

(2011) 05 GAU CK 0017
In the Gauhati High Court
Case No : Writ Petition (C) No. 35 of 2011

Westwell Natural Resources Pvt. Ltd.	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 24-05-2011

Acts Referred:

Air (Prevention and Control of Pollution) (Amendment) Act, 1987 — Section 9
Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 21(1)
Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 3, 4, 5, 5(1), 6
Central Sales Tax Act, 1956 — Section 10(3), 11(2), 4, 6(2), 7
Companies (Central Government) General Rules and Forms, 1956 — Rule 4BBA
Companies Act, 1956 — Section 146, 17A, 17A(1), 35
Constitution of India, 1950 — Article 19, 226, 246
Income Tax Act, 1961 — Section 26A
Tripura Value Added Tax Act, 2004 — Section 18(1), 19, 19(1), 19(2), 19(3)
Tripura Value Added Tax Rules, 2005 — Rule 10, 11, 11(7)

Citation : (2011) 4 GLR 181(1)

Hon'ble Judges : I. A. Ansari, J

Bench : Single Bench

Advocate : A.K. Saraf, Mr. D. Baruah, Mr. P.K. Biswas, Mr. S.C. Saha, Mr. P. Majumdar, Mr. M.K. Biswas and Mr. P. Saha, for the Appellant; N.C. Pal, G.A., for the Respondent

Judgement

I. A. Ansari, J.—This writ petition raises, broadly speaking, five important questions, in the context of the scope and ambit of the power of a Sales Tax Commissioner, under the relevant Sales Tax statute, in respect of granting of "registration" to a person as a "dealer". The questions are:

(i) What constitute the object and purpose of "registration" of a "dealer" under the Sales Tax laws?

(ii) What is the scope of "enquiry" envisaged under sub-section (3) of Section 19 of the Tripura Value Added Tax Act, 2004, and sub-Rule (1) of Rule 5 of the Central Sales Tax (Registration and Turnover) Rules, 1957, in the matter of granting of "registration" to a "dealer" ?

(iii) Whether the "satisfaction", which sub-Section (3) of Section 19 of the Tripura Value Added Tax Act, 2004, and Section 7(3) of the Central Sales Tax Act, 1956, read with Rule 5(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957, contemplates, is a "satisfaction" without any limits or fetters ?

(iv) Whether refusal of "registration", in the present case, both under the Tripura Value Added Tax Act, 2004, and the Central Sales Tax Act, 1956, is based on irrelevant considerations having no nexus with the object behind incorporating the provisions for "registration" under the said Acts, and, if so, whether the refusal to register the petitioner as a "dealer", under the relevant fiscal statutes, suffers from malice in law, if not malice in fact ?

(v) Whether the petitioner is, in the facts and attending circumstances, entitled to compensation on account of the conduct of the respondents in not allowing "registration" to the petitioner as "dealer", under the relevant fiscal statutes, so as to enable the petitioner to carry on its business ?

2. Before one attempts to answer the questions posed above, imperative it is to take into consideration the circumstances, where-under the present writ petition has come to be filed under Article 226 of the Constitution of India. The material facts, giving rise to the present writ petition, may, therefore, be first noted.

BACKGROUND FACTS:

(i) The petitioner is a company incorporated under the provisions of the Companies Act, 1956, for carrying out, in the State of Tripura, the business in trading of coal and with the aim to set up, in future, the business of stone boulder crushing. The petitioner accordingly submitted, on 09.02.2010, applications to the Superintendent of Taxes, Charge-VIII, Agartala, seeking "registration" as "dealer" under the Tripura Value Added Tax Act, 2004 (hereinafter referred to as the "TVAT Act, 2004"), and the Central Sales Tax Act, 1956 (hereinafter referred to as the "CST Act, 1956"). By a communication, dated 10.02.2010, the Superintendent of Taxes, Charge-VIII, Agartala, requested the petitioner to submit various documents. The petitioner accordingly submitted the documents by its letter, dated 10.03.2010. On receiving the communication, dated 10.03.2010, aforementioned along with the documents, which the writ petitioner had submitted, the Superintendent of Taxes informed the petitioner, vide another communication, dated 11.03.2010, that the documents, submitted by the petitioner, were not in order and the petitioner was asked to submit the documents, in terms of its earlier communication, dated 10.02.2010, and some new documents as well. Responding to the communication, dated 11.03.2010, the petitioner submitted some more documents.

(ii) In the meanwhile, the petitioner's registered office was shifted. Following the change in the address of the petitioner's registered office, the entire files, containing the materials for processing the petitioner's application seeking "registration" as a "dealer", were transferred to the office of the respondent No.

3, namely, Superintendent of Taxes, Charge-I, Government of Tripura, Finance (Excise and Taxation) Department. The respondent authorities acknowledged the change, in the registered office of the petitioner, by their communication, dated 18.03.2010.

(iii) Thereafter, the Superintendent of Taxes, Vigilance Cell, issued a notice, dated 22.03.2010, to one of the directors of the petitioner company, asking the later to show cause as to why penal actions shall not be initiated against the petitioner company for violation of the provisions of the TVAT Act, 2004, and the Rules framed thereunder inasmuch as the petitioner company had imported 950 MT of coal into the State of Tripura without having been registered as a "dealer". Responding to the notice, dated 22.03.2010, aforementioned the petitioner submitted its reply, on 24.03.2010, stating, inter alia, that the petitioner company had already applied for its "registration" as a "dealer" under the TVAT Act, 2004, as well as CST Act, 1956, and the same were pending consideration by the authorities concerned. The reply, submitted by the writ petitioner, was followed by an order, dated 25.03.2010, issued by the Superintendent of Taxes, Vigilance Cell, raising a demand of Rs. 3,71,535/-, which included the taxable liability as well as penalty to the extent of 150% of the taxable liability. The demand, so raised, was satisfied by the petitioner by making payment of the said sum of Rs. 3,71,535/- subject to the condition that the payment was being made under protest inasmuch as the petitioner was in dire need of the "certificate of registration" as huge quantity of coal had been purchased by the petitioner and had to be unloaded at the railway stockyard and that the petitioner had been paying wharfage and demurrage charges to the railways.

(iv) As the "registration" certificates were not granted to the petitioner company despite the fact that sufficient time had elapsed, the petitioner made representations to the respondent Nos. 2 and 3, namely, Commissioner of Taxes, Government of Tripura, and Superintendent of Taxes, Charge-I, Government of Tripura, Finance (Excise & Taxation), requesting them to let the petitioner know the status of its applications and also to grant requisite "registration" certificates early. Reacting to the representations, so made, respondent No. 3 herein issued a communication asking the petitioner to furnish various documents for the purpose of disposal of the petitioner's applications for "registration". The respondent No. 3 informed the petitioner, by its communication, dated 18.06.2010, that the photograph, which had been pasted on the petitioner's applications, were found to be not attested by the Gazetted officer in Tripura, as was required. By the said communication, the Superintendent of Taxes also asked the petitioner to furnish photographs of all the partners (shareholders) of another company, namely, Westwell Iron and Steel Pvt. Ltd., which is a shareholder of the petitioner company, and to produce requisite trade licence/permission, issued by the Government of India, for trading in coal, to produce agreement of trade, executed by the petitioner with the seller/exporter of coal, the modalities/guidelines for sale of coal by the petitioner in the State of Tripura, etc. In response to the communication, dated 18.06.2010, aforementioned, the

petitioner submitted a reply along with some documents required for the purpose of granting of "registration". In its said reply, the petitioner informed the respondent authority that, as per Rule 11 (vii) of the Tripura Value Added Tax Rules, 2005 (hereinafter referred to as the "2005 Rules"), while applying for "registration" as a "dealer", the photograph, to be pasted in Form-1, is not required to be attested by any Gazetted officer in Tripura, but by the applicant himself. As regards the respondents' direction to the petitioner to submit photographs of the partners/shareholder of the Westwell Iron and Steel Pvt. Ltd., the petitioner informed the respondent authority that the petitioner company is a separate entity from the said Westwell Iron Steel Pvt. Ltd. and it (Westwell Iron Steel Pvt. Ltd.) was but a shareholder of the petitioner company and that it was, therefore, not necessary that the identity and/or particulars of shareholders of the said Westwell Iron and Steel Pvt. Ltd. be disclosed by furnishing their particulars and photographs. With regard to the trade licence/permission, the petitioner stated that trading in coal is not subject to any licence/permission by the Government of India and that the petitioner was not having any business with the Coal India Ltd. The petitioner also submitted a copy of the agreement entered into for import of coal from outside the State of Tripura. The petitioner further stated that the guidelines and modalities had been duly stated in the petitioner company's profile.

(v) In continuation to the communication, dated 09.07.2010, the petitioner, by another communication, informed the respondents that, in the State of Meghalaya, coal is sold in open market and, therefore, one need not enter into any agreement for the purpose of procuring coal and/or for each transaction of coal. Thereafter, the petitioner, vide communication, dated 22.07.2010, informed the respondents that a huge stock of coal, imported by the petitioner, had been lying at Bihara Railway Sidings, Assam, and the petitioner was incurring huge expenses on wharfage and demurrage to the railways, and requested the respondents to allow the petitioner to take the stock of coal from Bihara, Assam, to Jirania, Agartala, undertaking to pay the required VAT in this regard. It was mentioned by the petitioner, in its said communication, that the petitioner's application for "registration" as a "dealer", both under the TVAT Act, 2004, and the CST Act, 1956, were pending before the concerned authorities.

(vi) In response to the petitioner's aforementioned communication, respondent No. 3 informed the petitioner, by its communication, dated 28.07.2010, that the petitioner's prayer, submitted vide letter, dated 23.07.2010, for allowing the petitioner to import coal into the State of Tripura for resale within the State, cannot be permitted inasmuch as coal was a taxable goods under the TVAT Act, 2004, and, for import of coal from outside the State, "registration" under the TVAT Act, 2004, was mandatory. Thereafter, by an order, dated 31.08.2010, the respondent No. 3 rejected the petitioner's both the applications, namely, the application for "registration" under the TVAT Act, 2004, and also the application for "registration" under the CST Act, 1956, the ground for rejection of the petitioner's applications being that Form No. 1, which is required to be filled up

by the applicant for "registration" as a "dealer", had not been introduced by a registered "dealer" or any responsible person, that Form A, submitted by the petitioner (which is required to be filled in by the applicant under the CST Act, 1956), had been found to be incomplete inasmuch as Column No. 16 of the said Form A had not been filled in and Column No. 17 had not been properly filled in, that the change, in the address of the petitioner company, from Dhaleswar, A.A. Road, Agartala, to Ananya Complex, Near Bangladesh Visa Office, Kunjaban, Agartala, had not been subsequently amended by the Registrar of Companies, that though the petitioner's Municipal Trade Licence and the Forest Trade Licence had been found to have expired on 31.03.2001, the petitioner did not submit renewed Municipal Trade Licence and Forest Trade Licence afresh, that the Branch office of the petitioner company, at Bhopal Road, Ranir Bazar, Tripura (West), had not been mentioned by the petitioner in both the application forms for "registration", though the said address had been mentioned in the petitioner's official pad, and that the information, with regard to the movable and immovable properties of the Board of Directors of the petitioner company, had not been furnished in the petitioner's application.

