

16.06.2023
Item No.8
gd/ssd

MAT/1034/2023
IA NO: CAN/1/2023, CAN/2/2023
USHA MARTIN LIMITED AND ANR.
VS
THE DEPUTY COMMISSIONER OF
STATE TAX, DURGAPUR RANGE AND ORS.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah
..for the Appellants.

Md. T.M. Siddiqui
..for the State.

Re: CAN 1 of 2023

1. CAN 1 of 2023 has been filed by the appellants seeking condonation of delay of 320 days in filing this appeal.

2. Learned counsel for the appellant has referred to the explanation which has been furnished in the application and also has made submission in respect of the explanation for the delay.

3. We find that the delay in filing this appeal has been sufficiently explained and the appellant was prevented from filing the appeal within time on account of bona fide reason.

4. Hence, CAN 1 of 2023 is, accordingly, allowed.
The delay in filing the appeal is condoned.

Re: MAT 1034 of 2023

5. This intra court appeal by the appellants is directed against the order passed by the learned Single Bench dated 22nd June, 2022 in WPA 10856 of 2022.

6. By the said order the learned writ court had dismissed the writ petition filed by the appellants challenging the order passed by the appellate authority dated 20th July, 2022 confirming the order of levying 100% tax and penalty.

7. On the ground that the appellants had approached the writ court almost after two years after the appellate authority had passed the order. The explanation given by the appellants is that the appellants, being aggrieved by the order passed by the appellate authority was entitled to go before the Tribunal.

8. However, since a Tribunal was not constituted, the appellants were advised to await the Constitution of the Tribunal and thereafter since the Tribunal was not constituted for almost two years, the appellants were advised to file the writ petition. In any event the appellants had already paid the tax and penalty and therefore, we are of the view that the matter can be decided on merits.

9. The undisputed facts are that the goods in question were meant for export and the appellants had

generated an e-Way Bill which was valid till 12th September, 2019.

10. The appellants' case is that the goods while being loaded into the vessel and had got damaged and as a result, the goods had to be taken back to the appellants factory at Ranchi for repairs. For such purpose the e-Way Bill was generated based on a challan on 7th September, 2019 which was valid till 12th September, 2019.

11. On perusal of the e-Way Bill, it is seen that no tax was payable since the goods which were owned by the appellants were taken back to their factory at Ranchi for repairs. The goods were detained while in transit at about 8.20 a.m. on 13.09.2019. In terms of Rule 138(10) of the WBGST Rules an option is given to the assessee to extend the period of e-Way Bill and such extension should be done before eight hours and after eight hours of the expiry of its validity. Admittedly the eight hour period expired about 8.10 a.m. on 13.09.2019 and at about 8.20 a.m. the goods were intercepted and detained.

12. The identical issue was considered by the Court in various matters and some of which being in the case of Progressive Metals Pvt. Ltd. v. The Deputy Commissioner, State Tax, Bureau of Investigation, South Bengal, Durgapur Zone & Ors. in MAT 562 of 2023 dated 28.04.2023 and in KDG Projects Pvt. Ltd. v.

Assistant Commissioner of State Tax, Bureau of Investigation (North Bengal) reported in 2022(66) G.S.T.L. 262 (Cal) and the decision in Medha Servo Drives Private Limited & Anr. v. The Assistant Commissioner of, State Tax, Bureau of Investigation (South Bengal), Durgapur Zone & Ors. in MAT 1751 of 2022 dated 17.11.2022. In all these matters the Court considered the conduct of the assessee and having found that the conduct was not with the intention to evade tax, granted relief to those assessees. The case on hand also would fall under the said category since there is no allegation of any evasion of tax rather it is not disputed that the goods were being transported under a cover of challan to the factory of the appellants for carrying out repairs.

13. Considering the peculiar facts and circumstance of the case, this Court is of the view that it is not a fit case where tax and penalty should have been levied on the appellants.

14. For the above reasons, the appeal as well as the writ petition is allowed and the orders impugned in the writ petition are set aside and quashed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(UDAY KUMAR, J.)