

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) 1110 of 2019**

Shri Pankaj Behari Saha  
S/o of Late Anil Chandra Saha,  
carrying on the business of Bonded Warehouse  
in the name and style of Udaipur Bonded Ware House  
at New Town Road, Near Mahadeb Dighi, Udaipur, Gomati Tripura

**-----Petitioner(s)**

***Versus***

1. The State of Tripura  
Represented by the Chief Secretary,  
Government of Tripura, Agartala, New Civil Secretariat,  
PO- Kunjaban, P.S- New Capital Complex (NCC),  
District- West Tripura, PIN 799006
2. The Principal Secretary,  
Finance Department, Government of Tripura, Agartala  
New Civil Secretariat, PO- Kunjaban,  
PS- New Capital Complex (NCC),  
District- West Tripura, PIN 799006
3. The Commissioner of Taxes,  
Government of Tripura  
P.N. Complex, Gurkhabasti, PO- Kunjaban,  
P.S- New Capital Complex (NCC), Agartala,  
District- West Tripura, Pin code- 799006
4. The Superintendent of Taxes, Agartala  
Charge- Udaipur, PO- Udaipur, PS- Udaipur,  
District- Gomati, Pin code-799120
5. The Superintendent of Taxes,  
Tax Audit Cell, HQ, Agartala  
P.N. Complex Gurkhabasti, PO- Kunjaban,  
PS- New Capital Complex (NCC), Agartala,  
District- West Tripura, Pin Code- 799006

**-----Respondent(s)**

|                           |                                                     |
|---------------------------|-----------------------------------------------------|
| For Appellant(s)          | : Mr. A. K Saraf, Sr. Adv<br>Mr. B. Roy, Adv.       |
| For Respondent(s)         | : Mr. S. S. Dey, Adv. General<br>Mr. A. Nandi, Adv. |
| Date of hearing           | : 13.07.2022                                        |
| Date of pronouncement     | : 03.08.2022.                                       |
| Whether fit for reporting | : Yes                                               |

**HON'BLE MR. JUSTICE T. AMARNATH GOUD  
HON'BLE MR.JUSTICE ARINDAM LODH**

**Judgment & Order**

The present writ petition is filed by the petitioner under Article 226 of the Constitution of India to issue a writ in the nature of certiorari or mandamus or appropriate writ or direction or order

(i) For enforcement of the fundamental rights of the petitioner guaranteed under Part-III of the Constitution of India.

(ii) Violation of Articles 14, 19(1) (g) and 21 of the Constitution of India.

(iii) Legality and validity of Notification dated 04.06.2018 issued by the Commissioner of Taxes, Government of Tripura in the purported exercise of powers under Section 85 of the Tripura Value Added Tax Act, 2004 delegating the powers of the Commissioner of Taxes under Section 31 of the Act to all the Superintendent of taxes posted in Tax Audit Cell to be exercised within the State of Tripura with effect from 31.03.2018.

(iv) Notice No. F(1)/ST/TAX/AUDIT/UDP/2018/2723-24 dated 04.04.2018 issued by the Superintendent of Taxes, Tax Audit Cell, HQ, Gurkhabasti, Agartala in purported exercise of powers under section 31(1) of the Tripura VAT Act, 2004 directing the petitioner to produce or cause to be produced the accounts and documents relating to the turnover of sales and/or purchase for the period from 2013-2014 to 2017-2018 for scrutiny of the returns furnished by the petitioner.

(v) Notice No.F(1)/ST/TAX/AUDIT/UDP/2018/2083 dated 22.02.2019 issued by the Superintendent of Taxes, Tax Audit Cell, HQ, Gurkhabasti, Agartala directing the petitioner to submit the segregated accounts of opening stock, closing stock, freight charge, import fee, bid money etc, in respect of imported and domestic goods for assessment years 2013-14 to 2016-17 for assessment.

(vi) Notice No.F(1)/ST/TAX/AUDIT/UDP2018/2777 dated 26.02.2019 issued by the Superintendent of Taxes, Tax Audit Cell, HQ, Gurkhabasti, Agartala directing the petitioner to show cause as to why penalty @ Rs.100/- per day should not be imposed for the alleged delay in submission of returns subject to a maximum of Rs.10,000/- as per section 25(4)(d) of Tripura VAT Act, 2004 for assessment years 2013-14 to 2016-17.

(vii) Notice No.F(1)/ST/TAX/AUDIT/UDP/2018/3034 dated 01.03.2019 issued by the Superintendent of Taxes, Tax Audit Cell, HQ, Gurkhabasti, Agartala informing the petitioner that as per the returns furnished, the dealer was liable to pay the balance amount of tax stated in the notice for the Month of May, 2013 to January, 2014 during the assessment year 2013-14 and directing the petitioner to show cause as to why amount of balance tax payable along with interest shall not be recovered and also to show cause as to why penalty should not be imposed as per the provisions of Tripura VAT Act, 2004 and Rules, 2005.

