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**(2010) 09 GAU CK 0050**  
**In the Gauhati High Court**  
**Case No : WA. No's. 9 and 79 of 2007**

Samir Ghosh

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

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**Date of Decision :** 09-09-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Tripura Value Added Tax Act, 2004 — Section 3, 3(1), 3(2), 5, 5(2)

**Citation :** (2011) 1 GLR 102 : (2011) 38 VST 441

**Hon'ble Judges :** Iqbal Ahmed Ansari, J; C.R. Sharma, J

**Bench :** Division Bench

**Advocate :** A.K. Bhowmik and S. Ghosh, in WA No. 59 of 2007 and S.S. Chakraborty, in WA No. 79 of 2007, for the Appellant; S. Chakraborty in WA. No. 59 of 2007 and S. Ghosh in WA No. 79 of 2007, for the Respondent

**Final Decision :** Dismissed

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## Judgement

C.R. Sarma, J.—The above mentioned two writ appeals have arisen out of the common-judgment and order, dated 15.6.2007. passed by a learned Single Judge of this Court in WP(C) No. 114 of 2000 and WHO No. 355 of 2006. The short question, involved in the said writ petitions, was whether the item "pea gravel" is a taxable item, under the Tripura Sales Tax Act, 1976 (TST Act") as well as the Tripura Value Added Tax Act, 2004 ("TVAT Act") or not.. The learned Single Judge, by the said common judgment and order, disposed of the writ petitions, deciding thereby that the item "pea gravel" is a taxable item under the TST Act with effect from 28.2.2000, i.e., after the insertion of the word "gravel", by the Tripura Sales Tax (8th Amendment) Act, 2000, in the schedule of the chargeable items, attached to the Act and that the said item is not a taxable item under the TVAT Act, 2004.

2. Challenging the decision, reached in WP(C) No. 114 of 2000, that "pea gravel" is a taxable item, under the TST Act, with effect from 28.2.2000, the writ Petitioner, Sri Samir Ghosh, has preferred the appeal, being WA No. 59 of 2007.

On the other hand, aggrieved by the finding and the decision of the learned Single Judge, rendered in WP(C) No. 355 of 2006, that "pea gravel" is not a taxable item under the TVAT Act, the State Respondents, in the said writ petitions, have come up with the appeal, being WA No. 79 of 2007.

3. Since both the writ appeals involve almost identical facts and similar questions of law, the same have been disposed of by a common judgment and order and the parties are represented by the same set of counsels, both the appeals, as agreed to by the learned Counsel appearing on behalf of the parties, have been heard together. For the sake of brevity and convenience, we propose to dispose of the two writ appeals by this common judgment and order.

4. The background facts, in brief, may be stated as follows:

The writ Petitioner, in WHO No. 114 of 2000 and WP(C) No. 355 of 2006, is a Government contractor and supplier, under the TST Act as well as TVAT Act. On the basis of the tender issued, the Executive Engineer, Rig Division, Agartala (i.e., the Respondent No. 4), by his order dated 29.1.1999, placed supply order with the Petitioner requiring him to supply 500 cum "pea gravel" and accordingly, the Petitioner started to supply the item and raised running bills. Though, initially, no tax was deducted, under the TST Act, from the bills aforesaid, Respondent No. 3, i.e., the Officer-in-Charge, Churaibari Sales Tax Check post, Tripura, did not allow the Petitioner to carry the goods, without paying tax at the rate of 12 per cent on the value of the pea gravel under the TST Act. According to the Petitioner, "pea gravel" is not a taxable item and the said item is not included in the list attached to the Tripura Sales Tax (8th Amendment) Act. 2000, but, due to demands raised by the Respondent No. 3, the writ Petitioner had no other alternative but to pay sales tax @12% on the tender value of the "pea gravel". Thus, being aggrieved for deduction of sales tax in respect of the "pea gravel", so supplied, the writ Petitioner approached this Court by filing a writ petition, under Article 226 of the Constitution of India, seeking a direction to the Respondents not to charge any tax under the TST Act for supply of "pea gravel" by the Petitioner. The said writ petition was registered as WP(C) No. 114 of 2000.

