The State Of Tripura Represented By The ... vs Chandan Deb on 24 March, 2023

Author: M. R. Shah

Bench: Krishna Murari, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6500 OF 2008
THE STATE OF TRIPURA & ANR. ..APPELLANT(S)

VERSUS

CHANDAN DEB & ORS. ..RESPONDENT(S)
WITH
CIVIL APPEAL NO. 6502/2008
WITH
CIVIL APPEAL NO.6501 OF 2008
WITH
CIVIL APPEAL NO.3985 OF 2009
WITH
CIVIL APPEAL NO.3984 OF 2009
WITH
CIVIL APPEAL NO.5877 OF 2022
JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned Reason: the Gauhati High Court by which the Division Bench of the High Court has dismissed the writ appeals preferred by the State of Tripura which were against the judgment and order passed by the learned Single Judge declaring Rule 3A(2) of the Tripura Sales Tax Rules, 1976 (hereinafter referred to as the 'TST Rules') as ultra vires to the Tripura Sales Tax Act, 1976 (hereinafter referred to as the 'TST Act') and partly allowing the appeals preferred by the original writ petitioners quashing and setting aside that part of the judgment and order passed by the learned Single Judge by which it was held that the original writ petitioners were liable under Section 3AA of the TST Act, the State of Tripura has preferred the present appeals.

2. That the Tripura Sales Tax Act, 1976 was enacted in the year 1976 containing provisions for the levy of tax on sale on certain goods in Tripura. Section 3A provided for tax on transfer of property in goods involved in execution of works contract. Section 3AA provided for deduction of tax at the time of payment. Section 44 provided for power to make Rules. In exercise of the Rule making power under Section 44 of the TST Act, the Tripura Sales Tax Rules, 1976 came to be enacted. Rule 3A(2)

provided for deduction of tax at source equal to 4% on transfer of rights to use goods. 2.1 The Revenue Department of the State of Tripura issued memorandum in the year 1992 for deduction of 4% tax at source under Section 3A of the TST Act.

2.2 Tender notices were issued by the ONGC, Gas Authority of India Ltd., FCI for hiring vehicles. Work orders were issued in favour of the original writ petitioners. Agreements were entered into between the original writ petitioners and GAIL, ONGC, FCI etc. respectively.

2.3 The original writ petitioners – suppliers of the vehicles filed the writ petitions before the learned Single Judge challenging the vires of Rule 3A(2) of the TST Rules and also for refund of the amount so deducted on the ground that there is no charging provision under the TST Act for levy of sales tax on transfer of the right to use goods and, hence, Rule 3A of the TST Rules, which makes it mandatory for persons, responsible for making payment of the bills of the transferer of the right to use goods, to deduct, at source, sales tax at a flat rate of 4% is ultra vires the TST Act. One another ground of challenge to Rule 3A was that Rule 3A suffers from absence of delegation of power and, hence the memorandum issued in the year 1992 is invalid and cannot be enforced.

2.4 All the writ petitions were resisted by the State contending inter alia that the transactions involved amounted to 'Sale' within the meaning of 2(g)(ii) of the TST Act and that as per the second proviso of Section 3(i) of the TST, Tax at 4% of the valuable consideration, shall be payable on transfer of the right to use any goods for any purpose and, hence, Rule 3A(2), prescribed merely a mode of recovery of sales tax which is otherwise due and payable and thus Rule 3A(2) is valid.

2.5 Learned Single Judge declared Rule 3A(2) as ultra vires the TST Act. However, the learned Single Judge held that the suppliers are liable to pay sales tax under Section 3AA of the TST Act. Aggrieved by the judgment of learned Single Judge, the State preferred writ appeals before the Division Bench of the High Court. The original writ petitioners – suppliers also filed the writ appeals before the Division Bench aggrieved by that part of the judgment of the learned Single Judge where it was held that the original writ petitioners – suppliers are liable to pay sales tax under Section 3AA of the TST Act.

2.6 The Division Bench considered the following two issues:

> (i) Whether authority vests in the Revenue Dept. to direct deduction at Source for payment of Sales Tax from Bills of any person who transfers right to use any goods for any purpose?
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> (ii) Whether Rule 3A(2) is a valid piece of delegated Legislation?

