(2013) 04 TP CK 0004

In the Tripura High Court

Case No : C.M. Application No. 102 of 2013 in Writ Petition (C) No. 72 of 2013

State of Tripura and Others VsShekhar Chandra Podder

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 04 TP CK 0004

Hon'ble Judges : U.B. Saha, J;S. Talapatra, J

Bench : Division Bench

Advocate : A. K. Saraf, N.G. Pal, Government Advocate and K. Roy, for the Appellant; Somik Deb, for the Respondent

Final Decision : Disposed Off

Judgement

S. Talapatra, J.—Heard Dr. A.K. Saraf, learned senior counsel assisted by Mr. K. Roy, learned counsel along with Mr. N.C. Pal, learned Government Advocate appearing for the applicants as well as Mr. Somik Deb, learned counsel appearing for the writ petitioner-respondent. The Revenue by this application filed under article 226 of the Constitution of India read with sub-rule (2) of rule 4 of Chapter V-A of the Gauhati High Court Rules, as followed, pressed for vacation/ modification of the interim order dated March 22, 2013 passed in W.P. (C) No. 72 of 2013 whereunder the following interim measures were provided:

Having perused the writ petition, the materials placed on record and the relevant provisions of the Tripura Value Added Tax Act, 2004, along with the Rules framed thereunder, we are of the view that the petitioner has been able to make out a prima facie case that deduction, at the flat rate of four per cent, from the gross bill of the petitioner, as a contractor, in works contract, and collection of VAT, at the enhanced flat rate of six per cent, from the gross bill of the petitioner, as a contractor, in works contract, and further levying the enhanced rate of deduction at six per cent of VAT, even in respect of the pending bills and levying of enhanced rate of deduction, as VAT at eight per cent and orders of assessment, the demand notices and the orders of attachment, are contrary to the scheme of the Tripura Value Added Tax Act, 2004, and the Constitutional scheme of levy of tax on works contract.

Considering, therefore, the matter in its entirety and in the interest of justice, it is hereby directed that until further order, the impugned Memorandum, dated June 25/30, 2005, notifications, dated September 21, 2011, November 16, 2011 and August 1, 2012, and also the impugned orders of assessment, the demand notices and the orders of attachment shall remain suspended.

The respondents are left at liberty to move this court for modification/vacation/ alteration of this interim direction.

(Emphasis supplied)

2. Dr. Saraf, learned senior counsel assisted by Mr. K. Roy, learned counsel along with Mr. N.C. Pal, learned Government Advocate appearing for the Revenue has submitted that the said interim order has been obtained by exercise of fraud and suppression of the material fact inasmuch as it has completely suppressed that the writ petitioner has filed another writ petition being W.P. (C) No. 440 of 2012 by challenging the memorandum dated June 25/30, 2005, the notification dated September 21, 2011, the notification dated November 16, 2011 and the notification dated August 1, 2012. It has been deliberately suppressed that along with the said writ petition, one application for interim measure by way of restraining the Revenue-respondents from acting in furtherance of the said impugned memoranda/notifications had been filed but on the face of the resistance by the Revenue-respondents and on due consideration this court did not pass any restraint order against the impugned memoranda/notifications as prayed. The said petition for interim order being C.M. Appl. No. 359 of 2012 in W.P. (C) No. 440 of 2012 was disposed of by an order dated September 18, 2012 with the following observation and direction:

The instant case is preferred by the petitioner on certain apprehension that from his bill, there would be a flat deduction of sales tax from the gross amount of his bill, but on perusal of the aforesaid notification, it appears that the deducting authority who is paying the contractual amount to a contractor like the petitioner is only liable to deduct tax at eight per cent on the taxable turnover by way of deducting the value of labour charges, service charges and other charges which are not taxable. Thus, in no way the petitioner is going to be affected at this stage.

In view of the above, respondent No. 5 is directed to deduct tax from the bill of the petitioner in relation to the works contract at eight per cent of the taxable turnover to be determined after deducting the non-taxable turnover and charges.

