41
07.03.2022.
SB

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

W.P.A. 621 of 2022

Mriganka Sarkar
-versus
The Union of India & Ors.

Mr. Saumyajyoti Dutta
Mr. Subrata Purakayastha
Ms. Druti Roy
Ms. Kakali Roy
Mr. Anurag Sharma … For the petitioner

Mr. Sudipto Kumar Mazumder, Ld. Asstt. S.G.
Mr. Sudip Kumar Paul
… For U.O.I.

Mr. Subir Kumar Saha, Ld. A.G.P.
Mr. Bikramaditya Ghosh
…. For the State

The petitioner is aggrieved by the order passed by the Adjudicating Authority on 11th January, 2021 and the order passed by the Appellate Authority on 29th September, 2021 whereby the petitioner's prayer for refund of the tax paid for the second time and penalty amount has been rejected.

The petitioner is a timber merchant. He was transporting logs on 8th January, 2021. The e-Way Bill was generated on 8th January 2021 around at 1.12 PM wherein the address details from where the goods were transported has been mentioned. It appears that the address from where the goods were dispatched was mentioned as Ward No. 23, East Arabinda Nagar, Jalpaiguri and the goods were transported to

Subhasganj, Raiganj, West Bengal. The petitioner paid the total amount on account of tax.

According to the petitioner, the address from where the timber was dispatched was inadvertently mentioned in the e-Way Bill. The address which appears therein is the address of the petitioner and not the place from where the timber was actually dispatched.

The vehicle of the petitioner was intercepted and penalty was imposed on account of transporting timber without a valid Way Bill. The goods were confiscated and the petitioner had to pay penalty for the purpose of releasing the said goods upon payment of taxes as well as penalty.

A further e-Way Bill was generated on 8th January, 2021 at 5 PM wherein the dispatch address was mentioned as Barobhisha and the goods were transported to Raiganj. The description and quantity of the goods that was transported remains the same in both the e-Way Bills.

The petitioner prays for refund of the amount paid on account of taxes for the second time and the penalty amount, as according to the petitioner, the respondents cannot impose double taxation in respect of the self-same goods. The petitioner prays that the said amount be refunded.

Learned advocate representing the respondents submits that e-Way Bill was generated by the petitioner himself and the petitioner is responsible for any discrepancy or error that has been mentioned in the e-Way Bill. It has been submitted that as the petitioner did not carry a proper Way Bill he is liable to pay taxes as well as penalty for the same.

It has further been submitted that there is no provision for refund in such a case.

Learned advocate appearing on behalf of the petitioner relies upon an unreported order dated 1st March, 2022 passed by a co-ordinate Bench of this Court in W.P.A. No. 11085 of 2021 in the matter of Ashok Kumar Sureka –vs- Assistant Commissioner, State Tax, Durgapur Range, Government of West Bengal in support of his case.

It appears from the submissions made on behalf of the parties that admittedly, the petitioner at the very first instance paid the taxes which he was liable to pay on account of the goods in question. Due to an unintentional error at the time of generating the e-Way Bill, the address from where the goods were dispatched was wrongly mentioned and accordingly, the goods were rightly confiscated by the respondent authorities. It was not for the respondents to take a decision as to whether the petitioner was intentionally trying to evade tax or not. As there was discrepancy in the document from where the goods were dispatched, the authorities intercepted and confiscated the same. The petitioner was directed to pay the tax as well as penalty.

Thereafter it appears that a fresh e-Way Bill was generated immediately after interception. The description of the goods in the second e-Way Bill remains the same. It is only that the place of dispatch was rectified. The petitioner had to pay tax for the second time and penalty for not carrying the proper Way Bill at the very first instance.

In Ashok Kumar Sureka (supra) the Court was of the opinion that as no case has been made out for willful and deliberate attempt to evade tax accordingly the petitioner was held to be entitled to get the refund of the penalty and tax paid.

From the conduct of the petitioner it does not appear that there was an intention to evade tax. The respondent authorities ought not to collect tax for second time in respect of the self-same goods that were transported by the petitioner. Law doesn't require payment of tax to be made more than once in respect of the self same goods. The petitioner is entitled to the refund as prayed for.

Accordingly, the order passed by the Adjudicating Authority as well as the Appellate Authority are set aside.

Respondent No. 2 being the Directorate of Commercial Taxes, Government of West Bengal is directed to take steps for refund of the amount which was collected from the petitioner on account of tax for the second time and the penalty paid by him at the earliest, but positively within a period of four months from the date of communication of this order subject to compliance of all necessary formalities.

The writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, after completion of all legal formalities.

(Amrita Sinha, J.)