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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

WPA 869 of 2023

Sunil Yadav
-versus
Assistant Commissioner, Bureau of Investigation
(North Bengal) Headquarters & Ors.

Mr. Boudhayan Bhattacharyya
Ms. Taniya Roy
Ms. Stuti Bansal
Ms. Sriya Basu
... For the petitioner.

Mr. Subir Kumar Saha
Mr. Bikramaditya Ghosh
... For the State.

Mr. Ratan Banik
Mr. Saptarshi Banik
...For the respondent nos. 4 and 6.

The petitioner's vehicle, bearing registration number WB33C6286 which was carrying goods covered by e-way bills was intercepted on 4th February, 2023 at Ghospukur at about 22 kilometers away from the final destination. The time of interception, according to the revenue, is 12.12 p.m. At the time of interception it was found that the e-way bill permitting the movement of the consignment through the vehicle concerned had expired at mid-night of 3rd February, 2023. The time of interception is, however, disputed by the petitioner as according to the petitioner the interception took place at around 9 a.m. on 4th February, 2023 and the detention memo was issued at Matigara, which is about 48-50 kilometers from Ghoshpukur, the place of interception as it was after interception taken to Matigara. The time to take the vehicle from Ghoshpukur to Matigara according to the petitioner is about three (3) hours which on being accounted for, the interception will be [12.12 p.m. – 3 hours] around 9 a.m. The petitioner also says that under the applicable rules, the petitioner is entitled to revalidate the e-way bill within 8 hours. from the time it lapsed and as such the time of interception was within the period. . The petitioner also says that 4th February, 2023, being Saturday and the petitioner even if had made an application for revalidation of e-way bill, the same in all likelihood may not have been revalidated on the same date, being Saturday. The petitioner relies upon a judgment and order of the Hon'ble Division Bench of this Court passed on 21st March, 2023 in **MAT 33 of 2023** (Pushpa Devi Jain vs. Assistant Commissioner of Revenue, Bureau of Investigation, North Bengal Headquarters & Ors.). The petitioner says that the facts of the petitioner's case are more or less identical to the case considered by the Hon'ble Division Bench while passing the judgment and order dated 21st March, 2023. The petitioner says that upon payment of the penalty, the vehicle and the consignment therein have been released. The petitioner, therefor, is entitled to refund of the penalty by applying the ratio in Puspha

Devi Jain (supra), to the facts of the case of the petitioner. The petitioner also says that there is no other allegation made against the petitioner for intercepting the said vehicle.

On behalf of the Revenue, it is submitted that at the time of interception, the vehicle was without any valid e-way bill and as such it was detained. The Appellate Authority after considering the petitioner's case in details, by an order dated 6th March, 2023 rejected the petitioner's contention and upheld the order of imposition of penalty. The judgment and order in Puspha Devi Jain (supra) has been delivered subsequent to passing of the order dated 6th March, 2023 by the Appellate Authority. Although, the application of a judgment is prospective unless specifically made applicable retrospectively but the judgment and order of the Hon'ble Division Bench is available before me at the time of adjudicating the writ petition. The ratio Puspha Devi (supra) therefor, becomes applicable.

Considering the view taken by the Hon'ble Division Bench and fitting the ratio laid down therein to the facts of the instant case, I am inclined to grant the same benefit to the petitioner as given by the Hon'ble Division Bench in Puspha Devi Jain (supra).

The facts are clear and affidavits, if invited, will not make any substantial difference in the stand taken by the Revenue.

In view of the aforesaid, the adjudicating order dated 10th February, 2023 passed by the Assistant Commissioner, State Tax, Bureau of Investigation, North Bengal Headquarters, West Bengal and the order of the Appellate Authority dated 6th March, 2023 are accordingly set aside.

In the aforesaid facts and circumstances, the petitioner is entitled to apply for refund which shall be considered by the appropriate authority within a period of 21 days from the date on which such application is made and refund be effected, if there are no other legal impediment.

With the aforesaid observations and/or directions the writ petition is disposed of.

All parties shall act on a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the requisite formalities.

(Arindam Mukherjee, J.)