HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) 694/2021

SL Automobiles Private Limited, A company incorporated under the provisions of the Companies Act, 1956 having its registered office at Reshambagan, Khayerpur, Assam-Agartala Road, Agartala, West Tripura-799008 and in the present proceedings represented by Sri Manish Agarwal, the Managing Director of the petitioner company.

---- Petitioner

Versus

1. The State of Tripura, represented by the Chief Secretary, Government of Tripura, Agartala, New Civil Secretariat, P.O. 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, P.O. Kunjaban, P.S. New Capital complex (NCC), District- West Tripura, Pin- 799006.

3. The Commissioner of Taxes & Excise, Government of Tripura, 3rd Floor, Khadya Bhawan, P.N. Complex, Gurkhabasti, Agartala, District- West Tripura, Pin-799006.

4. The Superintendent of State Taxes, Agartala, Agartala Enforcement Wing-I, Agartala, Tripura (West), 799001.

5. The Additional Commissioner of State Taxes, Government of Tripura, Khadya Bhawan, P.N. Complex, Gurkhabasti, Agartala, District- West Tripura, Pin- 799006.

----Respondents

For Petitioner(s)	:	Dr. Ashok Saraf, Sr. Advocate Mr. P. Baruah, Advocate Mr. Kousik Roy, Advocate
For Respondent(s)	:	Mr. K. Dey, Additional GA
Date of hearing and delivery of Judgment & Order	:	**14.03.2023**
Whether fit for reporting	:	**Yes / No**

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH
Judgment & Order (Oral)

14/03/2023
(T. Amarnath Goud, ACJ)

Heard Mr. Ashok Saraf, learned senior counsel assisted by Mr. P. Baruah, learned counsel and Mr. Kousik Roy, learned counsel appearing for the petitioner as well as Mr. K. Dey, learned Additional GA, appearing on behalf of the respondents.

2. By means of filing this writ petition, the petitioner has challenged the "authorization for inspection and search" dated 25.06.2021 issued by the Additional Commissioner of State Taxes, Tripura, respondent no. 5, herein as well as subsequent order of seizure and order of prohibition, dated 25.06.2221 issued by the Superintendent of State Taxes, Agartala, Enforcement Wing-I, Agartala, respondent no. 4 herein, and also challenged the "intimation of tax ascertained as being payable" dated 25.08.2021, issued by the Superintendent of State Taxes, respondent no. 4 herein, advising the petitioner to pay an amount of Rs. 1,28,37,517/- on account of tax as ascertained alongwith applicable interest and penalty.

3. Briefly stated, the petitioner is a dealer of Honda motorcars having its head office at Guwahati and a branch office at Agartala. Upon an order placed by a local customer for delivery of the car, the petitioner sent the vehicle from Guwahati to Agartala by way of a branch transfer but upon payment of full IGST. The State GST authorities, however, hold the belief that not IGST but CGST and SGST were payable since this is an incident of local sale. Under a memo dated 25.06.2021 (Annexure V and VI to this writ petition), the Superintendent of State Tax seized the three motorcars which were lying in the showroom of the petitioner at Agartala. The Superintendent of State Tax, on 25.08.2021 (Annexure XIII to this writ petition) issued a notice under Section 74(1) of the CGST Act and passed an intimation/order asking the petitioner to pay a sum of Rs.1,28,37,517/- by way of unpaid CGST and SGST with interest and penalty. These orders of attachment and assessment the petitioner has challenged in this petition.

4. During arguments, Dr. Saraf, learned senior counsel appearing for the petitioner has argued that the case of the petitioner is of inter-state sale and the petitioner was bound only to pay IGST from which the State would receive its share or revenue. Learned senior counsel has also argued that there cannot be double taxation. Learned senior counsel has further submitted that seizing of the vehicles of the petitioner and directing him to may payment of Rs. 1,28,37,517/- alongwith interest and penalty is wholly illegal and without jurisdiction. Lastly, learned senior counsel has urged this court to set-aside the memo dated 25.06.2021 (Annexure V and VI to this writ petition), and also to set-aside the notice dated 25.08.2021 (Annexure XIII to this writ petition).