2.7 During the pendency of the writ appeals, the TST Act has been replaced by the Tripura VAT Act, 2004 w.e.f. 01.04.2004. Therefore, as such the dispute is for the period prior to 01.04.2004.

2.8 By the impugned common judgment and order the Division Bench of the High Court has dismissed the appeals of the State and has allowed the appeals of the original writ petitioners –

suppliers and has held that Rule 3A(2) is ultra vires TST Rules and TST Act. The Division Bench of the High Court has also set aside that part of the judgment of the learned Single Judge where it was held that the supplier – original writ petitioners are liable under Section 3AA of the TST Act.

2.9 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench of the High Court, the State of Tripura has preferred the present appeals.

2.10 While granting the leave this Court has framed the following question of law:

> "Whether Sub-rule (2) of the Rule 3A of the TST Rules can be declared ultra vires being contrary to the provisions of the 'TST Act', though there is express proviso in Section 3(1) for levy of 4% Sales Tax on any transfer of the right to use any goods for any purpose?"

3. Ms. Madhavi Diwan, learned ASG and Shri Shuvodeep Roy, learned counsel have appeared on behalf of the State of Tripura, Shri Ahanthem Henry, learned counsel has appeared for respondent no.1 in all the matters, Shri Somiram Sharma, learned counsel has appeared on behalf of the ONGC and Shri Abhay Kumar, learned counsel has appeared on behalf of the FCI.

4. Ms. Madhavi Diwan, learned ASG appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case and taking into consideration the relevant provisions of the TST Act, the High Court has committed a very serious error in declaring Rule 3A(2) of the TST Rules as ultra vires to TST Act.

4.1 It is submitted that as such Rule 3A, which provides for the tax deduction at source, is a machinery provision with respect to tax leviable under the TST Act. Rule 3A(2) provides for the manner of depositing tax in a sale transaction and does not change the person liable to be taxed, i.e. the dealer under the TST Act or the tax liability in any manner.

4.2 It is further submitted that the transaction of hiring of vehicles by ONGC, GAIL and FCI falls within the definition of Sale under Section 2(g) of the TST Act and is subject to tax. It is submitted that TST Act provides for a deemed sale where there is 'transfer of right to use any goods for any purpose". It is submitted that in the subject transaction, the right to use of car/vehicles is being transferred and therefore, the transaction is a sale for the purposes of TST Act. Reliance is placed on Section 2(g) of the TST Act.

4.3 It is submitted that the supplier being the person making the delivery or transfer within the meaning of Section 2(g)

(ii) falls within the definition of the term 'Dealer' as provided under Section 2(b) of the TST Act. It is submitted that therefore, the supplier – original writ petitioner would fall within the definition of 'Dealer' as he is a person 'selling' taxable goods in terms of the TST Act by transferring the right to use the goods in question.

4.4 It is further submitted by Ms. Diwan, learned ASG that Section 3(1) is the charging section under the TST Act, which provides for imposition of tax and makes the dealer liable for payment of the same.

4.5 It is submitted that the TST Act provides for delegated legislation and rule making power is provided under Section 44 of the TST Rules.

4.6 It is submitted that Rule making power under Rule 44 is inclusive and wide enough to cover the procedure for recovery including tax deduction at source. It is submitted that therefore Rule 3A(2) which provides for tax deduction at source at the hands of the transferee of the right to use goods is a machinery provision which can be provided in the Rules. It is submitted that further, all rules framed in furtherance of Section 44 are placed before the state legislature.

4.7 It is further submitted that the impugned Rule 3A(2) does not in any manner change the liability to pay the tax from the dealer and the dealer continues to remain liable to pay the tax.

4.8 It is submitted that thus Rule 3A(2) provides is only for a machinery/mechanism where the person buying the goods deducts tax at source and deposits the same with the Revenue. It is submitted that it does not in any manner change the chargeability of tax or liability to pay the tax. It is submitted that therefore, the provisions relating to tax deduction at source are machinery provisions. Being a machinery provision, the same can be provided in rules. 4.9 It is submitted that even the tax deducted at source is neither the final payment of tax nor assessment of tax. It is submitted that in the present case, the payment and assessment of tax continues to be of the dealer. Reliance is placed upon the decision of this Court in the case of PILCOM vs. CIT, (2020) 19 SCC 409 (paragraphs 36 to

38).

