

**HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.535 of 2021**

M/s Godrej & Boyce Manufacturing Company Limited

.....Petitioner(s)

Versus

The State of Tripura and Others

.....Respondent(s)

For Petitioner(s)	:	Ms. Nitu Hawelia, Adv. Ms. M.L. Gope, Adv. Ms. H. Jain, Adv. Ms. S. Chakraborty, Adv.
For Respondent(s)	:	Mr. S.S. Dey, Advocate General. Mr. D. Bhattacharya, G.A. Mr. K. De, Addl. G.A. Ms. A. Chakraborty, Adv.
Date of Hearing of Judgment & Order	:	10.01.2023
Whether fit for reporting	:	YES/NO

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order

[Hon'ble The Chief Justice [Acting]]

Heard Ms. Nitu Hawelia and Ms. Medha Lila Gope, learned counsel assisted by Ms. Simita Chakraborty learned counsel appearing for the petitioner. Also heard Mr. S.S. Dey, learned Advocate General assisted by Mr. K. De, learned Addl. G.A. appearing for the Respondents.

2. The petitioner has filed the instant petition challenging the impugned orders of assessment and demand notice dated 26.03.2021 for the

assessment years 2015-16, 2016-17 and 2017-18 (Annexure VII) under the Tripura Value Added Tax Act, 2004.

3. The petitioner is a dealer dealing in Electrical goods, Electronic goods, furniture and parts, Floor covering, kitchenware, Marble & Articles of Marble, Mosaic tiles, Chips & Powder Plywood, Veneer Plywood, Paints, Lacquers, Polishes, Enamels, Colours, Varnishes, Primers of all kinds, Air Conditioning plants, Air Conditioner parts & accessories in the State of Tripura. The petitioner also deals in parts and accessories. For the assessment years 2015-16 to 2017-18, the petitioner has filed his return of turnover in the State of Tripura along with all papers and documents. Thereafter there was no notice from the respondent state tax department and the petitioner for all intent and purpose was sure that the returns for the said years have been accepted along with papers and documents. However, all on a sudden, during the COVID period the respondent issued a show cause notice dated 24.09.2020 is suppression of previous notice issued under Section 31 of the Tripura Value Added Tax Act, 2004 on the ground that the petitioner was selected for audit assessment.

4. The petitioner has filed a reply dated 06.10.2020 along with photocopies of the documents. However the Respondent No.3 was not satisfied with the same and on the basis of suspicion and surmises, asked the petitioner to produce the original invoices. Since it was COVID period, the petitioner asked for four months time to bring and produce the original invoices which were at Mumbai and was badly hit by COVID. However, the respondent No. 3 without waiting for the invoices vide the assessment orders dated 26.03.2021,

a demand notice was passed and order of assessment for the assessment years 2015-16 to 2017-18 issued notices of demand for the said years.

5. The petitioner have challenged the impugned orders of assessment dated 26.03.2021 for the assessment years 2015-16 to 2017-18 under the Tripura Value Added Tax Act, 2004 on the ground that all reasonable opportunities of hearing were granted to the petitioner before passing of the said assessment order. The petitioner therefore prayed for setting aside the impugned orders of assessment and notice of demand dated 26.03.2021 for the assessment years 2015-16 to 2017-18.

6. Ms. Nitu Hawelia, learned counsel appearing for the petitioner has contended that sufficient opportunity have not been given. Providing of opportunity must be real and effective to term the said opportunity as reasonable opportunity of being heard. The opportunity should not merely be on papers, but must actually be provided to the dealers. It was further argued by the learned counsel that taxing laws are to be interpreted very strictly. There is no intendment as to taxation, nothing is to be read and nothing is to be left out. The word in taxing statutes are interpreted with full meaning given to each and every word of the statute. In the instant case when the legislatures have used the word "reasonable opportunity of hearing" under Section 31 of the Tripura Value Added Tax Act, 2004, the word "reasonable" have to be given its due meaning and cannot be brushed aside. It is not sufficient that an opportunity of hearing vide issuance of a show-cause notice is provided. The hearing must be "reasonable" as to the understanding of a prudent man.

