Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

RVW 43 of 2024
With
IA No: CAN/1/2024, CAN/2/2024

State Tax Officer Goods & Services Tax,
Bureau of Investigation South Bengal
Howrah Zone & Ors.
Vs.
Relay Express Pvt. Ltd. & Anr.
In
WPA 13616 of 2024
Relay Express Private Limited & Anr.
Vs.
State Tax Officer, GST, Bureau of Investigation, South Bengal Howrah Zone & Ors.

For the petitioners in WPA 13616 of 2024 and opposite party/respondents of RVW application	:	Ms. Rita Mukherjee, Mr. Ghanshyam Jha, Mr. Rowsan Kr. Jha
For the applicant	:	Mr. Anirban Ray, Ld. G.P., Mr. T.M. Siddique, Mr. Tanoy Chakraborty, Mr. Saptak Sanyal, Mr. Debraj Sahu
For the State	:	Mr. Anirban Ray, Ld. G.P., Mr. T.M. Siddique, Mr. Tanoy Chakraborty, Mr. Saptak Sanyal, Mr. Debraj Sahu
Heard on	:	23.08.2024.
Judgment on	:	**23rd August, 2024.**

Raja Basu Chowdhury, J:

1. Leave is granted to the writ petitioner to correct the prayer portion in WPA 13616 of 2024.

2. The present review petition has been filed by the State respondents. Mr. Siddique, learned Additional Government Pleader submits that as and by way of an abundant caution an application under Section 5 of the Limitation Act, 1963 has been filed, inter alia, praying for condonation of delay. Since the stamp reporter's report does not indicate there is any delay in filing the review, I am of the view no order is required to be passed on the application under Section 5 of the Limitation Act, 1963. Accordingly, CAN 1 of 2024 stands disposed of.

3. Mr. Siddique appearing in support of the review, by drawing attention of this Court to the judgment and order dated 29th November, 2023 submits that challenging the show-cause notice issued in GST MOV 07 and in GST DRC 01 dated 24th July, 2023, inter alia, including the order dated 30th July, 2023 passed in GST MOV 09 imposing penalty on the petitioner, the writ petition had been filed. He submits that the Court while deciding the matter had proceeding on the premise that Part-B of the e-waybills in question had been updated within 2 minutes of interception of the vehicle in question, and accordingly was prompted to consider the order determining imposition of penalty of Rs.8,71,074/- as harsh

and had thereby, taking note of such fact felt that the imposition of penalty of Rs.50,000/- would be justified. He would, however, submit the basic foundation for passing such an order was on a wrong premise as admittedly in this case, out of the four e-waybills, only part B of three e-waybills had been updated. In fact, the fourth e-waybill had not been updated at all. Unfortunately, the order as noted above proceeds on the premise that Part-B of all the four e-waybills in question had been updated. This according to Mr. Siddique is an error apparent on the face of the record and no detailed enquiry is necessary to ascertain the same. By placing before this Court the judgment delivered in the case of ***S. Nagaraj & Ors. Vs. State of Karnataka & Anr.***, reported in **1993 Supp (4) Supreme Court Cases 595**, he would submit that in a case relating to review, if the Court finds that the order was passed under a mistake, and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it is always open to the Court to rectify such an error. He submits that the root of the power to review comes from the anxiety to avoid injustice. Admittedly, in this case, Part-B of all the e-waybills had not been updated though, the Court proceeding on the premise that the Part B of all the e-waybills had been updated had decided the case. In the facts as aforesaid he submits that this Court may be pleased to review the judgment and order dated 29th November, 2023.

4. Ms. Mukherjee, learned Advocate appearing on behalf of the writ petitioners would submit that in the instant case, there is no error on the face of the record. She submits that the factum of the Part-B of the fourth e-waybill not being updated, was within the notice and knowledge of the Court. There has been no suppression by the petitioners. She submits that the petitioners had at the first instance by a contemporaneous letter dated 25th July, 2023 had brought the factum of non-updation of the fourth e-waybill to the knowledge of the Deputy Commissioner of Revenue, Howrah Zone, and detailed explanation had been given in connection with non-updation of the fourth e-waybill. In the writ petition, appropriate explanation as regards non-updation of the fourth e-waybill was detailed in paragraph 8 thereof, which was a mirror reflection of the earlier stand taken by the petitioners in their communication dated 25th July, 2023. By referring to the judgment and order dated 29th November, 2023, she submits that the Court was conscious of the circumstances as regards non-updation of the fourth e-waybill. Such fact would corroborate from the second page of the order wherein the Court taking note of the genuine difficulty in non-updation of the e-waybill and the intention of the petitioners not to evade tax had proceeded to consider the imposition of penalty and having found the same to be harsh and taking note of non-updation of Part-B of the e-waybill, had imposed a penalty of Rs.50,000.

