HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.174 of 2026

Smt. Sabita Bhattacharjee, W/o Lt. Mrinal Kanti Bhattacharjee, G.S.I. Complex, Saradha Palli 79 Tilla, Kunjaban, PO: Kunjaban, District – West Tripura, Tripura – 799006.

…… Petitioner(s).

V E R S U S

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

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

3. The Superintendent of Taxes, Charge – VI, Government of Tripura, Kar Bhavan, Palace Compound, Agartala, West Tripura.

4. The Deputy Collector & Magistrate, Attached to SDM Office, Sadara, Agartala, West Tripura, Pin-799001.

……Respondent(s).

For Petitioner(s) : Mr. Dhrubajyoti Saha, Advocate.

For Respondent(s) : Mr. P. Gautam, Sr. G.A.

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

Date of hearing & judgment : **19.11.2026**.

Whether fit for reporting : **YES**

JUDGMENT & ORDER (ORAL)

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

The petitioner is an assessee under the Tripura State GST Act, 2017.

2. For the assessment years 2017-18 and 2018-19, on 04.10.2019 show cause notices were issued invoking Section 74 of the TSGST Act, 2017.

3. These show cause notices contained a demand of Rs.82,47,936.82/- towards interest and penalty for the period July, 2017 to

March, 2018 and Rs.1,41,15,155/- as tax and penalty for the financial year 2018-19.

4. In both the show cause notices it is alleged that the petitioner had not filed GSTR-3B returns and though GSTR-3A notice was issued to it, no reply was received from the petitioner. It is alleged that notice for cancellation of GST Registration was also served on 02.09.2019, but petitioner did not reply to it. It is stated that Form GST ASMT-10 was served on the petitioner after scrutiny of return, but no reply was received from the petitioner. On the basis of this, it is stated that the petitioner wilfully suppressed facts and made short payment of tax under Section 74(1) of the TSGST Act, 2017 and so penalty was imposed on her for short payment of tax by reason of suppression of facts to evade tax.

5. We are of the opinion that a show cause notice will no longer remain a show cause notice if already there is a determination of the tax and penalty payable by the petitioner in it even before the said show cause notice served on the petitioner and even before the petitioner replies to it. It would practically amount to pre-judgment of liability of the petitioner under Section 74 which is impermissible in law. This vitiates the show cause notices.

6. Moreover, what facts or information, the petitioner is alleged to have suppressed is not indicated anywhere.

7. The Supreme Court in case of ***M/s Tata Steel Limited versus Union of India through the Secretary Ministry of Finance and Others, SLP (C) No.16859 of 2026*** emphasised that a show cause notice has to contain foundational facts to validate an allegation of suppression of facts and held as under:

*"**13.** The fact that the Department had taken up the objections on audit with the Public Accounts Committee itself indicates that there was no satisfaction at the end of the Department, meaning the Assessing Officer; as to the mismatch or the short fall of payment of tax having occurred, not to say anything about the suppression alleged. Further, but for a bland statement of availing of ITC for the three years 'without documentary evidence and suppress the facts' (sic), the SCN did not contain any foundational facts to validate such allegation of suppression.*

***14.** It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud/willful misrepresentation/suppression. The foundational facts which led to the inference arrived at of fraud/willful misrepresentation/ suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at. The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute.*

***15.** In the facts of the above case, we do not find any such factual facts having been stated to make out a case of a deliberate device employed to evade tax or avail excess ITC, as coming out from the SCN. The bland statement made at some places of suppression of facts, merely to avail the extended period of limitation would barely suffice and puts to peril the notice under Section 74. The SCN on the above reasoning, cannot be sustained and the consequential Order-in-Original dated 26.12.2025 too is put in peril and both are set aside. However, the extended period of two years is not yet over, for all the three years since the three-*

> *year limitation expired only on 28.02.2025 for all the subject financial years. It would be open for the Department, if it is thought fit, to initiate an appropriate proceeding under Section 74, but with the foundational facts, coming out from the notice itself and an order being passed before 28.02.2027."* *(emphasis supplied)*

8. In the instant case also, we are unable to find any foundational facts in the said show cause notices issued to the petitioner justifying the invocation of Section 74 on the pretext of alleged suppression of facts. Nowhere have the respondents indicated what facts they wished to know or when the respondents demanded to know such facts. When the show cause notice itself is vague and bald without containing any particulars, the respondents cannot rely on what is stated in the reply to the GST ASMT-10 notice or the reply DRC 06 to the GST DRC 01.

9. Coming to the orders passed on 18.11.2019 in DRC-07 for both these financial years, perusal of the said orders which are only a summary, does not indicate any reasons for the imposition of the amount of tax, interest and penalty therein on the petitioner.

10. There is no reasoned order bearing the date 18.11.2019 admittedly communicated to the petitioner till date. Petitioner cannot be expected to challenge such orders before the statutory Appellate Authority without knowing what exactly is passing in the mind of the authority who passed such orders. On the basis of such orders passed on 18.11.2019, it is also not open to the respondents to invoke the provisions of the Tripura Land Revenue and Land Reforms Act, 1960 for issuance of a certificate for recovery of Rs.2,23,63,091.82/- on 09.10.2025.

11. In the facts and circumstances of the case it would be a travesty of justice to permit the respondents to recover any amount from the petitioner for the said periods in the light of the vague show cause notice issued to the petitioner and the DRC-07 order dated 18.11.2019 which contains no particulars or reasons justifying the same. In fact, the very invocation of Section 74 in the facts and circumstances of the case is suspect.

12. For all the aforesaid reasons, the Writ Petition is allowed. The summary show cause notices both dated 04.10.2019 for the financial years 2017-18 and 2018-19 as well as the Form GST DRC – 07 orders both dated 18.11.2019 for the said financial years and the consequential demands are set aside; and the demand notice dated 09.10.2025 issued by respondent no.4 under the Tripura Land Revenue and Land Reforms Act, 1960 and all consequential recovery proceedings initiated pursuant thereto are also set aside.

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

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

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