

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

Present :- Hon'ble Justice Amrita Sinha

WPA 178 of 2023

Pushpa Devi Jain

Vs.

**Assistant Commissioner of Revenue, Bureau of
Investigation, North Bengal Headquarters & Ors.**

For the writ petitioner	:-	Mr. Boudhayan Bhattacharyya, Adv. Mr. Sougata Banerjee, Adv. Mr. Biswajit Basak, Adv. Ms. Stuti Bansal, Adv.
For the Union of India	:-	Mr. Sourab Kar, Adv.
For the State	:-	Mr. Bikramaditya Ghosh, Adv. Mr. Hirak Barman, Adv.
For the respondent no. 4	:-	Mr. Ratan Banik, Adv.
Heard on	:-	01.03.2023
Judgment on	:-	03.03.2023

Amrita Sinha, J.:-

The petitioner challenges the order passed by the adjudicating authority under Section 129(3) of the West Bengal Goods and Services Tax Act, 2017 and the order affirming the same by the appellate authority.

The goods of the petitioner were found moving without a valid e-way bill. The vehicle was intercepted, inspected and thereafter detained as the person in charge of the goods failed to produce a valid e-way bill. The goods were later released upon payment of penalty.

A show cause notice was issued and opportunity of hearing was given to the petitioner. The proposed penalty was accepted and paid by the tax payer on 25th April, 2022 without raising any objection. The adjudicating authority, in the absence of any objection, confirmed the penalty.

On 18th July, 2022, an appeal was preferred. The said appeal was considered and rejected on 31st August, 2022.

Learned advocate for the petitioner contends that the imposition of penalty is illegal as the petitioner did not have any deliberate intention to evade tax. The vehicle in question suffered a breakdown in the course of journey and the same had to be repaired prior to resuming movement. The e-way bill expired in the last lap of the journey when the vehicle was only twenty kilometres away from the final destination. The genuine reason which prevented the goods from being transported on time was not at all considered by the respondent authority and penalty has been imposed in a mechanical manner.

It has been argued that the authority ought to have exercised their discretion to invoke the relevant sub section of Section 129 of the Act instead of routinely imposing penalty directing payment of amount equal to two hundred percent of the tax payable on the goods transported.

Reasonable opportunity of hearing was not granted to the petitioner prior to passing the order of penalty at the adjudicating stage or before the appellate forum. The purpose of providing opportunity of hearing to the concerned person has been rendered otiose as the penalty was imposed mechanically in a predetermined manner.

It has been argued that the issue whether penalty can be imposed if the goods are transported without a valid e-way bill is no longer *res integra* and has been conclusively decided by the Hon'ble Supreme Court in ***Assistant Commissioner (ST) and others –vs- Satyam Shivam Papers Pvt. Limited & Anr; 2022 SCC Online SC 115.***

Reliance has also been placed on the judgment passed on 12th May, 2022 in MAT 470 of 2022 with I.A CAN 1 of 2022; ***Assistant Commissioner, State Tax, Durgapore Range, Government of West Bengal –vs- Ashok Kumar***

Sureka, Proprietor of Subham Steel and the order dated 26th July, 2022 in WPA 15469 of 2022, **Ramji Jaiswal & Anr. -vs- State Tax Officer, Bureau of Investigation (South Bengal) Kharagpur Zone & Ors.**

Prayer has been made for setting aside the order passed by the adjudicating authority, appellate forum and for refund of the penalty amount which has been collected arbitrarily upon non application of mind.

The respondents oppose the prayer of the petitioner. It has been contended that due opportunity was given to the petitioner as envisaged in law. The petitioner failed to submit any reply to the show cause issued. No document to support that the vehicle was moving and the goods were transported in accordance with the provisions of law could be produced either at the adjudicating stage or at the appellate forum.

It has been submitted that the petitioner never raised any objection at the initial stage and paid the penalty that was imposed. The appeal was a formal one without any supporting documents. As the vehicle was found to be moving without the valid papers, the authority acted in accordance with the relevant statute and imposed penalty.

Before the High Court the petitioner cannot be permitted to raise the objection for the first time, more so, after everything is over.

Reliance has been placed on the judgment of the Hon'ble Supreme Court in **Guljag Industries vs. Commercial Tax Officer; (2007) 7 SCC 269** and the judgment delivered by this Court on 6th February, 2023 in WPA 190 of 2023 in **Ashok and Sons (HUF) -vs- Joint Commissioner, State Tax, Office of the Senior Joint Commissioner, Siliguri Circle & Ors.**

Respondents pray for dismissal of the writ petition.

I have heard and considered the rival contentions of both the parties.

The petitioner admits that when the vehicle was intercepted, the e-way bill was invalid. The petitioner, being aware of the legal consequences, did not raise objection and paid the penalty that was imposed. The appeal filed was also very formal and the petitioner was unable to rebut the charge of transporting goods without a valid e-way bill.

