

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No.285 of 2022

Podder & Podder Industries Private Limited

.....Petitioner(s)

V E R S U S

The State of Tripura and others

.....Respondent(s)

For Petitioner(s) : Mr. B.N. Majumder, Sr. Advocate,
Mr. D.J. Saha, Advocate,
Mr. S.C Sen, Advocate,
Mr. Bikash Paul, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharya, G.A.,
Mr. Asish Nandy, Advocate,
Mr. P. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

O_R_D_E_R

29/03/2022

(Indrajit Mahanty, CJ)

This writ petition has come to be filed by the petitioner- Podder and Podder Industries Pvt. Ltd. which is engaged in the business of selling of construction machinery. It is submitted that the petitioner sold certain construction materials to a buyer in Agartala from Silchar (State of Assam) and the said machine was transported through a truck/trailer bearing registration No.HR 38 Z – 6075 and the said vehicle was used to transport the materials from Silchar to Agartala. It is asserted by the counsel for the petitioner that the vehicle was carrying all valid documents pertaining to the machinery sold including the sale invoice,

temporary registration certificate, insurance policy and e-way bill No.8612 1401 9866 valid up to 17.03.2022. It is further submitted that on the way the vehicle under which the goods were being transported, faced certain technical problems and when the vehicle reached at Churaibari on 18.03.2022 by the said time the e-way bill has expired. For this reason, the vehicle was detained and ultimately on 18.03.2022 the driver in-charge of the vehicle was informed with a direction of seizure of both the vehicle as well as the goods concerned. Since the vehicle and goods concerned are remained in stopped at the entry point into the State of Tripura, the present writ petition has come to be filed seeking release of the vehicle and the goods noted hereinabove.

[2] Learned counsel appearing for the petitioner submitted that the e-way bill under which the goods were being moved from Silchar to Agartala was issued by the buyer namely, Sri Swapan Chandra Dey who is a registered contractor in the State of Tripura and the buyer purchased the said equipment from the petitioner for the purpose of utilizing the same to enable Sri Dey to carry out his contractual obligation to the State of Tripura under certain contract entered into by him. Accordingly, he submits that seizure and detection of the vehicle at the entry point into the State of Tripura has caused an impediment on the free-flow of goods and services within the Union of India. In any event, learned counsel for the petitioner brings to our notice that the petitioner and/or the buyer only

had an 8-hour window of Rule 138, sub-rule (10) of the GST Rules, 2017 to seek any extension thereof. Therefore, he submits that the denial of entry of the vehicle into the State of Tripura on the aforesaid plea, as noted hereinabove, amounts to an impediment on the free-flow of goods and services.

[3] On the other hand, Shri Debalay Bhattacharya, learned Government Advocate contended that since the petitioner has admitted that the e-way bill issued by him had expired on 17.03.2022 and the date of entry was 18.03.2022, it was obligatory on part of the transporter and/or the buyer to make necessary prayer for extension of time in the e-way bill and since the e-way bill had expired, the authority under the GST Act at the check gate was left with no other alternative other than to stop the vehicle and to effect seizure of both the vehicle as well as the goods concerned.

[4] Similar instances have been noticed by this Court in the past. We are constraint to note that any impact on the free-flow of goods and services (*bona fide*) ought to be encouraged and not discouraged since the free-flow and movement of goods and services throughout the Union of India is meant to be for the purpose of development of the nation. No doubt the rule making authorities have the authority to put conditions such as requirement of an e-way bill to cover the goods that have been

transported. However, it must not be lost sight of the fact that an e-way bill has supplied to cover the goods under the transit by a registered dealer under the GST Act. Learned Government Advocate when queries as to whether there was any doubt about the genuinity of the transaction is concerned, fairly admitted that there is at present no question or any doubt over the genuineness of the transaction. Therefore, the question that next comes for consideration before this Court is as to whether a vehicle carrying goods for which the e-way bill has expired and the vehicle as well as goods ought to be seized or should the authority concerned release such goods and vehicle by seeking an undertaking from the assessee concerned either the buyer or the seller.

[5] This Court is of the considered view since the transaction in question is between two registered dealers under the GST Act covered by the e-way bill and other documents where genuineness is not in doubt, vehicles carrying such goods ought to be permitted to continue with such carrying subject of course to either the check gate officer informing the assessing officer where the buyer is located and further direct the buyer to appear before the assessing officer to provide an opportunity to the buyer or seller to take such corrective steps as may be necessary in the matter. We are also in agreement with the learned counsel for the revenue that the movement of goods from one state to another is controlled by the taxation department under the GST regime on the e-way bill issue. Therefore,

since the transaction admittedly is between two registered dealers located in two different states, there is no justification for stoppage in transit of the vehicle and goods.

[6] We are of the considered view that balance has to be brought between transportation of goods as well as the taxing event i.e. the sale or purchase of goods of service. In a case where there is no doubt that a transaction is made between two registered dealers and is covered by the necessary documents including the e-way bill even if the e-way bill has expired just prior to the date of entry into the State, such goods ought not to be stopped and instead an undertaking should be taken from the buyer or the seller and intimation should be provided to the assessing officer of both the parties before whom the buyer or seller may appear to make necessary compliance. Any hindrance in the movement of goods or fray amounts to an obstacle of the development of the nation.

[7] It would be appropriate also to take note of the fact that the vehicles stranded for which the department has been charging additional higher charges but the equipment loaded on the truck remains unutilized and the buyer is prevented from using that machinery for the contracts which have been given to him by the state and others. Therefore, to enhance the ease of business it is also necessary for the rule making authority to reconsider in their best wisdom whether the requirement of

fixation of the period of time in the e-way bill is at all appropriate requirement in the circumstances?

[8] Accordingly, writ petition is disposed of directing the petitioner to appear before the check gate officer and to submit an undertaking or bond before the check gate officer and the check gate officer shall release the vehicle as well as the goods by accepting the undertaking or bond and such information as may be appropriate be provided to the assessing officer of both the seller and buyer who may be at liberty to initiate appropriate action against the registered dealer who shall be duty bound in law to make such compliances failing which they shall be liable for whatever consequences law has prescribed.

[9] Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J

(INDRAJIT MAHANTY), CJ