

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 16.04.2024
DELIVERED ON: 25.04.2024

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND**

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. 504 OF 2024

I.A. NO. CAN 01 OF 2024

ASHISH KUMAR SHARMA

VERSUS

**THE DEPUTY COMMISSIONER, STATE TAX, BUREAU OF
INVESTIGATION, SOUTH BENGAL, HOWRAH ZONE AND OTHERS**

Appearance:-

**Mr. Rajeev Kumar Agarwal, Adv.
Mr. Rajarshi Chatterjee, Adv.
Mr. Sanjay Dixit, Adv.
Mr. Siddharth Agarwal, Adv.**

.....For the Appellant

**Mr. T.M. Siddiqui, Adv.
Mr. T. Chakraborty, Adv.**

.....For the State

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. The unsuccessful writ petitioner is the appellant before us. The writ petition was filed challenging an order passed by the appellate authority under the provisions of the West Bengal Goods and Services Tax Act, 2017 dismissing the appeal filed by the appellant challenging the order passed by the adjudicating authority imposing penalty on the appellant on the ground that the e-way bill which was generated by the appellant had expired and at the time when the vehicle was intercepted four days had lapsed.
2. The learned writ court was of the view that the appellant though contended that the vehicle suffered a breakdown did not annexe supporting documents in the writ petition and merely contending that he had no intention to evade tax is not sufficient and if such contention is accepted transporting without a valid e-way bill will remain a piece of paper and a mere idle formality.
3. The following facts would be relevant for the disposal of this appeal.
4. The appellant is engaged in the business of trading of dehydrated coal tar and allied products. In the course of business, they procured goods for resale from Odisha among other suppliers. Tax invoice dated 02.09.2023 was issued by the vendor for supply of 22.17 MTS dehydrated coal tar on which applicable IGST at 18% was charged. The said tax invoice was duly incorporated in the e-way bill generated by the appellant and the goods were loaded in the vehicle on 02.09.2022. The transportation started on 03.09.2022 for onward delivery to the place of business at Liluah.

5. The case of the appellant is that the vehicle suffered breakdown during the course of its journey and on the date the vehicle was intercepted on 10.09.2022, e-way bill generated by the appellant on 02.09.2022 had expired and four days had lapsed by then. The authority who detained the vehicle namely the State Tax Officer, Bureau of Investigation (South Bengal) Howrah Zone while ordering for physical verification/inspection of conveyance goods and documents in Form GST MOV-02 stated that the inspection is required to be done in accordance with Section 68(3) of the WBGST Act read with CGST Act, 2017 or under Section 20 of IGST Act for the reasons that the e-way bill expired for more than four days. The Deputy Commissioner passed an order of detention under Section 129(1) on the ground that the e-way expired for more than four days. A showcause notice was issued under Section 129(3) of the Act proposing to levy of 200% penalty on the grounds that the e-way had expired for more than four days and the vehicle was moving with the loaded consignment without an e-way bill.
6. The appellant submitted their reply on 13.09.2022 stating that the material loaded in the vehicle belongs to them and though the loading was done on 02.09.2022, the journey was started by the driver on 03.09.2022; before entering the state of West Bengal the vehicle passed through Paza toll plaza on 05.09.2022 at 7:35 AM and then passed through Kokpora toll plaza on 05.09.2022 at 11:21 AM and later passed through Balibhasa toll plaza at 1:48 PM. After passing through Balibhasa toll, the vehicle suffered a breakdown and it was repaired and it started its journey again and reached Debra toll plaza on 07.09.2022 at 9:57 PM. After crossing the said toll plaza,

there was a malfunction of the battery of the vehicle and therefore the vehicle could not move further and the same was repaired and the vehicle reached Dhulagarh toll plaza on 08.09.2022 at 9:12 AM. After it reached the said toll plaza, the vehicle got stuck in a hole and the services of a crane was engaged and the vehicle was pulled out and was to commence the journey. On 09.09.2022, the vehicle was delayed due to no entry for heavy vehicles to enter into Bally area. On 09.09.2022, late at night the driver started the journey and on 10.09.2022 at 1:05AM the vehicle was intercepted by the officers. With these submissions, the appellant requested for release of the materials and the vehicle.

7. Vehicle Verification Report dated 13.09.2022 was drawn by the Deputy Commissioner which does not point out any other discurbancy upon verification of the goods. An order was passed under Section 129(3) of the Act on the same day namely 13.09.2022 levying penalty on the appellant for the same reason that the goods are not covered with valid documents. This was followed by an order of demand under Section 129(3) of the Act. Since the goods had to be moved, the appellant had made the payment of tax and penalty and a release order was passed by the Deputy Commissioner dated 13.09.2022. Aggrieved by the imposition of tax and penalty, appeal was preferred to the Senior Joint Commissioner, Bally Circle West Bengal, the appellate authority. Written submissions were also made before the appellate authority. On 08.11.2023, the appeal was dismissed. Aggrieved by the same, the appellant filed a writ petition which has been dismissed by the impugned order.

