THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) NO.38 of 2013

M/s Freight Carriers (India) Pvt. Ltd.,
Having its registered office at 47, Zakharia Street,
Kolkata – 73, West Bengal, Represented by :-
Sri Sanjib Roy, S/o Lt. Saroj Roy, its Branch Manager,
Agartala Branch, Motor Stand, Agartala, Tripura West.

.... *Petitioner.*

- Vs –

1. **The State of Tripura,**
   Represented by the Secretary
   to the Government of Tripura,
   Finance Department, Agartala, West Tripura.
2. **The Commissioner of Taxes,**
   Government of Tripura,
   Agartala, West Tripura.
3. **The Superintendent of Taxes,**
   Vigilance Cell, Kar Bhavan,
   Palace Compound, Agartala, West Tripura.

.... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S C DAS

For the petitioner : Mr. R Saha, Advocate,
Mr. D J Saha, Advocate.

For the respondents : Mr. S Chakraborty, Addl. G. A.

Date of hearing and delivery of judgment : **19.8.2015.**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

This petition by the assessee has been filed praying for quashing of the order dated 26th December, 2012.

2. The facts of the case are that the petitioner is the owner of a truck bearing registration No.NL 02/K-4471. The vigilance cell of the Commissioner of Taxes seized the material being carried in the truck on 26th December, 2012 on the following grounds :

> ***"The rates found in the produced bills/invoices of the seized goods and reflection of the value accordingly in the respective column of Declaration in Form-XXV appear to be un-realistic in terms of value in comparison with the import of allied nature of goods and with that sold in the prevailing market. The Value so arrived never comes to the sale price of goods sold in the market after adding the required incidentals to the cost of goods under the bill referred to and hence the bill produced with the value appears to be fake which was deliberately done in made-up form of bills/invoices, lessening actual values of the product. The actual cost of goods at per the prevalent market appears to be immensely higher than the bill value so produced, making it to be fake as established which altogether un-favourable to the normal trade practice and therefore seized."***

3. In reply to the petition the respondents took up the stand that the authorized representative of the petitioner had compounded the case and had paid the value, as assessed by the seizing officer and therefore, the writ petition is not maintainable. The order of compounding the case has been attached as Annexure - R/1. The relevant portion of the order reads as follows :

> ***"Date :- 28-12-2012.***
>
> ***…………………………………………………………***
>
> ***On perusal of the records in possession and hearing of the Manager of the Transport Agency Shri Sanjib Roy could not adduce on his behalf after allowing reasonable opportunities and finally admitted/confessed the offence committed under the provision of the TVAT Act, 2004 & Rules, 2005 for which he has appeared before the office chamber of the undersigned agreeing for compounding the Seizure Case No.13/VIG/2012-13, Dated 26-12-2012 departmentally stating that he will not proceed further on this particular case from his end at any time after settlement of the issue.***
>
> ***Now, the Transporter, M.S. Freight Carriers(India) Pvt. Ltd., 156, Motor Stand Road, Agartala holding Regn. No.TRN/CH 5U/0006 who carried the taxable goods on behalf of the respective dealers as per Seizure Case No.13/VIG/2012-13, dated 26-12-2012 has agreed to compound the Seizure Case and after careful consideration to all aspects, compound the Case under Section 80(1) of the TVAT Act, 2004 as under……………………………………………"***

Thereafter there is a table of the computation of taxes.

4. On the second page of the order there is a direction to the representative Sri Sanjib Roy to deposit the amount of Rs.70,875/-. However, there is another portion of the order which is very relevant and reads as follows :

> ***"Date :- 28-12-2012.***
>
> ***After completion of the order for compounding the case, Shri Sanjib Roy, the Manager of the Transporter, M. S. Freight***

Carriers (India) Pvt. Ltd. is asked to go through the order and to put his signature on the copy of the order as a token of receipt. After going through the compounding order in my presence Shri Roy prepared the challan copies in Form – XVIII for depositing the demanded amount and submitted for certifying the challans by the Vigilance Cell yet Shri Roy declined to put his signature on the office copy of the compounding order. However, in spite of his unwillingness to put his signature in the office copy of the compounding order the challan copies so prepared and signed by him had been certified by the vigilance Cell, Agartala for facility of depositing the demanded amount in the Bank for the interest of State revenue."

5. Sri Sanjib Roy also took possession of the goods on 2nd January, 2013. It would also be pertinent to mention that on 29th December, 2012 while depositing the amount as assessed the petitioner had written as follows :

"This is to inform you that pursuant to the seizure case, under reference, we are submitting/paying the tax and Penalty reserving all our right legal in this matter.

This is for your kind information."

The goods have been released in favour of the petitioner and the amount has been paid by the petitioner but the question is whether the petitioner is entitled to ask for assessment of the amount in accordance with law?

6. We had called for the record of the case and after going through the record we are clearly of the view that the compounding is not a voluntary compounding. The compounding was done only with the view to get the goods released. The representative of the assessee did not sign the order because he did not accept the same to be correct. Even while depositing the amount a clear cut stipulation was given that this is subject to the right of the assessee to seek assessment in accordance with law.

7. While interpreting Section 67 of the Tripura Value Added Tax Act, 2004 in ***CRP No.76 of 2009(M/s Ruchi Soya Industries Ltd. Vs. The State of Tripura)*** this Court clearly held that the powers under Section 67 could not be used only because the assessing officer finds that the goods were undervalued. However, in this case the amount has been paid and the goods have also been released. Therefore, the only relief which can be granted to the petitioner is as follows :

> The assessing officer shall determine the market value of the goods. It is to be noted that Maximum Retail Price(MRP) by itself cannot be the guideline to determine the value of the goods. In many cases the maximum retail price is inflated and goods are sold at less than the said price. Therefore, he can assess the value of the goods on the basis of comparison with similar goods sold in the wholesale market. The assessing officer shall supply a copy of the *'market survey report'* to the petitioner and shall give the petitioner as well as the Revenue (Taxation Department) an opportunity to lead evidence or produce other material before him to show what

was the price of such goods in the wholesale market at the relevant time.

8. In view of the above discussion, the impugned order dated 26th December, 2012 is set aside. The assessing officer is directed to assess the value of the goods and Tax/VAT payable thereupon by keeping in view the directions given hereinabove and, thereafter, in case the assessee is aggrieved by the order of the assessing officer he can file an appeal etc. in accordance with law. The assessee is directed to appear before the assessing officer on ***29th September, 2015*** and the assessing officer is directed to ensure that the entire proceedings are completed by 31st December, 2015. In case any amount is found refundable to the petitioner the same shall be refunded along with statutory interest @ 9% per annum failing which the State shall be liable to pay the interest @ 12% per annum w.e.f 1st March, 2016.

The petition is disposed of accordingly.

JUDGE **CHIEF JUSTICE**

Sukhendu