

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

Present :- Hon'ble Justice Amrita Sinha

WPA 340 of 2023

**Asian Switchgear Private Limited
Vs.
State Tax Officer, Bureau of Investigation, North Bengal
Headquarters & Ors.**

For the writ petitioner	:-	Mr. Boudhayan Bhattacharyya, Adv. Ms. Stuti Bansal, Adv.
For the State	:-	Mr. Subir Kumar Saha, Ld. AGP Mr. Bikramaditya Ghosh, Adv.
Heard on	:-	01.03.2023
Judgment on	:-	03.03.2023

Amrita Sinha, J.:-

The petitioner is aggrieved by the order passed by the adjudicating authority subsequently affirmed by the appellate authority imposing penalty under Section 129(3) of the West Bengal Goods and Services Tax Act, 2017. Prayer has been made for setting aside the aforesaid orders with a direction for refund of the penalty amount.

The e-way bill in question was generated on 10th June, 2022 and the same was valid upto 21st June, 2022. The vehicle number against which the e-way bill was generated was specifically mentioned therein. The goods which were being transported against the aforesaid e-way bill were intercepted on 19th June, 2022, from a different conveyance, not mentioned in the e-way bill. On demand, the person in charge of the goods and conveyance failed to produce any document in support of the said goods being transported by a different conveyance.

As there was failure on the part of the person in charge to produce documents in support of the movement of the goods, the goods were seized and later released on payment of penalty under Section 129(3) of the West Bengal Goods and Services Tax Act, 2017.

Learned advocate for the petitioner submits that as the vehicle in which the goods were originally loaded for transportation and e-way bill generated suffered a break down in the course of journey, accordingly, the person in charge had to arrange for a different conveyance for transporting the said goods. The goods in question are electrical switches which are manufactured as per the requirement of the Arunachal Pradesh Government and there is no scope for selling the said goods in the open market as there will be no buyers for the same.

It has been submitted that had the initial vehicle not suffered a mechanical snag, the said vehicle would have certainly reached the final destination within the validity period of the e-way bill. The break down was an unforeseen event, completely beyond the control of the petitioner. There was no intention to evade tax.

The respondent authorities did not give a proper opportunity to the petitioner to defend and imposed penalty in a mechanical and routine manner without appreciating the genuine difficulty on the part of the petitioner for not being able to transport the goods in the vehicle against which the e-way bill was generated.

It has been argued that as the e-way bill was still valid on the date and time of interception of the goods, accordingly, penalty under Section 129(3) of the Act ought not to have been imposed. It has been submitted that fair opportunity was not provided to the petitioner either at the adjudication stage or before the appellate forum. The show cause reply was not considered properly and the same was an empty formality, mechanical in nature. The

penalty was determined prior to the opportunity of hearing given to the petitioner which is contrary to the provision of Section 129(4) of the Act.

It has been argued that instead of imposition of hefty penalty amount, the authority ought to have released the goods upon furnishing a security as per Section 129(1)(c) of the Act. The authority ought to have appreciated the reason for temporary shipment of the goods via a different conveyance and ought not to have imposed penalty after detecting that the description of the goods mentioned in the e-way bill matches the goods seized on interception.

It has been submitted that the petitioner would not have gained anything by transporting the goods by a different conveyance as the goods cannot be sold over the counter in an open market. The goods are specifically meant for government use, and as such, the imposition of penalty is not warranted.

Reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in ***Assistant Commissioner (ST) and others -vs- Satyam Shivam Papers Pvt. Limited & Anr; 2022 SCC Online SC 115***, judgment delivered by this Court 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.***

Learned advocate representing the respondents opposes the prayer of the petitioner. It has been submitted that the conduct of the petitioner in transporting goods in a vehicle without a proper e-way bill is in contravention of the Act. At the time of interception of the vehicle the same was found to be loaded with goods without a proper e-way bill. The same being impermissible in law, the petitioner has rightly been imposed penalty.

It has been argued that in terms of the ratio laid down by the Hon'ble Supreme Court in the judgment passed in the matter of ***Guljag Industries vs. Commercial Tax Officer*** reported in ***(2007) 7 SCC 269*** 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.

Reliance has also been placed on 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.***

I have heard the submissions made on behalf of both the parties and have perused the materials on record.

It appears that the adjudicating authority and the appellate authority applied their mind and on being satisfied that the goods were found to be transported without any e-way bill imposed penalty. The petitioner ought to appreciate that when an e-way bill is generated then the details of the goods to be transported, the place from where the shipment is made and the final destination are mentioned therein along with the details of the transporter and the vehicle number.

Apart from the taxing purpose, the e-way bill is generated to identify the goods that are being transported, the place from where it is being transported, the final destination and the vehicle number by which the goods will be transported. The same implies that the goods cannot and ought not to be transferred from one vehicle to the other, far less, transported via a different vehicle, without obtaining a proper e-way bill.

If the same is not followed, it will be practically impossible for the authority to keep track of the goods that are being transported and whether the

statutory charges have been paid for such transportation. Though the petitioner insists that there was no other alternative but to transfer the goods to a different vehicle for transporting the same to the consignee, but the same ought to have been done only after generating a fresh e-way bill.

The moment the goods are unloaded from the vehicle in respect of which e-way bill was generated and loaded in a different vehicle without any e-way bill a statutory breach is committed, liable to be dealt with in accordance with the statute.

There may be instances where, for illegal purpose, the goods are off loaded in the midway and taken to a different destination other than the one mentioned in the e-way bill. It is not for the authority to ascertain the reason as to why such action has been undertaken. There is no requirement in law to verify the reason for transporting goods in a vehicle without a proper e-way bill.

The facts of *Satyam Shivam* (supra) and *Ramji Jaiswal* (supra) do not fit into the facts of the present case, and accordingly, the ratio laid down therein cannot be made applicable in the facts and circumstances of the instant case. On the other hand, in *Guljag Industries* (supra) the Court held that breach of statutory provision would attract levy of penalty and the officer does not have any authority to either reduce or waive the penalty.

Ashok Kumar Sureka (supra) cannot be treated as precedent.

The petitioner admits that the vehicle in which the goods stood transferred for being transported allegedly to the pre-recorded destination, did not have an e-way bill. The Court is convinced that provision of Section 129 will be attracted in such a situation and has been rightly invoked by the authority.

The facts of the case do not warrant interference by the Court. The writ petition fails and is hereby dismissed.

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.)