From the documents available before the Court it does not appear that the petitioner genuinely intended to contest the charge brought against her. On the contrary, the petitioner without any objection deposited the penalty amount. It seems that the petitioner is raising all the issues for the first time before the High Court in the present proceeding.

Various authorities of the Court have been relied upon by the petitioner to contend that as the petitioner did not have any intention to evade tax, accordingly, the penalty ought not to have been imposed even though the goods were found to be transported against an expired e-way bill.

Records reveal that the petitioner started the journey with a valid e-way bill, but prior to reaching the final destination the said e-way bill expired. The vehicle was intercepted, and penalty imposed.

The issue is, whether or not the respondent authority acted in any manner, contrary to law.

Section 129 of the Act permits detention, seizure and release of goods upon payment of penalty. The authority appears to have acted in accordance with the said provision. The petitioner is aggrieved because the authority did not exercise discretion to impose a lesser amount of penalty or to release the goods without imposing any penalty as the vehicle was approximately twenty kilometres away from the final destination. It has been claimed that there was bona fide reason for not reaching the end point within the validity period of the e-way bill. The ground for delay in transportation was absolutely beyond the control of the petitioner.

It appears from records that the petitioner, without much ado, paid the penalty. The appeal against the order of the adjudicating authority also does not speak much. The petitioner got inspired to contest the proceeding before the High Court relying upon the judgment delivered by the Hon'ble Supreme Court in *Satyam Shivam* (supra).

In *Satyam Shivam* (supra) the Hon'ble Supreme Court was deciding a case where the goods got stranded and e-way bill expired because the State was unable to provide smooth passage of traffic. The movement of the vehicle got blocked because of mass agitation against CAA and NRC. To add to the same, the respondent authority kept the detained goods in the house of a relative of one of the respondents instead of the designated place for safe custody for sixteen days at a stretch.

Mass agitation for hours together blocking traffic is an exceptional situation, completely beyond the control of an individual. Because of the same the entire traffic system halts. The Court rightly observed that it is for the State to provide smooth passage of traffic. As the State failed to provide free passage, accordingly, the authority cannot impose penalty upon an individual.

The case in hand is not so. The State is no way responsible for the delay in movement of the goods of the petitioner. In fact, even before the High Court, there is no document to infer the alleged reason of delay in transportation of the goods. Apart from a bald statement that the vehicle broke down in the midst of the journey, there is no document in support of such statement. Whether availability of the supporting documents would have been of any help to the petitioner is a different question all together; but in the absence of the same the petitioner loses the very base to contest the proceeding.

The learned advocate for the petitioner tries to impress upon the Court that there are certain practical difficulties in revalidating the e-way bill in the midst of journey and as the conveyance was hardly twenty kilometres away

from the end point the e-way bill could not be revalidated within such short period of time. Learned advocate has tried to convince the Court that though there is provision in the Act for revalidation of an expired e-way bill within eight hours, but practically the same is very difficult to do.

The petitioner suggests that the authority ought to have exercised discretion to conclude whether penalty could be levied or not. The Court is not at all agreeable to the said proposition. As long as the provision to revalidate the e-way bill remains in the rule book, the same is required to be strictly complied despite the fact that the same may be practically difficult to implement.

The practice and procedure to obtain way bill electronically from the portal suggests that there is minimal manual interference and there is no scope to exercise discretion at any stage. Opportunity of hearing is given to allow the person in charge of the goods and/or the conveyance to produce relevant documents to rebut the charge and not for examining the reason or ground for not being able to act in accordance with law.

The Hon'ble High Court in Ashok Kumar Sureka (supra) did not lay down any ratio to be followed. On the other hand, the Court arrived at the said conclusion on the peculiar facts of the said case and specifically recorded that the same cannot be treated as a precedent.

In Ramji Jaiswal (supra) the Hon'ble Court opined that the respondents could not make out any case of deliberate or wilful intention to avoid and evade payment of tax.

In Guljag Industries (supra) while considering the provision of Section 78 and its various sub-Sections of Rajasthan Sales Tax Act, 1994, the Hon'ble Supreme Court held that in penalty for statutory offences, there is no question of proving of intention or of *mens rea* as the same is excluded from the category of essential element for imposing penalty. Penalty is attracted as soon as there

is contravention of statutory obligations. Intention of parties committing such violation is wholly irrelevant.

The Supreme Court on repeated occasions has held that a statutory authority does not have any power to do anything unless such powers are specifically enumerated in the Statute which creates it. The authority merely performs the statutory obligation.

Here, it does not appear that the authority acted in any manner contrary to law. Travelling without a proper e-way bill attracts penalty. The authority assessed the penalty amount and the petitioner deposited the same without a murmur.

In view of the above, there is hardly any reason to interfere in the instant proceeding. The writ petition fails and is hereby dismissed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)