

Item No.2.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 16.03.2023

DELIVERED ON: 16.03.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNAMAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 222 of 2023

With

I.A. No.CAN 1 of 2023

Deepika Mandal Maity.

Vs.

**The Assistant Commissioner of State Tax, Bureau of Investigation, South
Bengal, Howrah Zone & Ors.**

Appearance:-

**Mr. Jaweid Ahmed Khan,
Mr. Bhaskar Sengupta,
Mr. Talha Ahmed Khan**

....

for the appellant

**Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Debraj Sahu**

...

for the State of W.B.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNAMAM, J.)

1. This intra-Court appeal filed by the writ petitioner is directed against an order dated 13th January, 2023, 2023 in WPA No.648 of 2023. The said writ petition was filed by the appellant challenging an order passed by the adjudicating authority dated 16th December, 2022 levying a total penalty of Rs.8,97,125/-. The allegation is that the excavator owned by the appellant was being transported, which was intercepted and the road challan, which was issued, was produced before the authority and according to the authority, the transportation of the vehicle was in contravention of Section 129 of the Act and therefore, liable for payment of penalty.

2. It is clear that there is no allegation that the appellant had sold the excavator in question and upon sale, it was being transported. The appellant's case is that the vehicle was purchased by the appellant by availing financial assistance from a bank and a hypothecation agreement has been entered into with the bank and the vehicle cannot be sold by the appellant. It is the further case of the appellant that the vehicle was being used for various job works and while performing the job work in one of the universities, the excavator got damaged and it was being transported by using another lorry for repairs and at that juncture, it was intercepted.

3. The learned Single Bench dismissed the writ petition on the ground that the appellant has to file an appeal before the appellate authority. Insofar as the factual issues are concerned, it is but appropriate that the appellant avails the alternate remedy of appeal. However, this Court is of the view that the vehicle, which was carrying the excavator and the excavator could not be kept under detention as it will deteriorate the value of both the vehicles and it will be counter productive as the appellant will not be able to repair and use the vehicle. Consequently, he will be declared as a defaulter in payment of the monthly instalments to the bank and the net result would be even assuming that the order of penalty is to be upheld, it will continue to remain as a paper work. Therefore, while affirming that portion of the order passed by the learned Writ Court directing the appellant to file an appeal before the appellate authority, if the appellant files such an appeal, upon payment of the requisite pre-deposit, both the vehicles in question, i.e. the excavator and the vehicle, which was carrying the excavator shall be released after obtaining an undertaking from the appellant that he shall not sell the excavator till the disposal of the appeal.

4. The release of the vehicle shall be done within three days from the date on which the appeal is filed before the appellate authority and the pre-deposit is made and the requisite challan is produced before the detaining authority.

5. With this direction, the appeal along with the application being I.A. No.CAN 1 of 2023 are disposed of.

6. There shall be no order as to costs.

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

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)