17.11.2021
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Sl. No. 34
Ct. No. 05

WPA 5369 of 2021

[Via Video Conference]

Trilok Kumar Agarwal HUF & Anr.
-Versus-
State of West Bengal & Ors.

Mr. Tanay Chakraborty
Mr. Keshav Daruka
..... for the petitioner
Mr. Samita Das De
Mr. Amal Kr. Dutta
..... for the U.O.I.
Mr. Pantu Deb Roy
Mr. Anand Fermaria
...... for the State

The prayer in the writ petition is for an appropriate direction on the respondents to compensate the loss suffered by the petitioner by way of a penalty imposed on the petitioner in terms of communication dated 28th February, 2021 by the Motor Vehicles Inspector, Transport Department, Government of West Bengal. By the said communication, the weight of the petitioners' vehicle was assessed at 49520 kgs. whereas according to learned counsel appearing for the petitioners, the petitioners would have the benefit of a Circular issued by the National Highways Authority of India dated 6th February, 2016. Under the Circular, the Explanation to Clause 2 of the Motor Vehicles Act, 1988 gives a relaxation of 5 per cent in the gross vehicle weight and safe axle weight under Section 113 of the

Motor Vehicles Act, 1988. Counsel submits that if the 5 per cent relaxation is taken into account, the total admissible weight would be 49875 kgs. which would be higher than 49520 kgs. which was found by the Motor Vehicles Inspector. Petitioner would hence come within the total admissible weight and the penalty paid by the petitioner should be declared to be illegal.

The prayer of the writ petitioners is opposed by the learned counsel appearing for the State who relies on a later Circular dated 6th August, 2018 under Clause 4 whereof, approval certificates granted prior to 16th July, 2018, only be considered. Counsel submits that the registration of the petitioners' vehicle is before the date mentioned in Clause 4 of the later notification.

Upon hearing learned counsel and considering the relevant Circulars, this Court is of the view that the explanation to Clause 4 of the later notification dated 6th August, 2018 is identical to that of the Circular dated 6th February, 2016. The effect of the Explanations to both the Circulars is that there would be a relaxation of 5 per cent in the gross vehicle weight and for the purpose of compliance to Section 113(3) of the Motor Vehicles Act, 1988. The only difference is the part of Clause 4 before the explanation in relation to maximum safe axle weight in the later notification which relates to clause 2 of the said notification which mentions the gross vehicle weight and the permissible safe axel weight.

Since the relaxation of 5 per cent was not altered in the later notification of 6th August, 2018, there is no reason why the petitioner should not have the benefit of the 5 per cent relaxation which would bring the petitioner within the relaxed outer limit; namely the assessed laden weight of 47,500kgs. if the 5 per cent relaxation is taken into account.

Having found that the petitioner is entitled to the benefit of both the notifications, the penalty paid by the petitioner pursuant to the communication of the Motor Vehicle Inspector should be refunded to the petitioner by the concerned authority within three weeks from the date of communication of this order. The petitioner is also entitled to a declaration that the petitioner shall have the benefit of the 5 per cent relaxation under the notifications.

WPA 5369 of 2021 is disposed of with a direction on the Regional Transport Officer, Uttar Dinajpur, to refund the penalty amount to the petitioner as directed above.

Learned counsel appearing for the State suggests that the Regional Transport Authority is the appropriate authority for taking steps in this regard.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Moushumi Bhattacharya, J.)