

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.852 OF 2021**

M/S Western Carriers(India) Ltd.

..... **Petitioner(s)**

Vs.

The State of Tripura and ors.

..... **Respondent(s)**

For the Petitioner(s) : Mr. A. Nandi, Advocate.

For the Respondent(s) : Mr. K. De, Addl. G.A.

Date of hearing and delivery of
Judgment & Order : 03.01.2023.

Whether fit for reporting : YES/NO.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

JUDGMENT AND ORDER(ORAL)

The petitioner herein is a registered transporter in the name and style of M/S Western Carriers(India) located at 67/28 Strand Road Kolkata. The petitioner-transporter was booked with consignment No.1/ONG-0080/21 against SL. No.461859 dated 24.09.2021 from the Office of Transportation and Shipping, Oil and Natural Gas Corporation, located at Technopolis Building, 4th Floor, Sector-V, Salt Lake Kolkata for delivery of said shipment at ONGC, Tripura Asset, Badharghar

Complex, which was also having GST registration No.16AAACO1598A2ZP(Tripura). The convey note was shared with the petitioner-transporter. Thereafter, E-Way Bill was generated by the transporter dated 25.09.2021 for the smooth movement of the said shipment. Inadvertently, the class of the vehicle was mentioned as 'ODC' instead of a normal vehicle. The vehicle of the transporter vide registration No.JK02AV1205(truck) was intercepted on 05.10.2021 by the enforcement wing at Churaibari, North Tripura. During inspection/physical verification of the said vehicle, no wrong consignment was detected except the wrong description of the class of the vehicle, for which tax and penalty were labeled upon the transporter. Finally, for the release of the urgent operational spare of ONGC, the petitioner had to execute a bond and a bank guarantee worth Rs.40,85,488/- in favour of the Superintendent of State of Tax, Churaibari Enforcement Wing, North Tripura, 799262.

2. Being aggrieved by the impugned order of detention and order of proposed payment of tax and penalty, the petitioner herein has filed this instant writ petition praying for the following reliefs:-

" (i) Issue rule asking the respondents to show cause as to why the respondents No.4 & 5 should not be directed to release the Bank Guarantee in favour of the petitioner.

(ii) Issue Rule upon the respondents and each one of them to show cause as to why a writ in the nature of certiorari shall not be issued directing the respondents to produce the records relevant to the subject matter of the proceedings for rendering consignable justice by squashing/setting aside the impugned order of detention of goods dated 06.10.2021 in FORM GST MOV-06 towards allowing the movement of the consigned goods and further the demand raised vide FORM GST MOV-07 dated 06.10.2021.

(iii) Issue rule upon the respondents and each one of them to show cause s to why the writ in the nature of mandamus shall not be issued directing the respondent Nos.3 to 5 to provide a scope to rectify the inadvertent mistake in regards to the class of vehicle meant for said shipment and as well as for dropping the proceedings and also for passing necessary direction for release of bank guarantee.

(iv) Upon hearing both the parties' rule may be made absolute in the terms of the above prayer.

(v) Any other order as your lordship may deem fit in the facts and circumstances of the case."

3. Mr. A. Nandi, learned counsel appearing for the petitioner submitted that there was no suppression in either invoices or bill of the supply of delivery challan in transit. There is no provision for double imposition of tax and penalty upon the shipment, which has already paid proper tax. Minor anomaly in regard to the class of vehicle as to the description in the E-Way Bill, nowhere invites any provision for imposition of tax and penalty as is done against the instant petitioner. For violation on other grounds as is applicable against the instant petitioner, only Rs.10,000/- can be fastened and fined that too without detention of the vehicle.

4. Mr. K. De, learned Addl. G.A. appearing for the respondent submitted that the vehicle involved is a normal vehicle but in the E-Way Bill, it was wrongly stated as an 'ODC'

vehicle. The same was done to avail the benefit of 'ODC' vehicle. Further learned Addl. G.A. stated that the subject of the penalty which has been given as reference is under challenge before the Hon'ble Supreme Court.

5. After hearing both the parties and perusing the evidence on record this instant writ petition is disposed of with a liberty to the petitioner herein to file an appeal against the impugned action of the respondents. The Appellate Authority before deciding the appeal shall consider the matter in its entirety including the issue that is pending before the Hon'ble Supreme Court. Further, till the appeal is decided, the Bank Guarantee that is furnished by the petitioner shall continue.

6. With the above observation and direction, this instant writ petition is disposed of. Consequently, pending application(s), if any also stand closed.

JUDGE

CHIEF JUSTICE (ACTING)