Subsequently also, by his order, dated 3.7.2006, the Executive Engineer, Rig Division, i.e., the Respondent No. 3 in WP(C) No. 355 of 2006, placed supply order with the writ Petitioner, for supply of 1000 cms "pea gravel" (from Durgapur, West Bengal) of approved quality of size ranging over 2.00 mm to 4.75 mm (best quality) at Agartala. Accordingly, as ordered, the writ Petitioner made all arrangements for supply "pea gravel". In the first week of September, 2006, Respondent No. 3 informed the Petitioner that the Petitioner would be required to pay tax under the TVAT Act. Though the Petitioner informed Respondent No. 3 that "pea gravel" is not a taxable item under the TVAT Act, Respondent No. 3 continued to charge tax at the rate of 12.5 per cent under the TVAT Act. Being aggrieved, the writ Petitioner, seeking to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India,

approached this Court by filing a writ petition, which was registered as WHO No. 355 of 2006.

5. The Respondents contested the writ petitions, by filing an affidavit-in-opposition, rebutting the contentions, raised in WP(C) No. 114 of 2000. The Respondents, in their affidavit-in-opposition, contended, inter alia, that, though the item "gravel" was not included in the Entry No. 29 of the schedule of taxable goods, prior to the 8th amendment of the TST Act, by the said amendment, "gravel" was included as taxable item at Entry 28 of the schedule of the taxable goods attached to the TST Act and, thus, the item "pea gravel" was made taxable @ 12% with effect from 28.2.2000 under the TST Act. According to the Respondents, the item "gravel" includes all types of "gravels" including "pea gravel". In their affidavit-in-opposition, filed in WP(C) No. 355 of 2006, the Respondents contended, inter alia, that in view of Entry 193 of the Schedule II(b) to the TVAT Act, which included miscellaneous items not covered in any other schedule, the Petitioner was liable to pay tax for "pea gravel".

The prime contention of the State Respondent is that, as per the petrography report, submitted by the Geological Survey of India (GSI) (NER, Shillong), which has been annexed as Annexure-R/2 to the counter affidavit, "pea, gravel" is nothing but a natural stone, which is a taxable item.

6. We have heard Mr. A.K. Bhowmik, learned senior counsel, assisted by Mr. S. Ghosh, learned Counsel, appearing on behalf of the Appellant in WA No. 59 of 2007, and on behalf of the Respondent in WA No. 79 of 2007. We have also heard Mr. S. Chakraborty, learned Addl. Government Advocate, appearing for the State Respondents in WA No. 59 of 2007 and for the State Appellants in WA No. 79 of 2007.

7. Taking us through the relevant provisions of the Tripura Sales Tax Act, 1976 (TST Act) and the Tripura Sales Tax Rules, 1976, as modified up to 2001, the Tripura Value Added Tax Act, 2004 (TVAT Act) and the Tripura Value Added Tax Rules, 2005, Mr. Bhowmik has submitted that in Tripura Sales Tax Act, 1976 (as modified up to August, 2001) as well as in the Act prior to 28.2.2000 and 1.12.1994. there was no mention of the item "pea gravel" in the list of the goods in respect of which tax was leviable under Sub-section (1) of Section 3 of the Act. Referring to the TVAT Act, 2004, it is also submitted, by the learned senior counsel, that the item "pea gravel" was not included in the list of taxable goods. The learned senior counsel further submitted that though the item "gravel" has been included at Entry 28 in the Schedule of taxable goods, under the TST Act, the "pea gravel" and "gravel" are two distinct items and that in the common parlance as well as in the trade also, "pea gravel", is known by the term "pea gravel" itself and, therefore, the term "gravel" does not include or mean "pea gravel". Referring to the decision rendered in the case of Chitta Ranjan Saha v. State of Tripura and Ors. (1989) 2 GLR 101, learned senior counsel, appearing for the private Appellant, has submitted that in the said case, a Division Bench of this Court has held that "pea gravel," is not stone or sub-product of stone under

