

Item No. 03

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 30.03.2023

DELIVERED ON: 30.03.2023

CORAM:

**THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT 477 of 2023
with
I.A. NO. CAN 1 of 2023**

**Usha Gupta
vs.
The Assistant Commissioner of Revenue, Bureau of Investigation, North
Bengal, Siliguri Headquarters & ors.**

Appearance:-

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Jitesh Sah

... for the appellant

Mr. T. M. Siddiqui
Mr. D. Ghosh
Mr. D. Sahu

... for the State

JUDGMENT

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

1. This intra-Court appeal is directed against the order dated 1st March, 2023 passed in WPA 3512 of 2023 by which the learned Single Bench was declined to grant any interim order. The appellant, being aggrieved by this order, has preferred this appeal.

2. The learned advocates for the parties pray that the writ petition can be taken up for consideration along with the appeal. Accordingly, the writ petition as well as the appeal is taken up for hearing to be decided.

3. We have heard the learned advocates for the parties at length. Though elaborate submissions were made by Mr. Kanodia, learned counsel appearing for the appellant and Mr. Siddiqui, learned counsel appearing for the respondent, we need not labour much to elaborate on all factual issues. The case arose out of a detention of two consignments, which have been transported by the appellant for being exported to Bhutan. The detention of the goods was on the ground that the quantity of the boxes were lesser than the quantity shown in the document. Secondly, it was stated that IGST was not charged. The third issue is with regard to alleged discrepancy in the export invoice and the purchase order. So far as the issue relating to not mentioning charging IGST the appellate authority has granted relief in favour of the appellant assessee. So far as the aspect of discrepancy is concerned the learned advocate appearing for the appellant has produced before us a copy of the sales order which shows the sales order number as SG/2022-23/004 dated 23rd April, 2022. The purchase order placed by the purchaser from Bhutan shows the sales order number correctly and in the said

purchase order license number of the purchase has been given as SAB84282. In the export invoice, which was generated by the appellant, buyer's license number has been shown as buyer's order number. In our view, this cannot be treated as a discrepancy because in the purchase order of the buyer the sales order number has been correctly shown as SG/2022-23/004. Therefore, on this ground the authorities could not have imposed 200% penalty on the entire consignment. So far as the third issue is concerned with regard to shortage of quantity of goods, it is submitted by the learned counsel for the appellant that even at the time of detention of the goods, the appellant expressed his willingness to pay penalty for the shortage of quantity of the goods. However, the authority while passing the penalty order has imposed penalty on the entire consignment which includes the amount of cess paid by the appellant.

4. In the light of the above, the appeal and the writ petition stand disposed of by setting aside the order passed by the appellate authority for levying penalty on the entire consignment and the matter is remanded back to the appellate authority to recalculate to take note of the order and recalculate the penalty in respect of shortage in quantity and over than quantity penalty shall be levied at 200% and the remaining penalty which has been remitted by the appellant shall be refunded to the appellant within a period of eight weeks from the date of receipt of the server copy of the order. Consequently, the application being CAN 1 of 2023 stands disposed of.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

RP/AN (AR.CT.)