(vii) On receiving the respondent's communication rejecting the petitioner's applications for "registration", the petitioner submitted representations to the respondent No. 3 to allow the petitioner to rectify the defects shown in the rejection order, dated 31.08.2010, aforementioned and, challenging the rejection order aforementioned, the petitioner also approached respondent No. 2, namely, Commissioner of Taxes, Government of Tripura. By order, dated 23.11.2010, the respondent No. 2 allowed the petitioner to remove the defects in its applications for "registration" by submitting fresh applications, both under the TVAT Act, 2004, and CST Act, 1956. The respondent No. 2 also directed the respondent No. 3 to dispose of the petitioner's revised applications as per the provisions of the relevant Acts and Rules on removal of the defects.

(viii) The petitioner, thereafter, submitted fresh applications to the respondent No. 3 for "registration" by curing the defects mentioned in the order, dated 31.08.2010, aforementioned. However, the respondent No. 3, once again, issued another communication, on 15.12.2010, informing the petitioner that in the applications, submitted afresh by the petitioner, Form-1 and Form A, had not been found to be in conformity with the existing Rules relevant for the purpose of "registration" of a "dealer". The petitioner was, therefore, asked by the respondent No. 3 to submit certificates in respect of the petitioner's factories and boilers, labour, pollution control, certificate of incorporation of new address of the petitioner company, petitioner's up-to-date bank account statement, registered Lease Deed in respect of the petitioner's business premises, export and import licence, registered Deed of Agreement for stocking coal and stone boulder, documents showing the source of fund in respect of share capital of the company, documents regarding cash capital, infrastructure, man-power and up-to-date balance sheet.

(ix) In compliance with the communication, dated 15.12.2010, issued by the respondent No. 3, the petitioner, by communication, dated 27.12.2010, submitted certain documents to the respondent No. 3, but some of the documents, sought for by the respondent No. 3, were not furnished by the petitioner as the same, according to the petitioner, were either not relevant or the petitioner had no control in getting the documents issued to the petitioner. The petitioner informed the respondent No. 3, vide the said communication, dated 27.12.2010, that as per Rule 11(7) of the TVAT Rules, 2005, the photograph to be pasted in Form-1, is not required to be attested by a Gazetted Officer in Tripura, but by the applicant himself. The petitioner further informed the respondent No. 3 that the petitioner company is a company incorporated under the Companies Act, 1956, and that the object of the petitioner company, to carry on a number of business activities, had been clearly defined in the petitioner company's Memorandum of Articles itself and it is on this premises that the petitioner company had applied for "registration" to carry on the business of coal and for setting up a stone boulder crusher unit in the State of Tripura. With regard to the submission of requisite certificates in respect of factory and boiler, the petitioner stated that as no "registration" had been given to the petitioner company by the respondent authorities, the petitioner did not apply either for factory land or for permission to install boiler and, therefore, certificate, in respect of factory and boiler, could not be furnished. As regards the certificate of incorporation, the petitioner informed the respondent No. 3 that in terms of the Companies Act, 1956, Certificate of Incorporation of a company is not issued afresh unless the name of the company is changed and, in the case of the petitioner company, since only the Registered Office had been changed, the petitioner company had already submitted requisite form (Form 18) along with requisite Challan, dated 12.03.2010, in terms of the requirements of the Companies Act, 1956, for recording change of address of the petitioner company. The petitioner company submitted a copy of the Form 18 along with a copy of the Challan, dated 12.03.2010, aforementioned for necessary consideration by the respondent authority. The petitioner further informed the respondent authority that the petitioner company was not in the business of export and/or import of any goods from outside India, but in trade and business within India and, hence, the export/import licence or IEC Certificate, as sought for by the respondent authority, was irrelevant.

(x) With regard to the respondent authority's direction to the petitioner to submit Registered Deed of Agreement for stockyard for stocking coal and stone boulder, the petitioner informed the respondent authority that the Registered Deed of Agreement, in respect of stock-yard, had been duly enclosed and that as the petitioner had not started the business of stone boulder, the petitioner had not bought or taken, on lease, any land for the purpose of stone boulder crushing unit and the petitioner was, therefore, not in the position to furnish any Deed of Agreement, or land document, with regard to its proposed establishment of stone crushing unit. The petitioner further clarified, vide its said communication,

dated 27.12.2010, that it intended to remain involved only in the business of coal and stone boulder business.

(xi) On receipt of the communication, dated 27.12.2010, from the petitioner company, respondent No. 3 informed the petitioner that the respondent authority was not satisfied with the petitioner company's plea with regard to submission of the documents, sought for by the respondent authority, and directed the petitioner to appear before it (respondent No. 3), on 25.01.2011, for having its (petitioner's) say in the matter. The petitioner accordingly appeared, on 25.01.2011, before the respondent No. 3 and, on the same day, respondent No. 3 passed an order directing the petitioner to produce the Certificate of Incorporation of the new address of the petitioner company on 03.02.2011. By an order, dated 04.02.2011, the respondent No. 3 rejected the petitioner's applications for "registration" on the ground that the petitioner had failed to produce requisite Pollution Clearance Certificate, Registered Deed of Lease and Certificate of Incorporation of change in address of the petitioner company and that the introducer of the petitioner, in the petitioner's application in Form-1, had withdrawn on 31.12.2010.

3. Unable to receive "registration" as a "dealer" in the fiscal statutes aforementioned, the petitioner has filed the present writ petition, under Article 226 of the Constitution, challenging the legality of the conduct of the respondents/authorities concerned in dealing with the petitioner's applications for grant of "registration" certificate under the relevant fiscal statutes and also claiming compensation for the loss, which the petitioner claims to have sustained due to the respondents' refusal to grant "registration" certificate to the petitioner.

SUBMISSIONS:

4. Appearing on behalf of the petitioner, Dr. Ashok Saraf, learned Senior counsel, made multifold submissions assailing the actions of the respondents in not granting "registration certificates" to the petitioner and in, eventually, rejecting the said applications by their order, dated 04.02.2011. It has been pointed out by Dr. Saraf that the basic object behind "registration" of a "dealer", under the Sales Tax statutes, is to keep track of the taxable transactions, which may take place within a State, and to ensure effective levy and collection of tax on such transactions. Dr. Saraf relies, in this regard, on the decision in *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, wherein the Supreme Court held that "registration" is mainly aimed at securing the interest of revenue by facilitating collection of tax and prevention of evasion thereof.

5. According to Dr. Saraf, one of the essential objects of providing for "registration" of a "dealer", under the Sales Tax statutes, is to localize a person's taxable turnover as a "dealer" and to facilitate the collection of tax. In this regard, Dr. Saraf makes reference to the decision of the Supreme Court, in *Periyar and Pareekanni Rubbers Ltd. v. State of Kerala*, reported in (2008) 14 SCC 704.

6. In substance, what Dr. Saraf submits is that the provisions for "registration" of a "dealer", in all the enactments, have been made with the primary object of levy and collection of tax.

7. According to Dr. Saraf, the respondents, particularly, respondent No. 3, has not granted "registration" certificate to the petitioner under the TVAT Act, 2004, and the CST Act, 1956, on wholly untenable grounds by taking into account such factors and materials, which, according to Dr. Saraf, have no nexus with the object sought to be achieved by the legislature. Dr. Saraf submits that under the scheme of the enactments, which form the subject-matter of discussion in this writ petition, an authority can, undoubtedly, determine by holding an "enquiry" if the application, seeking "registration", is in order or not and, if, upon such "enquiry", the authority concerned is satisfied that the application is in order, "registration", as sought for by the applicant, must necessarily follow. The enquiry, visualized in the enactments, is, according to Dr. Saraf, limited to the particulars, which are required under the relevant Acts and the Rules for the purpose of achieving the object behind "registration". The "satisfaction", contends Dr. Saraf, contemplated u/s 19(3) of the TVAT Act, 2004, and Section 7(3) of the CST Act, 1956, read with Rule 5(1) of the CST (Registration and Turnover) Act, 1957, is not without any contours or limits. Dr. Saraf submits that a registering authority cannot raise any objection or demand production of a document or insist on receiving such information, which is irrelevant or not material for the purpose of granting of "registration". In the case at hand, submits Dr. Saraf, the materials, which the respondent No. 3 has been demanding and alleges to have not been submitted by the petitioner, are wholly irrelevant and immaterial for the purpose of granting of "registration" and, hence, calling of further information by the respondent No. 3 is wholly impermissible in law. In fact, submits Dr. Saraf, the refusal to register the petitioner, as a "dealer" under the relevant statutes, is for reasons other than bona fide and, hence, such a decision may not be sustained.

8. Dr. Saraf reiterates that the "satisfaction", which is required to be arrived at by the authorities concerned, in the matter of granting of registration", has to have nexus with the objects sought to be achieved by the Act by means of compulsory "registration" of a "dealer". The learned Senior counsel further submits that the Sales Tax authorities cannot take into consideration, in refusing "registration" of a "dealer", such materials, which are irrelevant and have no nexus with the objects sought to be achieved. Support for his submission is sought to be derived by Dr. Saraf from the decision of the Calcutta High Court, in Durga Prosad Khaitan Vs. The Commercial Tax Officer and Others, and also the decision of the Supreme Court, in Indian Nut Products and Others Vs. Union of India (UOI) and Others, . In support of his submissions, Dr. Saraf, further relies on Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, , wherein the Supreme Court held that if people, who have to exercise a public duty by exercising their discretion, take into account matters, which the court considers not to be proper for the guidance of their discretion, men, in the eye of law, they

have not exercised their discretion and, in such cases, it would amount to non-exercise of discretion.

9. Mr. NC Pal, learned Senior Govt. Advocate, appearing for the respondents, submits that Section 19(3) of the TVAT Act, 2004, empowers the respondent No. 3 to grant certificate of registration if he is satisfied, upon holding enquiry, that the application, seeking registration, is in order. This shows, according to Mr. Pal, that if the authority is not satisfied with an application for registration, then, the authority can reject the application seeking registration. Mr. Pal contends that since the petitioner had failed to supply the necessary documents, which the respondent No. 3 had sought for, respondent No. 3 was wholly justified in rejecting the petitioner's application seeking registration.