3. Dr. Saraf, learned senior counsel, has also reassured this court that after issuance of the notification dated August 1, 2012 (annexure P/3 to the W.P. (C) No. 440 of 2012), the earlier notifications issued by the State-respondents are no longer in force. Thus, it is not necessary to pass any interim order so far these memoranda/notifications (annexures P/2, P/3 and P/4 to the said writ petition being W.P. (C) No. 440 of 2012) are concerned.

4. Dr. Saraf, learned senior counsel assisted by Mr. Roy, learned counsel appearing for the Revenue, has contended further that the similar prayers have been replicated in the present writ petition along with some additional prayers but the nature and contour of the writ petition hardly have any distinguishable variation. Dr. Saraf, learned senior counsel has referred the prayers made in the previous writ petition being W.P.(C) No. 440 of 2012 for making comparison with the prayers made in the present writ petition being W.P. (C) No. 72 of 2013 and contends that except some very insignificant additional reliefs the challenge remains the same. He has further contended that the petitioner has deliberately suppressed the pendency of an identical writ petition on the same subject-matter and between the same parties being W.P. (C) No. 440 of 2012 and the interim order dated September 18, 2012 as passed in C.M. Appl. No. 359 of 2012 in W.P. (C) No. 440 of 2012 with unmasked purpose of misleading this court and obtaining the interim order by such suppression and mis-representation of the relevant fact. Had the said interim order dated September 18, 2012 been placed before this court before the order dated March 22, 2013 was passed in W.P. (C) No. 72 of 2013, this court would not have passed the interim order in favour of the petitioner in conflict to its previous order. He has also submitted that after passing the said interim order, dated September 18, 2012, the Revenue-respondents has published the memorandum No. F.I-7(11)-TAX/87/PART-II dated January 8, 2013 whereby it has been provided that the tax would be deducted against the works contract at the source. By the said memorandum dated January 8, 2013 various charges towards labour and services have been sub-categorized on which the deduction would be made. It has also been clarified in the said memorandum dated January 8, 2013 that "In cases where the amount of charges towards labour, services and other like charges in such contract are not ascertainable from the terms and conditions of the contract for the purpose of determining turnover of goods in which transfer of property in goods has taken place, the amount of such charges shall be calculated at the percentage prescribed in rule 7A for determining taxable turnover of running bills for deduction of tax at source at eight per cent. The applicability of tax deduction at source is at the time of making payments irrespective of the date of entering into the contract".

5. Dr. Saraf, learned senior counsel, has also contended that by another writ petition, the petitioner had challenged the notification dated 25/30, June, 2005, the notification dated September 21, 2011 and the notification dated November 16, 2011. By the order dated June 22, 2012 available at annexure A/5 to this application, this court in terms of

Sri Pradip Paul v. State of Tripura reported in (2011)41 VST 386 (Gauhati) (2011)5 FLR 814

had allowed the writ petition with the following observation and direction:

The deductions, which stands impugned in the present writ petitions, shall, therefore, stand set aside and quashed. The respondents are, however, left at liberty to assess taxable liability, if any, of the petitioners and realize the liability of the petitioners in accordance with law. The interference by us with the deduction, at source, shall not, in any way create any impediment on the part of the respondents to make assessment, in accordance with law, as regards the taxable liability of the petitioners and/or realization thereof by resorting to law contained in that behalf.

Considering the fact that it has been submitted, on behalf of the State respondents, that the taxable liability, if any, of the petitioners would be determined in accordance with law, within a period of three months from today, we presently do not direct the State-respondents to refund the deducted amount to the petitioners, but make it clear that if the respondents fail to determine, in accordance with law, the taxable liability, if any, of the petitioners within the said period of three months from today, the petitioners shall remain at liberty to claim refund of the amount(s), which have been deducted, at source, from the running bills of the petitioners. It is also made clear that after fixing the taxable liability, if any, of the petitioner, the balance amount, if any, shall be made available to the petitioners within four weeks from the expiry of the said period of three months.

