

13-07-2022
Court No.2
Sh/22.

**CALCUTTA HIGH COURT
CIRCUIT BENCH AT
JALPAIGURI**

W.P.A. 721 OF 2022

Hemraj Jain & Anr.

Petitioners.

Ms. Rita Mukherjee,
Mr. Abhijit Das.

For the petitioners through virtual mode

Mr. Rowsan Kr. Jha,
Mr. Santosh Kr. Mandal.

... For the Petitioners.

Mr. Subir Kumar Saha,
Mr. Bikramaditya Ghosh.

For the State.

Ms. Esha Acharya.

For the respondent No.7.

This writ petition has been filed praying for a writ of Mandamus to command the respondent to set aside the order of demand of tax and penalty dated March 9, 2022.

The petitioner No.1 claims to carry on the business under the name and style of M/s. Hemraj Infrastructure. The petitioner No.1 is the registered tax payer under the West Bengal Goods and Service Tax Act (for short WBGST 2017 Act). The petitioner no.1 claims to have engaged the petitioner no.2 on hire basis for transportation of the goods from the Consignors place of business in Assam to the

place of business of the petitioner no.1 in West Bengal. On February 25, 2022 at about 7-10 A.M. the respondent no.1 intercepted the vehicle carrying the aforesaid consignments near Mohit Nagar at Jalpaiguri. On February 28, 2022 the respondent No.2 issued an order of detention of the vehicle in question. The show-cause notice was issued on February 28, 2022 proposing to impose a penalty. The petitioners duly replied to the said show-cause notice. Thereafter the order of demand dated March 19, 2022 was served upon the petitioners confirming the penalty of Rs.14,26,732/-.

Ms. Mukherjee, learned advocate assisted by Mr. Jha, learned advocate for the petitioners submits that the petitioner No.1 being the owner of the goods in question is liable to pay penalty equal to 200% of the tax payable on the goods in order to get the vehicle released. She submits that a direction may be passed upon the respondent authority to release the vehicle including the goods in question upon accepting the said penalty as and by way of interim relief.

Mr. Ghosh learned advocate appears for the State and raises a preliminary objection

with regard to the maintainability of this writ petition in view of existence of alternative efficacious appellate remedy available under the Statute. He submits that the petitioner has to approach the appellate authority and to claim release of the vehicle and the goods in question from such authority in accordance with law. He further submits that there is a dispute as to whether the petitioner no.1 is the owner of the goods in question. He submits that the goods in question cannot be released in favour of the petitioner no.1 at this stage till the dispute as to who is the owner of the goods in question is resolved. He further draws the attention of this Court to the provision laid down in Section 129(1)(b) of the WBGST 2017 Act and submits that the said Act contemplates separate quantum of penalty for release of goods to the owner or persons other than the owner. He thus, submits that even if the petitioner is agreeable to pay the penalty the respondents are not in a position at this stage to release the goods in favour of the petitioner no.1 without being prima facie, satisfied with regard to the capacity in which the petitioner no.1 is claiming release of such goods.

Heard learned advocates appearing for the parties and considered the materials placed before this Court.

Section 107 of the WBGST 2017 Act provides that any person aggrieved by any decision or order passed under this Act by an Adjudicating Authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which such decision or order is communicated to such person.

The order being No.509 dated March 9, 2022 passed by the respondent no.2 is an appealable order under the WBGST 2017 Act. Though the time limit prescribed for preferring appeal has expired in the meantime, it is not in dispute that this writ petition was filed on March 22, 2022, that is, well within the prescribed time limit for preferring such appeal.

This writ petition was also pending before this Court for some time for which the petitioners cannot be faulted with. Thus, this Court of the considered view that the petitioners will be entitled to the benefit of the

period during which this writ petition was pending.

Since Ms. Mukherjee, learned advocate for the petitioners submits that an appeal will be preferred within a period of one week from this date, this Court direct the Appellate Authority to accept the same. In that case such appeal can be said to be filed within the period of limitation after excluding the time spent in disposing of the writ petition. The Appellate Authority shall not dismiss the appeal filed in terms of the order on the ground of limitation.

In the event, the appeal is preferred by the petitioners the appellate authority shall dispose of the same as expeditiously as possible, but positively within a period of fortnight from the date of filing of such appeal after giving an opportunity of hearing to the petitioner or his authorized representative.

Needless to mention that the petitioners shall have to comply with the procedures for preferring the appeal including the statutory deposit.

It will be open to the petitioners to pray for release of the goods before the Appellate Authority and if such a request is made, the Appellate Authority shall consider and dispose of the same by passing a reasoned order upon giving an opportunity of hearing to the petitioner or his authorized representative.

At this juncture, Ms. Mukherjee draws the attention of this Court to a letter dated March, 19, 2022, which is appearing at page 63 of the writ petition in response to an electronic mail of the petitioners dated March 17, 2022 and submits that any person except Mr. Sabyasachi Mukhopadhyaya, Senior Joint Commissioner of Revenue may be directed to consider and dispose of the appeal as, according to Ms. Mukherjee, the petitioners have the apprehension in their mind that Mr. Mukhopadhyaya may proceed to decide the appeal with a preconceived notion.

Mr. Ghosh, learned advocate appearing for the State submits that in order to avoid any future complication in this matter the respondent authority will ensure that the appeal, if any, preferred by the petitioner will be assigned to an officer of the same rank having the powers and jurisdiction to decide

such appeal excepting Mr. Mukhopadhyay. Taking note of such submission of Mr. Ghosh, this Court refrains from making any observation with regard to the aforesaid submission of Ms. Mukherjee.

Before parting with it is made clear that this Court has not entered into the merits of the claims and counter claims of the respective parties.

With the above directions the writ petition being WPA 721 of 2022 stands disposed of without, however, any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties on compliance of all requisite formalities.

(HIRANMAY BHATTACHARYYA , J)