IN THE HIGH COURT OF TRIPURA
<u>A G A R T A L A</u>

<u>W.P.(C) No.280 of 2015</u>

Smti. Baby Saha,
wife of Shri Nidul Saha, resident of Math Chowmuhani Bazar, Lane No.2, Agartala, P.S. East Agartala, District – West Tripura

...... **Petitioner**

– V e r s u s –

1. **The State of Tripura, Agartala**
represented by the Secretary, to the Revenue Department, Government of Tripura, Agartala

2. **The Commissioner of Taxes,**
Government of Tripura, Gurkhabasti, Pandit Nehru Complex, P.O. Kunjaban, Agartala, West Tripura

3. **The Superintendent of Taxes,**
Government of Tripura, Churaibari Check Post, P.O. & P.S. Churaibari, District – North Tripura

4. **The Superintendent of Taxes,**
Government of Tripura, Charge-VIII, Agartala, P.O. Agartala, P.S. West Agartala, District – West Tripura,

...... **Respondents**

BEFORE
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR.JUSTICE S. TALAPATRA

For the petitioner : Mr. A.K. Bhowmik, Sr. Advocate
Mr. R. Dutta, Advocate

For the respondents : Mr. D.C. Nath, Advocate

Date of hearing and delivery of judgment and order : **27.07.2015**

Whether it is fit for reporting :

Yes	**No**
	√

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

This petition is directed against the order dated 22.06.2015 delivered in Revision case No.47 of 2015 by the Commissioner of Taxes, whereby he dismissed the revision petition of the petitioner and further held that the petitioner transported a consignment of other paper products taxable under entry No.130 of Schedule II(b) of the Tripura Value Added Tax, the TVAT Act in short.

[2] It is not disputed that the petitioner imported certain material from Kolkata for sale in the State of Tripura. According to the petitioner, the material was to be used as covers of exercise books. According to the Revenue Department, the petitioner imported certain material showing it to be exercise books but on checking, it was not found to be the exercise books. The officer at the Churaibari Checkpost came to the conclusion that the material was paper envelopes in 61 packages and held that the material was wrongly declared to be exercise books which is taxable at 5%. The material was seized. Against this order of seizure, the petitioner approached to the Commissioner of Taxes, Government of Tripura, who passed the impugned order on 22.06.2015. The relevant portion of which reads as follows:

> **"The petitioner submitted that they are manufacture of 'exercise book' and the item seized is a raw material for exercise book. She further submitted that they are not aware of the tax rate of the item seized and had unintentionally declared the item as exercise book. She further submitted that they are collecting and paying taxes @5% on exercise book.**
>
> **The petitioner transported a consignment of 'other paper products' taxable @14.5% under entry No.130**

> **of Schedule II(b) but declared the consignment as 'exercise book' taxable @5%. Therefore, the seizure made by O/C, Churaibari Checkpost is absolutely justified and hence upheld."**

[3] A bare perusal of this portion of the order shows that the petitioner had admitted before the Commissioner of Taxes that the item seized was not an exercise book but was a raw material for use in preparing the exercise book. A product may be classified as a certain item but all the raw materials used in producing that product do not necessary fall within the same entry. They can be taxed at different rates. The petitioner mis-declared that the item was an exercise book because even according to her it is not an exercise book but it is a cover of the exercise book. Therefore, we are not in agreement with the petitioner that there was no mis-declaration.

[4] The next issue raised is that, according to the petitioner, even if the material is not an exercise book, it is paper within the meaning of entry No.71 of or printed material within the meaning of entry No.74 of Schedule II(a). It is contended that the residual item i.e. entry No.130 of Schedule II(b) would only come into consideration when the paper product does not fall in any of the descriptions under entry Nos.71 or 74.

[5] We are at this stage are only concerned with the question whether the order of seizure is valid or not. This Court is only concerned with the order of seizure and the seizure has been made on the basis of mis-declaration. The authority, who seized the material held that the item is paper envelopes which *prima-facie* appears to be incorrect. Whether the item falls under the head of other paper products under entry No.130 which is the residual entry or falls under entry Nos.71 or 74, is something which the assessing officer has to decide? Therefore, we dispose of the writ petition with the following directions:

(i) that in case the petitioner wants release of its material, he shall have to pay the tax @14.5%.

(ii) that the assessing authority shall after giving opportunity of hearing to the petitioner decide the question as to under which entry of the TVAT Act the product which is brought into Tripura from Kolkata by the petitioner falls.

[6] We however, make it clear that this product cannot be termed to be an exercise book and we leave it to the assessing authority to decide after hearing the party whether the product falls under entry Nos. 71, 74 of Schedule II (a) or entry No.130 of Schedule II(b). The assessing authority shall decide this question uninfluenced by the observation of the Commissioner of Taxes that the item transported is other paper products because this has been done without giving any reasons.

The petition is disposed of in the aforesaid terms.

No costs.

JUDGE **CHIEF JUSTICE**

Sujay