Entry 29 of the Schedule of taxable goods attached to the TST Act and as such, the same is not taxable. The learned senior counsel, referring to Chitta Ranjan Saha (supra), further submitted that, in view of the said decision, wherein the State of Tripura was a party, it was clearly made known to the State authority that "pea gravel" was not a taxable item. Therefore, it is submitted, that as the State of Tripura, being aware of the said findings/decision, did not include the item "pea gravel" by its specific name, the Legislature must be taken to have intentionally omitted the said item from the list of the taxable items/goods. It is also contended that if the Legislature had any intention to make "pea gravel" a taxable item, it would have been clearly mentioned the said item in the list of taxable goods. Therefore, it is submitted on behalf of the private Appellant, that as the State Respondent, even after the 8th amendment, did not include the "pea gravel" as a taxable item, there should not be any difficulty in understating that the law makers had no intention to make "pea gravel" a taxable item. It is further submitted that, as in the common parlance, as well as in commercial circle, "pea gravel" is not known either as stone or sub-produce of stone, non-inclusion of "pea gravel" in the list, by its specific name, indicates that "pea gravel" was not made a taxable item. Mr. Bhowmik, learned senior counsel, referring to the decisions in *Sneh Enterprises v. Commissioner of Customs, New Delhi* (2006) 7 SCC 774 and *Mahim Patram (P.) Ltd. v. Union of India and Ors.* (2007) 2 SCC 668 submitted that the provisions of a taxing statute are required to be construed by ordinary rule of construction, but in the case of any doubt or dispute, construction has to be made in favour of the taxpayers and against the revenue. The learned senior counsel, appearing for the private Appellant, further submitted that the learned Single Judge committed illegality and error by holding that the term "gravel", appearing in Entry 28 of the TST Act (after amendment), included "pea gravel" and, thus, incorrectly decided that the said item became taxable with effect from 28.2.2000.

8. Supporting the decision of the learned Single Judge that the "pea gravel" is not a taxable item, under the TVAT Act as held in WP(C) No. 355 of 2006, the learned senior counsel, on behalf of the private Respondent, submitted that, in view of the decision, rendered by this Court in the case of Chitta Ranjan Saha (supra), the learned Single Judge has rightly decided that "pea gravel" is not taxable under the TVAT Act.

9. Strongly refuting the arguments, advanced by the learned senior counsel, the learned Additional Government Advocate submitted that the term "gravel" appearing at Entry 28 of TST Act (after amendment) included all types of "gravel" including "pea gravels". Referring to the supply order, issued by the Executive Engineer, Rig Division, Agartala, by his letter, dated 3.7.2006, the learned Government Advocate submitted that, by the said order, the writ Petitioner was asked to supply "pea gravel" of approved quality of particle size range over 2.00 mm to 4.75 mm. The learned Additional Government Advocate, referring to Clauses 2 and 3 of the terms and conditions of the said work order, pointed out that, in the said work order, the term "gravel" of specific size was

used. It is submitted, by the learned Additional Government Advocate, that gravel can be of various sizes and shapes and its utility is determined as per its size and shape. It is also submitted that gravel is a genus, while, the "pea gravel" is its species and as such, the term "gravel", appearing at Entry 28 of the TST Act, included "pea gravel" also. Referring to the petrography report, received from the Geological Survey of India, NER, Shillong, the learned Additional Government Advocate further submitted that "pea gravel" is nothing but a natural stone of small dimension and as such, the item "any other natural stone" appearing at Entry 67(iv) of TVAT Act included and implied "pea gravel" also. The learned Additional Government Advocate, referring to the Entry 193 of the Schedule II(b) of the TVAT Act, has further contended that miscellaneous items, not covered by the Act, included "pea gravel" also.