5. Learned Additional GA has submitted that the memo dated 25.06.2021 and the notice dated 25.08.2021 passed by the respondents no. 5 and 4 respectively, are not illegal and the same had been passed within the ambit of law since the petitioner had not discharged his actual tax liability in filing Returns. Learned Additional GA has also submitted that the representative of the petitioner failed to produce any valid document regarding the mode of business operation of the petitioner. Learned Additional GA has further submitted that without final outcome of the proceeding initiated by the respondent no. 4, the petitioner has filed the instant writ petition, and accordingly, the instant writ petition is at its premature stage.

6. Considered the submission of learned counsel appearing for the parties. We have also perused the record.

7. Annexure XIII to this writ petition is intimation of tax ascertained as being payable under Section 73(5)/74(5) whereby the respondent no. 4 had advised the petitioner to pay the amount of tax as ascertained alongwith amount of applicable interest and penalty and requested the petitioner to file any submission if he desire against the said ascertainment in Part B of this Form within 21.09.2021. The said Annexure XIII which is Form GST DRC-01A is reproduced here-in-below:

"FORM GST DRC-01A

Intimation of tax ascertained as being payable under Section 73(5)/74(5)

[See Rule 142(1A)]

Part A

No. F.12/TAX/ST/GSTIN-16AAWCS7754G1ZM/AGT/ENFW/479 Date: 25/08/2021

Case ID No.:

To,

GSTIN-16AAWCS7754G1ZM

Name: S L AUTOMOBILES PRIVATE LIMITED

Address: Resham Bagan, Khayerpur, West Tripura, Pin. 799008

Sub: ***Case Proceeding Reference No. F.12/TAX/ST/GSTIN-16AAWCS7754G1ZM/ AGT/ ENFW/ 468, Dated 06-08-2021- Intimation of liability under Section 74(5)-reg.***

Please refer to the above proceedings. In this regard, the amount of tax/interest/penalty payable by you under Section 74(5) with reference to the said case as ascertained by the undersigned in terms of the available information as is given below:

Act	Period	Tax			
CGST Act	2018-19	Rs. 10,14,120.67			
	2019-20	Rs. 43,13,870.57			
	2020-21	Rs. 9,48,577.34			
	2021-22	Rs. 1,30,438.20			
SGST/UTGST Act	2018-19	Rs. 10,14,120.67			
	2019-20	Rs. 43,13,870.57			
	2020-21	Rs. 9,48,577.34			
	2021-22	Rs. 1,30,438.20			
IGST Act	---	---			
Cess	2019-20	Rs. 23,503.87			
Total		Rs. 1,28,37,517.43			

The grounds and quantification are attached/given below:

REASONS FOR ASCERTAINING THE TAX AND OTHER AXXOCIATED DUES ARE ATTACHED HEREWITH:

You are hereby advised to pay the amount of tax as ascertained above alongwith the amount of applicable interest and penalty under section 74(5) by 21/09/2021 failing which Show Cause Notice will be issued under Section 74(1).

In case you wish to file any submissions against the above ascertainment, the same may be furnished by 21/09/2021 in PART B of this Form."

8. Annexure XIII, dated 25.08.2021, which is under challenge in this writ petition, clearly shows that if the petitioner fails to submit any response/reply to the liability intimated under Section 73(5) of the Act to this writ petition in Part-B within the time stipulated, in that case, Show-Cause notice will be issued against the petitioner. Thus, it is aptly clear that Annexure XII (dated 25.08.2021) is not a show-cause notice, which the petitioner prays to quash in this writ petition. Moreover, the proceeding initiated by the respondent no. 4 against the petitioner is pending and without any outcome of the proceeding, the petitioner had approached this court.

9. In view of the above submission and the records in its entirety, this court feels that the present writ petition which is filed by the petitioner is at the pre-mature stage, and accordingly, the same is dismissed giving liberty to the petitioner to approach the appropriate forum. The petitioner has expressed that the petitioner has already paid the taxes, and he is not liable to pay any further tax and with regard to the consideration, the tax authorities have not considered in its entirety. In this regard, the petitioner expresses that the demand made for Rs. 1,28,37,517.43 is not payable, and in that event if he prefers an appeal under the statute, 50% of the same needs to be paid which could again burden the petitioner. Having concerned to the submission made by the petitioner, this court makes it open to the petitioner to file an appropriate application seeking dispensing of the same, and if such an application is filed, it is open for the revisional authority to consider the case of the petitioner in accordance with law.

10. In the circumstances aforesaid we hold that the writ petition is premature and not maintainable, and therefore, stands dismissed.

Pending application(s), if any, also stands disposed.

JUDGE **CHIEF JUSTICE (ACTING)**

Saikat