(viii) Notice No. F(1)ST/TAX/AUDIT/UDP/2018/3496 dated 12.03.2019 issued by the Superintendent of Taxes, Tax Audit Cell, HQ, Gurkhabasti, Agartala informing the petitioner that as per Rule 20 of the Tripura VAT Rules, 2005 every registered dealer liable to pay tax have to deposit 90% of the tax for the month or quarter ending on 31<sup>st</sup> March of a year within 31<sup>st</sup> March of that year and since 90% of the total tax was not deposited within 31<sup>st</sup> March during the year 2013-14 to 2016-17 directed the petitioner to show cause as to why interest should not be charged on the balance amount of 90% of tax payable as per the provisions of Tripura VAT, Act, 2004 and Rules, 2005.

(ix) Notice No. F(1)ST/TAX/AUDIT/UDP/2018/3605 dated 16.03.2019 issued by the Superintendent of Taxes, Tax Audit Cell, HQ, Gurkhabasti, Agartala directing the petitioner to show cause as to why the different in amount of purchase should not be considered as concealment and as to why the same should not be put to tax by determining its turnover and as to why in addition to VAT,

due, interest and penalty should not be impose for concealment of purchase and its relative turnover.

(x) Order of Assessment dated 30.03.2019 passed by the Superintendent of Taxes, Tax Audit Cell, HQ, Agartala for the Assessment year 2013-2014 to 2016-2017 in purported exercise of powers under Section 31 of the Tripura VAT Act, 2004 and the Notices of Demand issued in pursuance thereof.

(xi) Legality and validity of proviso to Rule 20 of the Tripura VAT Rules, 2005 providing for deposit of 90% of the tax payable for the month or quarter ending on 31<sup>st</sup> March of a year within 31<sup>st</sup> March itself.

**[2]** The facts of the case are that the petitioner is carrying on the business of bonded ware house in the name & style of M/s Udaipur Bonded Ware House, Udaipur, Gomati, Tripura under a valid license issued by the Competent Authority under the Tripura Excise Act 1987 & Rules made under. Petitioner also has a valid registration TIN 16111128003 issued under Tripura VAT Act 2004. The nature of business of the petitioner is to purchase goods from local and also from various parts of India by duly paying taxes as applicable like Sales Tax, Excise Duties etc.

**[3]** The respondent No.3 the Commissioner of Taxes, Government of Tripura has delegated respondent No.4, the Superintendent of Taxes, Agartala the powers including power of assessment under Section 31 of Assam VAT Act 2004 which has been adopted by State of Tripura under Section 85 of Tripura VAT Act vide notification dated 01.04.2006 and later another notification dated 04.06.2018 has also been issued delegating powers on respondent No.5. Both are extracted as under:

**NO.F.1-1(2)-TAX/92/5125-186  
GOVERNMENT OF TIPURA  
OFFICE OF THE COMMISSIONER OF TAXES  
KAR BHAWAN: AGARTALA**

Dated, Agartala, the 01<sup>st</sup> April, 2006.

**NOTIFICATION**

In exercise of the powers conferred by Section 85 of the Tripura value Added Tax Act, 2004 (Tripura Act No.1 of 2005) the powers of the Commissioner of Taxes under Section 10, 19, 20, 22, 24, 25, 27, 30, 31, 32, 34, 36, 37, 38, 39, 40, 43, 44, 46, 48 (4), 48 (5) 49 52, 53(3), 59, 60, 66(2), 75, 77 and 80 of the Said Act are hereby delegated to the Superintendent of Taxes w.e.f 27<sup>th</sup> April, 2005.

The Concerned officers will exercise the powers so delegated to them in their respective arrears.

(M.S. Bhattacharjee)  
Commissioner of Taxes  
Government of Tripura

**Copy to :-**

1. The Manager, Tripura Government Press, Bordowali, Agartala with request to publish the above Notification in the extra-ordinary issue of Tripura Gazette, 10 (ten) copies of the above Notification may please be sent to the Commissioner of Taxes immediately.
2. All Inspector of Taxes.....
3. The Asstt. Commissioner of Taxes, Agartala and Churaibari Check-Post.
4. Dy. Commissioner of Taxes, Agartala/Churaibari.
5. The Superintendent of Taxes, Charge-I/II/III/IV/V/VI/ Agartala P.Tax, Lux. Tax etc. Agartala /Udaipur/ Dharmangar/Kailashahar/Belonia/Ambassa/Agartala Airport/Checkpost/Vigilance Cell Agartala.
6. Statistical Section/Establishment Section/General Section.
7. Guard File.