10. Relying on the affidavit, which the respondents have filed, Mr. Pal submits that the application for registration certificate has already been rejected by order, dated 04.02.2011, because the petitioner had failed to produce all the documents, such as, pollution certificate, registered lease deed for stockyard of the petitioner company for stone boulder and certificate of incorporation of change of address from Dhaleswar to Kunjaban. Mr. Pal points out that during the pendency of the writ proceeding, the writ petitioner's introducer has withdrawn his signature from the application, whereby registration was sought for by the petitioner. In such circumstances, contends Mr. Pal, when the authority, empowered to grant certificate of registration, is not satisfied with the documents submitted by the applicant, he has the authority to reject the application seeking grant of certificate of registration and such rejection cannot be termed as illegal, arbitrary, mala fide or suffering from malice in law. Mr. Pal contends that if the authority, empowered to grant certificate of registration, is not satisfied with the documents submitted by an applicant, he has the absolute right to reject the application. In the case at hand too, according to Mr. Pal, the petitioner had failed to submit all the documents, which had been asked for, and, hence, rejection of the petitioner's application was wholly tenable in law.

11. Yet another interesting submission, made by Mr. Pal, is that coal is not required, in usual course of business, in the State of Tripura, and no certificate of registration, in respect of trading in coal, has been issued, in the past, in the State of Tripura, to other private businessman for trading in coal in the market of Tripura, and, hence, the petitioner cannot insist that the petitioner be registered as a "dealer" in the trading of coal. This apart, according to Mr. Pal, there is a requirement of submission of pollution certificate in every case of using coal and the petitioner has failed to furnish the requisite pollution certificate. On this aspect of his submission, Mr. Pal heavily relies on para 6.6 of the affidavit-in-opposition, which is reproduced below:

6.6. That the respondents clearly state "COAL" is not required in usual course of business in Tripura. There is no domestic use of "coal" in Tripura except in the Brick Kiln and Tea Gardens and other small industries. Besides the Government in the finance department has already entered into agreement with the brick Kiln

dealer to pay lump sum taxes to import coal from the outside of the state but within India to burn green bricks to sale. All the tea garden dealers and other small industrial dealers have obtained certificate of registration for importing coal to run their machine etc. No certificate of registration has been issued to other private businessman for usual trading in coal in the market of Tripura. It is also stated that there is a requirement of submitting of pollution certificate every case of using of coal.

12. Mr. Pal further submits that without permission of State Government allowing the petitioner to deal in coal in the State of Tripura, the petitioner cannot claim that it be allowed to carry on the business of sale of coal in the State of Tripura merely because the petitioner company has been incorporated, under the Companies Act, 1956, for establishment of business in trading of coal. Mr. Pal further submits that the documents produced by the petitioner shows that the petitioner has entered into an agreement for supply of coal weighing 5000 MT @ Rs. 3,500/- per MT costing, in total, Rs. 1,75,00,000/-, though its share capital is only Rs. 10,00,000/-.

13. Controverting the above submissions made by Mr. Pal, Dr. Saraf, learned Senior counsel, submits that the grounds on which the applications for registration have been rejected, such as, non- production of pollution certificate, non-production of registered lease deed for stockyard of the company for stone boulders and non-production of certificate incorporating change of address from Dhaleswar to Kunjaban and the factum of withdrawal of introducer of the petitioner, in the application in Form No. 1, are irrelevant considerations as far as grant of registration certificate is concerned. It is further submitted by Dr. Saraf, learned Senior counsel, that pollution certificate is not required for the purpose of trading in coal inasmuch as pollution certificate has to be obtained for the purpose of establishment and operation of an industrial plant, where coal is used. Referring to Section 21 of (Prevention and Control of Pollution) Act, 1981, Dr. Saraf submits that the pollution certificate is given by the State Pollution Board to an Industrial Unit to establish and operate an industrial plant in an air pollution control area. Dr. Saraf submits that the petitioner has applied for registration for trading in coal; hence, rejection of the petitioner's application on the ground of non-production of pollution certificate is totally on irrelevant consideration and the decision, reflected by the impugned order, dated 04.02.2011, which is based on such irrelevant consideration, is liable to be set aside and quashed.

14. As regards non-submission of registered lease deed for stockyard of the company for stone boulders, it is submitted by Dr. Saraf that registration of a lease deed in respect of stock yard is, again, an irrelevant consideration inasmuch as the sales tax authority is not required to consider, while taking a decision on an application seeking registration, whether a lease deed exists or not, when the place of business of petitioner company has already been disclosed. It needs to be noted, in this regard, points out Dr. Saraf, that the

petitioner has submitted registered lease deed in respect of the principal place of its business, i.e., its registered office. Dr. Saraf further pointed out that in terms of Section 146 of the Companies Act, 1956, a company shall carry on its business, at its registered office, to which all correspondences and notices may be addressed. What this logically means, contends Dr. Saraf, is that respondent No. 3 could not have rejected the petitioner's application for registration, when the petitioner had a registered lease deed as regards the place of its registered office.

15. Reacting to the respondents' contention that registration could not be granted to the petitioner for non-production of certificate of incorporation of change of address from Dihaleswar to Kunjaban, Dr. Saraf submits that this ground is perverse and bad in law inasmuch as neither the Companies Act, 1956, nor the Companies (Central Government's) General Rules and Forms, 1956, envisage issuance of fresh certificate of registration within the same State. Dealing with this aspect of the case, Dr. Saraf points out that the notice of the change of location of the registered office of the company is required to be informed to the Registrar of Companies as per Companies (Central Government's) General Rules and Forms, 1956, by submitting, in this regard, to the Registrar of Companies Form No. 18 and, as Form No. 18 had been duly filled in by the petitioner and submitted to the Registrar of Companies and a receipt was issued, in this regard, by the Registrar of Corporate Affairs, no further material was required to be produced by the petitioner before the authority concerned for recording change in address of their registered office. Under these circumstances, insistence by the respondents, that the petitioner shall produce a fresh certificate of registration incorporating the change of address of its registered office, is, according to Dr. Saraf, wholly uncalled for and irrelevant for the purpose of granting of registration certificate.

16. As regards Mr. Pal's contention that the petitioner's introducer, in Form No. 1, has subsequently withdrawn, Dr. Saraf submits that this is wholly in violation of principles of natural justice inasmuch as the petitioner was never informed, at any point of time, about the said withdrawal. Dr. Saraf, however, points out that the petitioner's application, seeking registration, was given as far back as, on 27.11.2010, and the said application, having been acted upon by the respondent authority, the need of subsequent signature becomes irrelevant and futile.

17. It is contended by Dr. Saraf that the petitioner, being a company incorporated under the Companies Act, 1956, the requirement of introduction of the applicant by a registered dealer or by a responsible person cannot be held to be mandatory, when the petitioner has a certificate of incorporation. In fact, Dr. Saraf contends that there is no requirement of introducer in respect of an application for grant of registration under the CST Act, 1956, and, hence, on the said ground, the application for registration under the CST Act, 1956, could not have been rejected. The sales tax authorities, according to Dr. Saraf, have no business or jurisdiction in matters, which are not covered by the TVAT Act, 2004,

or the CST Act, 1956. The certificate of incorporation along with Form 18 and challan, dated 12.03.2010, having been submitted to the respondent No. 3 by the petitioner, the same clearly go to show, points out Dr. Saraf, that the petitioner has changed its registered office within jurisdiction of the respondent No. 3. Dr. Saraf further submits that the share capital of a company has nothing to do with registration and management of the finances of company is not a relevant consideration for grant of registration under the TVAT Act, 2004, and/or the CST Act, 1956.

18. Strongly objecting to the submissions of the respondents, that the petitioner is not entitled to registration inasmuch as no Certificate of registration has been issued to any other businessman for trading in coal, in the markets of Tripura, Dr. Saraf submits that the State cannot prevent any person from carrying on a business in a particular item within a State inasmuch as the same would amount to unreasonable restriction on carrying on trade and business and would violate the guarantee under Article 19(1)(g) of the Constitution of India.

19. As regards Mr. Pal's submission made to the effect that although the petitioner-Company has been incorporated under the Companies Act, 1956, for establishment of business in trading of coal, the said incorporation cannot be the sole source of getting Certificate of Registration, because Article 246 of the Constitution of India provides for the distribution of powers between the Union and the States, Dr. Saraf contends that the submission, so made on behalf of the State, is wholly untenable in law in the context of the facts of the present case inasmuch as there is no dispute, and there can be no dispute, as regards the distribution of legislative powers between the Union and States, but a company, incorporated under the Companies Act, 1956, cannot be asked to comply with any such requirements, which are not contemplated under the Companies Act, 1956, and/ or the TVAT Act, 2004 and/or CST Act, 1956. Dr. Saraf, therefore, submits that the respondents have exceeded the jurisdiction conferred on them by the statute in rejecting the applications for registration and the present one is a fit case, where not only a direction needs to be issued to the respondents concerned to issue certificate of registration to the petitioner forthwith, but also to pay to the petitioner such compensation as may be determined by this Court.

PURPOSE AND OBJECT OF "REGISTRATION" OF A "DEALER" UNDER THE SALES TAX ACT:

20. The case, as set up by the petitioner, clearly shows that the petitioner's case is that the action of the respondents, particularly, respondent No. 3, in not granting "Certificate of Registration" to the petitioner company, under the TVAT Act, 2004, as well as the CST Act, 1956, is wholly arbitrary, illegal and for reasons other than bona fide.

21. In order to ascertain the correctness of the petitioner's case and also the justification of the submissions made on behalf of the petitioner and the counter submissions made by the respondents, what is imperative is that this Court

determines what are the reasons or objects in making the provisions for making the "registration" of a "dealer" compulsory under the fiscal enactments aforementioned. In other words, the issue to be decided is as to why the provisions for "compulsory registration" is embodied in the TVAT Act, 2004, as well as the CST Act, 1956?

22. The Preamble of the TVAT Act, 2004, states that the said Act has been enacted to provide for "levy and collection" of Value Added Tax at different points of sale in the State of Tripura. Similarly, the Preamble of the Central Sales Tax Act, 1956, states that the Act has been enacted to formulate the principles for determining when a sale or purchase of goods takes place in the course of interstate trade or commerce or outside the State or in the course of import of goods into, or export of goods out of, India, and to provide for the levy, collection and distribution of taxes on sale of goods in course of inter-State trade or commerce and also to declare certain goods to be of special importance in the inter-State trade or commerce and specify the restrictions and conditions to which the State laws, imposing taxes on sale or purchase of such goods of special importance, shall be subject to.

23. Thus, it would be seen that both the Acts were enacted for the purpose of levy and Collection of taxes. No wonder, therefore, that the TVAT Act, 2004, aims at making provisions for levy and collection of Value Added Tax in respect of sales within the State of Tipura, which are exigible to Value Added Tax, and the CST Act, 1956, aims at levy, collection and distribution of taxes on the sale of goods in the case of inter-State trade or commerce and to declare certain goods to be of special importance in the inter-State trade or commerce.

