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

**WP(C) No.36 of 2025**

M/s North East Carrying Corporation Ltd. (NECC), TRN No.16010004, having its registered office at B.K. Road, North Banamalipur, Agartala, West Tripura, being represented by its authorized representative: Sri Suman Prakash (Branch Manager of Agartala)

.....Petitioner(s);

Versus

1. The State of Tripura represented by the Secretary of Finance, New Secretariat Complex, PO- Secretariat Office Rd, 79 Tilla, Agartala, West Tripura-799010

2. The Commissioner of Taxes, Govt. of Tripura, 3rd Floor, Khadya Bhavan, P.N. Complex, Gurkhabasti, Agartala, West Tripura

3. The Superintendent of Taxes, Charge-I, Govt. of Tripura, Kar Bhavan, Palace Compound, Agartala, West Tripura

.....Respondent(s)

**along with**

**W.P.(C) No.37 of 2025**

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.....Respondent(s)

| | |
|---|---|
| For Petitioner(s) | : Mr. Bibhal Nandi Majumder, Sr. Advocate,<br>Mr. Dhruba Jyoti Saha, Advocate,<br>Mr. Samrat Sarkar, Advocate. |
| For Respondent(s) | : Mr. Pradyumna Gautam, Sr. G.A. |

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO**
**HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

| | |
|---|---|
| Date of hearing | : **29.10.2025** |
| Date of Judgment & Order | : **25.11.2025** |
| Whether Fit for Reporting | : **YES** |

**JUDGMENT & ORDER**

***(M.S. Ramachandra Rao, C.J.)***

**The background facts**

1) The Petitioner is a Company registered under the Companies Act, 1956 having its registered office at Agartala.

2) On 23.07.2013, when the Tripura Value Added Tax Act, 2004 [for short 'the TVAT Act'] was in operation, petitioner was registered (Vide Annexure 1 in W.P.(C) No.37 of 2025) under the said statute as a taxable *transport agent* (hereinafter referred to as 'transporter') under Section 22 of the TVAT Act, and also the Tripura Value Added Tax Rules, 2005 [TVAT Rules, 2005] made thereunder.

3) To secure such registration, the petitioner had deposited on 12.7.2013 an amount of Rs.12,00,000/- as security deposit with respondent No.3 in view of sub-section (4) of Section 22 of the TVAT Act, 2004 (vide Annexure 1 in W.P.(C) No.37 of 2025).

4) The TVAT Act was repealed when the Tripura State Goods and Services Tax Act, 2017 [TSGST Act, 2017] was enacted with effect from 01.07.2017 as per notification dt. 29.06.2017 issued by the Government of Tripura, Finance Department (Taxes & Excise).

5) Under Section 174 of the TSGST Act, 2017, except in respect of goods included in the Entry 54 of List II of Seventh Schedule to the Constitution, the TVAT Act, 2004 was repealed w.e.f. 01.07.2017. The said entry deals with only five petroleum products and alcohol for human consumption.

6) Believing that after the coming into force of the TSGST Act, 2017 w.e.f. 01.07.2017, the provisions of the TVAT Act, 2004 are no longer applicable and the security deposit is not necessary to be given to the GST authorities and so it cannot be retained by the respondents, petitioner filed an application dt. 05.04.2023 (Annexure 2 in W.P.(C) No.37 of 2025) before the Superintendent of Taxes, Charge-I, Tripura, Agartala (respondent No.3) seeking refund of the said amount.

7) The respondent No.3 issued 7 show cause notices under Section 77 of the repealed TVAT Act, 2004 on 04.07.2023, 14.07.2023 and 18.07.2023 proposing to impose penalty for the period of September, 2013 to March, 2014. It was alleged in these notices that the petitioner had given delivery of taxable consignments against consignment notes in those financial years against which no valid delivery permits were found from the consignee(s), and petitioner should show cause why penalty under Section 77 of the TVAT Act, 2004 be not imposed on it.

8) Petitioner appeared before the respondent No.3 and filed replies dt. 20.07.2023 and 07.08.2023 (Annexure-4 in W.P.(C) No.37 of 2025) stating *inter alia* that as per Section 33 of the TVAT Act, 2004, no assessment can be made after expiry of 5 years; as per Rule 21(8) of the TVAT Rules, 2005, a dealer is required to keep documents in regard to a particular year for a maximum period of five years from that particular year only to which they relate; and a transporter cannot be expected to keep documents for an indefinite period. Petitioner requested for withdrawal of the notices and refund of the security deposit at the earliest.

9) On 08.01.2024 (Annexure-5 in W.P.(C) No.37 of 2025) another notice was issued by respondent No.3 stating that Section 33 of the TVAT Act, 2004 was not applicable to petitioner, and petitioner should appear with documents before the respondent No.3.

10) Petitioner appeared and reiterated the same stand taken by it earlier.

