

**HIGH COURT OF TRIPURA**  
**AGARTALA**

**W.P.(C) No. 340 of 2021**

ITC Limited having its Registered & Head Office at Virginia House, 37 Jawaharlal Nehru Road, Kolkata, West Bengal 700071 and also corporate office at Virginia House, 37 Jawaharlal Nehru Road, Kolkata, West Bengal 700071 and Branch Office at ITC Limited, c/o Ratan Debnath, R.K. Nagar, Opposite Govt. Cattle Firm, West Tripura, Tripura 799008, represented by its Authorized Signatory Ashwani Kumar, Designation Assistant Manager, Finance, Address 21 Bangla School Lane, O.C. Compound, Ranchi G.P.O., Jharkhand-834001 camped at Agartala

-----Petitioner(s)

Versus

1. The State of Tripura,  
(Represented by The Secretary, Finance Department) Finance Department, Civil Secretariat, New Capital Complex, P.O. Kunjaban, Agartala, District: West Tripura, 799006
2. The Commissioner of Taxes,  
Government of Tripura, Gurkhabasti, P.N Complex, P.S Capital Complex, District West Tripura, Pin 799006
3. The Superintendent of Taxes,  
Charge-I, Agartala, Kar Bhavan, Palace Compound, P.S. East Agartala, District West Tripura

----- Respondent(s)

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For Petitioner(s) : Mr. Rohan Shah, Advocate.  
Mr. Tapas Kumar Deb, Advocate.  
Mr. Nirnoy Paul, Advocate.

For Respondent(s) : Mr. D. Bhattacharya, Government Advocate.  
Mr. K. De, Additional Government Advocate.  
Mr. S. Saha, Advocate.

Date of Judgment & Order : **4<sup>th</sup> October, 2021.**

Whether fit for reporting : NO.

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**B\_E\_F\_O\_R\_E\_**

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

**HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

**JUDGMENT & ORDER (ORAL)**

*(Akil Kureshi, CJ)*

The petitioner has challenged an order dated 26.02.2021 passed by the Superintendent of Taxes, Agartala demanding a sum of Rs.1,18,79,583/- by way of unpaid taxes with interest and penalty for the assessment year 2015-16 under Tripura Value Added Tax Act. The petitioner has also challenged an order dated 23<sup>rd</sup> March, 2021 passed by the Superintendent of Taxes rejecting the petitioners' application for rectification of the assessment order. These orders are challenged primarily on the ground of breach of principles of natural justice which are canvassed by the counsel for the petitioner in following manner:

(i) According to the petitioner, after certain hearings before the Assessing Officer, further hearing was fixed on 23.11.2020. On 23.11.2020, the representative of the petitioner company was present to advance his arguments before the Assessing Officer. However, the Assessing Officer could not conduct the hearing. Thereafter, there was no further communication or notice from the Assessing Officer to the petitioner or its representative till the order of assessment was passed on 26.02.2021. In short, the case of the petitioner is that the assessment order was passed without completing the hearing of the assessment proceedings.

(ii) Learned counsel for the petitioner contended that the Assessing Officer in the impugned order has compared the dealer's value with "office value" and the difference between two is taken as undisclosed sale value for the purpose

of demanding further taxes. Counsel submitted that this office value was gathered by the Assessing Officer behind the back of the petitioner and utilized in the order of assessment without sharing it with the petitioner.

(iii) Counsel further submitted that the Assessing Officer failed to take into account several documents on record and erroneously came to the conclusion that the petitioner had not produced the F-Form along with the return but produced only at the time of the assessment and therefore the same was considered as inter-state sale.

(iv) The Assessing Officer failed to exercise the power of rectification provided under section 74 of the TVAT Act though strong grounds were made out by the petitioner.

(v) The case of the petitioner also is that due to high number of cases of Corona in the country including in Kolkata where the Head Office of the petitioner company is situated, a request was made to the Assessing Officer for virtual hearing. The Assessing Officer, however, did not grant any such liberty.

[2] On the other hand the case of the department is that no one was present on behalf of the petitioner before the Assessing Officer in the first half of 23<sup>rd</sup> November, 2020. The Assessing Officer had other commitments in the second half and therefore the hearing could not be conducted on that day. Thereafter, several notices were sent to the petitioner for fresh dates of hearing, however, the representative of the petitioner did not participate. The Assessing Officer,

therefore, had no choice but to conclude the hearing upon which the impugned order of assessment was passed.

