

GAHC010131022024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3392/2024

TNS EXPRESS PVT LTD AND ANR
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT 1956 AND HAVING ITS REGISTERED OFFICE SITUATED
AT 5E, SHAHZADA BAGH, INDUSTRIAL AREA, NEW DELHI, 0035 AND ITS
MAILING ADDRESS AT A-406, ROAD NO-4, STREET NO-8, MAHIPALPUR
EXTENSION, NEW DELHI, PIN-110037, DELHI, AND REP BY AMARENDRA
KUMAR SINGH, AS ONE OF ITS DULY AUTHORISED DIRECTORS

2: SUBODH KUMAR SINGH
S/O- DHIRENDRA KR. SINGH

R/O- H.NO-25
SHANTI KUNJ
N.S ROAD
EAR ARYA SCHOOL
CHAABIPOOL
BILPAR
REHABARI
GUWAHATI-08

DIST- KAMRUP (M)
ASSAM.
DESIGNATED AS THE AUTHORIZED REP. AND POWER OF ATTORNEY
HOLDER OF THE PETITIONER NO-1 COMPANY

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP BY THE PRINCIPAL SECRETARY/COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM, FINANCE(TAXATION) DEPTT., DISPUR,
GUWAHATI-06

2: THE DEPUTY COMMISSIONER OF TAXES
GUWAHATI

ZONE C
NEW KAR BHAWAN
DISPUR
GUWAHATI-06

3:THE ASSISTANT COMMISSIONER OF STATE TAX
GUWAHATI ZONE C
GUWAHATI

O/O THE DEPUTY COMMISSIONER OF TAXES
GUWAHATI
ZONE C
NEW KAR BHAWAN
DISPUR
GUHATI-06
ASSA

Linked Case : WP(C)/3417/2024

TNS EXPRESS PVT. LTD. AND ANR
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE SITUATED AT 5E
SHAHZADA BAGH INDUSTRIAL AREA
NEW DELHI-110035 AND ITS MAILING ADDRESS- AT A-406
ROAD NO. 4
STREET NO. 8
MAHIPALPUR EXTENSION
NEW DELHI-110037
DELHI AND REPRESENTED BY SHRI AMARENDRA KUMAR SINGH AS ONE
OF ITS DULY AUTHORIZED DIRECTORS.

2: SUBODH KUMAR SINGH
S/O- SHRI DHIRENDRA KUMAR SINGH
R/O- HOUSE NO. 25
SHANTI KUNJ
N.S. ROAD
NEAR ARYA SCHOOL
CHABIPOOL
BILPAR
REHABARI
GUWAHATI
PIN- 781008
DIST. KAMRUP(M)
ASSAM
DESIGNATED AS THE AUTHORIZED REPRESENTATIVE AND POWER OF
ATTORNEY HOLDER OF THE PETITIONER NO. 1 COMPANY.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY/ COMMISSIONER AND
SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE (TAXATION) DEPARTMENT
DISPUR
GUWAHATI-781006.

2:THE DEPUTY COMMISSIONER OF TAXES
GUWAHATI
ZONE-C
NEW KAR BHAWAN
DISPUR
GHY-781006.

3:THE ASSISTANT COMMISSIONER OF STATE TAX
GUWAHATI ZONE-C
OFFICE OF THE DEPUTY COMMISSIONER OF TAXES
GUWAHATI
ZONE-C
NEW KAR BHAWAN
DISPUR
GUWAHATI
ASSAM
PIN- 781006.

Advocate for the Petitioners : Mr. N. Baruah, Advocate

Advocate for the Respondents : Mr. B. Gogoi,
SC, Finance & Taxation

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 20.09.2024

Date of Judgment : 20.09.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. N. Baruah, the learned counsel appearing on behalf of the petitioners and Mr. B. Gogoi, the learned counsel appearing on behalf of the respondent Nos.1 to 3.

2. The petitioners herein have filed the instant writ petitions being aggrieved by the action on the part of the respondent authorities in not reflecting the payments so made by the petitioners pursuant to the final demands raised. At this stage, it is relevant to mention that because of non-reflection in the website, the petitioners are also not in a position to file the statutory appeals and it is under such circumstances, the petitioners therefore have approached this Court by filing both the writ petitions.