8. We have heard Mr. Rajeev Kumar Agarwal assisted by Mr. Rajarshi Chatterjee, Mr. Sanjay Dixit and Mr. Siddharth Agarwal, learned advocates appearing for the appellant and Mr. T.M. Siddiqui and Mr. T. Chakraborty learned advocates appearing for the State.
9. The following facts appear to be not in dispute namely an e-way bill was generated on GST Portal. Movement of vehicle carrying dehydrated coal tar on the strength of the invoice dated 02.09.2022. The applicable GST of Rs. 157.70/- was paid and the same was uploaded by the vendor by filing the return in Form GSTR-1. There was no allegation that there was any intention or attempt made to evade payment of tax. The e-way bill which was generated on 02.09.2022 has been recorded in the tax invoice. It is seen that the penalty was calculated at 200% on the assessable value of Rs. 13,96,710/- though the value mentioned in the invoice by the vendor is Rs. 8,75,715/-. It appears that the appellant did not have any opportunity to put forth his objection with regard to the enhanced assessable value as made by the adjudicating authority.
10. The question which falls for consideration in this case is whether penalty in terms of Section 129 of the Act could be imposed without considering as to whether there was an intention to evade the payment of taxes. This contention was raised by the appellant before the appellate authority and several decisions in support of their contention were relied on for the proposition that “mens rea” is essential for imposition of penalty. The appellate authority has noted the submissions made by the appellant, however rejected the appeal on the ground that the appellant could not

produce any documentary evidence to justify that efforts were taken by them to extend the validity of e-way bill.

11. The learned Government Counsel would strenuously contend that the provisions should not be rendered redundant and something which is not contained should not be read into statute and the case on hand being admittedly a violation of the statute in as much as the vehicle when intercepted did not carry a valid e-way bill which is a statutory requirement and this has resulted in imposition of penalty.
12. The vehicle which was transporting the goods is said to have suffered three breakdowns in the course of its journey. The first breakdown which has been stated by the appellant in the reply dated 30.09.2022 to the show cause notice had occurred after the vehicle passed through Kokpara toll plaza on 05.09.2022 at 11:21 AM at which point of time the e-way bill was valid. Later on it has passed Balibhasa toll plaza at 1:48 PM and the e-way bill was valid. The appellant would contend that the vehicle suffered a breakdown after it crossed Balibhasa toll plaza and the vehicle could start its journey only on 07.09.2022.
13. The learned Government Counsel is right in his submissions that it does not take much effort for extending or re-validating the e-way bill and the appellant as well as transporter are well aware of the procedure and such extension of the e-way bill can be obtained by using the mobile phone.
14. The appellant would contend that after the vehicle was repaired, it started its journey and reached Debra toll plaza on 07.09.2022 at 9:57 PM. Admittedly on the said date, the e-way bill had expired. Once again, the vehicle is said to have suffered a breakdown and after the vehicle was

repaired it reached Dhulagarh toll plaza on 08.09.2022 at 9:12 AM. After reaching the said toll plaza, the vehicle got stuck in a hole and the services of a crane had to be requisitioned to pull out the vehicle. The payment towards the crane higher charges has been established by producing the necessary payment receipt. It is thereafter the vehicle commenced its journey and on 09.09.2022 the entry was delayed on account of no entry restriction and when it entered Bally area on 10.09.2022 at 1:05 AM, the vehicle was intercepted.

15. The above contention was raised by the appellant at the earliest point of time i.e. on 30.09.2022. The adjudicating authority nor the appellate authority has found these factual averments to be wholly untrue or unacceptable. The appellant has been found fault for not producing documentary proof to establish their stand, except for the payment receipt for engaging services of a crane, the appellant did not produce any other document. However, there was nothing on record to show that there was intention on the part of the appellant to evade the payment of tax.

16. In the preceding paragraphs, we have referred to the inspection report which does not contend any other allegations except that there was no valid e-way bill when the vehicle was intercepted. The Hon'ble Supreme Court in **Satyam Shivam Papers Private Limited Versus Assistant Commissioner State Tax and Others** noticed the facts of the said case and held that it has precisely been found that there was no intent on the part of the writ petitioners to evade payment of tax and rather the goods could not be taken to the destination within the time for reasons beyond the control of the writ petitioners.