11) On 18.03.2024, the respondent No.3 passed 7 impugned orders (Annexure-6 in W.P.(C) No.37 of 2025) under Section 77 of the TVAT Act, 2004 imposing tax and also a penalty of 150% for the months of September, 2013 to March, 2014. The details of period, tax and penalty imposed on petitioner in these orders is as under:

| **PERIOD** | **TAX LEVIED** | **PENALTY LEVIED** |
|---|---|---|
| SEPTEMBER, 2013 | Rs.29,823/-<br>Rs.3568/- | Rs.44,735/-<br>Rs.5351/- |
| OCTOBER, 2013 | Rs.1,51,070/- | Rs.2,26,605/- |
| NOVEMBER, 2013 | Rs.58,031/-<br>Rs.26,103/- | Rs.87,046/-<br>Rs.39,155/- |
| DECEMBER, 2013 | Rs.23,409/-<br>Rs.3,627/- | Rs.35,114/-<br>Rs.5,440/- |
| JANUARY, 2014 | Rs.70,355/-<br>Rs.77,826/- | Rs.1,05,533/-<br>Rs.1,16,739/- |
| FEBRUARY, 2014 | Rs.887/-<br>Rs.54,390/- | Rs.1331/-<br>Rs.81,585/- |
| MARCH, 2014 | Rs.24,243/-<br>Rs.2424/- | Rs.36,365/-<br>Rs.3636/- |

12) The petitioner then filed rectification petitions (Annexure-7 in W.P.(C) No.37 of 2025) on 14.05.2024 under Section 74 of the TVAT Act against all the impugned orders imposing tax and penalty contending that assessment is barred beyond 5 years from the corresponding assessment year under Section 33 of the said Act placing reliance on a Division bench decision of this Court in ***T.R. Freight Movers v. State of Tripura and others***[1].

13) On 01.08.2024 (Annexure-8 in W.P.(C) No.37 of 2025) the respondent No.3 rejected the said applications for rectification stating that under Section 69 of the TVAT Act, 2004 (Rule 22 of the TVAT Rules, 2005) and under Section 70(2) of the TVAT Act, 2004 (rule 24 of the TVAT Rules, 2005), there is no power vested upon the said respondent to rectify any order issued or quash any order under Section 77 of the TVAT Act, 2004.

14) All the show cause notices and the order dt. 18.03.2024 and order dt. 01.08.2024 were challenged by petitioner in W.P.(C) No.37 of 2025.

15) Thereafter, the respondent No.3 got served on the petitioner show cause notices dt. 02.08.2024 proposing to impose penalty under Section 77 of the repealed TVAT Act, 2004 on petitioner for the financial years 2014-15, 2015-16, 2016-17 and 2017-18 respectively (Annexure-3 in W.P.(C) No.36 of 2025).

16) It was alleged in these notices that the petitioner had given delivery of taxable consignments in those financial years without any valid delivery permits found from the consignees. It was asked to appear on

[1] W.P.(C) No. 42 of 2005 dt. 30.03.2011 (Agartala Bench of Gauhati High Court ) (DB)

02.09.2024 to show cause why penal action shall not be taken under Section 77 of the Act.

17) In W.P.(C) No.36 of 2025, petitioner has sought for quashing of the show cause notices issued under Section 77 of the TVAT Act, 2004 for the years 2014-15, 2015-16, 2016-17 and 2017-18 issued by the respondent No.3, and sought for refund of the security deposit of Rs.12,00,000/- deposited with the respondents in July, 2013.

**Consideration by the Court**

18) Section 77 of the TVAT Act, 2004 invoked by the respondents against the petitioner states**:**

> ***"****77.* ***Penalty payable by the transporters*** *:*
>
> *(1) If the Commissioner is satisfied that any transporter has delivered taxable goods to any person without obtaining from the dealer, copy of the valid permit or has concealed the actual particulars of the consignment transported by him, the Commissioner may direct that such transporter shall pay, in addition to tax, by way of penalty, a sum which may extend to one hundred and fifty percent of the tax involved.*
>
> *(2) No order under sub-section (1) shall be made unless the transporter 73 has been heard or has been given reasonable opportunity of being heard."*
>
> *(emphasis supplied)*

19) The petitioner's counsel relied on the decision of a Division Bench of the Gauhati High Court, Agartala Bench in ***T.R. Freight Movers (1 supra).***

***T.R. Freight Movers ( 1 supra).***

20) In that case**,** the Division Bench of the Gauhati High Court had held that under Section 77, a transporter has been made liable to pay, on non-fulfilment of obligations, '*in addition to tax*', by way of *penalty*, a sum, which may extend to 150% of the *tax involved*.

