WPA 5240 OF 2024

20.03.2024
Sl no. 13
Ct no. 2
P.M.

Himadri Speciality Chemical Limited
- Vs -
The Deputy Commissioner, State Tax, Bureau of Investigation, South Bengal Headquarters & Ors.

Mr. Rajarshi Chatterjee,
Mr. Govind Jethalia
... for the petitioner

Mr. Anirban Ray, Ld. Govt. Pleader
Md. T. M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Sanyal
... for the State

Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned order of the appellate Commissioner dated November 29, 2023 confirming the original order dated October 21, 2022 passed by the adjudicating authority under section 129 of the West Bengal Goods and Services Act, 2017 for detention of the goods in question on the ground that thee-way bill relating to the consignment in question had expired one day before, i.e. in the midnight of October 18, 2022, and that the goods was detained in the morning of October 19, 2022 on the grounds that the e-way bill has expired which is even less than one day and extension could not be made and petitioner submits that delay of few hours even less than a day of expiry of the validity of the tenure of the e-way bill was not deliberate and willful and was due to break down of the vehicle in question and there was no intention of any evasion of tax on the part of the petitioner.

The petitioner in support of his contention has relied on an unreported decision of the Supreme Court dated January 12, 2022 passed in Special Leave Appeal (C) No(s).21132/2021 (Assistant Commissioner (ST) & Ors. v. M/s Satyam Shivam Papers Pvt. Limited & Anr.).

Learned advocate appearing for the respondent could not make out a case against the petitioner that the aforesaid violation was willful and deliberate or with a specific material that the intention of the petitioner was for evading tax.

Considering the submission of the parties and the facts and circumstances of the case, this writ petition being WPA No.5240 of 2024 is disposed of by setting aside the impugned order of the appellate authority dated November 29, 2023 as well as the order of the adjudicating authority dated October 21, 2022 and as a consequence, the petitioner will be entitled to get the refund of the penalty and tax paid on protest subject to compliance of all legal formalities.

(Md. Nizamuddin, J.)