01/04/2006

(M.S. Bhattacharjee)  
Commissioner of Taxes  
Government of Tripura

**NO.F.1-1(2)-TAX/9  
GOVERNMENT OF TIPURA  
OFFICE OF THE COMMISSIONER OF TAXES  
P.N. COMPLEX, GURKHABASTI, AGARTALA**

Dated, Agartala, the 04<sup>TH</sup> June, 2018

**NOTIFICATION**

In continuation of this office, Notification vide No.F.1-1(2)-TAX/92/5125-186 dated 1<sup>st</sup> April, 2006 and in exercise of the power conferred by section 85 of the Tripura Value Added Tax Act, 2004 (Tripura Act.No.1 of 2005) the powers of the Commissioner of Taxes under Section 31 of the act is hereby delegated to all the Superintendent of Taxes posted in Tax Audit Cell and they shall exercise the powers to entire state of Tripura.

This shall take effect from 31<sup>st</sup> March, 2018.

(Nagesh Kumar, B, IAS)  
Commissioner of Taxes  
Government of Tripura

Copy to :-

1. The Manager, Tripura Government Press, Bordowali, Agartala with request to publish the above Notification in the extra-ordinary issue of Tripura Gazette, 10 (ten) copies of the above Notification may please be sent to the Commissioner of Taxes, Tripura.
2. The Additional Commissioner of Taxes, Agartala for information.
3. The Asstt. Commissioner of Taxes, Agartala for information.
4. The Superintendent of Taxes, Charge-I/II/III/IV/V/VI/VII/VIII/Tax Audit Cell/ Agartala Enforcement Wing/Udaipur Enforcement Wing/Choraibari Enforcement Wing/Udaipur /Belonia/Ambassa/Teliamura/Bishalgarh/Dharmanagar/Kailashar.
5. Statistical Section/General Section/Establishment Section/Guard File.

(Nagesh Kumar, B, IAS)  
Commissioner of Taxes  
Government of Tripura

**[4]** In pursuance of the powers delegated, the respondents No.5 for assessment year 2013-14 to 2016-17 issued demand notices in terms of the assessment orders dated 30.03.2019. The said orders were challenged by the petitioner by way of WP(C) 560 of 2019. Initially there was an interim order dated 30.03.2019 in favour of the petitioner directing the respondents not to take any

coercive steps. Later in view of fresh facts placed by the respondents the said writ petition has been dismissed as withdrawn on 25.06.2019 with liberty to file a fresh writ petition.

**[5]** The petitioner by way of present writ petition has challenged the notification dated 04.06.2018 whereby the respondent No.3 invoking powers under Section 85 of Tripura VAT Act 2004 has delegated the powers under Section 31 of the Act to all the Superintendent of Taxes in Tax Audit Cell. The respondent No.5 is one of such Superintendent. In pursuance of such delegation, the respondent No.5 has issued notices under the Act on several occasions like notice dated 04.04.2018 to produce accounts & documents relating to turn over of sales/purchase for 2013-14 to 2017-2018, notice dated 22.02.2019 issued under Section 31 informing the petitioner that he failed to submit accounts; notice dated 26.02.2019, stating the petitioner failed to furnish returns for assessment year 2013-14 to 2016-17 within stipulated time, hence imposition of penalty under Section 25(4)(d) of Tripura VAT Act, notice dated 01.03.2019 to pay balance tax per earlier notices in May 2013 to January 2014 during Assessment year 2013-2014 and recovery thereof with interest; notice dated 12.03.2019 for charging interest as per Rule 20 of Tripura VAT Rules 2005 framed under Tripura VAT Act 2004; notice dated 16.03.2019 to show cause treating the action of petitioner in concealing statements and hence imposition of tax determining on turnover.

**[6]** To all above notices, petitioner has submitted his reply dated 06.03.2019 stating the said notices are barred by limitation under Section 33 of the Act since the assessment has been completed after five years and prayed to withdraw the notices issued in reference to Assessment year 2013-14.

(B) Reply dated 15.03.2019 has been submitted to notice dated 12.03.2019 stating that Tripura VAT Act, Rules do not apply for the reasons stated in the reply and prayed for withdrawal of the said notice.

(C) Reply dated 25.03.2019 has been submitted to notice dated 16.03.2019 explaining the facts and also pointing out the discrepancies.

The respondent No.5 without considering the reply of the petitioner has drawn an adverse inference against the petitioner and has invoked power under Section 31(5), 25(1)(c) Rule 20 and levied taxes, interest & penalty. The assessment order dated 30.03.2019 issued by the respondent No.5 are also under challenge along with the notification dated 04.06.2018 stated supra. The main point which falls for consideration is this is the point of jurisdiction. That the respondent No.3 cannot delegate the powers upon respondent No.5 and the action taken by respondent No.5 is not in consonance with the Act & Rules.

**[7]** Hence, this writ petition.

**[8]** The Counter affidavit and written argument have been filed on behalf of the respondents wherein contending that no fundamental right of the petitioner has been violated, writ is not maintainable as no cause of action is made out, the impugned orders are appealable under Section 69 of the Act before Appellate Authority and a revision under Section 72 before High Court. Further, contended that respondent No.3 is having power under Section 85 to delegate to persons appointed under Section 18(1) of the Act. The audit wing is delinked with tax collection wing as per proviso to Section 28(1). Thus, the orders of imposition of interest, penalty, determining tax demand are as per Law.

