Item No.1.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 29.11.2022

DELIVERED ON:29.11.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPTT No.5 of 2022

Jitendra Kumar Singh.

Vs.

Assistant Sales Tax Officer, Berma Check Post & ors.

Appearance:-

Mr. Debanuj Basu Thakur,
Mr. Atish Chakraborty ... for the petitioner.

Mr. Anirban Roy, Ld. G. P.,
Mr. T. M. Siddique,
Mr. Debasish Ghosh .... for the State.

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM*, J.)

1. This writ petition has been filed challenging the order passed by the West Bengal Taxation Tribunal (for short, "the Tribunal") in Case No.RN-572/14 dated 5th April, 2022. By the said order, the learned Tribunal had modified the order of penalty passed by the Sales Tax Officer, Purulia Range dated 10th May, 2019 in and by which the said officer imposed the penalty of Rs.24,55,477/-. The learned Tribunal after considering the submissions made on behalf of the writ petitioner reduced the penalty to a sum of Rs.2.5 lakhs and this amount was directed to be adjusted from the cash security provided by the writ petitioner of Rs.5 lakhs at the time when the goods were ordered to be released subject to the outcome of the proceedings. The power to impose penalty is given under sub-Section (6) of Section 80 of the West Bengal Value Added Tax Act, 2003 (for short, "WBVAT Act") in terms of the provision where the commissioner is satisfied, for reasons to be recorded in writing, that the transporter, carrier or transporting agent or any other person has contravened the provision of Section 80, he may, after giving the transporter, carrier or transporting agent or any other person a reasonable opportunity of being heard, impose, by an order to be passed in the prescribed manner, such

penalty, not exceeding twenty five percentum of the value of the goods so transported, as may be determined by him in accordance with the rules made under the WBVAT Act.

2. It is not in dispute that the goods were detained on the alleged ground that the writ petitioner had contravened the provisions of Section 80 by detention order dated 24th February, 2014 upon furnishing cash security of Rs.5 lakhs the goods were returned to the writ petitioner. After about 4 years, a show cause notice dated 25th February, 2019 was issued to the writ petitioner calling upon him to show cause as to why penalty should not be imposed under the provisions of sub-Section (6) of Section 80 of the WBVAT Act. The writ petitioner did not file a reply to the show cause notice and consequently the Sales Tax Officer by order dated 10th May, 2019 imposed the penalty. Aggrieved by the same, the writ petitioner filed the revision case before the Learned Tribunal.

3. On reading of sub-Section (6) of Section 80, it clearly shows that there is discretion vested with the authority in the matter of imposition of penalty. More importantly, the authority, who imposes the penalty has to record reasons in

writing that the transporter or carrier or transporting agent has contravened the provisions of Section 80. On going through the show cause notice as well as the order of penalty dated 10th May, 2019, we find that the concerned Sales Tax Officer has not recorded his satisfaction and to say the least, it is a non-speaking order.

4. The case of the writ petitioner is that the goods in question were being transported from the State of Assam to the State of Chhattisgarh and the goods had to pass through the State of West Bengal for which transit permit had been obtained in terms of the provision of the WBVAT Act, which permits the transporter to transport the goods through the State of West Bengal within a period of 7 days.

5. The writ petitioner's further case is that on account of a break down of the truck, which was carrying the goods, at the time when the goods reached the outward check post, the period of 7 days had lapsed and it was 9 days by then. This led to the detention of goods in the said check post. Admittedly, the writ petitioner had not placed any record to establish that for circumstances beyond their control, the goods could not be

transported through the State of West Bengal within a period 7 days.

6. Nevertheless, when the authority proposes to invoke its power under Section 80(6) of the WBVAT Act, he has to record reasons as to how he is satisfied that the transporter / petitioner had contravened Section 80 of the Act.

7. This very important aspect is conspicuously missing in the order of penalty, which appears to have not been adequately dealt with by the learned Tribunal. In any event, there appears to be no mens rea on the part of the writ petitioner. Nevertheless, since the goods having not crossed the borders of State of West Bengal within the time permitted and in absence of extension of time obtained by the writ petitioner, the writ petitioner could be stated to have contravened the provisions of Section 80 of the WBVAT Act.

8. However, considering the factual situation, we are of the view that the penalty imposed by the learned Tribunal at Rs.2.5 lakhs is excessive and we are inclined to exercise our discretion by reducing the penalty.

9. Accordingly, the writ petition is partly allowed and the order passed by the learned Tribunal is modified and the penalty of a sum of Rs.35,000/- is imposed on the writ petitioner, which shall be adjusted from and out of the cash deposit of Rs.5 lakhs paid by the writ petitioner and the balance amount be refunded to the petitioner within a period of 15 days from the date of receipt of the server copy of this judgment and order.

10. We make it clear that the observations contained in this order shall not be treated as a precedent, nor we have embarked upon the requirements to be complied with while passing an order under Section 80(6) of the WBVAT Act and considering the peculiar facts and circumstances, we have exercised discretion in this matter.

11. The writ petition is partly allowed on the above terms.

12. There shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)