WP(C) No.3392/2024

3. The case of the petitioner herein is that on 23.09.2023, a transport vehicle bearing license No.AS01DC1037 transporting Pan Masala products was intercepted by the respondent No.3 and detained due to some alleged discrepancies. Accordingly, proceedings under Section 129 (3) of the Assam Goods and Services Tax Act, 2017 (for short, 'the State Act') were initiated and the show cause notice dated 05.10.2023 was issued to the petitioner. The petitioner thereupon submitted the reply on 09.10.2023 rebutting the allegations raised. Subsequent to the said reply, the respondent No.3 passed an order dated 13.10.2023 under Section 129 (3) of the State Act as well as the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act, 2017') determining the tax, quantum of penalty and cess payable at Rs.16,35,840/-. The petitioner taking into account that the goods in question were perishable in nature and not making the payment of the demand of tax and penalty would result in detention for unduly long period of time, paid the amount of Rs.16,35,840/- via net/online banking on 19.10.2023 which was duly acknowledged by the respondent authorities. Thereupon, the detained goods were released

upon payment of the entire demand amount on protest by release order dated 20.10.2023. The petitioners thereafter tried to file an appeal against the order dated 13.10.2023. It is the case of the petitioners that when they tried to file the Appeal, an alert notification kept cropping up in the portal to the effect that the Appeal could only be filed after complete payment of taxes as calculated in Table 15 (a). The petitioners were shocked and surprised at the said aspect taking into account that when the entire demanded amount had been paid under protest how such alert notification kept cropping for which the petitioner submitted two communications dated 06.01.2024 and 02.03.2024 addressed to respondent No.3. The petitioners submit that they had reasons to believe that the glitch which had occurred in the portal must have been on account of the officer concerned not setting off the deposited sum of Rs.16,35,840/-. On the ground that the petitioners have been deprived of their valuable right to file appeal for no fault of the petitioner, the instant writ petition has been filed for appropriate writ direction(s) and order(s).

WP(C) No.3417/2024

4. The facts involved in the instant writ petition are similar to WP(C) No.3392/2024. However, the difference is that the vehicle which was intercepted beared the registration number being No.AS01Y5425 and was intercepted on 02.08.2023. In the instant case, the show cause notice was issued on 03.09.2023 and the petitioners submitted a reply on the 12.09.2023. On the basis of that, initially the tax, quantum of penalty and cess was determined at Rs.24,12,288/-. However, subsequently the same was revised to Rs.16,08,192/-. Be that as it may, the petitioners paid the amount on the 06.09.2023 and the authorities duly acknowledged the

receipt of Rs.17,50,000/-. Thereupon, the petitioner tried to file an appeal against the order dated 12.09.2023. However, the appeal could not be filed on account of the same glitch of an alert notification kept cropping up to the effect that the Appeal could only be filed after complete payment of taxes as calculated in Table 15 (a). Under such circumstances, the petitioner in the instant writ petition had submitted two communications on 02.12.2023 and 17.02.2024 to the respondent No.3. However, nothing was done for which the instant writ petition was filed.

5. Being aggrieved, both the above writ petitions were filed and this Court vide separate orders issued notice and also observed that the pendency of the writ petitions shall not be a bar to the respondents to proceed with the Appeal. This Court had also taken note of that on various occasions, orders have been passed in the instant writ petitions enquiring with the respondent authorities as to whether the glitch was removed taking into account that the petitioners have duly paid the said amount. However, this Court was informed that instructions were awaited.

6. On the 11.09.2024, this Court directed the respondent authorities to apprise this Court as to whether the payments so made by the petitioners have been duly reflected in as much as on account of non-reflection of the said payments, the petitioners were not in a position to file the Appeals. In response to the said directions, affidavit-in-opposition in both the writ petitions have been filed. The specific stand which has been taken in both the affidavits filed by the respondents is that as the demands comprising of the tax, penalty and cess were paid in full, the proceedings initiated by the notice under Section 129 (3) of the State Act in both the writ petitions stood concluded or in other words, the stand which is being taken now by

the State respondents there is nothing left in the proceedings as the petitioners had already paid the demand amount in full. It is apposite herein to mention that the stand of the respondents were based upon a decision taken by the Respondent Authorities on 19.09.2024, that too when the instant writ petitions were pending.