**[9]** Heard both sides.

**[10]** Learned senior counsel for the petitioner Mr. A.K. Saraf, filed written argument and apart from other submissions contended mainly on the point of jurisdiction and the delegation of power by respondent No.3 to respondent No.5 is contrary to law and the respondent No.5 being an authority to audit cannot act as an assessing authority and also as collection authority. The imposition of penalty & interest is also without any authority.

[11] Mr. Saraf, learned senior counsel in support of his contention has relied upon a judgment passed by the apex court in **State of Kerala vs. K.M. Cheria Abdulla & Company** reported in **(1965) 1 SCR 601** where the apex court while explaining scope of revisional power indicated the limitation within such power can be exercise by holding as under:

**"It would not invest the revising authority with power to launch upon enquiries at large so as either to trench upon the powers which are expressly reserved by the Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those powers. For instance, the power to reassess escaped turnover is primarily vested by Rule 17 in the assessing officer and is to be exercised subject to certain limitations, and the revising authority will not be competent to make an enquiry for assessing a taxpayer. Similarly, the power to make a best judgment assessment is vested by Section 9(2)(b) in the assessing authority and has to be exercised in the manner provided. It would not be open to revising authority to assume that power.**

[12] Reliance has also been place on another judgment in **Commissioner of Income Tax, Mumbai Vs. Amitabh Bachchan** reported in **(2016) 11 SCC 748** while examining contours of suo motu revisional power under Section 263 of the Income Tax Act, 1961 held as under:

**"9. Under the Act different shades of power have been conferred on different authorities to deal with orders of assessment passed by the primary authority. While Section 147 confers power on the assessing authority itself to proceed against income escaping assessment, Section 154 of the Act empowers such authority to correct a mistake apparent on the face of the record. The power of appeal and revision in contained in chapter XX of the Act which includes Section 263 that confers suo motu power of revision on the learned CIT. The different shades of power conferred on different authorities under the Act has to be exercised within the areas specifically delineated by the Act and the exercise of power under one provision cannot trench upon the powers available under another provision of the Act....."**

[13] In another judgment by apex court in **The Barium Chemicals Limited vs. The Company Law Board**, reported in **AIR 1967 SC 295** held as under:

**Delegatus Non Potest Delegare means that a delegate has no power to delegate. The said maxim indicates a rule of construction of a statute or other instrument conferring an authority. Ordinarily, a discretion conferred by a statute on instrument conferring an authority. Ordinarily, a discretion conferred by a statute on any authority in intended to be exercised by that authority, and by no other. But the intention**

**may be negative by any contrary indication in the language, scope or object of the Statute.**

**[14]** In **Mohd Naved vs. State of Uttarakhand & Ors** reported in **2020 SCC Online Utt 236** with regard to power of delegation in paragraph 38 held as under:

**38. In practice government demands a great deal of delegation. This has to be authorized by statute, either expressly or impliedly. Statutory delegation of powers must be construed in the same way as other powers, and will not therefore extend to sub-delegation in the absence of some express or implied provision to that effect. The delegate, must also keep within the bounds of the power actually delegated, which may be narrowed than the possessed by the delegating authority.**

**[15]** Mr. S. S. Dey, learned Advocate General appearing for the respondents contended that the notifications issued are well within the powers conferred upon respondent No.3 and the delegation of powers upon respondent No.5 are not in violation of Act & Rules. The impugned notices issued are in accordance with law. The petitioners ought to have preferred appeal under Section 69 of the Act. He further argued that the delegation of power is done under Section 85 of TVAT Act, whereby he may delegate his power to any person appointed under Section 18(1) of the same Act. By exercising this power the Commissioner by a notification dated 04.06.2018 delegated his powers under Section 31 to the Superintendent of Taxes Audit Cell and they were given the territorial jurisdiction in the whole State of Tripura. There is nothing illegal. Mr. Dey, learned Advocate General further argued that the instant writ petition is not maintainable and prayed to dismiss the same.

**[16]** Mr. S. S. Dey, learned Advocate General has relied on a decision of Delhi High Court in **H.G. International versus The Commissioner of Trade and Taxes, Delhi** (Order dated 16.08.2017) where that court had the occasion to observe as follows:

**15. Mr. Taneja then referred to the decisions in Tata Sponge Iron Ltd. vs Commissioner of Sales Tax, Orissa [2012] 49 VST 33 (Ori) and ABB India Limited vs State of Odisha [2015] 77 VST 124 (Ori) wherein it was held that the officer who prepares the audit report cannot himself pass an assessment order based on such audit report. The said**

decisions are distinguishable in their application to the present case since the corresponding provisions under the Orissa Value Added Tax, 2004 ('OVAT ACT') is Section 41(4) which does not envisage the same officer who conducts the audit also making the consequent assessment. The said provision reads as under:

**41(4) After completion of tax audit of any dealer under sub-section (3), the officer authorised to conduct such audit shall, within seven days from the date of completion of the audit, submit the audit report, to be called "Audit Visit Report" to the assessing authority in the prescribed form along with the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes.**

**16. Thus, under the OVAT Act the officer undertaking the audit has to forward the report to the assessing officer who then, in terms of Section 42 of the OVAT Act, makes an 'audit assessment. The position under Section 58 of the DVAT Act is very different."**

**[17]** Reliance has also been placed on another judgment of the apex court in **Kerala Trade Links, Adichira vs. Commercial Tax Officer and Ors** (order passed on 05.02.2009) where the apex court has observed that the contention of counsel for the appellant that the Audit officer's main function is to make audit assessment under Section 24 is certainly correct. However, while scrutinizing the accounts or other materials, if he notices that assessment under Section 24 is barred by limitation and if the assessment is otherwise tenable under Section 25, then certainly he is entitled to invoke section 25 and make assessment as an Assessing officer, if he is authorized by Commissioner under Section 2(v) of the Act. Since in this case the first respondent is authorized by the Commissioner to function as an Assessing Officer, he is entitled to make a turnover escaping assessment under Section 25 as above. The very purpose of conferring concurrent jurisdiction on different officers is to ensure collection of tax, if the regular officer falls in it. We therefore find that the order passed by the first respondent is within his powers and so much so, order cannot be challenged on the ground of want of jurisdiction. The Writ Appeal is therefore, dismissed.

[18] To appreciate the contentions of both sides mainly on the point of jurisdiction it is necessary to examine certain provisions under the Tripura VAT ACT & Rules.

**Definitions:**

**Assessee** : means a person by whom any tax or any other sum of money is payable under this Act, and includes-

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person or of the amount of refund due to him or to such other person.

(b) every person who is deemed to be an assessee under any provision of this Act:

(c) every person who is deemed to be an assessee in default under any provision of this Act

**Assessing authority**: means any person appointed by the State Government or the Commissioner to perform all or any of the functions of the assessing authority under this Act.

**Audit**: An official examination of accounts with verification by reference to witness and vouchers.

**Collection**: The term 'Collection' means only recovery of tax already assessed and levied and in respect of which liability to pay has arisen.

**Demand**: The action of demanding to ask for with legal right or authority to ask; for peremptorily, imperiously or urgently.

**Commissioner**: Commissioner means any person appointed by the State Government to be a commissioner of Taxes.

**Gazette**: Gazette generally means the official Gazette, published under the authority of the Government.

**Official Gazette**: The words OFFICIAL GAZETTE refer to the official Gazette of the State which enunciates the scheme and not to the Central Govt. Gazette.

**NOTIFICATION**: means a notification published by authority of the local Government in the official Gazette, Pun. Act XVII of 1887 (Land Revenue), S.3, Cl. 15.

**Superintendent of Taxes**: Superintendent of Taxes means (in respect of dealer a Superintendent of Taxes referred to in Rule 8 or) any person appointed as such by the State Government under Section 18 and within whose jurisdiction the dealer's place of business is situated or if the dealer has more than one such place, the Superintendent within whose jurisdiction the general branch or Head office in Tripura of such business is situated, or if the dealer has no place of business within the State of Tripura, the Superintendent who has been so notified by the Commissioner under Rule. 8.

**Section 18. (1)** The State Government may, for carrying out the purposes of this Act, appoint a Commissioner of Taxes, and such other persons to assist him as it thinks fit.

**(2)** Persons appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

**(3)** The State Government may, instead of appointing any person under sub-section (1), invest, by notification, any officer to exercise any power under this Act and also specify therein the area, in which, power is to be exercised and thereupon such officer or officers shall be deemed to have been appointed under sub-section (1).

**Section 25. Return defaults:-** (1) If a dealer required to file return under sub-section (1) or sub-section (2) of section 24 -

- (a)** fails without sufficient cause to pay the amount of tax due as per the return for any tax period ; or
- (b)** furnishes a revised return under sub-section (3) of section 24 showing a higher amount of tax to be due than was shown by him in the original return; or
- (c)** fails to furnish return; such dealer shall be liable to pay interest in respect of-
  - (i)** the tax payable by him according to the return, or
  - (ii)** the difference of the amount of tax according to the revised return; or
  - (iii)** the tax payable for the period for which he has failed to furnish return; at the rate of one and half percent per month from the date the tax payable had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

**Section 25 (4)...**

**(d)** having paid the tax payable according to a return in time, fails to furnish along with the return proof of payment made in accordance with sub-section (4) of section 24 ; the Commissioner may, after giving the dealer reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty under sub-section (3) payable or paid by him, a penalty of a sum of rupees one hundred per day of default subject to a maximum of rupees ten thousand.

