

Item No. 4

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 06.07.2022

DELIVERED ON: 06.07.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 1480 of 2022

**M/s. Hanuman Ganga Hydroprojects Private Limited.
VERSUS**

Joint Commissioner, State Tax Authority, Siliguri Circle & anr.

Appearance:-

Dr. Navin Barik,

Mr. Anup Kumar bhattacharjee,

Ms. Esha Acharya

.....for the Petitioner

Mr. Subir Kr. Saha, Ld. A.G.P.,

Mr. Bikramaditya Ghosh

.. for the State.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. This writ petition is directed against an order dated April 18, 2022 passed by the Joint Commissioner, State Tax Authority, Commercial Taxes, Siliguri Circle, Siliguri being the respondent no.1 thereby rejecting the appeal preferred against the adjudication order no.240 dated October 8, 2021 passed by the Assistant Commissioner, State Tax, Bureau of

Investigation, North Bengal Headquarter, Directorate of Commercial Taxes, being the respondent no.2.

2. The writ petitioner claims to be engaged in the business of executing hydro and other renewable energy related projects across India. The petitioner is registered under the Sikkim Goods and Services Tax Act, 2017 (for short, 'SKGST Act') and the Central Goods and Services Tax Act, 2017 (for short, 'CGST Act'). For the purpose of execution of a project at Sikkim, the petitioner claims to have purchased a hydro mobile crane with 4-part boom and tool kit (for short, 'Hydraulic Mobile Crane') from one M/s. Action Construction Equipment Limited, which has its registered office in the State of Haryana. In terms of the purchase order, the said Hydraulic Mobile Crane was to be transported from Haryana and delivered to the petitioner at the East Sikkim site. While the said crane was being transported by road on the basis of E-Way bill dated September 25, 2021, the vehicle carrying the crane, which was parked at Fulbari bypass was intercepted by the office of the respondent no.2, i.e. the Assistant Commissioner, State Tax, Bureau of Investigation and the same was detained on the ground that the validity period of the said E-Way bill had expired.

3. A show cause notice was issued asking the petitioner to show cause as to why the proposed tax and penalty should not be payable. Petitioner replied to the show cause notice and as directed by the respondent no.2 appeared before the Adjudicating authority.

4. The adjudicating authority passed an order dated October 8, 2021 holding that the movement of the goods in question was found to be made in contravention of the provisions of the WBGST Act, 2017, CGST Act, 2017 and the provisions of Rule 138 (10) of the WBGST Rules, 2017 read with the provisions of the CGST Rules, 2017 and the provisions of the IGST Act, 2017. The adjudicating authority held that for such violation, the petitioner is liable to pay tax and penalty as applicable under the law and an order was passed demanding tax and penalty against the petitioner.

5. Being aggrieved against the order of the adjudicating authority dated October 8, 2021, petitioner preferred statutory appeal under Section 107 of the WBGST Act, 2017 and the appellate authority by order dated April 18, 2022 rejected the appeal petition upon holding that there is no reason to interfere with the adjudication order.

6. The petitioner has challenged the orders of the appellate authority and the adjudicating authority in this writ petition.

7. The learned Advocate appearing for the petitioner submits that the validity period of the E-Way bill dated September 25, 2021 expired only on October 3, 2021. The case of the petitioner is that since October 3, 2021 was a Sunday and further instructions for extension of the validity period of the aforesaid E-Way bill could not be obtained immediately, the said vehicle was parked at Fulbari bypass when it was intercepted and detained by the office of the respondent no.2. The learned Advocate for the petitioner submits that neither the adjudicating authority nor the appellate authority returned a finding that the petitioner had the intention to evade tax. He refers to a judgment and order dated May 12, 2022 passed by a Hon'ble Division Bench in **M.A.T. No.470 of 2022** in the case of **Assistant Commissioner, State Tax, Durgapore Range, Government of West Bengal Vs. Ashok Kumar Sureka, Proprietor of Subham Steel** and submits that on more or less identical facts, the Hon'ble Division Bench was of the view that such minor delay in extending the validity period of the E-Way bill without an intention to evade tax cannot saddle an assessee by way of imposition of penalty.

8. Mr. Ghosh led by Mr. Saha, learned Advocates appearing for the State, submits that the procedure for extension of the validity period of the E-Way bill is very simple in view of the modern advanced information technology. He submits that the respondent authority was perfectly justified in intercepting the vehicle and detaining the same as at the relevant time, the said vehicle was, in the eye of law, without any supporting E-Way bill. He further submits that the adjudicating authority after taking into consideration the provisions of the GST Rules, 2017 held that the alleged breach do not fall within the ambit of "minor breach" as provided under the provisions of the GST Act. He, thus, submits that the order of the adjudicating authority, which was subsequently affirmed in appeal by the appellate authority may not be interfered with by this Hon'ble Court exercising the powers of judicial review under Article 226 of the Constitution of India as there is no infirmity in the decision making process.

9. Heard the learned Advocates for the parties and perused the materials on record.

10. There is no dispute as regards the quantity and description of the goods as well as the particulars of the vehicle carrying the said crane as mentioned in the E-Way bill dated September 25, 2021.

11. It is also not in dispute that the Hydraulic Mobile Crane had to be transported from a distant place and the crane is a heavy machinery and also that the trailer on which the crane was transported was a very long one. It is further not in dispute that the said crane was being transported vide a valid E-Way bill though the validity of the same stood expired some hours prior to the time of interception.

