25.7.2022
ks
sl. 5

WPA 15512 of 2022

Sheetla Mishra, Proprietor of MAA KALI ENTERPRISE & Anr.

Vs

Deputy Commissioner, State Tax, BI (South Bengal), Purulia Zone, Government of West Bengal & Ors.

Mr. Avra Mazumder,
Mr. Nilendu Chakrabarty,
Mr. B. Gupta
... For the Petitioners.
Mr. A. Ray, Ld. GP.,
Md. T.M. Siddiqui,
Mr. N. Chatterjee,
Mr. V. Kothari
... For the State.

Heard learned Advocates appearing for the parties.

By this writ petition, petitioners have challenged the impugned order of the Appellate Authority dated 28th February, 2022 confirming the order of the Adjudicating Authority dated 13th December, 2021 imposing penalty on the ground of expiry of e-way bill due to break down of the vehicle in question and contends that period of delay of e-way bill and the time of reaching the destination is only 7 hours. Petitioners submit that expiry of such e-way bill was bona fide and beyond control of the petitioners and there was no deliberate intention of the petitioners to evade any tax. In support of their contention, petitioners rely on an unreported decision of this Court dated 1st March, 2022 in 11085 of 2021(Ashok Kumar Sureka vs. Assistant Commissioner, State Tax, Durgapur Range, Government of West Bengal) and an order of the Division Bench of this Court dated 12th May, 2022 in MAT 470 of 2022 and submit that the issue involved in this writ petition is squarely covered by the aforesaid decisions of this Court.

Mr. Siddiqui, learned Additional Government Pleader appearing for the respondents State GST Authority could not make out any case against the petitioners factually and legally and could not distinguish the aforesaid decisions of this Court upon which petitioners have relied upon.

Considering the submission of the parties and facts and circumstances of this case and orders relied upon by the petitioners, this writ petition being WPA 15512 of 2022 is disposed of by setting aside the impugned order of the Appellate Authority dated 28th February, 2022 and the order of the Adjudicating Authority dated 13th December, 2021 and as a consequence of setting aside the aforesaid orders, petitioners will be entitled to get the refund of penalty and tax paid on the basis of the impugned adjudication order.

(Md. Nizamuddin, J.)