**Section 27. Scrutiny of returns :-** (1) Each and every return in relation to any tax period furnished by a registered dealer to whom notice has been issued by the Commissioner under section 24 shall be subject to scrutiny by the Assessing Authority to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein; and full payment of tax and interest payable by the dealer during such period.

**(2)** If any mistake is detected as a result of such scrutiny made as per the provisions of sub-section (1), the Commissioner of Taxes shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax along with the interest as per the provisions of this Act, if it is payable, by a date specified in the said notice.

**Section 28. Tax audit:-** (1) The Commissioner or any other tax officer as directed by him shall undertake tax audit of the records, stock in trade and the related documents of the dealer who are

selected by the Commissioner in the manner as may be prescribed for the purpose.

Provided that the audit wing shall be delinked from tax collection wing as may be prescribed.

(2) The tax audit shall be generally taken up in the office, business premises or warehouse of the dealer.

(3) For the purpose of tax audit under sub-section (1) the Commissioner or any other tax officer directed by him shall examine the correctness of return or returns filed and admissibility of various claims including input tax credit.

#### **Section 29. Self assessment :- (1)...**

(2) Not with standing anything contained in this section, if a registered dealer has failed to furnish return or returns under sub-section (1) of section 25 in respect of any tax period or periods, the Commissioner shall proceed to make provisional assessment under section 30.

**Section 30. Provisional assessment:-** (1) Where a registered dealer fails to furnish the return in respect of any tax period within the prescribed time, the Commissioner shall, not withstanding anything contained in section proceed to assess the dealer provisionally for the period of such default.

(2) The provisional assessment under sub-section (1) shall be made on the basis of past returns, or past records, where no such returns are available, on the basis of information received by the Commissioner and the Commissioner shall direct the dealer to pay the amount of tax assessed in such manner and by such date as may be prescribed.

(3) If the dealer furnishes return along with evidence showing full payment of tax, interest and penalty, if any, on or before the date of payment specified under sub-section (2), the provisional assessment made under sub-section (1) shall stand revoked to the extent of the tax demanded, interest levied and penalty imposed, on the date on which such return is filed by the dealer.

(4) Nothing contained in this section shall prevent the Commissioner from making assessment under section 31 and any tax, interest or penalty paid against provisional assessment shall be adjusted against tax, interest and penalty payable on final assessment under that section.

#### **Section 31. Audit assessment:- (1) Where**

- (a) a registered dealer has failed to furnish any return under sub-section (1) of section 25 in respect of any period; or
- (b) a registered dealer is selected for audit assessment by the Commissioner on the basis of any criteria or on random basis; or
- (c) the Commissioner is not satisfied with the correctness of any return filed under section 24, or bonafides of any claim of exemption, deduction, concession, input tax credit or genuineness of any declaration, evidence furnished by a registered dealer in support thereof; or
- (d) the Commissioner has reasons to believe that detailed scrutiny of the case is necessary, the Commissioner may, notwithstanding the fact that the dealer may already have been provisionally assessed under section 30, serve on such dealer in the prescribed manner a notice requiring him to appear on a date and place specified therein, which may be in the business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books

of account and all evidence on which the dealer relies in support of his returns including tax invoice, if any, or to produce such evidence as specified in the notice.

- (2) The dealer shall provide all cooperation and assistance to the Commissioner to conduct the proceedings under this section at his business premises.
- (3) If proceedings under this section are to be conducted at the business premises of the dealer and it is found that the dealer or his authorized representative is not available or not functioning from such premises, the Commissioner shall assess to the best of his judgement the amount of tax due from him.
- (4) If the Commissioner, after considering all the evidences produced in course of the proceedings or collected by him, is satisfied that any dealer –
  - (a) has not furnished return in respect of any period by the prescribed date; or
  - (b) has furnished incomplete and incorrect return for any period; or
  - (c) has failed to comply with any notice under sub-section (1) or sub-section (3); or
  - (d) has failed to maintain accounts in accordance with the provisions of this Act or has not regularly followed any method of accounting; the Commissioner shall assess to the best of his judgement the amount of tax due from such dealer.
- (5) If the Commissioner is satisfied that the dealer, in order to evade or avoid payment of tax –
  - (a) has failed to furnish without reasonable cause, returns in respect of any period by the prescribed date; or
  - (b) has furnished incomplete and incorrect returns for any period; or
  - (c) has availed himself of tax credit to which he is not entitled to ;  
Or
  - (d) has followed such method of accounting which does not enable the Commissioner to assess the tax due from him, he shall, after giving the dealer reasonable opportunity of being heard, direct him to pay, in addition to tax and interest payable by him, a penalty not exceeding one and half times of the tax due but which shall not be less than 10% of that amount.

**Section 32. Assessment of dealer who fails to get himself registered :** (1) If the Commissioner, upon information which has come into his possession, is satisfied that any dealer who has been liable to pay tax under this Act, in respect of any period, has failed to get himself registered, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax due from the dealer in respect of such period and all subsequent periods and in making such assessment shall give the dealer reasonable opportunity of being heard.