12. The issue in this appeal is whether the authorities were justified in imposing tax and penalty on the ground that, at the time of interception, the validity period of the E-Way bill stood expired.

13. Though the learned Advocate for the petitioner disputed the exact time of interception of the vehicle carrying the Hydraulic Mobile Crane but the fact remains that at the time of interception, the validity period of the E-Way bill stood expired. It is not in dispute that the validity period of the E-Way bill stood expired on October 3, 2021 which was a Sunday. The driver of the vehicle as well as the person

accompanying him may not be so well conversant with the modern information technology of making speedy communication with the parties.

14. Petitioner claims that the movement of the goods from the supplier to the petitioner at the project site at Sikkim could not be completed within the time specified in the E-Way bill on account of the heavy nature of the goods and the length of the vehicle. Such explanation, in the facts of the instant case, may be considered to be a bona fide one as the petitioner cannot be said to benefitted in any way by the delay in transportation of the crane. Moreover the period between expiry of the validity period of the E-Way bill dated September 25, 2021 and the time of interception and consequent detention of such vehicle is not a substantial one. Though Mr. Ghosh may be right in contending that the alleged breach does not strictly fall within the scope of 'minor breach' but considering the nature of the alleged breach, this Court is of the considered view that the same cannot be said to be a grave one for the purpose of holding the assessee liable to penalty as directed by the orders passed by the authorities under the said statute as it is not a case of tax evasion.

15. The Hon'ble Division Bench on a more or less identical facts in the case of **Ashok Kumar Sureka, Proprietor of Subham Steel (supra)** held as follows:-

"7. After hearing the learned Advocates for the parties, we are of the view that in the instant case, the bona fides of the writ petitioner has to be tested on the documents, which were available on record. Firstly, we find that the tax invoice has been raised by Bhaskar Steel and Ferro Alloy Pvt. Ltd. dated 7th September, 2019. There is no dispute as regards the quantity and description of the goods. The said vendor had raised the e-way bill dated 7th September, 2019 as the goods were to be despatched from SRMB Srijan Pvt. Ltd. to the writ petitioner, who had its registered office at Kolkata. The said e-way bill was valid upto 9th September, 2019 since the approximate distance was about 168 kilometers. The writ petitioner's case was that they are traders and they had a supply order from Om Dayal Educational and Research Society, which also has its registered office at Kolkata but, however the goods had to be shifted to a place in Durgapur. Therefore, the writ petitioner raised a second e-way bill on 7th September, 2019 and since the distance from SRMB Srijan Pvt. Ltd., Durgapur to the Delhi Public School, Durgapur was only 9 kilometers, the e-way bill was valid only for one day, i.e. 7th September, 2019 to 8th September, 2019 (midnight).

8. We need not go into the controversy as to whether there was a break down of the vehicle, etc. The case has to be approached by considering the bona fides of the transaction as to whether the case warrants detention of the goods and collection of tax and penalty. Admittedly, the first e-way bill dated 7th September, 2019 was valid upto 9th September, 2019. Therefore, in the absence of second e-way bill, the tax authorities at Durgapur could not have intercepted or

detained the vehicle. Therefore, the explanation offered by the respondent / writ petitioner was an acceptable explanation and a case cannot be made out that there was a deliberate and willful attempt on the part of the respondent / writ petitioner to evade payment of tax so as to justify invocation of the power under Section 129 of the Act.”

16. In **Ashok Kumar Sureka (supra)** it was held that the case has to be approached by considering the bona fides of the transaction in order to decide whether it was a fit case for detention of goods and collection of tax and penalty.

17. After going through the order of adjudicating as well as the order passed by the appellate authority, this Court finds that the aforesaid authorities have not returned any finding that there was any deliberate and willful attempt on the part of the writ petitioner to evade payment of tax. In order to justify invocation of the power to impose penalty in terms of the said Act, it is necessary that such authority arrives at a definite finding that there was a deliberate and willful attempt on the part of the assessee to evade tax or there is lack of bona fide.

18. This Court already held that there is no lack of bona fide on the part of the writ petitioner in the instant case for not extending the validity period of the E-Way bill within

the aforesaid short period of time. It is also not a case of willful attempt on the part of the writ petitioner to evade payment of tax.

19. It is the admitted position that the petitioner has paid the amount of penalty levied by the adjudicating authority and the vehicle was also released thereafter.

20. For all the aforesaid reasons, the orders passed by the appellate authority dated April 18, 2022 as well as the order passed by the adjudicating authority dated October 8, 2021 and consequential demand of tax and penalty are all set aside and quashed. The Assistant Commissioner, State Tax Authority, Commercial Taxes, Siliguri Circle, Siliguri being the respondent no.2 herein is directed to take necessary steps for refund of the amount of tax and penalty recovered from the petitioner pursuant to the aforesaid orders impugned in this appeal and to refund the same forthwith but positively within a period of three weeks from the date of communication of a server copy of this judgment and order.

21. This Court, however, makes it clear that this order is being passed taking note of the peculiar facts and circumstances of this case as recorded hereinbefore and the same cannot be treated to be a precedent.

22. WPA No.1480 of 2022 accordingly stands allowed without, however, any order as to costs.

23. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Naren, AR(Ct.)