24. Section 18(1) of the TVAT Act, 2004, envisages appointment of a Commissioner of Taxes by the State Government and such other persons to assist the Commissioner as the State Government may think fit. Coming to the CST Act, 1956, it maybe noted that sub-Section (2) of Section 9 thereof provides that the authorities, who are, under the State's law, empowered to assess, reassess, collect and enforce payment of tax, shall assess, re-assess, collect and enforce payment of tax even on behalf of the Government of India.

25. It, thus, becomes evident that the persons, appointed under the TVAT Act, 2004, to ensure levy and collection of Value Added Tax, would be the persons competent to levy and collect tax under the CST Act, 1956, too.

26. From a combined reading of the Preamble of both the said enactments, namely, TVAT Act, 2004, and CST Act, 1956, it transpires that the basic object behind the enactment of both the said fiscal legislations is to levy and collect tax. The question, therefore, which, naturally, arises, is this: If the basic object behind the enactment of TVAT Act, 2004, and CST Act, 1956, is to levy and collect tax, then, why "registration" has been made compulsory in respect of a "dealer", who carries on the business of taxable goods in a State? The only plausible answer to the question, so posed, is that "registration" of a "dealer"

enables the State authorities to keep track of the assessable transactions and also-of the persons, who indulge in such assessable transactions so that levy and collection of tax can be effectively ensured.

27. In *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, the Supreme Court observed, in paragraph 12, that "registration" is mainly conceived in the interest of revenue so as to facilitate collection of tax and to prevent evasion thereof. The relevant observations, appearing at paragraph 12, in *Ghanshyamdass* (supra), read as under:

12. To appreciate the rival contentions it is necessary to notice the relevant provisions of the Act and the Rules. u/s 4 of the Act, every dealer whose turnover exceeds the specified limits prescribed under sub-section (5) thereof shall be liable to pay tax in accordance with the provisions of the Act on all sales effected by him. u/s 8 no dealer shall, while being liable to pay tax under the Act, carry on business as a dealer unless he has been registered as such and possesses a registration certificate. Part IV of the Rules prescribes the manner in which a dealer shall get himself registered under the Act. u/s 8, if the dealer satisfies the requirements prescribed in that regard, the Sales Tax Officer grants him a registration certificate in Form II, which specifies the particulars, such as, the location of the business, the nature of the business etc. The said Officer enters the name of every dealer registered in a ledger maintained u/s 9 and issue copies of registration certificates for exhibition in the places of their business. Under one of the columns in that Form the period for which and the date on which the return has to be furnished has to be mentioned. A list of such registered dealers is also published under Rule.

17. Under the Act, no "dealer", who is liable to pay tax thereunder, shall carry on business unless he has been registered as such and possesses a registration certificate. It is therefore, clear that registration is mainly conceived in the interest of revenue, to facilitate collection of taxes and to prevent the evasion thereof.

(Emphasis added)

28. The Supreme Court has further observed, in *Ghanshyamdass* (supra), at paragraph 17, that "registration certificate" is issued to localize a "dealer" with taxable turnover and to facilitate collection of taxes. It is pointed out by the Supreme Court, in *Ghanshyamdass* (supra), that "registration" enables the "dealer" to carry on his business. The relevant observations read as under:

17. It is manifest that in the case of a registered dealer the proceedings before the Commissioner start factually when a return is made or when a notice is issued to him either u/s 10(3) or u/s 11(2) of the Act. The acceptance of the contention that the statutory obligation to file a return initiates the proceedings is to invoke a fiction not sanctioned by the Act. The obligation can be enforced by taking a suitable action under the Act. Taking of such an action may have the effect of initiating proceedings against the defaulter. The default may be the

occasion for initiating the proceedings, but the default itself *proprio vigore* cannot initiate proceedings. Proceedings in respect of the assessment of the turnover for the relevant period cannot, therefore, be said to be pending before the Commissioner. Learned counsel for the respondent contends that the Certificate of registration is itself a notice to the registered dealer to furnish his returns within the prescribed time. Reliance is placed upon Form II wherein under the appropriate column the particulars in regard to a dealer's return and the date within which he should submit it are given. The main purpose of the registration certificate is to localize dealers with taxable turnovers and to facilitate the collection of taxes. The registration certificate enables the dealer to carry on the business. Neither Section 8, which enjoins such registration on every dealer with taxable turnover nor Rule 8, which prescribes the particulars to be incorporated in a certificate suggests that the certificate itself is a statutory notice to a dealer. The objects of the certificate and the statutory notices under the Act are different and the former cannot be equated with the latter.

(Emphasis added)

29. Reiterating the objective of a taxable legislation of the nature as the one, which we have at hand, the Supreme Court, in *Periyar and Pareekanni Rubbers Ltd. v. State of Kerala*, reported in (2008) 14 SCC 704, has pointed out, at paragraph 21 and 22, that the statutory purpose of the "registration" of a "dealer" is not only to enable him to carry out his business of taxable goods, but also to help various authorities, under the taxing statute, to achieve the objective of the enactment, which is, primarily, to levy and collect taxes. The Supreme Court clearly held, in *Periyar and Pareekanni Rubbers Ltd. (supra)*, that "registration" of dealer" enables the State to fasten taxable liability on the party, which may be found liable thereto, so as to enable the State realize taxes. In fact, the Supreme Court, in *Periyar and Pareekanni Rubbers Ltd. (supra)*, approved its earlier observations, made in *M.A. Rahman v. State of A.P.*, AIR pp. 1472-73, which read thus.

...it would be impossible for the State to know the persons, who are selling motor spirit and from whom the tax is due", meaning thereby that "registration" helps the authorities, under a taxing statute, to not only keep track of the taxable sales, but also of the "dealers" involved in such taxable sales. The purpose and statutory object of the TVAT Act, 2004, being to levy and collect taxes, the "registration" of "dealer" helps in such levy and collection inasmuch as it makes not only the taxable sales traceable, but also the "dealers", who are involved in such taxable transactions.

30. Because of "registration" of a "dealer", the State remains in a position to identify and impose taxable liability upon the "registered dealers", who may incur taxable liability. If a "dealer" is not registered, it may be difficult for the State to know about, and/or keep track of, each of the assessable transactions, which the "dealer" may have entered into, and the value of the taxable goods, which the "dealer" sells.

31. In short, thus, the necessity of "registration", as contemplated under the TVAT Act, 2004, and CST Act, 1956, is to trace out assessable transactions that may take place within the State so as to help the authorities concerned to assess, levy and collect tax in order to ensure that evasion of tax does not take place. In fact, as we proceed further, it would also become transparent that merely because a person is a "dealer", he is not required to be registered under the TVAT Act, 2004, or the CST Act, 1956, inasmuch as "registration" would become necessary only in respect of such a "dealer", who becomes liable to pay tax.

SCOPE OF ENQUIRY AS ENVISAGED u/s 19(3) OF THE TVAT ACT, 2004. AND RULE 5(1) OF THE CENTRAL SALES TAX (REGISTRATION AND TURNOVER) RULES, 1957.

32. While considering the scope of the "enquiry", as visualized by Section 19(3) of the TVAT Act, 2004, and Rule 5 of the Central Sales Tax (Registration and Turnover) Rule, 1957 (hereinafter referred to as the "1957 Rules"), it needs to be noted that a "dealer" is not required to be compulsorily registered unless he becomes liable to pay tax. Section 19 of the TVAT Act, 2004, states about "compulsory registration" of "dealer". Being relevant, sub-Section (1) to (4) of Section 19 of the TVAT Act, 2004, are reproduced below:

19. Compulsory registration of dealers -

(1) No dealer, while being liable to pay tax under this Act, shall carry on business as a dealer unless he has been registered and possesses a certificate or registration;

Provided that a dealer liable to pay tax shall be allowed thirty days" time from the date from which he is first liable to pay such tax to get himself registered.

(2) Every dealer required by sub-section (1) to be registered shall make application in this behalf in the prescribed manner to the Commissioner and such application shall be accompanied by a declaration in the prescribed form duly filled in and signed by the dealer specifying therein the class or classes of goods dealt in or manufactured by him.

(3) If the said authority is satisfied after such "enquiry" as may be deemed necessary that an application for registration is in order, he shall, in accordance with such manner, grant registration to the applicant and issue a Certificate of "registration" in the prescribed form which shall specify the class or classes of goods dealt in or manufactured by him.

(4) Where the application for registration is made under this section, the Commissioner shall grant him the Certificate of registration from the date of order granting such registration.

(5)....

33. Before proceeding further, what needs to be also noted is that Rules 10 and

11 of the Tripura Value Added Rules, 2005 (hereinafter referred to As the "2005 Rules"), prescribe the manner in which an application for "registration" u/s 19 shall be submitted to the concerned Superintendent of Taxes. Rules 10 and 11 aforementioned, being, therefore, relevant, are quoted below:

10. REGISTRATION OF DEALER:

An application for registration u/s 19 shall be in Form I and it shall be addressed to the Superintendent of Taxes.

(1) An application for registration shall be signed and verified in the case of:-

- (i) Individual, by the proprietor of the business.
- (ii) an association of persons, by an adult member of the association.
- (iii) a firm, by the managing partner or an adult member of the firm.
- (iv) a Hindu undivided or joint family, by the Manager of Karta or any adult member of the family.
- (v) a company, by the Managing Director or the Secretary or Manager of the Principal or Chief Executive Officer of the Company in India.
- (vi) any Government Department, by the head of the Office.

(2) The person making an application for registration shall specify the capacity in which the application is made, signed and verified.

Provided that for the purpose of making an application, a Warehouse where no accounts of sales are kept shall not be deemed to be a place of business.

11. In the application form referred to in Rule 10, a dealer shall state inter alia-

- (i) the nature of the business in broad but sufficiently clear terms and mention whether he manufactures, processes, imports, wholesells, distributes or retails taxable goods or if he carries out more than one of these functions, he shall state precisely the combination of the functions carried out;
- (ii) the nature of the business namely whether it relates to importing from outside Tripura but within India or importing from outside of India, manufacturing wholesale distribution, retail sale, supply of food or drink, transfer of property in taxable goods in execution of works contract, transfer of right to use any taxable goods.
- (iii) the class or classes of taxable goods that a dealer purchases or intends to purchase for resale by him in Tripura;
- (iv) the class or classes of goods, that a dealer purchases or intends to purchase for use by him directly in the manufacture of taxable goods, including containers or packing materials, in Tripura for sale by him in Tripura;
- (v) status of occupancy of the applicant in relation to the place of business

namely, whether the place of business is owned, rented, leased or provided free of rent by the owner or lessee;

(vi) the application in Form I shall be accompanied by a declaration affixing one copy of passport size photograph of the proprietor or partner or the Karta of a Hindu Undivided family as the case may be duly attested by the witness attesting the signature of the proprietor or the partner or the Karta in the space provided in Form I, and the said declaration shall be duly signed by the person who has signed the application in Form I.