[3] Learned Government Advocate for the respondents submitted that the office value of the goods is nothing but the value indicated in the transportation permits granted to the petitioner for movement of the goods. Such value is very much available to the petitioner and thus the Assessing Officer has not taken into account any material which the petitioner was not in possession of. The Government counsel submitted that the Assessing Officer has passed a reasoned order. If the petitioner has any grievance about the same, it must be ventilated in appeal proceedings. In view of statutory appeal available, this court should not entertain the writ petition directing against the order of assessment.

[4] Learned Government advocate submitted that the rules framed under TVAT Act do not envisage virtual hearing of assessment proceedings. In any case the Assessing Officer has no facility for conducting the same. He had, therefore not accepted the request of the petitioner for virtual hearing.

[5] First dealing with the question of adequate hearing before the Assessing Officer passed in order of assessment, the petitioner has averred in the petition that:

“The hearing from 16.11.2020 to 18.11.2020 was recorded by the Respondent No.3 in the proceedings sheet and the same was duly signed by representatives of the Petitioner. Next date of hearing was fixed as 23.11.2020, to highlight the issues (if any) with the documents submitted and to produce further documents, if required, post scrutiny of documents submitted. The same was noted in the

proceedings sheet which were countersigned by the representatives of the Petitioner. As per the schedule, representatives of the Petitioner appeared on 23.11.2020 for the final hearing. However, the Petitioner was informed telephonically that the Respondent No.3 is not in office. Subsequently, representatives of the Petitioner visited the office of the Respondent No.3 on multiple occasions to facilitate closure of assessment for the Relevant Period. However, no final hearing was conducted.”

It was further stated that:

“The Respondent partly conducted a hearing, and, fixed a further hearing to hear the Petitioners further on factual issues. The further hearing which was fixed on 23.11.2020 was never held. Despite follow ups by the Petitioners, no further hearings were held. The Respondent thereafter passed the Impugned Assessment Order 26.02.2021. The Petitioner has been denied a full and fair opportunity of hearing. The Impugned Assessment Order 26.02.2021 is in breach of the principles of natural justice, and, is unsustainable and bad in law.”

[6] In response to these averments of the petitioner on oath, the respondents in the reply have stated as under:

“9. That the dealers failed to appear before the concerned Superintendent by forenoon of 23.11.2020, after which, the concerned Superintendent of Taxes had to go out with the Inspectors of Taxes for market survey as part of routine office work under GST and P. Tax Acts.

10. That, with regard to statements made in para 6 of the Writ Petition, I say that, the dealer has been called several times vide Notice in FORM XXXV which have been served by post. The copies of the notices and the stamp registered have been attached here for your kind perusal.

The dealer submitted statements of C-Forms, F-forma procured by them, Sales register, etc. vide E-mail dated 16.11.2021 from the e-mail address namely raticol@gmail.com, which were to be checked and status was to be discussed and if any discrepancy were found, it easy to be communicated to the dealer during hearing fixed on 23.11.2020.

However, as the dealer failed to appear during forenoon of 23.11.2020, the hearing could not take place as the assessing authority had to go out for routine office work, the report of the inspection has been attached here for your kind perusal.”

[7] In the rejoinder, the petitioner has reiterated that the scheduled hearing did not take place on 23.11.2020 and thereafter despite follow up by the petitioner no further hearing was held. With respect to the service of notices of hearing the petitioner has stated as under:

“That so-called further hearing notices were sent is averred by the Department but there is no evidence produced that these were served upon the Petitioners.”

And thereafter as under:

“Petitioner was in receipt of the Notice No. 745 dated 30.09.2020 and Notice No.: 855 dated 19.10.2020 only to which specific replies were filed and hearings between 16.11.2020 & 18.11.2020 were attended. However, the Petitioner is not in receipt of specified notice(s), other than those captured above, including Show Cause Notice dated 05.02.2021. Further, copy of such notices along with proof of dispatch has not been shared as part of the Counter Affidavit. The Petitioner first became aware of existence of such notice(s) on receipt of proceeding sheet in response to RTI application. Copies of such notices along with proof of dispatch were not even shared in response to the RTI application.”