10. In view of the above, the learned Government Advocate submitted that the learned Single Judge, while rightly deciding that "pea gravel" was a taxable item under the TST Act, committed error by holding that "pea gravel" was not a taxable item under the TVAT Act. In support of his contention, the learned Government Advocate has relied on the decision rendered by a learned Single Judge of this Court in the case of Samir Ghosh v. State of Tripura and Ors. (2004) 3 GLR 602.

11. In view of the rival arguments, advanced by the learned Counsel, appearing on behalf of the parties, we deem it appropriate to look into the relevant provisions of law.

Section 3 of the TST Act as well as Section 3 of the TVAT Act is the charging sections in respect of taxable goods. The list of goods, which were taxable, under Sub-section (1) of Section 3 of the TST Act, prior to 1.12.1994, is mentioned in the Schedule to the said Act. Entry 29 of the said Schedule included the following items:

29. Bricks, [Brick-bats, Jhama, Metals, Stone chips and any other products or sub-products arising out of bricks or stones] and tiles (kiln burnt) other than mosaic (masonry tiles).

12. Prior to 28.2.2000, at Entry 28 of the list of the taxable items under the TST Act, 1976, the following items were included.

28. Bricks, Brick-bats, Jhama, Metals, stone chips and any other products or sub-products arising out of bricks or stone and tiles (kiln burnt) other than mosaic (masonry tiles).

13. By the 8th Amendment Act, 2000, at Entry 28, the following items were included as taxable items under the TST Act:

28. Brick, Brick-bats, Jhama, Metals, stone, boulder, grovel, ballast, stone chips, any other products or sub-products arising out of bricks or stone, tiles (kiln burnt) other than mosaic (masonry tiles).

14. A comparative study of the said goods/items, as included in lists aforesaid, reveals that prior to the 8th Amendment Act, the item "gravel" was not included in the list. Prior to 28.02.2000, items, namely, stone chips, brick or stones and any other products or sub-products arising out of bricks or stone along with others were included. The said lists did not include either gravel or natural stone. Therefore, it is clear that the item called gravel, whether it is "pea gravel" or "gravel" (i.e., general gravel of any size) was not included as taxable goods in the list of taxable goods prior to 28.2.2000. However, by the 8th Amendment, i.e., with effect from 28.2.2000, the item "gravel" and stones have also been included at Entry 28 of the list of taxable goods.

15. The mentioning of both stone and gravel as separate items indicates that the law maker, by using the said terms, specifically indicated that gravel and stone were two different items, i.e., one did not mean the other. Therefore, it can be concluded without any difficulty that prior to 28.2.2000, "pea gravel" or "gravel" were not taxable items. But after the 8th amendment, i.e., after 28.2.2000, the item "gravel" has been included in the list of taxable item making it, thus, taxable w.e.f. 28.2.2000.

In the case of Samir Ghosh (supra), a learned Single Judge of this Court referred to the following definition of "gravel" as provided in Engineering Materials by Surendra Singh. The definition reads as follows:

1.12.12. Gravel -These ore wafer worn pebbles of any kind of stone and are up to 7.5 cm in diameter. Usually found in river beds or in alluvial tracts. These are used for road blindage, surfacing and in concrete.

From the above definition of gravel, it is found that gravel is nothing but pebbles of any kind of stone within specific size. Therefore, scientifically, gravel is also a stone up to the size of 7.5 cm in diameter.

In the supply order also, the term "gravel" was used without prefixing the term "pea gravel" at Clauses 2 and 3 of the terms and conditions therein. Clauses 2 and 3 of the said terms and conditions read as follows:

Physical characteristic

(i) The gravel shall consist of hard quartz (about 96 per cent sch) with an average specific gravity of not less than 2.5.

