THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) No.413 of 2013

Dheer Marketing India,
Represented by its proprietor Smti Richa Goel,
W/o Shri Lovelesh Raj Goel 315,
Patpar Ganj Industrial Area,
Patpar Ganj, New Delhi - 110092.

.... *Petitioner.*

- Vs –

1. **The State of Tripura,**
   Represented by the Secretary,
   Revenue Department, Government of Tripura,
   Capital Complex, P.O. Kunjaban, Agartala.
2. **The Commissioner of Taxes,**
   Govt. of Tripura, P.N. Complex,
   P.O. Kunjaban, Agartala.
3. **The Superintendent of Tax,**
   Churaibai Check Post, P.O. Churaibari,
   North Tripura.

.... *Respondents.*

_B_E_F_O_R_E_
HON’BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON’BLE MR. JUSTICE S TALAPATRA

For the petitioner	:	Mr. B N Majumder, Advocate.
For the respondents	:	Mr. S Chakraborty, Addl. Govt. Advocate.
Date of hearing & Judgment	:	09.02.2015.
Whether fit for reporting	:	No.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

By means of this writ petition, the petitioner M/s Dheer Marketing India has prayed for quashing of the orders dated 07.12.2013 and 21.12.2013 whereby the Bank guarantee furnished by the petitioner has been forfeited.

2. Briefly stated the facts of the case are that the petitioner entered into a contract with the B.S.F and C.R.P.F for supply of shoes and shirts to their canteen stores. The petitioner sent the transaction through business mail. A passenger bus was intercepted by the tax authorities in which 20 packages of footwear and 11 packages of shirts were seized. The courier who was allegedly carrying the goods on behalf of the petitioner did not have any document with him to show that this consignment was meant for the B.S.F or C.R.P.F authorities. The goods of the petitioner were seized at the border and thereafter the petitioner approached this Court by filing WP(C)241 of 2013.

3. No doubt, the fault of the petitioner was that it sent the goods via courier and they were not accompanied by proper documents. We had first passed an order that the Assessing Officer should determine the taxes, interests and penalties, if any, levied on the petitioner and thereafter, the petitioner would furnish Bank guarantee and on furnishing the Bank guarantee the good seized would be released in his favour.

4. Thereafter the petitioner made a representation to the Superintendant of Taxes stating that by inadvertence the documents could not be produced. All the relevant documents were enclosed with the representation showing that the goods were meant for supply to the B.S.F and C.R.P.F for further sale in their canteens. Thereafter time for submission of Bank guarantee was extended up to 31.12.2013 and the petitioner furnished the Bank guarantees within the extended period. The Superintendant of Taxes then directed the petitioner to appear-in-person before him on 13.12.2013 and noted that none had appeared for compounding the case and issued notice to the petitioner. On 13.12.2013, an order was also passed assessing the tax payable at Rs.67,991/- and penalty of Rs.1,35,982/- was imposed without giving any reasons why the maximum penalty was imposed and, therefore, a demand of Rs.2,03,973/- was issued. Finally on 21.12.2013 this demand was confirmed by the Assessing Officer.

5. The Assessing Officer assessed the margin of profit at 12.70% on footwear and 19.51% at readymade garments. While doing so, the Assessing Officer did not take into consideration the fact that this transaction between the petitioner and B.S.F and the C.R.P.F and there could be no wrong statements in the accounts. The transaction which had taken place at Delhi could not be the subject matter of the TVAT Act in Tripura. The only fault was that the goods were being transported without proper documents. The tax, payable for sale in Tripura had to be paid by B.S.F or the C.R.P.F on the amount which they were to receive and not on the amount which they paid to M/s Dheer Marketing Company for supply of the shoes and shirts which were supplied from Delhi but sent to Tripura. Whether the sale had taken place at Delhi or whether the sale was an inter-State sale whereby goods moved from one State to the other, the State of Tripura had no right or authority to levy tax on the same. Therefore, the order dated 21.12.2013 is totally without jurisdiction.

6. Though the petitioner may not have been fully justified in sending the goods via courier without all the documents, we are clearly of the view that a person sitting in Delhi would not be aware about the requirements of the Rules in Agartala. For that, other action could have been taken but assessment of the tax could not have been resorted to because the sale is not amenable to tax within the State of Tripura.

7. Further development which has taken place is that during this process, great delay occurred and the contract of the petitioner was cancelled and he has finally taken back the goods to Delhi. We feel that in the circumstances, the petitioner has suffered enough for his fault and no penalty should be imposed upon him. Therefore, the orders dated 07.12.2013 and 21.12.2013 are quashed and the proceedings are closed. The Bank guarantee shall stand automatically discharged.

The writ petition is disposed of.

JUDGE **CHIEF JUSTICE**