4.10 Ms. Madhavi Diwan, learned ASG has further submitted that in the case of CIT vs. Eli Lilly & Co. (India) (P) Ltd., (2009) 15 SCC 1, this Court has been pleased to consider the issue whether provisions pertaining to deduction of tax at source are independent of charging provisions on the premise that the same is only a machinery provision. 4.11 Ms. Diwan, learned ASG has further submitted that in the present case the TST Act and the Rules clearly fulfil all the requirements for a valid taxing statute and provide for all components required for a taxing statute. It is submitted that as observed and held by this Court in the case of CCE & Customs vs. Larsen & Toubro Ltd., (2016) 1 SCC 170 there shall be four components for a valid levy of tax namely-

(i) character of the imposition known by its nature which prescribed the taxable event attracting the levy;

(ii) a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax;

(iii) the rate at which the tax is imposed and;

(iv) the measure or value to which the rate will be applied for computing the tax liability.

It is submitted that in the present case all those components for a valid taxing statute are provided under the TST Act and the TST Rules.

4.12 It is further submitted that there is no change in chargeability of the Tax by introduction of Rule 3A(2) nor is a new levy created and Rule 3A(2) only provides for the mechanism of tax deduction at source and therefore, Rule 3A(2) cannot be said to be ultra vires to TST Act and TST Rules as observed and held by the High Court. Making above submissions it is prayed to allow the present appeals.

5. All these appeals are opposed by learned counsel appearing on behalf of the respective respondent no.1 – original writ petitioners – suppliers. It is vehemently submitted that in the facts and circumstances of the case, the Division Bench of the High Court has not committed any error in declaring Rule 3A(2) of the TST Rules as ultra vires to TST Act and the TST Rules.

5.1 It is submitted that as such the learned Single Judge allowed the writ petitions and held sub-rule 2 of Section 3A providing for sales tax deduction @ 4% at source to be ultra vires to TST Act and set aside the memorandum issued by the State Government providing for deduction of sales tax while making payment of bill amounts of the suppliers of the vehicles by the companies. However, the learned Single Judge held that the sales tax liability of the parties who had given vehicles on hire will continue because of Section 3AA of the TST Act. It is submitted that the Division Bench of the High Court has rightly confirmed the judgment and order passed by the learned Single Judge declaring Rule 3A(2) of the TST Rules ultra vires, and has also rightly set aside the observations and the findings recorded by the learned Single Judge that still the sales tax liability of the parties who had given vehicles on hire will continue because of Section 3AA of the TST Act. It is submitted that the Division Bench of the High Court has rightly corrected the view taken by the learned Single Judge on applicability of Section 3AA of the TST Act.

5.2 It is further submitted by learned counsel appearing on behalf of the respondents – suppliers that the Division Bench of the High Court in the impugned judgment and order has also rightly considered and held that the sales tax can be levied on sale of taxable goods and that the liability to pay the sales tax is of a registered dealer under the Act and any person cannot be made liable to pay sales tax as was done by the State Government under sub-rule 2 of Rule 3A of the TST Rules. It is submitted that in sub- rule 2 the requirement is deduction of sales tax while making payment to any person who has done transfer of right to use any goods for any purpose but the provisions of the TST Act provide for payment of sales tax by registered dealer of taxable goods and even in case of any transfer of the right of any goods for any purpose the sales tax can be levied/deducted if the transfer of right to use is of taxable goods and is done by a registered dealer under the Act. 5.3 It is further noticed and held by the Division Bench of the High Court that for imposing sales tax on works contract there is charging section in the TST Act which is not there in case of persons involved in transfer of right to use any goods for any purpose.