21) The Bench held that a transporter had been held liable to pay 'tax', i.e., 'tax payable', which means that there must be an assessment of tax at the hands of the dealer, because the transporter does not fall within the definition of dealer as embodied in the TVAT Act, 2004; that there is no mechanism provided in the said Act for assessment of tax, which a transporter helps to evade; so the liability to pay tax imposed on a transporter by Section 77 of the Act is constitutionally impermissible.

22) It held that the TVAT Act, 2004 was enacted under Entry 54 of List II of Seventh Schedule to the Constitution, that tax under the Act can only be levied on 'taxable turnover of the goods'; and in exercise of such powers, 'tax' cannot be imposed on the transporter, which the dealer is, otherwise required to pay.

23) It declared that, in the absence of a deeming provision that if a transporter delivers to any dealer or any person goods without obtaining from him a copy of the valid permit or if the transporter conceals the actual particulars of the consignment transported by him, the goods in question, so transported by the transporter, shall be deemed to have been sold by the transporter within the State of Tripura, Section 77 providing for the realization of 'tax' from the transporters, is beyond legislative competence of the State legislature.

24) It however held that Section 77 of the TVAT Act, 2004 in so far as it permits imposition of penalty, is *intra vires* Entry 54 of List II of Seventh Schedule to the Constitution because it operates in aid to the main charging section. To check evasion of tax, it had been made. The penalty provision has an intimate nexus with evasion of tax by the dealers, whose goods are carried by the transporter and for whose failure to procure the road permits and furnish correct information, evasion of tax takes place.

25) However, it laid down guidelines for levying penalty under Section 77 of the Act can be imposed on a transporter.

26) The Bench clarified that imposition of penalty is different than that of determination of the liability to pay tax under the charging section. The interpretation applied to charging section cannot, thus be applied mechanically, while interpreting a 'penalty' provision. Both the provisions i.e., penalty and charging have different objects to achieve and consequences to follow.

27) It declared that as per the decision of the Supreme Court in ***Hindustan steels Ltd vs. State of Orissa***[2]**,** ordinarily, penalty will not be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation; that imposition of penalty is not mandatory or compulsory; and it is only on the satisfaction arrived at by the Commissioner that the transporter had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation that penalty can be imposed. It held that discretion has been given

[2] (1970) 25 STC 211 (SC)

under Section 77 of the Act to impose or not to impose penalty, by use of the word 'may' in Section 77.

28) It has been pointed out to us that the State of Tripura had filed appeals (C.A No.1212 of 2018) under Art.136 of the Constitution of India in the Supreme Court of India which is pending in that Court, but no stay was obtained by them of the judgment in ***T.R. Freight Movers (1 supra).***

29) The said decision was also followed by another Division Bench of the Tripura High Court in ***M/s. M.S. Freight Carriers (India) Private Limited v. State of Tripura and others***[3]**.**

30) Thus the respondents are bound by the said decision in ***T.R. Freight Movers (1 supra)*** and ***M/s. M.S. Freight Carriers (India) Private Limited (3 supra)*** as its operation has not been stayed by the Supreme Court till date and they cannot deviate from it.

31) A reading of the orders dt. 18.03.2024 passed by respondent No.3 shows that the decision in ***T.R. Freight Movers (1 supra)*** has been violated by the said official in the following manner:

(a) tax has been imposed on the petitioner for the period from September, 2013 to March 2014 which is impermissible as per the said judgment; and

(b) penalty of 150% was imposed mechanically without determining, whether in the facts and circumstances of the case, petitioner's conduct warrants such imposition of 150% of penalty i.e., whether petitioner had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.

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[3] Common Judgment dt.23.6.2014 in W.P.(C) No.2,6 and 10 of 2007 (DB)

32) For the period September, 2013 – March, 2014, the show cause notices had been issued on 04.07.2023, 14.07.2023 and 18.07.2023 i.e., with delay of more than 9 years from the dates of alleged violation by petitioner.

33) For the period 2014-18, the show cause notices were issued on 02.08.2024 i.e., with 9-6 years delay from the dates of alleged violation by petitioner.

34) All the above show cause notices had been admittedly issued only after the petitioner had sought refund of the security deposit from the respondent No.3 by its application dt. 05.04.2023.

35) Section 33 of the TVAT Act, 2004 states:

> *"**Section 33**. No assessment after five years :-*
>
> *(1) No assessment under section 31 and 32 shall be made after the expiry of five years from the end of the tax period to which the assessment relates;*
>
> *Provided that in case of offence under this Act for which proceeding for prosecution has been initiated, the limitation as specified in this sub section shall not apply.*
>
> *(2) Any assessment made or penalty imposed under this Chapter shall be without prejudice to prosecution for any offence under this Act."*

36) Rule 21 of the TVAT Rules, 2005 states**:**

> **"Rule 21.**
>
> *(1) to (7)……*
>
> *(8) Period of preservation of accounts, books of accounts, registers by dealers :*
>
> *(a) The accounts, books of accounts, registers, documents of the dealer including computerized or electronic accounts maintained on any computer or electronic media, counter foils of all statutory forms obtained and used by the dealer,*