5. In compliance with the aforesaid direction, the petitioners had duly deposited the aforesaid sum with the said respondents. After realization of the said amount, the present review petition has been filed. By placing before this Court the judgment delivered in the case of ***Sanjay Kumar Agarwal Vs. State Tax Officer (1) & Anr.***, reported in **(2024) 2 SCC 362**, she submits that ordinarily a judgment pronounced by Court is final and departure therefrom is only justified when circumstances of substantial and compelling character make it necessary to do so. According to her no circumstances of substantial and compelling character has been shown for this Court to review its earlier judgment dated 29th November, 2023. She would submit that the state respondents are in fact challenging the order dated 29th November, 2023 by way of a review by treating the same as an erroneous order which is not permissible in law. If the State respondents were so aggrieved they could have filed an appeal. Having not filed an appeal from the order dated 29th November, 2023, no indulgence should be shown to the State respondents to avoid such order.

6. Heard the learned Advocates appearing for the respective parties and considered the materials on record.

7. Upon perusal of the aforesaid order it appears that the issue in the original writ petition revolved around imposition of penalty for non-updation of the four e-waybills by the petitioners which ultimately culminated in the order dated 30th July, 2023 passed in

GST MOV-09 and Form GST DRC-07 whereby, a penalty of Rs.8,71,074/- was imposed.

8. I find that it is the contention of the petitioners as it reflected in the paragraph 8 of the writ petition that the conveyance along with the goods in question was waiting outside the godown of the transporter, awaiting for updation of Part-B of the e-waybills and goods were being shifted to the conveyance bearing No.WB-11D-5374. At the relevant point of time when the conveyance along with the goods was intercepted, according to the petitioners the e-waybill Nos.201611047088, 231611047102 and 561522309890 had already been updated. Unfortunately, the e-waybill No.581519360017 could not be updated as according to the petitioners, the respondent no.1 had directed the driver of the conveyance to inform the petitioners not to update Part-B of the e-waybill as the vehicle was under detention. Such facts would also corroborate from the letter dated 25th July, 2023 which form Annexure P-5 to the writ petition. I find that the Coordinate Bench of this Court by its order dated 29th November, 2023 had not only taken note of the factum of e-waybills being updated within two minutes of interception but had also taken note that by reasons of genuine difficulty, updating of part-B of the e-waybills was not complied with immediately. It also appears from the aforesaid order that this Court taking note of the factum of non-disclosure of cogent reasons in the impugned order and the same being a non-

speaking order and also being harsh, in the facts of the said case had modified the order of penalty to Rs.50,000/-. Having regard to the aforesaid and taking note of the disclosure made in the writ petition, in my view, it is very difficult to conclude that the Court had passed the order by overlooking the factum of non-updation of the Part-B of the fourth e-waybill. I find that Mr. Siddique has placed reliance on the judgement of ***S.Nagaraj & Ors.*** (supra) to drive home the point that the review is always permissible when there is apparent mistake in the order. I find that in the aforesaid judgment the Hon'ble Supreme Court had elaborately dealt with the aforesaid issue in paragraph 18 thereof and has specifically held that the power to review flows from the anxiety to avoid injustice. Similarly, in the case of Sanjay Kumar Agarwal (supra), I find that the Hon'ble Supreme Court in Paragraph 16.2 thereof had observed that when circumstances of substantial and compelling character make it necessary to review, a review can be granted. I do not find in the facts of the case that any injustice has been caused to the respondents. There appears to be enough explanation in the writ petition as regards non-updation of Part-B of the fourth e-waybill being No. 581519360017. Having regard thereto, there is no reason to conclude that the Court being oblivious of such statement had passed the order. The judgment relied on by Mr. Siddique certainly does not assist him in the ultimate decision of reviewing the order although, neither of the parties have argued against the legal principles laid down therein.

9. Having regard to the aforesaid, I find no case for interference has been made out. The review is accordingly dismissed. The connected application being CAN 2 of 2024 also stands dismissed.

10. There shall be no order as to costs.

11. In view of the dismissal of the review petition, I am of the view that the State respondents cannot hold on to the Bank guarantee dated 5th August, 2023 made over by the petitioner no.1. Having regard thereto, I direct the State respondents to forthwith release the bank guarantee dated 5th August, 2023 and to make over the same to the petitioners.

12. With these observations and directions, the writ petition stands disposed of.

13. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.

(Raja Basu Chowdhury, J.)

Mithun A.R.