(2) The Commissioner may, if he is satisfied that the default was without reasonable cause, direct that the dealer shall pay, in addition to the amount of tax so assessed, such amount as interest and penalty as prescribed in section 25.

**Section 37. Payment and Recovery of Tax, Penalty and Interest:** (1) Tax shall be paid in the manner herein provided and at such intervals as may be prescribed.

- (2) A registered dealer furnishing returns under sub-section (1) of section 24 shall pay into Government treasury, in such manner and at such interval as may be prescribed, the amount of tax due from him for the period covered under the return along with the amount of penalty or interest or both payable by him under section 24 and shall furnish a receipt from the Treasury showing the payment of such amount.
- (3) A registered dealer furnishing a revised return in accordance with the sub-section (3) of section 24, which shows that a greater amount of tax is due than was paid or payable in accordance with the original return, shall furnish along with the return a receipt showing payment of the differential amount in the manner provided in sub-section (2).
- (4) (a) The amount of tax -
  - (i) due where returns have been filed without full payment of tax due;
  - or
  - (ii) assessed under section 29, section 30 and section 31 less the sum already paid in respect of such period together with interest, if any, required to be paid and the penalty, if any, imposed to be paid under sub-section (5) of section 31 or subsection (2) of section 32.(b) the amount of penalty imposed under any provision of this Act not covered under sub-clause ii) of clause (a); or (c) any other dues under this Act.  
shall be paid by the dealer into Government Treasury by such date as specified in the demand notice.
- (5) Where a dealer fails to make payment of the tax assessed or interest levied or penalty imposed on him or any other amount due from him under this Act within thirty days of the date of service of the notice of demand, the Commissioner may, after giving the dealer reasonable opportunity of being heard, direct that such dealer shall, in addition to the amount due pay, by way of penalty, a sum equal to 2% of such amount of tax, penalty, interest or any other amount due, for every month, for the period for which payment has been delayed by him after the date on which such amount was due to be paid.
- (6) The amount that remains unpaid after the due date of payment in pursuance of the notice issued under sub-section (4) and sub-section (5) shall be recoverable as arrears of land revenue, or in accordance with the provisions contained in section 38.
- (7) Where in pursuance of sub-section (6), any proceeding for the recovery as an arrears of land revenue of any tax, penalty, interest or part thereof or any other amount remaining unpaid, have been commenced and the amount of tax, penalty, interest or any other amount is subsequently enhanced or reduced as a result of any assessment made or order passed in the appeal, revision or rectification under this Act, the Commissioner may, in such manner and within such period as may be prescribed, inform the dealer and the authority by whom or under whose order the recovery is to be made and thereupon such proceeding may be continued as if the amount of tax, penalty, interest or any other amount as modified, enhanced or reduced, had been substituted for the

tax, penalty, interest or any other amount which was to be covered under sub-section (6).

**Section 85. Delegation of Powers** - The Commissioner may, subject to such restrictions and conditions as may be prescribed, delegate, by notification in the Official Gazette, any of his powers under this Act to any person appointed under sub-section (1) of section 18 to assist him.

**Rule 8. (1) There shall be the following authorities to assist the Commissioner :-**

- (i) Additional Commissioner of Taxes,
- (ii) Joint Commissioner of Taxes, (iii) Deputy Commissioner of Taxes,
- (iv) Assistant Commissioner of Taxes.
- (v) Superintendent of Taxes,
- (vi) Inspector of Taxes.
- (vii) Any other person appointed as such by the State Government.

(2) Subject to the provisions of the Act and the Rules made there under, the Commissioner, may, by notification in the official Gazette, delegate the powers to be exercised by above classes of officers and shall specify the area of the person in respect of which powers are to be exercised by each of the above class of officers.

Provided that the power of revision conferred upon the Commissioner under Section 70 of the Act shall not be delegated.

Amendment in proviso to sub-rule (2) of Rule 8:

The existing proviso to sub-rule (2) of Rule 8 of the Tripura Value Added Tax Rules, 2005 shall be substituted by the following proviso:

"Provided that the power of revision conferred upon him under sub-section (2) of Section 70 of the Act, the Commissioner, may, by notification in the Official Gazette, and with the approval of Secretary, in-charge of Finance Department in the Government delegate the power to be exercised by any officer not below the rank of Joint Commissioner of Taxes with certain terms, and he may alter or withdraw such power delegated to any such officer(s), as it seems fit, from time to time."

**Rule 27: Notice of Demand:** The notice of demand shall be in Form-XV.

**Rule 45. Selection of dealers for audit :-**

(1) The Commissioner shall, under sub-section (I) of Section 28, of the Tripura Value Added Tax Act, 2004 select the dealers for audit.

