Form J(1)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri.

W.P.A. 72 of 2023
Karan Singh
-Versus-
State of West Bengal & Ors.

For the Petitioner	**: Mr. Dr. Navin Barik, Adv.** **Ms. Esha Acharya, Adv.**
For the State	**: Mr. Subir Kumar Saha, Adv.** **Mr. Bikramaditya Ghosh,Adv.**
Heard & Judgment On	**: 31st January, 2023.**

The petitioner is a proprietor of M/S. Safe & Speed Cargo Movers having his office at Chennai. As the petitioner is engaged in transportation business, he was given a task for transporting a heavy vehicle (JCB) from MGB Motor and Auto Agencies Private Limited at Hyderabad. On perusal of the tax invoice raised by the MGB Motor and Auto Agencies Private Limited, the petitioner was satisfied that the invoice was issued with IRN number generated as per the provisions of CGST Act and Rules, which is a unique number and also bears a unique QR code of authenticity generated from the GSTN portal. The invoice categorically records the GSTIN of MGB Motor and Auto Agencies Pvt. Ltd. The goods were to be delivered from Pune, Maharashtra to Malli Bazar in the District of Darjeeling, West Bengal and the movement of the goods was by road. The invoice reflects that Integrated Goods and Service Tax of 18 % under the Integrated Goods and Service Tax Act is charged and paid against the interstate movement of the goods.

Since the JCB in question is a heavy vehicle approximately 40 Feet long, the petitioner had to arrange a trailer having registration No.NL01AD-6459 and the said trailer was transporting the aforesaid JCB towards its destination. It was directed in E-Way Bill that the JCB would have to be delivered to its destination by 12th July, 2022. However, the trailer carrying the said JCB reached and parked at Ghoshpukur in the District of Darjeeling. Since the said JCB was not delivered in the address of the recipient, the respondent authority claimed GST from the petitioner and issued a show-cause notice to authorized representative of the petitioner. The authorized representative of the petitioner duly replied to the said show-cause notice and explained that the goods were in transit to Melli, Darjeeling and it was moved on the basis of valid tax paid documents. Despite the said fact and explanation given by the representative of the petitioner, the Adjudicating Authority with utmost hurry and haste passed an order of Demand of Tax and Penalty on 22nd July, 2022 vide Form GST MOV-09 confirming Demand of Tax and Penalty of Rs.19,52,542/- against the petitioner under Section 129(3) of the said Act. The petitioner preferred an appeal before the Appellate Authority under Section 107 of the Act. However, the said appeal was dismissed confirming the order passed by the Adjudicating Authority. Being aggrieved, petitioner has preferred the instant writ petition.

The issue as to whether the authority were justified in imposing tax and penalty on the ground that at the time of interception, the validity period of the E-Way bill stood expired and came up for consideration before this Court in ***Hanuman Ganga Hydroprojects Private Limited Vs. Joint Commissioner, State Tax Authority, Siliguri Circle & Anr.*** Reported in 2022 ***(50 Tax.com.023).*** It was held by a Coordinate Bench of this Court that since it is not a case of willful attempt on the part of the writ petitioner to evade payment of tax, the orders passed by the appellate authority and penalty were all set aside and quashed.

Mr. Ghosh, learned Government Advocate has join the issue here. It is submitted by Mr. Ghosh that the liability of payment of tax under GST was diluted in the aforesaid decision relying on the decision of this Court in ***Assistant Commissioner, State Tax, Durgapur Range, Government of West Begal Vs. Ashok Kumar Sureka, Proprietor of Subham Steel*** reported in ***2022(48) Taxlok.com 071(Calcutta).***

It is submitted by Mr. Ghosh that the decision in A.K.Sureka (supra) is challenged before the Hon'ble Suprme Court in appeal and the said appeal is still pending before the Hon'ble Supreme Court. Therefore, the issue whether imposition of tax after expiry of few hours of E-Way Bill can be diluted or not is under consideration before the

Hon'ble Supreme Court. Therefore, any decision taken by this Court may cause prejudice to either of the parties.

In reply thereto, learned Advocate for the petitioner submits that the issue whether delay of 3 days after the expiry of the stipulated period in E-Way Bill to deliver consignment can be condoned was before the Hon'ble Supreme Court in the case of ***Assistant Commissioner (ST) & Ors. Vs. M/S. Satyam Shivam Papers Pvt. Ltd. & Anr.*** (petition for Special Leave to Appeal No.21132/2021 dated 12th January, 2022). The Hon'ble Supreme Court condoned the delay by imposition of cost. It was held by the Hon'ble Supreme Court that the respondent was able to establish sufficient cause for condonation of delay.

In the instant case, the consignment (GSV) transported from Pune, Maharashtra to Malli Bazar, Darjeeling. There was delay of only 41 minutes in delivering the consignment. The petitioner has made out a ground that the destination, Malli Bazar in Darjeeling is situated at a hilly terrain. Therefore, it is obvious that there might be few minutes delay in delivering the consignment.

In the instant case, imposition of tax was made by the Adjudicating Authority within 40 minutes from the expiry of E-Way Bill.

It is submitted by the learned Government Advocate that ***M/S. Satyam Shivam Papers Pvt. Ltd (supra)*** is not at all relevant under the facts and circumstances of this case and since *Ashok Kumar Sureka* is before the Hon'ble Supreme Court, no final order should be passed in the instant writ petition. Having heard the learned Counsels for the parties and on careful perusal of the materials on record as well as the relevant rules, it is found Rule 138 of the CGST Rule 2017 clearly provides that the validity of the E-Way Bill may be extended within 8 hours from the date of its expiry.

Mr. Ghosh vehemently urged that it is the transporter duty to extend the period of E-Way Bill and the Adjudicating Authority had no role to exercise discretion in the matter.

I am not in a position to accept such submissions made by the learned Government Advocate on the ground that where a statute provides extension of time to a transporter, the Adjudicating Authority before imposition of tax and penalty ought to have communicated to the transporter about his right to extend the period but the Adjudicating Authority failed to perform and the appellate authority failed to consider.

So it is the discretion of the Adjudicating Authority to extend the period of E-Way Bill up to 8 hours from the time of its expiry. The Adjudicating Authority failed to exercise its discretion. On this score, the order passed by the Adjudicating Authority and affirmed by the Appellate Authority are liable to be set aside.

In view of the above discussion, the instant writ petition is allowed on contest.

There shall be no order as to costs.

(Bibek Chaudhuri, J.)