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

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**Date of Decision : 24-07-2000**

**Acts Referred:**

Constitution of India, 1950 — Article 20(1), 20(2), 304, 366

**Citation : (2006) 143 STC 657**

**Hon'ble Judges : P.G. Agarwal, J**

**Bench : Single Bench**

**Advocate : Mr. S. Saha, for the Appellant; Mr. U.B. Saha and Mr. A. Ghosh, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

1. All these three Civil Rules are being disposed of by this common judgement as they involve a common question of law and facts.

2. The petitioner in Civil Rule No. 114/115 M/S R.L. Roy & Co. and the petitioner in Civil Rule No. 117 M/S B.D.D.& Co. are engaged in the contract work and also manufacturing and selling of bricks, brick-bats etc. The firms are also registered assessee under the Tripura Sales Tax Act, 1976.

3. The Tripura Sales Tax (Fourth Amendment) Act. 1987 (hereinafter referred to as "the Act") was enacted by the Tripura Legislative Assembly and received the assent of the Governor on 12-5-1987 and published in the Gazette on 12-6-1987. Section 1(3) reads as follows :

"(3) Clause (i) of section 3 and section 4 shall be deemed to have come into force on the Twelfth day of July, 1984 and all other provisions shall come into force at once."

4. In these writ petitions the petitioners have challenged the validity of the above provisions and has prayed for striking out the same and also prayed for setting

aside the order of assessment or revision passed on the basis of the said amended provisions of the Act.

5. I have heard Mr. S. Saha, learned counsel for the petitioners and Mr. U.B. Saha, learned senior Government Advocate for the respondent-State.

6. As stated above, the petitioners have challenged the validity of the retrospective operation of the Act mainly on the ground that levy of sales tax is an indirect tax and the petitioners were required to collect the above tax from the purchasers/concerned persons and in turn deposit the same. By making the said provision retrospective the State wants to collect the tax from the petitioners but it will be difficult for the petitioners to recover the tax for the earlier period. The statement of objects and reasons for the amendment of the Act reads as follows :

"The amendment of the Tripura Sales Tax Act, 1976 has become necessary for -

(a) Simplifying provisions relating to levy of tax on transfer of goods involved in execution of works contract, hire purchase and lease of goods.

(b) making provisions for prosecuting persons collecting tax at a rate higher than that provided under the Act and for forfeiture of any such amount collected in excess, and

(c) providing sonic clarification, required for implementation of the Act.

2. Following the 3rd amendment to the Tripura Sales Tax Act in 1984. transfer of goods involved in execution on of works contract, lease, hire purchase etc. has been made taxable. Under the said provision, sales tax @ 4% is to be collected on the entire turnover of the dealer after excluding certain specified amount. With a view to simplify this provision, it is proposed that when goods are transferred under a work contract, only the taxable items involved therein would be made taxable at the rate given in the schedule."

7. In the case of Rai Ramkrishna and Others Vs. The State of Bihar, the Apex Court held :

"The position, therefore, appears to be well settled that if in its essential features a taxing stature is within the legislative competence of the legislature which passed it by reference to the relevant entry in the list, its character is not necessarily changed merely by its retrospective operation so as to make (sic take 7) the said retrospective operation out-side the legislative competence of the said Legislature."

8. Learned counsel for the petitioners has referred to a decision of this court in the case of shri Hanuman Match Works and others v. The State of Assam and others 1982 STC 295 wherein it was held :

"(ii) When a statute does not so authorise a rule-making authority cannot give retrospective effect to the rules, but a rule would not become invalid merely

because retrospective effect has been given to it. even though not permissible. The effect of it would be that the retrospective part of the operation alone would be ineffective."

9. In the present cases the Act itself was amended by the Legislature and as stated above, there is no dispute at the Bar that the Tripura Legislative Assembly had the competency to enact the said law. There is a distinction between providing retrospective effect to the rule i.e. delegated legislation without proper authority and enactment of the act by a competent authority. The decision in Hanuman Match Works and others (supra) is not applicable/ relevant in the present cases. Shri S. Saha learned counsel for the petitioners has also referred to a decision of the Apex Court in the case of D. Cawasji and Co. Mysore v. State of Mysore and another 1985 SCC 63 wherein the amending act providing the retrospective effect of the imposition of sales tax was quashed by the Apex Courts. The provisions were set aside on the ground that the impugned act sought to nullify the judgment and order of the High Court and, as such, these are invalid and un-constitutional.

