

03 29.03.2022
 RP Ct. No. 16
 AN

MAT 287 of 2022
 With

IA No. CAN 1 of 2022

RGS Roadways & anr.
 vs.
 Union of India & ors.

Mr. B. P. Chakraborty
 Mr. Suvranil Saha
 Mr. Rituraj Chakraborty

... for the appellant

Mr. A. Ray, learned Government Pleader
 Md. T. M. Siddiqui
 Mr. D. Ghosh

... for the State

This intra court appeal is directed against the order passed by the learned Single Judge dated 02.02.2022 in WPA 1276 of 2022.

The writ petition was filed for issuance of a writ of mandamus to set aside the notice of demand dated 20.12.2021 as also the penalty levied on the appellants and for other consequential directions. The learned Single Judge was of the view that already the show cause notice has been issued and the appellants have participated in the adjudication proceedings and the writ petition cannot be entertained.

Aggrieved by the same, the appellants are before us by way of this appeal.

After hearing learned counsel for the parties at length, we are of the view that the findings and the observations made by the learned Single Judge reflect the

correct legal position as the appellants cannot be permitted to bypass the remedy available under the West Bengal Goods & Services Tax Act as the appellants seek to dispute certain facts. Therefore, necessarily the appellants have to participate in the adjudication.

As pointed out by the learned counsel for the State, a detailed show cause notice was enclosed as a separate attachment alongwith the summary of the show cause notice dated 20.12.2021 and the appellants complained before the learned writ court that they have not received the detailed show cause notice though it was sent as an attachment to the summary of the show cause notice. In any event, the respondents have furnished a copy of the detailed show cause notice and it is for the appellants to participate in the adjudication by submitting their reply.

Learned counsel for the appellants would contend that bona fides of the case has to be considered by the authority. The export of goods was from SAIL, Kolkata to Bangladesh Steel Re-Rolling Mills Ltd. and the appellants were only a transporter of the goods. In the affidavit filed in support of the writ petition the following stand has been taken on facts:

“FOR THAT the officials of SAIL failed to complete the paperwork in due time for which the gates of the premises of SAIL was shut down at about 7:00 pm and the carrier vehicle was stuck in the said premises. That on December 12, 2021 being a Sunday, the premises of the compound was completely closed due to Holiday and only on December 13, 2021, the gate of the SAIL Dankuni premise was reopened. It is pertinent to mention herein

that the officials of SAIL had failed to complete the paperwork on due time and only at about 1:00 pm, the paper works were complete on December 13, 2021. However, due to carrying such heavy goods, the carrier vehicles usually take the course of evening or early morning hours to travel and transport goods. Therefore, the carrier vehicles left the SAIL Dankuni premise at about 7:00 pm on December 13, 2021.

FOR THAT the respondent no. 6 intercepted and stopped both the carrier vehicle but by that time the concerned E-Way Bills being E-Way Bill No. 8711 9486 9342 and E-Way Bill No. 8511 9487 0728 had expired due to which the respondent no. 6 detained the said vehicle with the said goods without evaluating the situation and circumstances regarding the failure on part of SAIL to provide the paperwork in due time. That the driver of the vehicle had informed the proper officer the reasons for the delay. However, respondent no. 6 did not consider nor acknowledge the same, and forwarded to seize the vehicle.”

The appellants would contend that the above facts will clearly show the bona fides of the transaction and on account of certain administrative matters the vehicle could not leave the factory premises before 07.00 PM on 13.12.2021. Further, learned counsel for the appellants have drawn our attention to the work order issued by the SAIL, Kolkata dated 09.12.2021 for road transportation contract for export consignment from sales stockyard to LCS border at Bangladesh.

Considering the facts and circumstances of the case, it appears that the only reason which leads to the detention of the vehicle alongwith the goods is the validity of the E-Way Bill which was not extended within the

prescribed time limit following Rule 138(10) of the relevant rules. The facts remained that the E-Way Bill was generated on 11.12.2021 and was valid till 11.59 PM on 12.12.2021. The appellants' case is that the factory gates were closed and the paper work could not be completed by the authorities of SAIL and on account of intervening holiday, the paper work cannot be completed subsequently and the vehicle could move out of the factory only at 07.00 PM on 13.12.2021.

Considering the peculiar facts and circumstances of the case, the authority while adjudicating the show cause notice should examine the genuinity of the transaction though it may be true that on the date when the vehicle moved out from the stockyard, E-Way Bill was not valid. However, the appellant was able to substantiate with other contemporary records to show that the consignment was meant for export and export alone then it goes without saying that the authority is bound to consider the submission of the appellant.

Thus, while affirming the order passed by the learned writ court, we direct the appellant to file their reply to the show cause notice within two weeks from date and the adjudicating authority shall adjudicate the show cause notice after affording an opportunity of personal hearing to the authorized representative of the appellants and permit them to file letters and documents to show their bona fides and also to prove that the goods were meant for export and not for local sale.

Hence, with the above observations, the appeal stands **disposed of**. Consequently, the connected application also stands disposed of.

We note that during the pendency of the proceedings the appellants sought for release of the goods for which a bank guarantee has been executed.

In the light of the above, the authority shall not invoke the bank guarantee, if not already done, and the State is directed to keep the same alive till the adjudication of the show cause notice is completed.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)