5.4 It is further submitted that the respondents herein – suppliers who had given vehicles for use were not the dealers and were not registered under the Sales Tax Act and had not sold any goods in course of their work and transfer of the right to use any goods for any purpose having been done without being a dealer registered under the TST Act and the transfer of goods being not that of any taxable goods the deduction of sales tax amount at 4% would not be made under the TST Act or under the Rules and thus the deducted amount have rightly been refunded by the State Government/Companies to most of the vehicle suppliers during the pendency of present cases here. 5.5 It is further submitted by the learned counsel appearing on behalf of the respondents – suppliers that during the pendency of the present appeals and as there was no stay against the impugned judgment and order passed by the High Court, in many cases the State Government/respective companies have refunded the amount due and payable to the respondents herein – original suppliers and therefore now as the impugned judgment and order passed by the High Court has been implemented by the State Government/respective Companies the impugned judgment and order passed by the High Court may not be interfered with now. 5.6 It is submitted that in absence of any charging section in the Act for deduction/levy of sales tax on those who were giving vehicles on hire for use of staff of companies, the same could not have been provided under the Rules. It is submitted that as rightly observed and held by the High Court what cannot be done under the provisions of the Act for want of charging section in the Act cannot be done indirectly by taking help of Rules as the Rules cannot supersede the provisions of the Act. It is submitted that therefore sub-rule 2 of Rule 3A of the TST Rules is rightly held to be ultra vires of TST Act.

6. Heard learned counsel appearing on behalf of the respective parties at length.

7. At the outset, it is required to be noted that while granting the leave to appeal this Court has framed the following question of law which reads as under:

> "Whether Sub-rule (2) of the Rule 3A of the TST Rules can be declared ultra vires being contrary to the provisions of the 'TST Act', though there is express proviso in Section 3(1) for levy of 4% Sales Tax on any transfer of the right to use any goods for any purpose?"

8. The learned Single Judge while allowing the writ petitions preferred by the suppliers/dealers held and declared Rule 3A(2) of the TST Rules ultra vires to TST Act and quashed and set aside the memorandum issued by the Government providing for requirement of deduction of sales tax at 4% while making payment to any person who has done transfer of any right to use any goods. However, the learned Single Judge observed and held that the sales tax liability of the parties who had given vehicles on hire will continue because of Section 3AA of the TST Act. By the impugned judgment and order the Division Bench of the High Court has not only upheld the judgment and order passed by the learned Single Judge declaring Rule 3A(2) of the TST Rules ultra vires but has also set aside the findings recorded by the learned Single Judge that the sales tax liability of parties who had given vehicles on hire will continue because of Section 3AA of the TST Act. Therefore, the short question which is posed for consideration before this Court and as per the question of law framed by this Court while granting leave to appeal would be whether sub-

rule 2 of Rule 3A of the TST Rules can be said to be ultra vires to the provisions of the TST Act, though there is express proviso in Section 3(1) for levy of 4% sales tax on any transfer of the right to use any goods for any purpose? 8.1 While considering the aforesaid question the relevant provisions of the TST Act and the TST Rules are required to be referred to which are as under:

> “2(b) "dealer" means any person who sells taxable goods manufactured, made or processed by him in Tripura or brought by him into Tripura from any place outside Tripura for the purpose of sale of Tripura 1 [and includes Government and any person making a sale under section 3A;” “2(g) "Sale" means any transfer of property, in goods for cash or deferred payment or other valuable consideration, and includes—
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> (i) any delivery of goods on hire-purchase or any system of payment in instalments,
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> (ii) any transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration, and such delivery or transfer of any goods shall be deemed to be a sale of those goods by the person making the delivery or transfer and a purchase of those goods by the person to whom such delivery or transfer is made but does not include a mortgage, hypothecation, charge or pledge;” xxx xxx xxx “3. (1) Every dealer in taxable goods shall pay a tax on his turnover at the rate specified in column (3) of the schedule attached to this Act : Provided that subject to the provisions of section 14 and 15 of the Central Sales Tax Act, 1956 the State Government may, from time to time by notification in the Official Gazette and subject to such conditions as it may impose, fix a higher rate of tax 3 [not exceeding forty percent or any lower rate of tax payable under this Act on account of the sale of any taxable goods or class of taxable goods specified in such notification ; and thereupon the Schedule shall be deemed to be amended accordingly:
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> ..... Provided further that the rate of tax on any transfer of the right to use any goods for any purpose (whether or not for a specified period) shall be 4%]” “Section 3AA. Deduction of tax at the time of payments : Any person responsible for paying any sum to any person liable to pay tax under section 3A of the Act, shall at the time of credit of such sum to the account of the person or at the time of payment thereof in cash or by issue of a cheque or draft or any other mode, such amount towards sales tax as may be prescribed.” xxx xxx xxx “Section 44. (1) The State Government may, make rules for carrying out the purposes of this Act.
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> (2) Without prejudice to the genererality of the foregoing power, such rules may, in particular prescribe---
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> (a) all matters required by this Act to be prescribed ;