(4) Audit of selected dealers :

(i) For the purpose of audit, an audit team may consist of the following persons:

(a) Superintendent of Taxes and Inspector of Taxes with the Superintendent of Taxes as its head;

(b) Asstt. Commissioner of Taxes, Superintendent of Taxes and Inspector of Taxes with Asstt. Commissioner of Taxes as its head;

- (c) **Deputy Commissioner of Taxes, Asstt. Commissioner of Taxes, Superintendent of Taxes and Inspector of Taxes with Deputy Commissioner of Taxes as its head;**

**Provided that the members of the Audit team shall not be entrusted with the responsibility of collection of taxes.**

**Provided further that the State Government may authorise any other Government Department, Organisation or undertaking to perform the functions of an Audit team.**

**(ii) The Audit report drawn by an audit team :-**

- (a) **headed by Superintendent of Taxes shall be scrutinized by the Asstt. Commissioner of Taxes;**
- (b) **headed by an Asstt. Commissioner of Taxes shall be scrutinized by a Deputy Commissioner of Taxes;**
- (c) **headed by a Deputy Commissioner of Taxes, shall be scrutinize by an Addl. Commissioner of Taxes;**
- (5) (i) **Person or persons who are selected by the Commissioner of Taxes in the manner prescribed in clause (i) of sub-rule (4) shall audit the records and examine the correctness of return or returns generally and admissibility of various claims, including input tax credit.**
- (iii) **The result of audit shall be communicated by the auditing authority to the assessing authority.**

**Rule 57. DELEGATION AND EXERCISE OF POWER:**

**The powers to call for returns, to make assessment, to cancel or rectify them, to impose penalty and to order maintenance of accounts shall not be delegated to any officer below the rank of Superintendent of Taxes.**

**Rule 58. The officers to whom powers may be delegated under section 85 shall exercise the powers subject to the provisions of the Act and the Rules thereunder and to such restrictions as may be imposed by the Commissioner in delegating the powers.**

**[19]** The notification dated 01.04.2006 and in continuation another notification dated 04.06.2018 both have been issued by the third respondent under Section 85 of the Act. A fair reading of Section 85 of the Act specifically indicates the commissioner may subject to the such restriction and conditions as may be prescribed, delegate, by notification in the official gazette, any of his powers under this act to any person appointed under sub-section (1) of Section 18 to assist him has not been complied with in its true letter and spirit.

**[20]** The respondents have not placed any official gazette to show that the said notifications have been gazatted as contemplated under Section 85 of the

Act. The counter affidavit is also silent about such Gazette Notification. In the absence of which, this court has no hesitation to draw an inference that the requirement under Section 85 has not been complied with. Hence, the notification under challenge is invalid.

**[21]** A fair understanding in taxation law as (a) audit (b) assessment (c) demand/recovery/collection are three different stages and are dealt by different and competent authorities under the statute. Originally under notification dated 01.04.2006, certain powers have been delegated in favour of Superintendent of Taxes. But in notification dated 04.06.2018, the powers under Section 63 are delegated to all Superintendent of Taxes posted in Tax Audit Cell. This power is enhancing the action of the authority in audit cell also as an authority under assessment and an authority for demand and collection of Taxes including imposition of Interest & penalty. It is pertinent to mention that Section 28 has not been delegated.

**[22]** The entire action involving the 5<sup>th</sup> respondent-authority for issuing the impugned notices imposing the penalty and collecting of interest are the one without jurisdiction. Under Rule 41, the audit authority shall only communicate their finding to the assessing authority. A reading of Section 28 and Rule 45 clearly indicates that role of the audit & assessment authorities under the Act are different. The powers of assessment under the statute are not vested on the audit cell. And in the absence of such, commissioner cannot delegate. The powers of commissioner under section 31 has been delegated to the Superintendent of Taxes by notification dated 01.04.2006 and also the Superintendent of Taxes posted in tax audit cell by notification dated 04.06.2018.

**[23]** It is pertinent to note that the powers delegated under notification dated 01.04.2006 upon the Superintendent of Taxes and powers delegated by notification dated 04.06.2018 upon all the Superintendent of Taxes posted in Tax Audit Cell are altogether different. As stated (supra) audit, assessment &

collection are three different functions. Collection of penalty under Section 31 (5)(d) unless it is audited and assessment is made, it cannot be construed that the Assessee is liable to pay penalty and as well as interest upon the tax amount.

**[24]** In view of the above, this court is of the opinion that the notification dated 04.06.2018 is in consonance under Section 85 of the Act and also the Superintendent of Taxes posted in Tax Audit Cell can only act as the Audit Authority and not as Assessing Authority or Collection Authority.

**[25]** In view of the above discussion, the impugned notices be treated as audit reports only and the Audit authority shall forward it to the Assessing authority for taking action in accordance with law.

**[26]** The order passed in this writ petition is confined to this writ petition only and same cannot be treated as *judgment in rem* and will not have any retrospective effect enabling other Assesseees to rely on this order.

**[27]** With the above observation this writ petition is accordingly disposed of.

**JUDGE**

**JUDGE**