(vii) the application in Form I shall be accompanied by a declaration affixing one copy of passport size photograph, of managing director, director or principal of a company, or in case of govt. of head of Department or, in the case of any other association of persons, of the President, Secretary, or the Principal officer of such association, and the said declaration shall be duly signed by the person who has signed the application in Form I.

(viii) whether the imports any taxable goods from outside the state but within the territory of India or from outside the territory or from both sources;

(ix) whether he purchases any taxable goods from places within Tripura;

(x) the language in which he keeps in accounts;

(xi) whether applicant is not a company incorporated under the Companies Act, 1956, or under any other law, the name and addresses of the proprietor of the business or the names and addresses of the partners of the firm or the names and addresses of the persons having any interest in the business (as in the case of a Hindu Undivided family business), together with age, father's name and permanent home address of each such proprietor, partner or other persons;

(xii) Particulars of every business, if any, in Tripura or elsewhere in India outside Tripura in which the proprietor, the partners or other persons, as the case may be, as mentioned in clause(v), has or have any interest;

(xiii) Particulars of any registration certificate issued by the Registrar of Companies, Shillong or by any other registering authority in India in respect of such business;

(xiv) Taxable turnover of sales, taxable turnover of purchases of goods or contractual transfer price of goods involved in execution of works contract, for the preceding year, if any and for the current year up to a date not earlier than thirty days from the date of such application;

(xv) Particulars of the certificate issued by the municipality or other authority if any, in respect of business and the date of issue and last renewal thereof;

(xvi) Particulars of Income Tax Permanent Account Number (PAN) or the evidence that it has been applied for.

34. While considering the question of "compulsory registration" of a "dealer"

under the TVAT Act, 2004, and CST Act, 1956, it is necessary to take note of the definition of the expression, "place of business", as embodied in sub-Section (18) of Section 2 of the TVAT Act, 2004. Sub-Section (18) of Section 2 reads:

(18). "Place of business" means any place where a dealer carries on the business and includes;

(a) Any warehouse, godown or other place where a dealer stores or processes his goods;

(b) Any place where a dealer produces or manufactures goods;

(c) Any place where a dealer keeps his books of accounts;

(d) In cases where a dealer carries on business through an agent (by whatever name called), the place of business of such agent;

(e) Any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting the goods.

35. Turning to the CST Act, 1956, it may be noted that Section 7 of the CST Act, 1956, provides for registration of dealers. Section 7 of the CST Act, 1956, reads:

Section 7. Registration of dealers.--

(1) Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.

(2) Any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in sub-section (1), and every such application shall contain such particulars as may be prescribed.

Explanation.-- For the purposes of this subsection, a dealer shall be deemed to be liable to pay tax under the sales tax law of the appropriate State notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof.

(2-A) Where it appears necessary to the authority to whom an application is made under sub-section (1) or sub-section (2) so to do for the proper realisation of the tax payable under this Act or for the proper custody and use of the forms referred to in clause (a) of the first proviso to sub-section (2) of Section 6 or subsection 6-A or (sub-section (4) of Section 8), he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a Certificate of registration a requirement that the dealer shall furnish in the

prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes.

(3) If the authority to whom an application under sub-section (1) or sub-section (2) is made, is satisfied that the application is in conformity with the provisions of this Act and the rules made thereunder, and the condition, if any, imposed under sub-section (2-A), has been complied with he shall register the applicant and grant to him a Certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of sub-section (1) of Section 8.

36. As Rules 3, 4 and 5 of the 1957 Rules deal with "Certificate of Registration" of a "dealer", these Rules are quoted below:

3. Certificate of registration -

(1) An application for registration u/s 7 shall be made by a dealer to the notified authority in Form A and shall be -

(a) Signed by the proprietor of the business, or, in the case of a firm, by one of its partners, or, in the case of a Hindu undivided family, by the karta or manager of the family, or, in the case of a company by a director, managing agent or principal officer thereof, or, in the case of a Government, by an officer duly authorised by the Government, or, in the case of any other association of individuals by the principal officer managing the business, and

(b) Verified in the manner provided in the aid form.

(2) Where a dealer has more than one place of business within a State, he shall make a single application in respect of all such places, name in such application one of such places as the principal place of business for the purposes of these rules and submit such application to the notified authority specified in respect of the principal place of business so named:

Provided that any place so named shall not in any case be different from the place, if any, declared by him to be the principal place of business, by whatever name called, under the general sales tax law of the State.

4. (1) An application for registration under sub-section (1) of section 7 shall be made not later than thirty days from the date on which the dealer becomes liable to pay tax under the Act.

(2) An application for registration under subsection (2) of section 7 may be made at any time after the commencement of the Act.

(3) A fee of rupees twenty-five shall be payable in respect of every application for registration under sub-rule (1) or sub-rule (P) and such fee may be paid in the form of court-fee stamps/ local revenue stamps (for Union Territory of Goa, Daman and Diu.)

5. (1) When the notified authority is satisfied, after making such enquiry as it

thinks necessary, that the particulars contained in the application are correct and complete (and the fee referred to in sub-rule (3) of rule 4 has been paid), it shall register the dealer and grant him a Certificate of registration in Form "B" and also a copy of such certificate for every place of business within the State other than the principal place of business mentioned therein.

(2) When the said authority is not satisfied that the particulars contained in the application are correct and complete, or where the fee referred to in sub-rule (3) and (4) has not been paid, he shall reject the application for reasons to be recorded in writing:

Provided that before the application is rejected, the applicant shall be given an opportunity of being heard in the matter and, as the case may be, or correcting and completing the said particulars or complying with the requirements of sub-rule (3) of rule 4.

37. A careful reading of sub-Section (3) of Section 19 of the TVAT Act, 2004, shows that the "enquiry", which may be conducted by the authorities concerned, is such as is required to satisfy the authorities concerned that the application for "registration" is in order. The limited purpose of the "enquiry", therefore, is to ascertain if an application for "registration" is or is not in order, meaning thereby that by such an "enquiry", the authority concerned has to ascertain as to whether the particulars, which are required to be furnished in an application for "registration", have or have not been furnished by the applicant.

38. Coupled with the above, a perusal of Section 19 of the TVAT Act, 2004, read with Rules 10 and 11 of the 2005 Rules and Section 7 of the CST Act, 1956, read with Rules 3, 4 and 5 of the Central Sales Tax (Registration and Turnover) Rules, 1957, would go to show that the "enquiry", envisaged under the TVAT Act, 2004, is an "enquiry" in respect of the particulars to be submitted as per Rules 10 and 11 of the 2005 Rules in the case of TVAT Act, 2004; and the "enquiry", contemplated under the CST Act, 1956, is an "enquiry" for ascertainment of the particulars, which are required to be submitted by the applicant for "registration" in terms of Rules 3, 4 and 5 of the 1957 Rules. If the particulars, as required under the said Acts and the Rules, are furnished by a "dealer", the authority concerned is obliged to register the "dealer" under the relevant enactment and issue "Certificate of registration" to such a "dealer".

39. Examining the scope of the "enquiry", pertaining to Rule 6 of 1957 Rules, the Calcutta High Court, in Durga Prosad Khaitan Vs. The Commercial Tax Officer and Others, , took the view that the "enquiry", as envisaged under Rule 6 of the 1957 Rules, is not a judicial "enquiry", which necessitates applying a very strict proof, but the "enquiry" should be made in such a manner as it does not take away the fundamental rights of a "dealer", on the one hand, to enjoy its freedom of trading and, on the other hand, the "enquiry" should not be a mere formality so that the "enquiry" does not become a mere mockery.

40. Clarifying the scope of the "enquiry", the Calcutta High Court has taken the

view, in Durga Prasad Khaitan (supra), that the "enquiry" visualized pertains to matters, which are prescribed in the forms, and has to be made taking into account the object with which the legislature has made the "registration" of a "dealer" compulsory. It has been pointed out, in Durga Prasad Khaitan (supra), and I agree, that if the authorities find from an "enquiry" that any information, given in the application for "registration" of "dealer", is not correct, then, the authorities concerned would be bound to inform the "dealer" concerned (i.e., the applicant) about the incorrect/insufficient information so that the "dealer" gets an opportunity to explain the same. The "enquiry" cannot, however, be, as indicated hereinbefore, in the nature of a judicial "enquiry". The "enquiry" has to be, therefore, limited to the purpose for which the "enquiry" is held, namely, ascertainment of the fact as to whether an application is or is not in order, meaning thereby that the "enquiry" should be made strictly for the purpose of ascertaining as to whether the particulars, required under the relevant Acts and the Rules, have or have not been furnished by the "dealer", who seeks registration, and whether such information or particulars, furnished by the "dealer", are correct and true or not. The "enquiry", thus, must be confined to the ascertainment of the fact as to whether the information given, and/or particulars furnished, by a "dealer", seeking "registration", are correct or not. The relevant observations, made in Durga Prasad Khaitan (supra), read as under:

Next comes the question of rule 6. It is argued that under rule 6, the enquiry that has to be made is ex-parte and therefore it violates the rules of natural justice. Of course the rule says that the Commercial Tax Officer can make "any enquiry that he may think necessary". But that does not necessarily mean that the rules of natural justice are to be violated. The petitioner has to give certain information in his application. If the authorities are to act on such information then necessarily they must verify it. I do not think that verification or the checking of information given by the dealer himself has to be done in accordance with the rules of a judicial trial. After all, this kind of thing happens everywhere. Supposing a student applies for admission to a school. The particulars given in his application are checked, but nobody can urge that there should be a judicial enquiry. However it has been urged that the provisions of law restricting the fundamental rights of the petitioner, should be put on a different and a stricter footing. Undoubtedly, the "enquiry" must be done in a way that does not take away that right or make a mockery of it. The learned Standing Counsel concedes that so far as the enquiry contemplated in rule 6 is concerned, although it would not be possible to give notice to the dealer at every stage of the enquiry, still, the dealer must have every opportunity of answering any facts that emerge upon enquiry, and are to be used against him. In other words, if the authorities find from enquiry that any information given by him is not correct, then they would be bound to acquaint him with this, and give him an opportunity of explaining the same. Thus construed, I do not think that the rule is violative of the rules of natural justice, or arbitrary or unjust. In that facts and circumstances of the present case, the petitioner was given an opportunity of being present when the

enquiry, or at least the most important part of the enquiry was made. Upon this point he has come to Court with a false statement and that alone might have been a reason for throwing out his application. However, it is not necessary to do so. The case fails on the merits.

41. In the light of the language used in Section 19(3) of the TVAT Act, 2004, and Section 7(3) of the CST Act, 1956, there can be no doubt that the purpose of the "enquiry", as contemplated under the said Acts, is to help the authorities concerned in ascertaining the correctness of the information/particulars furnished in an application for "registration" of "dealer".

