

Bpg & Sg..
Sl.No1
May 30,
2022

**In the High Court at Calcutta
Jalpaiguri Circuit Bench
Civil Appellate Jurisdiction
Appellate Side**

MAT No.40 of 2022
With
CAN 1 of 2022

Hemraj Jain & Another
Versus
State Tax Officer, Bureau of
Investigation and others

Mrs. Rita Mukherjee,
Mr. Ghanshyam Jha.
...for the appellants.

Mr. Anirban Ray, Id. GP
Mr. Soumitra Mukherjee,
Mr. Nilotpal Chatterjee.
...for the State.

Learned counsel for the appellants submits that, in view of the prevalent laws and circumstances of the case, the learned single Judge ought to have granted an interim order directing release of the petitioners' vehicle on condition of payment of 50% of the value of the goods or 200% tax payable, whichever is higher.

It is submitted that, within the contemplation of the amended Section 129 (1)(a) (b) of the West Bengal Goods and Service Tax Act, 2017, even if the owner of the goods does not come forward for payment of the penalty contemplated in the said Section, the maximum penalty which can be charged is equal to the amount as indicated above, i.e, 50% of the value of the goods or 200% tax payable, whichever is higher.

Learned counsel submits that the petitioners submitted sufficient documents to raise a prima facie presumption of the petitioners being the owner of the goods. However, instead of accepting the petitioner no.1 to be such owner, the very existence and veracity of the petitioners have been questioned by the respondent-authorities.

It is submitted that the respondent-authority patently transgressed its jurisdiction, as contemplated in Section 129 (1)(a) (b) of 2017 Act, in insisting upon payment of 100% of the value of the goods.

Learned counsel appearing for the appellants places reliance on an unreported judgment dated February 15, 2022 passed by a learned single Judge of this Court in WPA 297 of 2022 to the effect that the goods-in-question should be released on making the

payment as per amended provision of Section 129 (1) of the said Act.

Learned counsel for the respondent-authority controverts such arguments and submits that the scope of exacting penalty from the petitioners is cast not only found in the State Act but in the Central Act as well.

As such, there was no impediment in the respondent-authority charging penalty to the extent of 100% of value of goods, taking in total the penalty for contravention of the relevant provisions of both the said Acts, amounting to 50% of value of goods for each contravention.

It is further contended that such methodology has been clarified in the impugned order, which is annexed to the writ petition and annexed at page 80 of the said application i.e. CAN 1 of 2022.

Learned counsel further contends that, in the present case, the detention of the vehicles and goods took place at the behest of the Bureau of Investigation, which unlike the assessing authority, is not bound by the fetters under Section 129 of the said Act.

Upon hearing learned counsel for the parties, we are of the opinion that there is no scope for

interference with the impugned order of learned single Judge at this juncture.

Since factual disputes, in respect of the authenticity of the ownership of the petitioners, and the legal question as to the applicability of the Central and the State Acts parallelly or one, in exclusion of the other, have been raised, such adjudication would be *de hors* the scope of the present appeal. Since it is within the domain of the first Court of learned single Judge, while deciding the writ petition, to adjudicate such questions on merits, even if the single Judge assumes jurisdiction in the teeth of availability of an alternative remedy by way of appeal, we do not intend to usurp such jurisdiction of the learned single Judge in the present appeal, which has been preferred against an interlocutory order.

Moreover, we do not find any error in the impugned order to justify interference in an intra-court appeal.

Hence, MAT 40 of 2022 along with CAN 1 of 2022 are dismissed. However, we make it clear that we have not entered into the merits of the respective contentions of the parties and it will be open to the learned single Judge to decide all questions, upon

hearing the parties, without being influenced in any manner by any of the observations made herein.

In view of the urgency pleaded by the appellants, since the appellants are suffering loss *de die in diem* due to detention of the vehicle and the goods thereon, we request the learned single Judge to take up the writ petition being WPA 721 of 2022 and to decide the same as expeditiously as possible, subject to the convenience of the said Bench, without granting any unnecessary adjournment to either of the parties.

There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Ajoy Kumar Mukherjee, J.)