27.02.2024
Item No.6
gd/ssd

FMA/52/2024
IA NO: CAN/1/2023
ARYAVRATA STEEL PRIVATE LIMITED
VS
INSPECTOR OF CGST, ANTI-EVASION,
BOLPUR COMMISSIONERATE AND ORS.

Mr. Akshat Agarwal
..for the Appellant.

Mr. S.S. Banerjee,
Ms. Manashi Mukherjee,
Mr. Tapan Bhanja
..for CGST Authorities.

1. This intra court appeal is directed against the order dated 12.07.2023 in WPA 14972 of 2023 by which the learned Single Bench did not grant any interim order but directed affidavit-in-opposition to be filed.

2. Considering the narrow scope of the matter, request is made to dispose of the writ petition as well as this appeal by a common order.

3. This request is acceded to and the appeal as well as the writ petition are taken up for consideration.

4. The question is whether the respondents could have imposed tax and penalty on the ground that when the vehicle was intercepted, the e-way bill had expired. The appellant had been able to establish that the vehicle has reached the factory gate where the goods have to be unloaded but, however, the said

company, namely, BDG Metal and Power Limited, Barjora, Bankura have a consistent practice that they will not allow entry of any vehicle into the factory during night time. This has been specifically mentioned in the letter given by BDG Metal and Power Limited which was submitted to the assessing officer in which they have also mentioned the date and time at which both the vehicles reported at the factory gate.

5. In our considered view, the bona fide of the appellant has not been doubted by the department and there is nothing to indicate that the stand taken by the company, namely, the purchaser is false or incorrect.

6. In the absence of the same the delay also being very meager, we find this is not a case where tax and penalty could have been imposed on the ground that the e-way bill had expired.

7. For the above reasons, the appeal and the writ petition are allowed, the impugned order is set aside and if any tax and penalty has already been collected from the appellant, the same shall be refunded by the department within three weeks from date.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)