(b) the clauses and duties of officers appointed for the purposes of enforcing the provision of this Act;

(c) the procedure to be followed and the forms to be adopted in proceedings under this Act ;

(d) the intervals at which, and the manner in which, the tax under this Act shall be payable;

(e) the dates by which and the authority to which returns shall be furnished ;

(f) the manner in which refunds shall be made ; (g) the fees, if any, for petitions, certificates and other;

(h) the nature of accounts to be maintained by a dealer ; and

(i) For any other matter necessary for giving effect to the purpose of this Act.

(3) Every rule made by the State Government under this Act shall be laid as soon as may be after it is made, before Legislative Assembly while it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if, before expiry of the sessions, in which it is so laid or the successive aforesaid the Legislative Assembly agree in making any modification in the rule or the Legislative Assembly agree that the rule should not be made, the rule shall thereafter have effect only in such modified from or be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule." xxx xxx xxx "Rule 3A (1) - Every person responsible for making payment of any person (hereinafter in this rule referred to as the contractor) for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether in goods or in any other form) in pursuance of the works contract shall at the time of making such payment to the contractor either in cash or in any manner, deduct 1.5% of the gross amount of the bill towards tax payable in case of r.c.c bridge and 4% of the gross amount of the bill towards tax payable in respect of other works under section 3A of the Act on account of such works contract:

Provided that no such deduction shall be made from the bill(s) or invoice (s) of the contractor for execution of works contract on account of the contracts for which work order was issued prior to first January, 1989:

Provided also that any person responsible to make deduction of any amount equal to the amount of tax as mentioned in this rule may refer the matter to the Superintendent of Taxes, having jurisdiction over the area, for provisional computation of the net turnover and the amount of tax payable thereof by such

contractor for the valuable consideration of the goods involved in the works contract.

(2) Every person responsible for making payment to any person for discharge of any liability on account of valuable consideration payable for any transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash or in any manner, shall at the time of making such payment, deduct an amount equal to four percentum of such towards part or as the case may be, full satisfaction of the tax payable under the Act, on account of such transfer of right:

Provided no such deduction shall be made from the bill(s) or invoice(s) of the transferrer -

(a) on account of such transfer where the transfer of right to use goods was agreed to before first day of January, 1989;

(b) The amounts received as penalty for defaults in payment or as damages for any loss or damage caused to the goods by the person to whom such transfer was made; and

(c) The amount representing the valuable consideration received for such transfer in respect of goods exempt from tax under Sub-section (2) and (3) of Section 3 of the Act."