> *documents, invoices, cash memos in respect of purchases, sales, delivery of goods by a dealer, or vouchers in respect of any year or part thereof shall be preserved by him for a period of not less then five years after the expiry of the year to which they relate, or till such period as these may be required for final disposal of any appeal, review, revision or reference under the Act or for final disposal of any case pending before any Court or Tribunal in respect of such year or part thereof, whichever is later."*
>
> *( emphasis supplied)*

37) It is true that no period of limitation is prescribed in the TVAT Act, 2004 for issuing show cause notices proposing to impose penalty under Section 77 of the said Act. So such power has to be exercised within a reasonable time.

38) In ***SEBI v. Sunil Krishna Khaitan***[4]**,** while interpreting the powers of the Securities Exchange Board of India under Sections 15-H and 15-I of the Securities Exchange Board of India Act, 1992 and regulation 44 and 45 of SEBI (Substantial acquisition of Shares and Takeovers) Regulations, 1997 where there was a delay of 5 years in initiating proceedings for levy of penalty, the Supreme Court held that proceedings have to be initiated within a reasonable time. It declared:

> *"93. .... In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast rules can be laid*

[4] (2023) 2 SCC 643, at page 696

> *down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty of the authority/officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time*[5]*. This prevents miscarriage of justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment."*
>
> *(emphasis supplied)*

39) When the TVAT Rules, 2005 require a 'dealer' to *preserve* records and documents in Rule 21(8) only for a period of 5 years after expiry of the year to which they relate, and also *bars* under Section 33 of the TVAT Act, 2004, any assessment of tax on a 'dealer' beyond 5 years from the end of the tax period to which the assessment relates, a transporter, who is not a dealer, and who merely helps in transport of goods sold by a dealer, cannot be put in a worse position than a dealer. So the respondents cannot propose imposition of penalty under Section 77 long after the said period of 5 years expired on a transporter like the petitioner. Such an exercise of power is contrary to the intention of the legislature and cannot be countenanced.

[5] (2007) 11 SCC 363, 1995 Supp 3 SCC 249 para 16, (1989) 3 SCC 483 para 6, (1984) 1 SCC 125 and (1969) 2 SCC 187

40) In the instant case, on the pretext that no period of limitation is indicated in Section 77 of the Act, the power under the said provision could not have been invoked after a long passage of time, in 2023 as in this case, (long after the alleged delivery of goods between 2013-18), that too only after petitioner sought refund of the security deposit given by it in April, 2023. There cannot be hung over a citizen/assessee a perpetual sword of penalty invocable at the whim and caprice of the respondents without reference to the nature of transactions being undertaken by it. Thus the action of the respondent No.3 is malafide.

41) We also see no merit in reliance by respondents on Section 43 of the TVAT Act, 2004 and Rule 35 of the TVAT Rules, 2005 laying down certain conditions for seeking refund of tax to deny the claim of petitioner for refund of security deposit.

42) This is because, both these provisions relate to refund of 'tax', and not to refund of 'security deposit', and the period of limitation if any prescribed in either of them for seeking refund of 'tax', cannot be made applicable to the instant case which relates to refund of 'security deposit'.

43) Admittedly, for securing registration under the TSGST Act, 2017, no security deposit is required for a 'transporter' to be given to the respondents. No such provision has been brought to our notice. So the petitioner cannot be compelled to leave the security deposit with the respondents when they have no power to retain it under the GST regime. They are therefore bound to refund it to petitioner.

44) For the aforesaid reasons, we hold that the action of the respondents in issuing show cause notices in 2023 from September, 2013 to

2018 and passing orders on 18.03.2024 adverse to petitioner for period September, 2013 to March, 2014 is arbitrary, illegal, without jurisdiction, malafide and also violative of Art.14, 265 of the Constitution of India.

45) Accordingly, both the Writ Petitions are allowed; show-cause notices issued by the respondent No.3 under Section 77 of the TVAT Act, 2004 for the years 2014-15 to 2017-18 are all quashed; the orders dt. 18.03.2024 passed by the respondent No.3 for the period September, 2013 to March, 2014 are also quashed for the same reason. The respondents are directed to refund Rs.12,00,000/- (rupees twelve lakhs only) deposited by the petitioner as security deposit for registration as a transporter under the TVAT Act, 2004 with interest @ 7% per annum from 05.04.2023 till the date of payment. The respondent No.3 shall also pay costs of Rs.20,000/- (Rupees Twenty thousand only) to the petitioner within eight weeks.

46) All pending applications shall stand disposed of.

**(S. DATTA PURKAYASTHA, J)** **(M.S. RAMACHANDRA RAO, CJ)**

Pijush/