10. The impugned amending Act was set aside in D.Cawasji and Co./ (supra) not because of retrospective operation but on the ground the amending Act has tried to circumvent the decision of the High Court. The ratio of the decision of D. Caswasji and Co. (supra) was distinguished by the Apex Court in a later case of Entertainment Tax Officer and another v. Entertainment Tax Officer and Another Vs. Ambae Picture Palace, The decision in Raj Mohan Rai (supra) was reiterated by the Apex Court in the case of Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, The Apex Court observed :

"it is true that there are some provisions in the Constitution which prohibit retrospective legislation as, for instance. Art. 20(1) and (2) vide West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras, But Art. 304(b) cannot be construed to mean that a law passed under it must in every case be prospective. If a statute is passed under Art, 304(b) retrospectively, its reasonableness may, of course, fall to be considered on the merits in a given case, but that is not to say that in no case can a statute be passed under the said article to operate retrospectively."

11. In Entertainment Tax officer and another (supra) the Apex Court reiterated the decision in Rai Ramkrishna (supra) and further held :

"Though it is not for the State to justify or explain the necessity for the amendment even in related to retrospectivity of the Act but obviously, on the face of it, there appeared to be a change of policy by a succeeding Government on the policy pursued by its predecessor. Surely the successor Government can have different rules from their predecessor including the matters relating to taxation or mode of taxation or basis of taxation or objects of taxation etc. No explanation was required from the State for the amending Act having retrospective effect."

12. From the statement and objects as quoted above, I find that the State has given an explanation for amending of the Act. The subject matter of the Amendment Act is relatable to Entry No. 54 (list ii) of the State list of the 7th Schedule to the Constitution of India read with Clause (29 A) of Article 366 of the Constitution. In the present case, as per the earlier provisions sales tax @ 4% was to be collected and paid by the contractor on the entire turn over under a work contract but by the amending act it was provided that when goods are transferred under a work contract, only the taxable items involved therein would be made taxable at the rate given in the schedule. Learned counsel for the petitioner, therefore, submits that instead of earlier tax @ 4% the petitioner is now required to pay tax at the schedule rate which varies from 4% to 12% Considering the item involved as per the schedule and as the Act has been made with retrospective effect, the petitioners are not in a position to collect the same from the concerned persons. The facts in Rai Ramkrishna (supra) were more or less identical whereby the tax of passengers carried by the motot vehicle was increased from retrospective effect and it was argued that it would be very difficult, if not impossible, for the owner to recover the tax from the passengers whom he had carried in the past, the argument was not accepted. In a recent decision American Remedies Pvt. Ltd. Vs. Govt. of Andhra Pradesh and Another, , the Apex Court held that "the differential amount of tax consequent to that amendment could not be escaped merely because the assessee had not collected the same from the consumer." The Apex Court further held :

"It is a settled position that an assessee is liable to pay sales tax and the question whether he has collected it from the consumer or not is of no consequence. His liability is by virtue of being an assessee under the Act."

13. In view of the above, it is held that the challenge to validity of the Act has no merit.

14. Shri S. Saha. learned counsel for the petitioners has submitted that the petitioners in these cases are doing contract works under the State of Tripura and as the amended provisions of the Act were not in existence at the relevant period and as the Act has been given retrospective effect, they could not collect the required tax from the concerned departments of the State and in case they are liable to pay the tax as per the amended provisions, they may be allowed to collect the same from the concerned departments, which also happens to be government depaertment. The learned counsel for the petitioner has also produced a copy of the decision of this Court in p. case of Civil Rule No. 2 of 1979 (Shri Binayendra Lal Roy & Ors v. The State of Tripura and others) disposed of on 24.2.1989. This Court gave the following directions :

"In this connection. Shri Majumder has submitted an instruction that other dealers have collected the tax from the purchasing departments and paid the same to the Sales-Tax Department. We would like the petitioners also to do so. To this the concerned department would not raise any objection on the ground of limitation. If the petitioner succeeds in this venture, the tax realised by him shall

be paid to the sales tax department. If, however, any resistance is given by the department concerned, it is apparent that it would be inequitable to ask the dealer at this stage to pay the tax from his own pocket inasmuch as when the agreement was entered into with the department concerned sales tax was not leviable and so at that stage the dealer could not have asked the department to pay the sales tax. This observation of ours would not however apply to sales to private persons."

15. When the petitioners are required to pay additional tax by virtue of retrospective provisions of law, they cannot be debarred from collecting the same, more so, when they are to collect from the other department of the Government. It is, therefore, provided that the above directions shall also cover the present cases and the petitioners are entitled to the benefits of the above directions, but they will be liable to pay the tax as assessed by the concerned authorities.

16. In the result, all the three writ petitions are dismissed as stated above.