42. While considering Section 19(3) of the TVAT Act, 2004, and Section 7(3) of the CST Act, 1956, the question, which immediately arises, is this: what is the extent of the "satisfaction", which, with the help of the "enquiry", an authority is required to reach, for the purpose of determination, whether or not the application, seeking "registration" as a "dealer", is in order? It needs to be borne in mind, in this context, that while considering an application for "registration", the satisfaction, to be arrived at by the authorities concerned, has to have a nexus with the objects sought to be achieved by the relevant enactment and this is possible, when the object, behind "compulsory registration", is kept in mind, the object being tracing out the taxable transactions so that the person, dealing with such taxable transactions, can be fastened with taxable liability, realization of tax from such a person (dealer) becomes possible and, consequently, evasion of tax is prevented. The satisfaction, to be reached by the authority concerned, has to be, therefore, based on such materials, which are required under the relevant Acts and the Rules framed thereunder, and only those materials can be regarded as relevant, which have nexus with the objects sought to be achieved by way of "registration" of "dealer".

43. In other words, while conducting the "enquiry", the authority concerned cannot take into consideration such matter, which are irrelevant and/or not required to be furnished under the relevant statute. A material, which has no nexus whatsoever, with the objects sought to be achieved by way of "registration" (namely, keeping the assessable transactions traceable and making the person, dealing with such transactions, liable to pay tax), would be nothing but irrelevant and the "dealer", applying for "registration", cannot be refused to be granted "registration" on the ground of failure, on the part of the "dealer", to furnish such irrelevant information/particulars.

44. In the case of Indian Nut Products and Others Vs. Union of India (UOI) and Others, the Supreme Court, while dealing with the matter of "satisfaction" of the authorities concerned in granting "registration" to a "dealer", observed, in paragraph 10 of its decision, that if a statute requires an authority to exercise its powers, the authority has to be satisfied that the necessary conditions or the grounds, for exercise of such power, as mentioned in the relevant statute, exist, or else, such exercise of powers, which is based on the satisfaction reached by taking into account irrelevant conditions/subjects, would be but bad in law. The

relevant observations of the Supreme Court, appearing in *Indian Nut Products (supra)*, in this regard, read thus:

10. It is well-settled that if a statute requires an authority to exercise power, when such authority is satisfied that conditions exist for exercise of that power, the satisfaction has to be based on the existence of grounds mentioned in the statute. The grounds must be made out on the basis of the relevant material. If the existence of the conditions required for the exercise of the power is challenged, the courts are entitled to examine whether those conditions existed when the order was made. A person aggrieved by such action can question the satisfaction by showing that it was wholly based on irrelevant grounds and hence amounted to no satisfaction at all. In other words, the existence of the circumstances in question is open to judicial review.

(Emphasis added)

45. Similarly, in *Smt. S.R. Venkataraman Vs. Union of India (UOI)* and Another, the Supreme Court, approvingly took note of the observations, made by Lord. Esher (MR), in the case of *the Queen on the Prosecution of Richard Westbrook v. The Vestry of St. Pancras*, reported in (1890) 24 QBD 371, which read thus:

...If people, who have to exercise a public duty by exercising their discretion, take into account matters which the Courts consider not to be proper for the guidance of their discretion, then, in the eye of the law they have not exercised their discretion.

46. What emerges from the above discussion is that when an "enquiry", as contemplated by Section 19(3) of the TVAT Act, 2004, and Section 7(3) of the CST Act, 1956, takes into account, or bring within its fold, an aspect, which has no nexus with the object, which is sought to be achieved by way of "registration" of a "dealer", then, such an "enquiry", or bringing into fore such an aspect, which is irrelevant, would, in the eyes of law, amount to non-exercise of discretion by the authority concerned. Thus, the satisfaction to be reached by an authority for the purpose of "registration" of a "dealer", u/s 19(3) of the TVAT Act, 2004, as well as Section 7(3) of the CST Act, 1956, is not, un-guided, uncanceled and arbitrary."

47. In the case of *Rungpur Enterprise v. State of Assam*, WP(C)No. 7967/2007, this Court, while dealing with a case pertaining to refusal of permission for sale of land, by the Guwahati Metropolitan Development Authority, on the ground that there exists a communication issued, dated 16.05.2005, wherein the Joint Secretary to the Government of Assam, Department of Industries and Commerce, addressed to the General Manager, District Industries Centre, had directed not to issue temporary and permanent "registration" for setting up of a coke industry, held that no authority and, more particularly, a statutory authority, can take into account any factor, which is not necessary for it to consider in arriving at a decision. If such a factor is taken into account, the discretion exercised by such an authority would not be sustainable in law. The relevant

observations read as under:

(vi) From the observations made above, it is clear that no authority and, more particularly, a statutory authority, can take into account any act, which is not necessary for it to consider in arriving at a decision. If such a factor is taken into account, the discretion exercised by such an authority would not be sustainable in law.

(vii) From the present case too, the GMDA can refuse permission only on the ground of contravention of the proposal contained in the plan or Zonal Regulations. The GMDA's decision not to grant permission on the basis of the communication, dated 16.05.05, aforementioned, which in itself is not sustainable, cannot be said to be a sound exercise of jurisdiction. It is also necessary to point out that according to the undenied facts of record, the coke industries, which are sought to be set up, fall within industrial area, as classified by the GMDA under the GMDA Act, 1985. In such circumstances, the GMDA could not have denied permission as had been sought for by M/s Ganesh Met Coke Industries and M/s Shri Balaji Coke Industries, when no violation of the Master Plan or the Zonal Regulations was alleged.

(viii) What emerges from the above discussion is that the very basis for rejecting the permission for sale of the land and also the permission for construction become irrelevant following the failure, on the part of the State Government, to sustain the communication, dated 16.05.2005, aforementioned.

48. The above observations of this Court, in Rungpur Enterprise (supra), clearly show that when a statutory authority denies permission, or refuses to exercise its power, on a ground, which is irrelevant, such a refusal cannot bear the scrutiny of law.

49. While dealing with a case of "registration" of a partnership firm u/s 26 A of the Income Tax Act, 1961, the Supreme Court observed, in Agarwal and Co. Vs. Commissioner of Income Tax, Uttar Pradesh, as under:

The jurisdiction of the Income tax Officer was, therefore, confined to ascertaining two facts namely (1) Whether the application for registration was in conformity with the rules framed under the Act and (2) whether the firm shown in the document presented for registration was a bogus one or had no legal existence. Further, the discretion conferred on the Income tax officer u/s 26-A was a judicial one and he could not refuse to register a firm on mere speculation. He had to base his conclusion on relevant evidence.

50. From the above cited observations, made in M/s Agarwal & Co. (supra), it becomes clear that an authority, under a taxing statute, cannot refuse to register a firm on its (the authority's) speculations, or on grounds, which are not relevant, and the question, as to whether a ground is or is not relevant, has to be seen in the context of the objects of "registration". If, therefore, the present petitioner's applications, which have been made, are in order in the sense that

the required particulars, under the TVAT Act, 2004, as well as the 2005 Rules, and the CST Act, 1956, as well as the 1957 Rules, have been furnished, the respondents, particularly, respondent No. 3, cannot refuse, and could not have refused, to grant "registration".

51. Thus, what emerges from the above discussion is that while considering an application for "registration" as a "dealer", the "satisfaction", which is to be arrived at by the authorities concerned, has to be relevant to the objects sought to be achieved by means of such "registration". In the present case, the "satisfaction", envisaged by Section 19(3) of the TVAT Act, 2004, has to be reached pursuant to an "enquiry", which has to be based upon relevant materials, i.e., such materials, which are required for granting "registration" taking into account the object behind granting of "registration", namely, to keep track of the assessable transactions of a "dealer" so that tax can be assessed and the "dealer" can be fastened with its taxable liability and facilitate thereby realisation of tax. If, while considering an application for "registration", the authority concerned takes into account any material, which is irrelevant for the purpose of reaching his "satisfaction", such action of the authority concerned would be treated as if the authority concerned has not exercised its discretion as warranted by law.

52. In the backdrop of the position of law, as indicated above, if the facts of the present case are carefully examined, it would surface that the respondents, particularly, respondent no. 3, has omitted to grant "registration" to the petitioner, both under the TVAT Act, 2004, as well as the CST Act, 1956, on wholly untenable grounds inasmuch as the grounds, which stand assigned for rejection of the petitioner's application for "registration", have, as would be seen, no nexus with the objects of "registration", sought to be achieved by the said enactments. At the cost of repetition, one can, once again, refer to the case of Ghanshyamdas (supra) and Periyar and Pareekanni Rubbers Ltd. (supra), wherein the Supreme Court has clearly held that "registration" of a "dealer" is in the interest of revenue so that by way of "registration" of "dealers", the authorities concerned can keep track of the assessable transactions and can fasten liability upon the registered "dealers" in respect of their taxable transactions and, consequently, realize tax and prevent thereby evasion of tax.

53. In the present case, it is the petitioner, who has applied for "registration" and it is in the interest of revenue of the State that such "registration" be granted unless impermissible in law or unless the petitioner has not been able to furnish a particular, which is relevant under the Act and the Rules concerned.

54. Considering the fact that the "registration" of a "dealer", in the present case, is governed by Section 19 of the TVAT Act, 2004, read with Rule 10 and 11 of the 2005 Rules, it logically follows that, in order to get registered under the said Act and/or the Rules, the petitioner was required to submit its applications in accordance with the relevant Rules, enclosing, therewith, such documents as are required under the said Act and the Rules. On the application being submitted,

the authority concerned is to make an "enquiry", in this regard, and if, upon such "enquiry", the authority concerned is satisfied that the application is in order, the "registration" must be allowed. The "enquiry", envisaged by the Act, is limited to the particulars required under the TVAT Act, 2004, read with the 2005 Rules, and the CST Act, 1956, read with the 1957 Rules, and nothing more. If the authority concerned, including the respondent No. 3, seeks to obtain any information, which is not relevant within the ambit of the said TVAT Act, 2004, read with the 2005 Rules, and /or the CST Act, 1956, read with the 1957 Rules, the refusal to grant "registration" to the petitioner, as a "dealer", would not be sustainable in law.

55. As is evident from the affidavit-in-opposition filed by the respondents, the registration certificates have been refused to the petitioner on the following "four" grounds:

(I) Non-submission of the pollution certificate.

(II) Non-submission of the registered lease deed for stockyard of the petitioner company for stone boulder.

(III) Non-submission of the certificate of incorporation recording change of address of the petitioner company from Dhaleswar to Kunjaban.

(IV) Subsequent withdrawal vide communication, dated 31.12.2010, of his signature by the introducer of the applicant in prescribed Form-1.