Coupled with the above, it is further directed that the respondents shall not, henceforth, make deduction, at source, at flat rate from the running bills of the petitioner.

6. Dr. Saraf, learned senior counsel has quite candidly submitted that the Revenue-respondents have been complying those directions and they have taken up the exercise of assessment of turnover return of the writ petitioner but the writ petitioner on the lame and unsustainable pretext had been avoiding participation in the assessment proceeding and ultimately the assessment has been finalized for the assessment years 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 and the demand of Rs. 30,10,090 has been raised and the writ petitioner has been asked to comply that demand. Since the petitioner did not comply the demand in terms of the notice issued along with the assessment order dated September 21, 2011, the Revenue-respondents have launched the recovery proceeding u/s 38 of the Tripura Value Added Tax Act, 2004 with caution that if the petitioner failed to make payment in pursuance to the notice he would be treated as a ''''dealer in default" under the TVAT Act in respect of the amount, specified in the notice and the further proceedings against the writ petitioner shall be initiated for realization of the amount as if it were an arrear due from the writ petitioner and the said notice shall have the same effect as an attachment of debt. Thereafter, the attachment order, available at annexure P/12 in series of this application was issued.

7. Dr. Saraf, learned senior counsel has submitted that the writ petitioner has not challenged the assessment order dated September 21, 2012 but when the attachment order dated February 8, 2012 had been issued he has immediately approached this court for obtaining interim orders by way of suppressing the

order dated August 19, 2012. He has vehemently contended that such suppression of material facts amounts to the criminal contempt and for that not only the equations reliefs should be denied but also the writ petition should be scuttled without any further consideration.

34. The jurisdiction of the Supreme Court under article 32 and of the High Court under article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L. J., in the leading case of R. v. Kensington income tax Commissioners (1917)1 KB 486: 86 LJ KB 257: 116 LT 136 (CA) in the following words (KB page 514):

... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts--it says facts, not law. He must not misstate the law if he can help it--the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.

9. The apex court further observed that:

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating. ''We will not listen to your application because of what you have done". The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this court under article 32 or of a High Court under article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play ''hide and seek'' or to ''pick and choose'' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If

material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, ''the court knows law but not facts''.

39. If the primary object as highlighted in Kensington income tax Commissioners (1917)1 KB 486: 86 LJKB 257: 116 LT 136 (CA) is kept in mind, an applicant who does not come with candid facts and ''clean breast'' cannot hold a writ of the court with ''soiled hands''. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuverings or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on the merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

10. Dr. Saraf, learned senior counsel, further states that the apex court in

K.D. Sharma (2008)12 SCC 481

, has also observed that:

49. ''Strongly disapproving'' the explanation put forth by the petitioner and describing the tactics adopted by the federation as ''abuse of process of court this court observed

All India State Bank Officers Federation v. Union of India (1990) Supp SCC 336 (SCC pages 340 and 341, para 9)

:

9... There is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process....

11.

K.D. Sharma (2008)12 SCC 481

, has approved

Vijay Syal v. State of Punjab as reported in (2003)9 SCC 401

where it has been enunciated that:

24. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal

material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice.

12. It has been further observed that such person cannot claim equitable relief who exercises fraud or misleads the court by way of suppression of the material facts.

13. Dr. Saraf, learned senior counsel also has referred

Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of Uttar Pradesh reported in (2008)1 SCC 560

and

Advocate-General, State of Bihar v. M.P. Khair Industries reported in (1980)3 SCC 311

and contended that repeated filing of the writ petitions on the same subject-matter amounts to the criminal contempt. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. Not only, he should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again on the same issue and the subject-matter as such conduct amounts to abuse of the process of law. In

M.P. Khair Industries (1980)3 SCC 311

, the apex court was of the opinion that such repeated filings of the writ petitions amounts to the criminal contempt.