(ii) The gravel shall be free from all foreign materials such as shale, Mica, Felspar, Clay, Sand, Dirt, Loan, Hematite and organic materials. The contractor shall, arrange for through washing and cleaning of gravel either at source or at stackyard after supply and then only measurements will be taken by the Engineer-in-charge, if otherwise satisfied about specification.

Gravel size -

The gravel shall be conforming to grades "A" and "B" specified in IS-4097-1967 having particle size range over 2.00 mm to 4.75 mm. For determination of the

particle size the corresponding sieves selected from IS-460-1962 shall be used.

All other terms and conditions will remain unchanged and will be as per terms and conditions of the tender/DN/T.

You are requested to attend this office of the undersigned within 7(seven) days of receipt of this work order for execution the formal agreement in PWD Form-8(Eight). Your letter No. NIL, dated 29.5.2006 and 13.6.2006 will be a part of agreement.

You are also requested to start the supply of Pea-gravels as per specification immediately under the direction of the Assistant Engineer, Rig Sub-Division No. 1, Kunjaban, Agartala, Tripura West, Please Note the time allowed is 150 days for carrying out the whole work, which will be reckoned from the 15(fifteen) days after the date of issue of this supply order to commence the work.

16. From the above, it is found that, while issuing the supply order, the authority concerned also, by using the term "gravel, as aforesaid, without any qualification, implied that gravel of a particular size, which was named, as "pea gravel" was required to be supplied. A careful reading of the said supply order indicates that the order was in fact, for supply of gravel of a particular shape and size and for the purpose of identifying the shape and size; the same was named as pea gravel. In the said order, the approximate measurement of the gravel, required to be supplied, was mentioned thereby making it clear that gravel of the given size was required to be supplied.

17. Therefore, a combined reading of the supply order as well as the above definition clearly indicate that "pea gravel" is a smaller type of "gravel" with certain specification in respect of its size. In view of the above, there is no difficulty in understanding "gravel" is a genus, while "pea gravel" is its species. Therefore, "gravel" includes, "pea gravel" and "pea gravel" was taxable under the TST Act with effect from 28.2.2000.

18. The second point, raised before us, is whether "pea gravel" is a taxable item under the TVAT Act. Admittedly, the TST Act has been repealed by the TVAT Act. Schedule II(b) to the TVAT Act contains a list of goods taxable at the rate of 12.5 per cent. Entry 67 of Schedule II(b), amongst others, contains the following items.

(iv) Black stone, kota stone or any other natural stone.

Entry 193 of the said Schedule reads as under:

193. Miscellaneous items not covered in any other Schedule.

19. The learned Government Advocate, referring to the term "natural stone" as well as the item, mentioned at Entry 193 aforesaid, submits that the "pea gravel" is also a natural stone and as such, the term "natural stone" would cover "pea gravel" for the purpose of levying tax under the TVAT Act.

The learned Government Advocate, drawing our attention to Entry 67 and 193 aforesaid, submits that as neither "pea gravel" nor gravel has been mentioned in the list aforesaid, the term "miscellaneous items" appearing at Entry 193 would include the "pea gravel".

20. Before answering the question as to whether "pea gravel" is or is not a taxable item, under the TVAT Act, it would be necessary to examine the scheme of the TVAT Act.

Under the Act, Schedule II(a) contains a list of goods taxable at the rate of 4 per cent, Schedule II(b) contains a list of goods taxable at the rate of 12.5 per cent, Schedule II(c) contains a list of the goods taxable at the rate of 1 per cent and Schedule II(d) contains a list of goods, in respect of which VAT is not applicable and taxable at the first point of sale within the State of Tripura at such rates as may be specified by the Government, from time-to-time, by notification in the Official Gazette.