17. The learned counsel appearing for the state would submit that the facts in the case of ***Satyam Shivam Papers Private Limited Versus Assistant Commissioner State Tax and Others*** was entirely different and it was a hard case of facts where the Hon'ble Supreme Court had granted relief and the said decision cannot be applied to the present case considering the factual position.
18. Be that as it may, what is required is whether there was intention to evade the payment of tax or in other words whether "mens rea" should be totally ignored. The statute empowers imposition of penalty which is rather rigid and as high as 200%. If that be so, it will be well open to the authorities to consider the other documents which were accompanying the goods to ascertain as to whether there was any intention on the part of the owner of the goods or the transporter to evade payment of taxes. In the instant case, that there is no such allegation. Therefore, considering the peculiar facts and circumstances of the case, we are of the view that the case on hand can be construed to be rather peculiar and imposition of 200% penalty is harsh and if the same is to be affirmed it will cause grave prejudice to the appellant. However, considering the fact that the appellant had not been diligent in validating the e-way bill for four days, the appellant cannot be wholly exonerated. It is no doubt true that the statute provides for imposition of 200% penalty.
19. Rule 138 of the CGST Rules deals with the information to be furnished prior to commencement of movement of goods and generation of e-way bill. In terms of Sub Rule (10) of Rule 138, an e-way bill or a consolidated e-way bill generated under the rule shall be valid for the period

mentioned in column 3 of the table below the said rule from the relevant date, for the distance, within the country, the goods have to be transported. The proviso states that the Commissioner may, on the recommendations of the council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein.

20. The second proviso states that provided further that where under circumstances of an exceptional nature including transshipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after obtaining the details in Part B of Form GSTEWB-01 if required. The third proviso states that provided also the validity of e-way bill may be extended within eight hours from the time of its expiry.

21. Section 129 of the CGST Act deals with detention, seizure and release of goods and conveyances in transit. Sub Section (1) commences with a non-obstante clause stating that notwithstanding anything contained in the Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of the Act or Rules made thereunder, all such goods and conveyances used as a means of transportation for carrying the said goods and documents relating to such goods and conveyances shall be liable to detention or seizure, the goods shall be released on payment of penalty equal to 50% of the value of the goods or 200% of the tax payable on such goods whichever is higher as per clause (b) of Section 129. Thus, in terms of the statute the percentage of penalty has been fixed giving no room for any discretion to be exercised by the concerned authority. However, when the correctness of the order passed

by the adjudicating authority/appellate authority is tested before a court of law, the court is entitled to consider the entire factual circumstances and to decide as to whether the aggrieved person was fairly dealt with by the authorities and whether they had adequate opportunity to put forth their submissions and whether the authorities has taken note of the submissions and given reasons in support of its conclusions while imposing the penalty.

22. In the instant case we find that the order of adjudicating authority does not deal with the specific submission made by the appellant in the reply dated 13.09.2022 to the show cause notice. In other words, no reasons have been set out to record satisfaction of the authority that it is a fit case for imposition of penalty. Further, the adjudicating authority did not reject the stand taken by the appellant in their reply dated 13.09.2022. In the grounds of appeal, the appellant has also contended that the officer who passed the order is not the proper authority under whom the appellant is liable to be assessed and there is a jurisdictional error. Thus, in the absence of any allegation that there is an intention to evade payment of taxes and in the absence of any adverse inference drawn pursuant to the physical verification except that e-way bill had expired, the court is of the view that some lenience can be shown to the appellant. However, the conduct of the appellant in not extending the e-way bill for four days after its expiry cannot be absolutely condoned.

23. As rightly pointed out by the learned counsel appearing for the state, that this statutory requirement to carry the necessary documents should not be made redundant. We are conscious of the fact that a transporter/owner of the goods is bound to carry certain documents as

mentioned in the Act which are to accompany the goods. In the instant case, prior to the movement of the goods e-way bill was generated in which the tax invoice number was duly incorporated proof of payment of tax has also been established and e-way bill was valid till 05.09.2022 and mistake committed by the appellant is not extending the e-way bill after the expiry despite such liberty being granted under the Rules. The appellate authority in fact has accepted the contention of the appellant that the penalty amount has been computed on a higher value than the invoice value without proper evidence and reason. To this extent the appellant succeeded before the appellate authority. This goes to show that the adjudicating authority did not apply his mind to the matter and dealt with the matter in an arbitrary fashion. Thus, considering the totality of the circumstances and the peculiar facts and circumstances of the case, the court is inclined to grant some indulgence to the appellant but will not completely exonerate the appellant.

24. Thus, considering the peculiarity of the facts, the appellant is liable to pay Rs. 1,00,000/-. This amount be retained from and out of the total amount paid by the appellant and balance shall be refunded to the appellant within three months from the date of the receipt of the server copy of this order. However, the appellant shall not be entitled for any interest on the said amount so directed to be refunded.

25. In the result, the appeal is partly allowed on the above terms.

(T.S. SIVAGNANAM, C.J.)

I Agree

(HIRANMAY BHATTACHARYYA, J.)