14. For further elaboration, Dr. Saraf, learned senior counsel assisted by Mr. Roy, learned counsel appearing for the Revenue has, having referred to

Prestige Lights Ltd. v. State Bank of India reported in (2007)139 Comp Cas 169 (SC) (2007)8 SCC 449

, contended that it is of utmost necessity that when a party approaches the High Court he must place all the material facts without any reservation inasmuch as the High Court would be exercising its extraordinary jurisdiction under article 226 of the Constitution. If there is suppression of material fact on the part of the applicant that would receive an apposite and equal repulse. He has strongly contended that for such exercise of fraud, suppression of material fact as well as for abuse of the process of the court which are extremely deplorable, the writ petition should be scuttled without considering the merit and at the threshold.

15. Finally, Dr. Saraf, learned senior counsel has contended that the impugned order of assessment is Appealable u/s 69 of the Tripura Value Added Tax Act, 2004 which provides that:

69. Appeal:

(1) Any dealer objecting to an order of assessment or penalty passed under this Act, may, within thirty days from the date of the service of such order, appeal to the prescribed authority against such assessment or penalty:

Provided that (i) no appeal shall be entertained by the said authority unless, he is satisfied that the amount of tax assessed or the penalty levied has been paid;

It has been further provided that:

(ii) the authority before whom an appeal has been filed may, for reasons to be recorded in writing, direct the appellant to pay any lesser amount which shall not be less than fifty per cent of the tax assessed or fifty per cent of the penalty levied and, on payment of the amount so directed, entertain the appeal.

16. Dr. Saraf, learned senior counsel, has added further that the appeal can also be filed after the expiration of 30 days if such authority is satisfied that for reasons beyond the control of the appellant or for any other sufficient cause the appeal could not be filed within time. The appellant without taking recourse to that statutory remedy has approached this court to avoid payment of the due tax as levied by the impugned assessment order and suppressed those material fact from this court for deriving benefit to which the writ petitioner is not otherwise entitled to.

17. Mr. Deb, learned counsel appearing for the writ petitioner, could not deny the allegation that in the writ petition there is no reference as regards the pendency of the writ petition being W.P. (C) No. 440 of 2012 and about the order dated September 18,2012 as passed in C.M. Appl. No. 359 of 2012 arising out of the W.P. (C) No. 440 of 2012, but he has contended that the reliefs as sought, for in the said previous writ petition are substantially different from the reliefs as sought for in the present writ petition. According to Mr. Deb, learned counsel for the writ petitioner, that the fundamental relief as sought for in the present writ petition is against the assessment order dated September 21, 2012 and the attachment order dated February 8, 2013, respectively, available at annexure P/11 and P/12 to the writ petition. Apart that, the other challenges have been perceived as essentially corollary to the said fundamental relief.

18. Mr. Deb, learned counsel for the writ petitioner, has contended that the legal concept of "the material fact" has to be adjudged, based on its impact on the dispute that has fallen for consideration of the court. There cannot be any straight-jacket formula to perceive or weigh the suppression of material fact. He admitted that the suppression of the material fact is definitely deplorable and

required to be viewed seriously but it has to be understood and examined in the given context of the case.

19. Having referred to

S. J.S. Business Enterprises (P) Ltd. v. State of Bihar as reported in (2004) 121 Comp Cas 99 (SC) (2004) 7 SCC 166

, where the apex court while, considering a case of almost similar circumstance, held that (pages 106 and 107 in 121 Comp Cas):

As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken {King v. General Commissioners for the purposes of the income tax Acts for the District of Kensington (1917)1 KB 486 (CA)).Thus when the liability to income tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact the suppression of which disentitled her from the relief claimed. Again when in. earlier proceedings before this court, the appellant had undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been, initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by the apex court (

State, of Haryana v. Karnal Distillery Co, Ltd. : AIR 1977 SC 781

). Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order Welcome Hotel v. State of A.P. AIR 1983 SC 105." All these illustrations were provided in

S. J.S. Business Enterprises (P) ltd. (2004)7 SCC 166

....

