Item No.2.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIRCUIT BENCH AT JALPAIGURI

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

FROM PRINCIPAL BENCH

HEARD ON: 21.03.2023

DELIVERED ON: 21.03.2023

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

M.A.T. 33 of 2023
With
I.A. No.CAN 1 of 2023

Pushpa Devi Jain.
Vs.
Assistant Commissioner of Revenue, Bureau of Investigation, North Bengal Headquarters & Ors.

Appearance:-

Mr. Boudhayan Bhattacharyya,
Mr. Sougata Banerjee,
Ms. Taniya Roy,
Ms. Sretapa Sinha,
Ms. Stuti Bansal .... for the appellant.

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee ... for the State.

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 3rd March, 2023 in WPA No.178 of 2023. The writ petition filed by the appellant challenging an order of adjudication passed under Section 129(3) of the West Bengal Goods and Services Tax Act, 2017 (for brevity, "the Act") as affirmed by the appellate authority was dismissed. Aggrieved by such order, the appellant is before us.

2. We have heard Mr. Boudhayan Bhattacharyya, learned Advocate for the appellant and Mr. Debasish Ghosh, learned Government counsel appearing for the respondents. Though elaborate submissions have been made by the learned Advocates of either side and a compilation of case laws have also been submitted before this Court by the learned Advocate for the appellant, we are of the view that the dispute in the instant case lies in a very narrow campus and it may not require elaborate consideration of any decision cited at the bar.

3. The reason for the vehicle of the appellant along with the goods for being detained was that the e-way bill had expired at 11:59 hours on 22nd April, 2022. As per the statute, the owner

of the goods / transporter had eight hours time to revalidate the e-way bill, which would have been at 8 a.m. on 23rd April, 2022. However, the said date was a Saturday and the vehicle was intercepted at 8.52 a.m., when it was travelling towards the destination and at a distance of about 20 kilometers from the destination. There is no other allegation made against the appellant.

4. Considering the peculiar facts of the case, we find that there is no lack of bona fide on the part of the appellant to state that there was wilful misconduct committed by the appellant while transporting the goods. There is every possibility that even if an application was made for extension of the e-way bill within the time permitted, 23rd April, 2022 being a Saturday, the e-way bill, in all probabilities, would not have been revalidated within the eight hours period.

5. Thus, considering the facts and circumstances of the case, the authority could not have imposed penalty on the appellant. For the above reasons, the appeal is allowed along with the connected application and the order passed by the adjudicating

authority dated 25th April, 2022, as affirmed by the appellate authority are set aside.

6. The appellant having 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.

7. There shall be no order as to costs.

8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)