7. In support of her contention, Ms. Nitu Hawelia, learned counsel appearing for the petitioner has relied on a judgment of the Division bench of this Hon'ble High Court in **Dwijendra Kumar Bhattacharjee versus Superintendent of Taxes** reported in **(1990) 78 STC 393**. The learned counsel has also relied on the judgment of the Supreme Court in **BSNL versus union of India** reported in **(2006)3 SCC 1**.

8. On the other side, learned Advocate General appearing for the respondents has contended that since a show cause notice was given, the same itself was sufficient in respect of providing of reasonable opportunity of hearing.

Heard the learned counsel for the parties.

9. Section 31 of the Tripura Value Added Tax Act provides for providing of a reasonable opportunity of hearing before passing an order under Section 31 of the Tripura Value Added Tax Act, 2004.

10. The Assessing Officer invested with the power to make assessment of tax discharges, quasi-judicial functions and he is bound to observe the principles of natural justice in reaching his conclusions. The fact that he is not fettered by technical rules of evidence of pleadings and is entitled to act on material which may not be accepted as evidence in a court of law and it does not absolve him from the obligation to comply with the fundamental rules of justice which comes to be known in the jurisprudence of administrative law. One of the rules which constitutes a part of the principles of natural justice is the rule of *audi alteram partem* which requires that no man should be condemned unheard. It requires an opportunity to be heard to be given to a

person likely to be affected by a decision. But this rule is also not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the inquiry. The procedure required to be adopted in giving an opportunity to a person to be heard must necessarily depend on the facts and circumstances of each case.

11. The Assessing Officer cannot pass an order on the basis of pure suspicion and surmised without giving reasonable opportunity of hearing the case which is sought to be made out in the assessment order. In other words, though the Assessing Officer can make such inquiries, he must give an opportunity of being heard which is not an empty formality or ritual or a pretence. It is a valuable right granted to the assessee and, in fact, is an important safeguard against arbitrary assessments. It cannot be taken lightly by the authorities. The opportunity must be real and reasonable. If an assessee, who is asked to furnish certain particulars or submit explanations within a specified time, prays for further time stating his difficulties or reasons, his prayer should be considered judiciously. Sometimes, as in the present case, for assessment for a number of years are taken up together and the assessee is asked to appear and produce evidence in support of his returns. On consideration of the evidence produced by the assessee, the Assessing Officer might require some further particulars or information which might not be possible for the assessee to submit instantaneously, for various reasons. He may require reasonable time to furnish the same and pray for the same before the Assessing authority. Such prayers cannot be rejected at the threshold without considering the ground given by the assessee merely because the

Assessing Officer is hard-pressed to complete the assessment by a specified date or for administrative expediency. Such a rejection would amount to denial of reasonable opportunity of hearing and vitiate the assessment. The Assessing Officer, after making all inquiries and giving reasonable opportunities of being heard to the assessee, can definitely arrive at his own conclusion.

12. The Assessing Authority cannot pass an order merely on the basis of pure guess and suspicion and surmises. Applying the aforesaid principles of law to the facts of the present case, we find force in the contention of the petitioner that he was denied reasonable opportunity to adduce evidence in support of his returns and that the Superintendent of Taxes made the assessment of the turnover for the assessment years 2015-16 to 2017-18 merely without giving any reasonable opportunity, on pure guess and surmises without reference to any materials or evidence on record. To recapitulate the facts, the petitioner in this case was asked to furnish certain information for which he wanted time on the ground that assessments for four years were being taken up at a time and it was not possible during COVID period to bring the original invoices from Mumbai and thus his prayer was rejected. The petitioner was thus denied reasonable opportunity of hearing and on that score itself, the impugned order of assessment cannot be sustained as the same being made in violation of principles of natural justice.

13. The impugned orders of assessment dated 26.03.2021 as well as the notice of demand for the assessment years 2015-16 to 2017-18 stands set aside and the matter is remanded back to the concerned authorities to issue a

fresh proceeding in accordance with law. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

In terms of the above, this petition is disposed of.

JUDGE

CHIEF JUSTICE (ACTING)