20. Thereafter, the apex court held that the rule is based on public policy but the motivating factor is the, existence, of a parallel jurisdiction in another court. But the apex court has also held in

C.B. Gosain Bhan v. State of Orissa (1963)2 SCR 879

,, that even when an alternative remedy has been availed of by a party but not pursued that the party could prosecute the proceeding under article 226 for the same relief. This court has also held that when a party has already moved the High Court under article 226 and failed to obtain relief and then moved an application under article 32 before this court for the same relief, normally the court will not entertain the application under article 32 .

21. It has been further held that instead of dismissing the writ petition on the ground that the alternative remedy had been availed of, the court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under article 226 (

K.S. Rashid and Son v. income tax Investigation Commission (1954)25 ITR 167 (SC) : AIR 1954 SC 207

). Therefore the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on the merit.

22. A reference has also been made to a decision of the apex court in

State of Jharkhand v. Voltas Ltd., East Singhbhum as reported in (2007)7 VST 317 (SC) (2007)9 SCC 266

, as where the apex court held in para 12 as under:

In our considered opinion sub-clause (i) of clause (a) of section 21(1) read with rule 13A of the Rules did not make sub-clause (1) fully workable because the manner and extent of deduction relating to any other charges has not been provided/prescribed by the State.

23. According to Mr. Deb, learned counsel for the writ petitioner, rule 7A of the Tripura Value Added Tax Rules is peri materia to rule 13A of the Bihar Sales Tax Rules and as such that decision would attract in the present case. He has also made a reference in

Larsen & Toubro Ltd. v. State of Bihar reported in (2004)134 STC 354(Patna)

, where the Patna High Court held that it would also be necessary to refer to the judgment of

Gannon Dunkerley & Co. v. State of Rajasthan (1993)88 STC 204 (SC) (1993)1 SCC 364

, to appreciate that how the provisions are to be made workable and what particular items are taxable in a works contract and what particular deductions are to be made from the works contractor.

24. In absence of any prescription or any other charges in the statute the Revenue cannot by way of exercise of the powers as provided u/s 87 of the Tripura Value Added Tax Act cannot make any law in the form of "the rule" which stands contrary to what has been provided in the Act. Section 5(2)(c) of the Tripura Value Added Tax Act, 2004 is one of such rule which is entirely

unworkable and vague, He has further submitted that in the present writ petition the horizon is much wider for consideration and it is different in nature. For non-disclosure of pendency of the previous writ petition or the interim order passed in connection therewith, it cannot be said there have been suppression of material facts. In this regard, he also pressed for appreciation, a decision of the apex court in

Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express reported in (2006)3 SCC 100

where the apex court held that:

....The expression ''material facts'' has not been defined anywhere, but from the wording of Order VI rule 2 the material facts would be, upon which a party relies for his claim or defence. The material facts are facts upon which the plaintiffs cause of action or the defendant''s defence depends and the facts which must be proved in order to establish the plaintiffs right to the relief claimed in the plaint or the defendant''s defence in the written statement. Which particular fact is a material fact and is required to be pleaded by a party, would depend on the facts and circumstances of each case. In

A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem (1989)2 SCC 163

, this court has considered the ambit of the exclusion clause whereby the jurisdiction of one court is excluded and conferred upon another court by agreement of the parties and said that in a suit for damages for breach of contract, the cause of action consists of making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred.

25. In that decision the apex court held that perceptive difference relating to remissness in the pleadings cannot be treated as suppression of the material facts.