[8] To put it simply, according to the petitioner, though its representative was present before the Assessing Officer on 23.11.2020 the hearing did not proceed. The Assessing Officer has not denied this. He has only stated that in the first half of the date no one had remained present and in the second half he had some other commitments. In any case the Assessing Officer did not conclude the proceedings on 23.11.2020. Thereafter, though the Assessing

Officer has contended that several notices were sent to the petitioner, there is no evidence of service of any of them. The petitioner has gone on affidavit stating that no such notice was received by the petitioner after 23.11.2020. Even, otherwise, it is difficult to believe that a company which was duly represented by the legal representative virtually on all previous hearing dates would suddenly abandon the assessment proceedings and incur the risk of substantial ex-parte liability arising against it. We wonder why the Assessing Officer did not use the electronic mode of communication of the hearing dates. Whether the rules envisage or not, nothing stops the Assessing Officer from dispatching a copy of the notice of hearing through official E-mail address of the assessee company. Be that as it may, in facts of the present case in our opinion the assessee deserves an opportunity of making further arguments before the Assessing Officer. This is additionally so, since one of the grounds raised by the petitioner is that several documents of duty paid were already on record which the Assessing Officer has ignored, possibly because the representative of the petitioner was not present at the last date of hearing to clarify these aspects.

[9] It is well known through series of judgments of the Supreme Court that where there is clear breach of principles of natural justice, availability of alternative remedy would not prevent the High Court from exercising this jurisdiction. Before closing however, we may clarify one aspect. As noted, the case of the department appears to be that office value is nothing but the value of the goods indicated in the transport permit granted from time to time. If that be so, surely the petitioner cannot claim surprise about the contents of such permits

granted by the department. However, if the department wishes to rely upon any other documents or material which is not within the knowledge or possession of the petitioner, the principles of natural justice require that the same must be provided to the petitioner before it can be used against it.

[10] We cannot appreciate the stand of the department that even during the time when the Corona Virus was at its peak, the administrative and legal representatives of the assessee company must appear before the Assessing Officer physically for conducting the hearings. Across the country courts at different levels not only High Court and Supreme Court but several District Courts also have operated virtually for months on end disposing of large number of contested cases. In a given case if the Head Office of the assessee company is located outside the state, insistence on personal appearance would require several people to travel long distances exposing them as well as others to cross infections. There were times when severe restrictions on inter-state movements particularly originating from the states which were recording high number of Corona cases were imposed. Insisting on personal hearing would either expose the representatives to catching infection or force the Assessing Officer to adjourn the hearings resulting into delays.

[11] In a given case, we will examine the provisions under the relevant statute more closely and will also take into account the view point of the administration in resisting such virtual hearings. In the present case, however, in the interest of justice we would permit such virtual hearing. This is so for the

reason that the petitioner is a company whose Head Office is registered at Kolkata. Its representatives such as accountants and legal representatives would have to travel long distances to appear before the Assessing Officer and it is not certain that such hearing could be concluded in one day.

[12] When we are quashing the very order of assessment on the ground of inadequate hearing, it is not necessary to examine the legality of the order passed by the Assessing Officer on rectification application.

[13] In the result, impugned order dated 26.02.2021 is set aside. Resultantly, the order rejecting the petitioner's application for rectification does not survive. The assessment proceedings are revived and restored to file of the Assessing Officer. To avoid any confusion regarding intimation of the date of next hearing, it is provided that such hearing shall take place before the Assessing Officer on 8<sup>th</sup> November, 2021 at 11 am if so convenient to the Assessing Officer, failing which he may fix any other time of the day. Such hearing shall take place through virtual mode. The representative of the petitioner shall create a link for such hearing on any of the recognized platforms and communicate the same to the Assessing Officer at least the previous day. The petitioner shall not ask for adjournment of the hearing. If, however, the Assessing Officer requires the hearing to take place on some other day in addition to the hearing of 8<sup>th</sup> November, 2021 it would be open for him to do the same so however, that the subsequent hearing shall also take place virtually in the same manner provided above. The assessment shall be framed afresh latest by 28<sup>th</sup> February, 2022. As

long as it is done within such time, there shall be no question of limitation in framing the assessment and the petitioner shall not be able to challenge the same as time barred assessment. It is clarified that we have focused only on the effective hearing being granted to the petitioner. Now that the assessment is set aside, the fresh assessment shall be made after hearing the petitioner. All contentions of the petitioner are kept open.

Petition disposed of accordingly. Pending application(s), if any, shall also stand disposed of.

**(S.G. CHATTOPADHYAY), J**

**(AKIL KURESHI), CJ**



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