16 25.06.2024
AN Ct. No. 01
RP

MAT 516 of 2024
with
IA No. CAN 1 of 2024; CAN 2 of 2024

Shree Shyam Inorganics Pvt. Ltd.
Vs.
Deputy Commissioner of State Tax, Bureau of Investigation South Bengal Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
... for the appellant

Mr. Anirban Ray, ld. G.P.
Mr. T. M. Siddiqui
Mr. Saptak Sanyal
... for the State

1. There is a delay of 30 days in filing the instant appeal. Sufficient grounds have been shown and we are satisfied with the reasons given for not preferring the appeal within the period of limitation. Hence, the application being CAN 1 of 2024 is allowed and disposed of. Delay in filing the appeal is condoned.

2. Heard learned counsel for the parties elaborately.

3. This intra-Court appeal filed by the writ petitioner is directed against the order dated 09.01.2024 passed in WPA 28551 of 2023 wherein the learned Single Judge declined to grant any interim order. The short issue which falls for consideration is whether the penalty imposed on the appellant on account of expiry of the e-way bill and demanding a sum of Rs. 9,10,824/- was justified. The appellant has challenged the order passed by the adjudicating authority dated 16.02.2022 before the appellate authority, the appeal was dismissed and challenging the same, since the Tribunal is yet to be constituted, the writ petition was filed challenging the order passed by the appellate authority.

4. The facts of the case are that the appellant was

the owner of the goods viz. Linear Alkyl Benzenesulphonic Acid (LABSA). The e-way bill was generated on 05.02.2022 and was valid till 07.02.2022 midnight. In terms of the statute, the e-way bill can be extended within 8 hours from the time of expiry. Therefore, in the instant case, had the appellant exercised the said right, they could have extended the e-way bill upto 8.00 A.M. on 07.02.2022. The vehicle was intercepted at 08.55 A.M. on 07.02.2022 and the vehicle and the goods were detained on account of expiry of the e-way bill.

5. The explanation offered by the appellant is that on 05.02.2022, when the e-way bill was generated, it was a Saturday and it was the Saraswati Puja Day and the driver of the said vehicle was not inclined to move the vehicle on the said date fearing that there may be calling upon to give donations on account of Saraswati Puja at various places. Therefore, the vehicle moved out only on 07.02.2022 and intercepted about one hour before reaching the destination. Records indicate that there is no mens rea on the part of the appellant to evade the payment of taxes and there is nothing on record by the authorities on this aspect. Nonetheless, the appellant should be aware of the statutory position of the movement of the e-way bill will be in violation of the provisions of the Act. However, considering as to whether there was a willful attempt on the part of the appellant in not getting the e-way bill extended, can also be looked into and equally so whether there was an intention to evade payment of tax. Since these parameters did not fulfill, in the instant case, we are of the opinion that imposition of penalty @ 200% and imposing a sum of Rs. 9,10,824/- is not proportionate to the charge against the appellant.

6. For the above reasons, the appeal and the writ

petition stand **allowed** and the order passed by the original authority as well as the appellate authority is set aside and the penalty is reduced to Rs. 1 lac instead of Rs. 9,10,824/- out of which an amount of Rs. 80,000/- paid as pre-deposit shall be adjusted and the appellant shall remit the pay, a sum of Rs. 20,000/-.

7. The appellant is further directed to remit the said amount within a period of 8 weeks from the date of receipt of the server copy of this order and if the appellant does so, then the Department shall return the bank guarantee and the appellant shall be entitled to cancel the said bank guarantee.

8. In connection with the above, consequently, the connected application, if any, also stands disposed of.

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)