26. While refuting the contentions of Dr. Saraf, learned senior counsel assisted by Mr. K. Roy, learned counsel appearing for the Revenue-respondents as to the maintainability of the writ petition for availability of effective statutory remedy, Mr. Deb, learned counsel for the writ petitioner having referred to a decision of the apex court in

Whirlpool Corporation v. Registrar of Trade Marks, Mumbai reported in (1998)8 SCC 1

has contended that:

15. Under article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not

normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

27. Mr. Deb, learned counsel for the writ petitioner, has further submitted that it would be evident from the impugned assessment order that rule 7A of the Tripura Value Added Tax Rules, 2005 as incorporated by the impugned notification dated August 1, 2012, has been given retroactive operation by levying the additional tax for labour and services fully in terms of the amended rules whereas sub-rule (2) of rule 1 of the Tripura Value Added Tax (Second Amendment) Rules, 2012, specifically provides that those rules shall come into force from the date of their publication in the official gazette and such publication has been caused only on August 1, 2012. As such, anterior to that date, rule 7A as incorporated by the Tripura Value Added Tax (Second Amendment) Rules, 2012, cannot have any sort of application on the assessment under reference. He has also referred to the assessment order to show that in absence of any books of accounts, the value towards labour charges, service charges and other like charges has been deducted from the gross bill as per rule 7A to determine the taxable turnovers as follows:

28. Situated thus, Mr. Deb, learned counsel for the writ petitioner, has emphatically contended that the said proceeding therefore was without jurisdiction. Apart that, the vires of the rule 7A of the Tripura Value Added Tax Act, 2005 as incorporated by the said amendment Rules has also been challenged in the writ petition, hi view of the

Whirlpool Corporation (1998)8 SCC 1

principle, Mr. Deb has contended that the writ petition is maintainable.

29. On appreciation of the contentions as projected by the learned counsel for the parties, it appears to this court that the interim order dated March 22,2013 as passed in W.P. (Q No. 72 of 2013 has generated a conflict with the order dated September 18, 2012 passed in C.M. Appl. No. 359 of 2012 to greater extent and that could emerge for not placing the interim order dated September 18, 2012 (which was however admittedly placed abruptly by Mr. N.C. Paul, learned Government Advocate for the Revenue respondents) by the writ petitioner in its perspective. However, the contention of Dr. Saraf, learned senior counsel cannot wholly be sustained that the Revenue was permitted by the said order dated September 18, 2012 to deduct the tax at the eight per cent on the taxable turnover on account of the service charges and other charges which were not

taxable on the turnovers, anterior to August 1, 2012. It cannot be denied that the writ petitioner has suppressed some facts, which were apparently material to the dispute as raised in the present writ petition. Therefore, the interim order dated March 12, 2013, stands modified and the direction that until further order the impugned memorandum dated June 25/30, 2005, the notification dated September 21,2011, the notification dated November 26, 2011 and the notification dated February 1, 2011, shall remain suspended is hereby vacated.

30. However, that part of the impugned assessment order for the years 2007-08,2008-09,2009-10, 2010-11 and 2011-12 whereunder in absence of any books of accounts the value towards the labour service charges and the other like charges have been assessed and deducted from the gross bill as per the amended rule 7A to determine the taxable turnover shall remain suspended till disposal of the writ petition. However, the Revenue shall be at liberty to redraw the demand notice in view of this order and also to proceed with the attachment proceeding in terms of the redrawn assessment order as indicated. The jurisprudential objection as raised by Dr. Saraf, learned senior counsel, as regards the maintainability of the writ petition shall remain open inasmuch as this court is of the opinion that the impact of suppression is required to be appreciated in terms of the reliefs as sought for in the present writ petition. In absence of averments from the Revenue-respondents in reply to the averments made in the writ petition, such exercise may turnout premature. Before parting with the records, this court strongly expresses its displeasure to the manner by which reference to the previous writ petition and the interim order has been avoided by the writ petitioner. However, for substantial justice this order of modification has been passed subject to the final outcome of the writ petition. Accordingly, this petition for modification or vacating of the interim order stands disposed of.