(I) NON SUBMISSION OF THE POLLUTION CERTIFICATE:

56. The first ground on which the application for registration has been rejected is non-submission of a pollution certificate. Before entering into the question as to whether a pollution certificate is or is not a relevant material for the grant of registration in the case of the petitioner, it would be apposite to know what a pollution certificate is and when can a pollution certificate be issued.

57. A pollution certificate is a consent, which is given, u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981, by the State Pollution Board to an industrial plant to establish or operate an industrial plant in an air pollution control area.

58. Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, being relevant for determining as to why a pollution certificate is granted, a part of Section 21, which is relevant in the present context, is quoted below:

21. Restrictions on use of certain industrial plants.--

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention

and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

59. Sub-Section (1) of Section 21 of the Air (Prevention and Control of Pollution) Act, 1991, goes to show that the consent is required to be given by a State Pollution Board for establishment or operation of an industrial plant. This apart, it is the State Pollution Board, which is the appropriate authority to take necessary action, in terms of the provisions of the Act of 1981, if a person establishes or operates, in an air pollution control area, an industrial plant without obtaining its previous consent. The Sales Tax Authorities are not the appropriate authority to enforce the provisions of the Act of 1981 inasmuch as a person, appointed as an authority under the TVAT Act, 2004, or the CST Act, 1956, has to function and perform his duties within the ambit of, and for the purpose of, the TVAT Act, 2004, and the CST Act, 1956, as the case may be.

60. In the present case, the petitioner has applied for registration, as a dealer for sale and purchase of coal and not for setting up any industry of coal. Under such circumstances, the rejection of the petitioner's application for registration on the ground of non-production of the pollution certificate is a totally irrelevant consideration and, consequently, non-production of pollution certificate ought not to have been taken into account by the respondent No. 3 for the purpose of reaching his satisfaction as contemplated by Section 19(3). Thus, non-production of pollution certificate by the present petitioner is a non-existent ground and rejection of the petitioner's application for registration, on such a ground, is liable to be interfered with.

61. While dealing with the above aspect of the matter, it is important to take note of paragraph 6.6 of the affidavit-in-opposition, which has been heavily relied upon by the learned Senior Govt. Advocate, to show that no certificate of registration has been granted, under the said fiscal assessment, to any private businessman permitting trading in coal in the local market of Tripura. It is necessary to point out, in this regard, that the respondents have failed to note that obtaining of pollution certificate is not at all required for the purpose of trading in coal even in the State of Tripura inasmuch as a pollution certificate can be issued and is required to be issued if one has to establish and operate an industrial plant in an air pollution control area.

62. Thus, the refusal to grant registration certificate, on the ground of non-production of pollution certificate, is on a non-existent material or factor. The following observations, made by the Supreme Court, in Smt. S.R. Venkatraman (supra), are eminently suitable to remember in the present context:

8. We are in agreement with this view. It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the

existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go these may well be said to run into one another.

9. The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of government servants only in the "public interest", to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must therefore be held to be infected with an abuse of power.

(Emphasis is added)

63. From the observations noted above, it becomes clear that when a public authority is prompted to take an action under a mistaken belief in the existence of a non-existing fact or circumstances, such a belief would be in bad faith and an administrative order, which is based on reasons of fact, which do not exist, must be held to be infected by abuse of power.

64. In the present case too, when the petitioner made applications, seeking registration as a dealer for trading in coal, and when, for the purpose of trading in coal, no pollution certificate is required, the refusal to grant registration certificate, on the ground of non-production of pollution certificate, cannot but be regarded as a non-existent ground and such refusal suffers from abuse of power.

(II) NON-SUBMISSION OF THE REGISTERED LEASE DEED FOR STOCK YARD OF THE COMPANY FOR STONE BOULDER:

65. The second ground for rejection of the application for registration is that the petitioner has failed to supply the registered lease deed for the stockyard in respect of its stone boulder business. This ground too is a wholly irrelevant ground inasmuch as sales tax authorities have nothing to do with the fact as to whether a lease deed is or is not registered, when the place of the business of the petitioner has been disclosed and the petitioner, being a company, has its principal place of business at its registered office.

66. What is also important to note is that the petitioner had, admittedly, submitted a registered lease deed in respect of its principal place of business, i.e., registered office.

67. We may pause, at this stage, to take note of the provisions embodied in Section 2(18) of the TVAT Act, 2004, which defines a place of business. Section 2(18) is, therefore, reproduced below:

2 (18). "Place of business" means any place where a dealer carries on the business and includes;

- (f) Any warehouse, godown or other place where a dealer stores or processes his goods;
- (g) Any place where a dealer produces or manufactures goods;
- (h) Any place where a dealer keeps his books of accounts;
- (i) In cases where a dealer carries on business through an agent (by whatever name called), the place of business of such agent;
- (j) Any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting the goods.

68. A bare reading of Section 2(18) clearly shows that a place of business is nothing, but a place, where a dealer carries on his business. In terms of Section 146 of the Companies Act, 1956, a company shall carry on its business, at its Registered Office, to which all communications and notices may be addressed.

69. Thus, the ground that the petitioner has not produced a lease deed in respect of the place, which it would utilise as stockyard of stone boulder, is a ground, which is wholly irrelevant inasmuch as the "place of business" of the petitioner would be the petitioner's office and not the place, where stockyard is located. This apart, respondent No. 3 could not have rejected the application seeking registration for the purpose of trading in coal inasmuch as the petitioner had submitted a registered lease deed of its stockyard enabling it to trade in coal.

(III) NON-SUBMISSION OF THE CERTIFICATE OF INCORPORATION OF CHANGE OF ADDRESS FROM DHALESWAR TO KUNJABAN:

70. As regards the rejection of the petitioner's applications seeking Certificate of Registration, under the TVAT Act, 2004, and the CST Act, 1956, on the ground of non-furnishing of the certificate of incorporation of change of address of the petitioner company from Dhaleswar to Kunjaban, suffice it to point out that this ground too suffers from malice in law inasmuch as respondents, particularly, respondent No. 3, appears to have not noted the requirements of the Companies Act, 1956, and the Companies (Central Govt. 's) General Rules and Forms, 1956, inasmuch as the Companies (Central Govt.'s) General Rules and Forms, 1956, envisages issuance of a fresh certificate of incorporation upon change of the registered office within the same State. As Section 17A of the Companies Act, 1956, are relevant, the same is reproduced hereinbelow.

17-A. Change of registered office within a State.--

- (1) No company shall change the place of its registered office from one place to another within a State unless such change is confirmed by the Regional Director.
- (2) The company shall make an application in the prescribed form to the Regional Director for confirmation under sub-section (1).
- (3) The confirmation referred to in sub-section (1) shall be communicated to the company within four weeks from the date of receipt of application for such

change.

Explanation.--For removal of doubts, it is hereby declared that the provisions of this section shall apply only to the companies which change the registered office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same State.

(4) The company shall file, with the Registrar a certified copy of the confirmation by the Regional Director for change of its registered office under this section, within two months from the date of confirmation, together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such document.

(5) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and confirmation have been complied with and henceforth the memorandum as altered shall be the memorandum of the company.

71. A careful reading of the provisions, contained in Section 17A, shows that when the registered office of a particular company is changed within a State, the change has to be confirmed by the Regional Director in terms of Sub-Section (1) of Section 17A and, in this regard, an application is required to be made in the prescribed form to the Regional Director. It may be further noted that the prescribed form is Form-1 AD in terms of Rule 4 BBA of the Company (Central Govt."s) General Rules and Forms, 1956. Section 17A has no application to a case, where change of registered office is within the jurisdiction of the same Registrar of Companies. The scheme of Section 17A envisages a new certificate of incorporation, when the registered office is changed from the jurisdiction of one Registrar of Companies to another. There are some States, it may be noted, in this regard, such as, the States of Tamil Nadu, Maharashtra, where there are more than one Registrar of Companies. As far as North Eastern Region is concerned, there is, admittedly, only one Registrar of Companies with its office at Shillong and, hence, in a case of present nature, Section 17A of the Companies Act, 1956, has no application and the respondents, including respondent No. 3, could not have insisted on a new certificate of incorporation of the petitioner company incorporating change of address.

72. Turning to Section 146, which relates to registered office of the company, it may be noted that Section 146 reads as under:

146. Registered office of company.-

(1) A company shall, as from the day on which it begins to carry on business, or as from the 1 [thirtieth] day after the date of its incorporation, whichever is earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of every change therein,

shall be given within 2[thirty] days after the date of the incorporation of the company or after the date of the change, as the case may be, to the Registrar who shall record the same:

Provided that except on the authority of a special resolution passed by the company, the registered office of the company shall not be removed-

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act, or where it may be situated later by virtue of a special resolution passed by the company; any

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated, or where it may be situated later by virtue of a special resolution passed by the company.

(3) The inclusion in the annual return of a company of a statement as to the, address of its registered office shall not be taken to satisfy the obligation imposed by sub-section (2).

(4) If default is made in complying with the requirements of the section, the company, and every officer of the company who is in default shall be punishable with fine which may extend to 3 (five hundred) rupees for every day during which the default continues.

73. A cautious reading of Section 146, as a whole, and, particularly, Sub-Section (2) of Section 146, shows that the notice of every change in the registered office of a company shall be given, within 30 days after the date of incorporation of the company or after the date of the change, as the case may be, to the Registrar, who shall record the same. The proviso to Sub-Section (2) of Section 146 stipulates that a registered office of the company shall not be removed except with the authority of a special resolution passed by the company as stated in Clauses (a) and (b) of the said proviso.

74. Thus, the notice of the change of the situation of the registered office of a company is required to be given to the Registrar of Companies in Form No. 18 as prescribed by the Companies (Central Govt."s) General Rules and Forms, 1956.

75. In the present case, the certificate of incorporation of the petitioner company was issued on 24.12.2009. This certificate of incorporation merely mentions the mailing address as per records available in the Registrar of Companies Office and, in the present case, the said address happens to be Westwell Natural Resources Pvt. Ltd., Village: Dhaleswar, A.A. Road, P.O. Dhaleswar, Dhaleswar - 799 007, Tripura, India. The petitioner has disclosed on record that upon the change of its registered office, it had submitted to the Registrar of Companies, at Shillong, a duly filed up Form-18. In fact, the petitioner has produced on record, in this regard, a receipt issued, on 12.03.2010, by the Ministry of Corporate Affairs indicating receipt of the application made in Form-18 by the petitioner.

76. Neither the Companies Act, 1956, nor the Rules framed thereunder, provide for issuance of a fresh certificate of incorporation or amendment of the certificate of incorporation upon change of the address of the registered office within the jurisdiction of the same Registrar of Companies. The only formality required is to inform the concerned Registrar of Companies, in prescribed Form - 18, the change in the address of the registered office and this had been done by the petitioner company as far back as on 12.03.2010 itself.