21. Schedule II of the TVAT Act contains a list of exempted goods. u/s 5 of the TVAT Act, the tax, payable by a dealer u/s 3, shall be levied on the taxable turnover of his sales. As per Sub-section (2) of Section 5 of the TVAT Act, taxable turnover of sales in relation to a dealer, liable to pay tax under Sub-section (1) of Section 3, is to be calculated from the gross turnover of sales during any period, which remains after deducting therefrom sales of goods declared as exempted from tax in Schedule III and sales of goods, which are shown to the satisfaction of the commissioner, to have taken place (i) in the course of inter-State trade or commerce, or (ii) outside Tripura or (iii) in the course of the import of the goods into or export of the goods out of the territory of India.

Section 8 of the Act provides that the sale of certain goods, as specified in the Schedule III of the Act, shall be exempted from tax, under the Act, subject to conditions and exceptions set out therein.

In view of the above, except the goods, which are specified in Schedule III to the Act, sale of all other goods are liable to be taxed under the TVAT Act.

22. Section 7 of the Act provides for the rate of tax. By the said Section 7, it has been provided that the value added tax payable by a dealer, under the Act, shall be levied on his taxable turnover at such rate as specified in the Schedule II(a), II(b) and II(c), subject to such conditions as the Government may, from time-to-time, impose.

23. From a conjoint reading of the provisions of Sections 5, 7 and 8 along with the Schedule II(a), II(b) and II(c), it is clear that all goods, other than the goods specifically exempted under Schedule III, are taxable under the TVAT Act. Entry 193 of Schedule II(b) of the Act is a residuary entry, which provides that the items, which are not covered in any other Schedule, shall be taxable under Schedule II(b) at the rate of 12.5 per cent. The item "pea gravel" is not included in the list of exempted goods as per Schedule III of the Act. The said item is also



not covered by any other Schedule of taxable goods, namely, Schedule II(a), II(b), II(c) or II(d). The said item, although not covered by Entries 1 to 192 of Schedule II(b) to the Act, shall being an item, not covered by any of the Schedules, become taxable at the rate of 12.5 per cent, as a residuary item, under Entry 193 of Schedule II(b) to the Act.

24. In view of the above provisions of the statute and the discussion aforesaid, we do not find any force in the submissions, advanced on behalf of the Respondent in Writ Appeal No. 79 of 2007, that since "pea gravel" has not been specifically made taxable under the TVAT Act, no tax can be levied on the said item inasmuch as "pea gravel", not being specifically included in Entry 28 to the Schedule of the taxable goods, under the Tripura Sales Tax Act, 1976, in Chitta Ranjan Saha (supra), has been held to be a non-taxable item. In this context, it is worth noting that the TST Act contained only one Schedule of the taxable goods. There was no Schedule of the exempted goods under the TST Act. Only the State Government was empowered, under Sub-section (2) of Section 3, to grant exemption from payment of tax in respect of any sale of taxable goods or class of taxable goods or a dealer or a class of dealer, for such period as may be specified therein, for fulfillment of the object specified in Sub-section (2). As such, when in Chitta Ranjan Saha (supra), it was held that "pea gravel" was not covered by Entry 28 of the Schedule of the taxable goods, no tax could be levied on the said item, till the said entry was amended by the Eighth Amendment Act, 2000, and "gravel" was specifically included in the said entry.

The Scheme of the TST Act and the TVAT Act being altogether different, it cannot be contended that since "pea gravel" or "gravel" has not been specifically included in the list of taxable goods, the said item shall stand exempted from the payment of VAT under the TVAT Act, despite the residuary entry, namely, Entry 193 of Schedule II(b) to the Act.

In view of the discussion made above, the judgment and order, passed by the learned Single Judge, in Writ Petition (C) No. 355 of 2006, holding the item "pea gravel" to be not a taxable item under the Tripura VAT Act, 2004, cannot be sustained and the same is, therefore, set aside. Consequently, Writ Appeal No. 79 of 2007 is allowed.

25. However, in view of our earlier discussion, we do not find any reason to interfere with the findings, reached by the learned Single Judge in Writ Petition (C) No. 114 of 2000, and accordingly, the Writ Appeal No. 59 of 2007 stands dismissed.

26. No order as to costs.