10-10-2023
Court No.3
Sh/27.

In The High Court At Calcutta
Jalpaiguri Circuit Bench

W.P.A. 2136 of 2023

Sri Biswanath Debnath & Anr..
-Vs-
Dy. Commissioner of Revenue & Ors.

Mr. Debabrata Dhar,
Mr. Prodyut Ray,
Mr. Ankan Mitra.
For the petitioners.
Mr. Subir Kumar Saha, AGP.,
Mr. Hirak Barman.
For the State.

Affidavit of service filed by the petitioners is taken on record.

The petitioners have filed this instant writ petition assailing the order dated 28th June, 2023 passed by the Deputy Commissioner of Revenue Bureau of Investigation, North Bengal, Alipurduar Zone, Alipurduar, thereby the authority directed the petitioners to pay tax and penalty to the tune of Rs.5,08,508/- in connection with movement of goods vehicle registration No. GJ 15V4728 alongwith goods. It was intercepted at Torsha Bridge, NH 31C, at 12.01 P.M. on 19-06-2023 by the Officer of Bureau of Investigation North Bengal, Alipurduar Zone, Alipurduar.

The goods and conveyance under movement was inspected by the proper officer under Section 68(1) of the CGST Act,2017 read with Rule 138A of CGST Rules, 2017 and WBGST Rules,2017 read with Section 20 IGST Act, 2017 and finally detained the goods and conveyance. At the time of interception of the goods and conveyance, driver of the conveyance has produced E-way bill, two tax invoices etc. Statement of the driver was recorded and finally it was found by the proper officer that the three Harvesters machine on the conveyance was used for movement to Shyamtila, Assam as required by the Proforma respondent No.7. The said proper officer further found, upon verification of the documents tendered by the driver prima facie to be defective and delivery challan was also not produced and contravened the provisions of the GST Act. Accordingly, issued an order of detention dated 21-06-2023 in Form GST MOV-6 observing therein that the goods not covered by valid documents. Thereafter, aforesaid impugned order dated 28.06.2023 has been passed under Section 129 (3) of the West Bengal Goods and service Tax Act,2017 read with Central Goods and Service Tax Act, 2017 and read with Section 20 of the IGST Act,2017.

Thereafter, writ petitioner came forward and claimed to be owners of the goods has made the payment of such tax including the penalty as claimed by the concerned Authority to the tune of Rs.5,08,508/- for release of the goods, which was detained by the authority in view of Section 129 of the WBGST Act, 2017.

It is the contention of the petitioners that no notice was served upon them, neither any opportunity was given to them to give reply, thereby the authority has violated the principle of natural justice and imposition tax as well as penalty without any fault or contravention of Act. He possessed all legal and valid documents for such transportation of goods belongs to the writ petitioners.

Ld advocate further submits that due to detention of their goods, he had no option but to pay the aforesaid amount claimed by the authority. They are feeling aggrieved and dis satisfied with the said impugned order dated 28.06.2023 as such they come before this Court with a prayer that the respondents shall immediately return the aforesaid amount which was deposited by the owners of the goods as a penalty and tax for Rs.5, 08,508/- in terms of payment receipt annexured as P-6 to the writ petition. However, Petitioners do not want to press other reliefs sought for in the writ petition before this Court.

On the other hand, Mr. Hirak Barman, learned advocate appearing for the respondents submits that in view of the provision laid down under Section 129(1) (a) of the West Bengal GST Act, 2017, the owners themselves came forward and claimed the goods are belongs to them and finally paid the imposed tax as well as penalty under the provision of the West Bengal GST, 2017. He further submits that if the petitioners are being aggrieved with the said impugned order passed by an authority then there is specific provision under the statute to file an appeal before the appropriate authority under Section 107 of the West Bengal GST Act, 2017. There is no scope in the writ jurisdiction, where tax and penalty has already made. As such writ petitioner should be dismissed in limini.

Heard Ld advocates for the parties and on perusal of the records, It appears Proper officer and authority followed the provision as prescribed in the Act. It is admitted facts that the tax and penalty imposed upon the owners of the goods have already been paid by the writ petitioners and now the prayer of the writ petitioners is to return the deposited amount as the adjudicating authority passed the impugned order without following the provision of the Act. No notice was served upon them, neither any opportunity was given to them to give reply, thereby the authority has violated the principle of natural justice and imposition a tax as well as penalty without any fault or violation of Act. However, I find the petitioners have come forward and paid the tax as well as the penalty imposed upon them under Section 129(3) of the WBGST Act, 2017. Moreover, there is specific provision in the statute to file appeal against the order passed under Section 129 (3) of the Act. The petitioners may approach before the appellate authority for redressal of their grievances, if they are not satisfied with the said impugned order.

Consequentially, this Court is not inclined to exercise its jurisdiction to interfere with the order passed by the authority. Needless to mention that the petitioners are free to approach before the appropriate authority in accordance with law for redressal of their grievances. Liberty is given to the Petitioners to approach before the appropriate authority, if so advice.

As this court does not get opportunity to enter into the merit of the case, appropriate authority is free to decide the case, on its own merit in accordance with law without being influenced of any observation, whatsoever, made in this order.

Accordingly, WPA 2136 of 20223 is thus disposed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties subject to compliance of all requisite formalities.

(**Ajay Kumar Gupta, J.)**