8.2 In exercise of the powers under Section 44 of the TST Act the State Government had enacted the TST Rules which were placed before the Legislative Assembly. On fair reading of Section 44 of the Act which is a rule making power it can be seen that the rule making power under Section 44 is inclusive and wide enough to cover the procedure for recovery including tax deduction at source. 8.3 Section 3 of the TST Act can be said to be the charging Section and the liability to pay the tax shall be as per Section 3 of the TST Act. As per Section 3(1) of the TST Act every dealer in taxable goods shall pay a tax on his turnover at the rate specified in column (3) of the Schedule. As per the proviso to Section 3(1) as inserted by Tripura Sales Tax (Fourth Amendment) Act, 1987 w.e.f. 12.05.1987 the rate of tax on any transfer of the right to use any goods for any purpose (whether or not for a specified period) shall be 4%. The ‘Sale’ is defined under Section 2(g) and it means any transfer of property, in goods for cash or deferred payment or other valuable considerations, and includes any transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration, and such delivery or transfer of any goods shall be deemed to be a sale of those goods by the person making the delivery or transfer and purchase of those goods by the person to whom such delivery or transfer is made. Thus, any transfer of right to use any goods including the vehicles shall be deemed to be a ‘sale’ as defined under Section 2(g)(ii). The word ‘Dealer’ has been defined under Section 2(b) of the TST Act and it means any person who sales taxable goods. As observed hereinabove the sale of taxable goods shall be as per Section 2(g) of the TST Act. Therefore, on combine reading of Section 3 read with Section 2(b) & 2(g) of the TST Act any transfer of the right to use any goods (including the vehicles) shall be deemed to a ‘sale’ and the transferor of the right to use any goods/vehicles can be said to be a dealer and therefore liable to pay the tax at the rate of 4%

on any transfer of the right to use any goods as per proviso to Section 3(1). Therefore, the liability to pay the tax at the rate of 4% on any transfer of right to use any goods shall be under Section 3(1). Therefore, the submissions on behalf of the respondents – suppliers/transferers that as there is no sale or transfer of the goods and that they are not registered with the TST Act and therefore, the liability to pay the tax at 4% does not arise cannot be accepted. As observed hereinabove the liability to pay the tax shall be on the transferer who transfers the right to use any goods as per proviso to Section 3(1) read with Section 2(b) and 2(g) of the TST Act.

9. Now next question which is posed for consideration before this Court would be whether Rule 3A(2) of the TST Rules and the memorandum issued by the Government to deduct the tax at 4% and the bills to be paid to the transferers can be said to be ultra vires to TST Act is concerned, it appears that the High Court has held the said provision as ultra vires by observing that there is no such provision for tax deduction at source under the TST Act and therefore, the Rule cannot go beyond the Act. The aforesaid view taken by the High Court is absolutely fallacious. Rule 3A(2) can be said to be a recovery machinery/mechanism. What Rule 3A(2) provides is only for a machinery/mechanism where the person buying the goods is required to deduct the tax at source and deposits the same with the Revenue. It does not in any manner change the chargeability of the tax or liability of the tax which is under Section 3(1) of the TST Act read with Section 2(b) & 2(g) of the TST Act. 9.1 As observed hereinabove the rules are framed in exercise of Rule-making power under Section 44 of the Act and in that view of the matter and as the liability to pay the tax on transfer of right to use the goods shall still be continued under proviso to Section 3(1), mere providing for mode of recovery and/or providing for machinery/mechanism to recover the tax to be paid by the transferer/supplier from the person buying the goods deducting the tax at source and depositing the same with the Revenue cannot be said to be ultra vires to TST Act and the Rules as observed and held by the High Court. At the cost of repetition, it is observed and held that Rule 3A(2) does not in any manner change the chargeability of the tax or liability to pay the tax. Therefore, the High Court has fallen in error in misinterpreting Rule 3A(2) of the TST Rules and has fallen in error in declaring Rule 3A(2) of the TST Rules ultra vires to TST Act and the High Court has materially erred in quashing and setting aside the memorandum issued by the State Government requiring the hirers namely the ONGC and the GAIL to deduct an amount equivalent to 4% out of the respective bills of the suppliers of the vehicles.

10. In view of the above and for the reasons stated above, present appeals succeed. The impugned common judgment and order passed by the Division Bench of the High Court and that of the common judgment and order passed by the learned Single Judge declaring Rule 3A(2) of the Tripura Sales Tax Rules, 1976 as ultra vires to the Tripura Sales Tax Act, 1976 and quashing and setting aside the memorandum of 1992 issued by the State Government requiring the hirers to deduct an amount of tax at 4% out of the respective bills of the suppliers of the vehicles are hereby quashed and set aside. Necessary consequences shall follow.

Present appeals are accordingly allowed. No costs.

.....J. (M. R. SHAH) .....J. (KRISHNA MURARI) New Delhi, March 24, 2023