7. During the course of the hearing, Mr. B. Gogoi, the learned counsel for the Finance and Taxation Department of the Government of Assam submitted that in terms of Section 129 (5) of the State Act upon payment of the amount referred to in Sub-section (1) of Section 129 of the State Act, all proceedings in respect of the notice specified in Sub-section (3) shall be deemed to have been concluded. He therefore submitted that it is in exercise of that power, the communication dated 19.09.2024 had been issued.

8. I have heard the learned counsels appearing on behalf of the parties and given my anxious consideration. Section 107 of the CGST Act, 2017 categorically stipulates that any person aggrieved by any decision or order passed under the CGST Act, 2017 or the State Act as well as the Service Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority, may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person. In terms of Section 107(6), no Appeal shall be filed under Sub-section (1) of Section 107 unless the appellant had paid either the amount in full or such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order as is admitted by him or a sum equal to 10% of the remaining amount of tax in dispute arising from the said order. The proviso to Sub-section (6) to

Section 107 categorically stipulates that no Appeal shall be filed against an order under Sub-section (3) of Section 129 of the State Act unless a sum equal to 25% of the penalty has been paid by the appellant.

9. In both the writ petitions, it would be seen that the petitioners herein have made the entire payment of tax, penalty and the cess which has been duly acknowledged by the respondent authorities. It is further seen that the petitioners have also within the period permissible to file the Appeal had submitted representation as aforementioned stating inter-alia the reason why the entire amount of tax, penalty and interest was paid as demanded vide the final order passed under Section 129 (3) of the State Act. It is also seen that within the period of limitation, the petitioners have also informed the glitch which was showing when the Appeals attempted to be filed in the portal and it was also duly intimated that amounts of demand were paid under protest. However, inspite of the representations so submitted, no steps were taken by the respondents thereby to enable the petitioners to file the appeals in the portal.

10. This Court has also perused the provisions of Section 107 and Section 129. A perusal of both the provisions do not in any manner show that there is a bar in filing Appeal if the entire demand as stated in the orders passed under Section 129 (3) have been paid.

11. Section 129 (5) of the State Act only stipulates that upon payment of the entire amount as referred to in Sub-section (1) of Section 129, all proceedings in respect to the notice specified in Sub-section (3) shall be deemed to be concluded. The said provision therefore shows that upon payment of the amount, the proceedings in respect of the notice specified in Sub-section (3) shall be deemed to be concluded. The said provision

would in the opinion of this Court, would apply only in circumstances, when pursuant to a Show Cause Notice issued under Section 129 (3), the entire amount so stated therein is paid. In contrast, it would be relevant to observe that Section 129 (3) also refer to an order to be passed within 7 days from the date of service of such notice. However, Section 129 (5) only refers to the notice and not to the order. In that view of the matter, this Court is of the opinion that right to file appeal by the petitioners cannot be taken away merely because the petitioners have paid the entire amount demanded in the orders passed under Section 129(3) of the State Act.

12. Taking into account the above, this Court is of the opinion that on account of the fault of the respondent authorities, the petitioners were not able to file appeals against the respective orders dated 19.10.2023 and 12.09.2023 passed under Section 129 (3) of the State Act.

13. Accordingly, the instant writ petitions are disposed of with the following observations and directions:-

(A) The petitioners are given the liberty to file the Appeals with 10 days from the date of the instant judgment in the portal.

(B) On filing of the said Appeals, the Respondent Authorities shall make available the infrastructure so that the Appeals are accepted in the portal.

(C) If in the eventuality, the Respondent Authorities are not in a position to provide the infrastructure for acceptance of the Appeals to be filed by the petitioners, further seven days time is provided on the expiry of ten days as stated in Clause (A) herein above to the

petitioners to file the Appeals in the manual mode and the Respondents shall accept the same.

(D) The Respondent Authorities shall not insist on the limitation, if filed within the period herein above directed.

JUDGE

Comparing Assistant