

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA 532 of 2023

M/s. Perfect Enterprise

Versus

State of West Bengal & Ors.

Mr. Milindo Paul

Mr. Nabankur Paul

Ms. Bedashruti Bose

.....For the Petitioner.

Mr. Subir Kumar Saha, Ld. AGP

Mr. Bikramaditya Ghosh

.....For the State.

Hearing Concluded On : 12.06.2023

Judgment on : 15.06.2023

Krishna Rao, J.:

1. The petitioner has filed the present writ application praying for setting aside the order passed by the Appellate Authority dated January 31, 2023 and the Adjudicating Authority dated May 12, 2022.

- 2.** The petitioner purchased 32.83 MT of bitumen 60/70 from M/s Prejag Petrochem of G-4, International Commerce Center, Ring Road, Surat against the invoice dated April 20, 2022 and e-way bill dated April 20, 2022 and the taxable value of the goods was Rs. 13,78,860/-.
- 3.** The goods were dispatched from Kandla Port, Gujrat to Silliguri through Lorry No. PB05Y4413 and the e-way bill was valid up to May 2, 2022. The said vehicle reached Silliguri on May 2, 2022 before the expiry of e-way bill. The goods were to be unloaded at the stockyard and accordingly the petitioner had directed the driver of the vehicle to take the vehicle said location.
- 4.** By the time, the driver reached the stockyard, it was closed and the next working day i.e May 3, 2022, the stockyard was also closed because of Ed-Ul-Fitr as a result, the vehicle could not enter the stockyard for unloading of the goods and the driver had parked the vehicle in the vicinity of the stockyard.
- 5.** On May 4, 2022 at 3:20 AM, the vehicle was intercepted by State Tax Officers, Bureau of Investigation, North Bengal. On May 5, 2022, the goods were inspected and as per the physical verification report dated May 5, 2022, the description and quantity of the goods matches with the description and quantity as per the invoice but only the difference was expiry of e-way bill on May 2, 2022.

- 6.** The goods and the vehicle were detained by issuing a detention order on the ground of vehicle being found in transit with an expired e-way bill. A show cause notice was issued on May 7, 2022 by proposing a penalty of Rs. 2,48,195/- each under CGST and WBGST or Rs. 8,13,528/- each under CGST and WBGST. The petitioner through his representative had appeared for personal hearing on May 9, 2022 and also made written submission.
- 7.** By an order dated May 12, 2022 demand of tax and penalty was served upon the driver of the vehicle claiming penalty of Rs. 4,96,390/-. The summary order in Form GST DRC-07 was uploaded on GST portal on the same day. On protest, the petitioner had met them on a penalty on May 12, 2022 and the goods were released.
- 8.** Being aggrieved with the order of adjudication dated May 12, 2022, the petitioner had preferred an appeal before the Appellate Authority and on January 31, 2023, the appeal preferred by the petitioner was rejected.
- 9.** Mr. Milindo Paul, learned Advocate representing the petitioner submits that there is no lack of bona fide on the part of the petitioner to state that there was wilful misconduct committed by the petitioner while transporting the goods. He further submits that there is every possibility that even if an application was made for extension of the e-way bill within the time permitted, May 3, 2022 being national holiday

on account of Ed-Ul-Fitr, the e-way bill, in all probabilities, would not have been revalidated within eight hours period.

10. Mr. Ghosh, representing the respondent authorities opposes the submission made by the Counsel for the petitioner and submits that admittedly when the vehicle was intercepted, e-way bill was not valid and already expired and the petitioner had not taken any steps for revalidation of the e-way bill.
11. Mr. Ghosh further submitted that the authorities have rightly imposed penalty and the petitioner had paid the penalty and the goods were released and thus there is nothing remains in the present writ application.
12. 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 the Coordinate Bench of this Court in the case of ***Hanuman Ganga Hydro Projects Private Limited -vs- Joint Commissioner, State Tax Authority, Silliguri Circle and Another*** reported in **2022 (50 Tax.com.023)**. It was held by the 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 the penalty were all set aside and quashed.

13. In the present case also the e-way bill was valid up to May 2, 2022 and the vehicle of the petitioner reached Silliguri on May 2, 2022 before the expiry of e-way bill but due to national holiday on May 3, 2022, the stockyard was closed and in the early morning May 4, 2022 at 3:20 AM, the vehicle was intercepted at Bakuabari which is about 16/17 kilometers from the destination. There is no other allegation against the petitioner.
14. Considering the peculiar facts of the case, this Court finds that there is no lack of bona fide on the part of the petitioner to state that there was wilful misconduct committed by the petitioner while transporting the goods.
15. In view of the above facts and circumstances of the case, the order of the Appellate Authority dated January 31, 2023 and the order passed by the adjudicating authority dated May 12, 2022 are set aside and quashed.
16. The petitioner paid the penalty, is entitled to apply for refund, which shall be considered by the appropriate authority within a period of 15 days from the date on which such application is made and refund be effected, if there are no other legal impediment.
17. **WPA No. 532 of 2023** is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)