77. Situated thus, it becomes clear that the insistence of the respondents, particularly, respondent No. 3, that the petitioner company shall produce a certificate mentioning therein the change in the address of the registered office of the company is a wholly irrelevant factor and ought not to have been made a ground for refusing to grant registration to the petitioner company as a dealer.

(IV) SUBSEQUENT WITHDRAWAL OF THE SIGNATURE FROM THE APPLICATION IN FORM - 1 AS AN INTRODUCER OF THE APPLICANT VIDE A COMMUNICATION DATED 31.12/2010:

78. While considering the above ground on which the certificates of registration are claimed by the respondents to have been declined, it is necessary to point out that it had never been communicated to the petitioner by the respondents that the petitioner's introducer had withdrawn by submitting a communication, dated 31.12.2010. The refusal to grant certificates of registration on the said ground, therefore, suffers from violation of the principles of natural justice. As already pointed out by the Calcutta High Court, in Durga Prasad Khaitan (supra), an authority cannot, while holding an enquiry, take into consideration a ground, as disqualification, without giving, in this regard, an opportunity to the dealer or else, it would amount to violation of the principles of natural justice.

79. Coupled with the above, it is also interesting to note that a perusal of the Form - "A" of the Rules of 1957, which relates to the grant of registration, under the CST Act, 1956, does not show requirement of any introducer for obtaining registration as a dealer and, hence, application, seeking registration under the CST Act, 1956, could not have been rejected on the ground that its introducer had withdrawn. As far as the TVAT Rules, 2005, is concerned, Form-1 thereof shows that this Form requires signature of a registered "dealer" or a responsible person as an introducer. This requirement was complied with by the petitioner company, on 27.11.2010, at the time of submission of the application seeking registration. The purpose behind the need of introduction by a registered dealer or by any responsible person is only for the purpose of submission of application form, which was done as far back as on 27.11.2010. The said application having been acted upon by the concerned authorities, the need of the introducer's signature became irrelevant. This apart, even if it is assumed, for a moment, that the signature of the introducer ought to have remained present although, it logically follows that it was, in such circumstances, the bounden duty of the authorities concerned to inform the petitioner company about the withdrawal of the signature by the introducer so that the petitioner could remove the defect.

Making withdrawal of the introducer as a ground for rejection of the certificate of registration, without giving any information to the petitioner, in this regard, is nothing but violation of the principles of natural justice.

80. What can also not be ignored is that the petitioner is a company registered under the Companies Act, 1956, and, in this regard, a certificate of incorporation has already been submitted by the petitioner to the appropriate authority. The scope and ambit of a certificate of incorporation can be gathered from Section 35 of the Companies Act, 1956, which reads as under:

35. Conclusiveness of certificate of incorporation.--A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under this Act.

81. A careful reading of Section 35 shows that the petitioner had submitted to the respondents a certificate of incorporation issued under the Companies Act. This ought to have been treated as a conclusive evidence of all the requirements of the Companies Act, 1956, having been complied with by the petitioner company. The requirement, therefore, of an introducer, in the case of a incorporated body, such as, Registrar of Company, does not arise at all. Logically extended, it would mean that the requirement of a registered dealer or by a responsible person introducing a person for being registered under the TVAT Act, 2004, is a requirement meant for persons other than an incorporated body, such as, a company, registered under the Companies Act, 1956. It would, thus, be transparent that respondent No. 3 has taken into account an extraneous and irrelevant factor into consideration for rejecting the petitioner's application for registration. This apart, the petitioner's application for registration was rejected without giving any notice of the fact that the introducer had withdrawn. Such an action, on the part of the respondent No. 3, suffers from gross violation of the principles of natural justice and cannot, therefore, be sustained.

82. The petitioner has, therefore, great substance in contending that the respondents/ authorities have consciously and deliberately delayed and have, eventually, refused to grant certificate of registration enabling the petitioner to trade in coal, in the State of Tripura, for only the reasons, which are untenable in law and not bona fide.

83. It may be noted that the order, dated 23.11.2010, passed by the Revisional Authority, shows that the petitioner was directed to file afresh applications by curing the defects, which are mentioned in the order, dated 31.08.2010. It may also be noted that the order, dated 31.08.2010, was interfered with by the Revisional Authority on the ground that the rejection of the petitioner's application was on technical grounds. Be that as it may, the petitioner has, in terms of the directions issued by the revisional authority, cured the defects to the

extent possible, but the respondent No. 3 is clearly adamant not to grant the registration to the petitioner. The consequence is that the petitioner's fundamental right to carry out trade in coal, in accordance with law, is blatantly denied by the respondents. This becomes clearer from the fact that the petitioner had requested for permission to import coal to the State of Tripura and to pay necessary taxes as per provisions of law, but the respondent No. 3 did not even allow the petitioner to bring coal to the State of Tripura on the ground that the petitioner is not a registered dealer, though as already indicated above, the requirement of a dealer getting registered arises u/s 19 only when the dealer has already incurred the liability to pay tax and, hence, unless a person has incurred the liability to pay tax under the relevant statute, he cannot be stopped from selling, without being registered, his goods and incurring thereby his first taxable liability.

WHETHER THE PETITIONER IS ENTITLED TO COMPENSATION ON ACCOUNT OF SUCH ACTS OF THE RESPONDENTS IN NOT ALLOWING THE PETITIONER TO CARRY ON ITS BUSINESS THEREBY CAUSING THE PETITIONER IMMENSE LOSSES ON ACCOUNT OF WHARFAGE AND DEMURRAGE CHARGES?

84. I have already indicated above that a person becomes liable, as a dealer, to apply for registration u/s 19(1) of the TVAT Act, 2004, and Section 7(1) of the CST Act, 1956, only when he incurs taxable liability. In no uncertain words, Section 19(1) of the TVAT Act, 2004, states that no dealer, while being liable to pay tax under the TVAT Act, 2004, shall carry on business as a dealer unless he has been registered and possesses a certificate of registration. Hence, the statutory obligation to compulsorily obtain, as a dealer, registration, is imposed on a dealer, when the dealer has already incurred the liability to pay tax under the TVAT Act, 2004.

85. Similarly, Section 7(1) of the CST Act, 1956, provides that every dealer, liable to pay tax under the CST Act, 1956, shall make an application for registration under the said Act. Section 7(2) of the CST Act, 1956, gives an option to a dealer to apply for registration under the CST Act, 1956, notwithstanding the fact that he is not liable to pay tax under the CST Act, 1956, or in case, he is liable to pay tax in the appropriate State or when there is no such law applicable in the appropriate State or any part thereof, where the dealer is having a place of business. The petitioner can become liable to tax under the TVAT Act, 2004, only if he makes sale of coal in the State of Tripura and since there is no dealer, dealing the sale of coal in the State of Tripura, as stated in the affidavit-in-opposition filed by the respondent, to become liable to tax under the TVAT Act, 2004, in respect of sale of coal, the petitioner has no other alternative but to import coal from outside the State of Tripura.

86. Situated thus, when the petitioner applied for permission to import coal in the State of Tripura and the said import being the petitioner's first entry as a dealer of coal into the State of Tripura, the petitioner could not have been stopped from bringing the coal into the State of Tripura inasmuch as in that

event, the petitioner can never become liable to tax in respect of sale of coal in the State of Tripura and, consequently, he can never become liable to apply for registration under the TVAT Act, 2004, and/or registration under the CST Act, 1956.

87. Similarly, u/s 7(1) of the CST Act, 1956, only a dealer liable to pay tax under the CST Act, 1956, is also liable to be registered under the said Act. u/s 7(2) of the CST Act, 1956, notwithstanding the fact that the dealer is not liable to pay tax under the CST Act, 1956, he may apply for registration or if he is liable to pay tax under the local sales tax Act or when a dealer has some particular place of business in the State and no sales tax law is in force in that State.

88. In the present case, the respondents have clearly stated, in their affidavit-in-opposition, that no registration has been granted to any local dealer, in Tripura, meaning thereby that coal is not sold in the local market in Tripura. Hence, for incurring any liability to pay tax, in the State of Tripura, for sale of coal, coal has to be imported from outside and, then, sold within the State.

89. In the present case, the petitioner is not liable to pay tax under the CST Act, 1956, as he has not made any sale in the course of inter-State trade and commerce from the State of Tripura nor he can make any sale of coal in the State of Tripura and become thereby liable to pay tax under the local sales tax Act unless and until he is allowed to import coal into the State of Tripura. In case, the petitioner is not allowed to import coal from outside into the State of Tripura, he cannot sell any coal in the State of Tripura to become liable to pay tax under the TVAT Act, 2004, so that registration can be granted to him under the TVAT Act, 2004. Similarly, till the petitioner gets itself registered under the TVAT Act, 2004, he cannot be registered even u/s 7(2) of the CST Act, 1956. As such, it is clear that the action of the respondent No. 3 in refusing permission to the petitioner to import coal from outside Tripura was nothing, but a motivated approach to deny the petitioner registration both under the CST Act, 1956, as well as under the TVAT Act, 2004.

90. As the action of the respondents/authorities concerned in refusing registration of the petitioner as a registered dealer is wholly untenable in law and discloses malice in law, the petitioner has considerable force, when it claims compensation for the losses, which it has suffered. In fact, in *Smt. S.R. Venkataraman (supra)*, referring to the observations of Viscount Haldane, in *Shearer v. Shields*, the Supreme Court held that malice in law means malice, which may be assumed from the doing of a wrongful act intentionally, but without just cause or excuse, or for want of reasonable or probable cause. When a person inflicts injury upon another person in contravention of law, he cannot be allowed to say that he did so with an innocent mind, because he is presumed to know the law and he must act within the law. In such circumstances, the person, inflicting injury on the other person, may be regarded as guilty of malice in law, though he might have acted ignorantly or even innocently. In the case at hand, the respondents may have acted in ignorance of law, they cannot, however,

escape and cannot be allowed to escape on the ground of their ignorance inasmuch as they, being the authorities under the relevant enactments, must be treated to have known the law and having known the law, they must be treated to have not acted in accordance with law. Each of the grounds, which the respondents have advanced for the purpose of refusing to grant registration certificate, is based on wholly non-existent fact. Such action, therefore, suffers from malice in law even if their action was in ignorance of law.

91. Thus, though the petitioner has been able to make out a good case for directing payment of suitable compensation for the losses, which the petitioner has suffered, this Court, at this stage, refrains from passing any order directing payment of compensation to the petitioner by the respondents, particularly, respondent No. 3. The present one is, however, a fit case, where the writ petition needs to be allowed with reasonable cost.

92. In the result and for the reasons discussed above, this writ petition is allowed with cost of Rs. 10,000/- to be paid within one month from today and the impugned communication, dated 30.12.2010, is hereby set aside and quashed. The respondent No. 3 is hereby directed to grant to the petitioner company necessary registration certificate in accordance with law without any further delay and within a period of, at best, two weeks from today.

93. With the above observations and directions, this writ petition shall stand disposed of.