

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP No. 878/2016

**M/s Sarang Traders through
its proprietor Omkar Nath
Sharma, age 70 years S/o Lt.
Sh.Devi Ditta Mal R/o 276/5
Channi Himmat, Jammu.**

.....Appellant(s)/Petitioner(s)

Through: Mr. Sachin Sharma, Advocate
Vs

- 1. State through Commissioner/
Secretary to Government Finance
Department, J&K Govt. Civil
Secretariat, Srinagar.**
- 2. Deputy Excise Commissioner,
Lakhanpur, Kathua**

..... Respondent(s)

Through: Mr. K.D. S. Kotwal, Dy. AG.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
11.03.2024

01. The petitioner has filed the instant petition seeking a direction upon the respondents to receive toll for the vehicle bearing No. PB-11-AT/7265 at the rates applicable prior to issuance of SRO 156 dated 30.05.2016 and as per the rates specified in terms of SRO 138 dated 28.03.2013. A further direction has been sought upon the respondents to allow the petitioner to ply its vehicle No. PB-11-AT/7265 carrying goods after making payment of toll at Toll Plaza, Lakhanpur.

02. It appears that the petitioner had purchased Mustard Oil Cakes from Haryana that were being carried in a Truck bearing No. PB-11-AT/7265 to

Jammu. On reaching Toll Post, Lakhanpur, the vehicle was stopped and its driver was asked to pay toll at the revised rates in terms of SRO 156 dated 30.05.2016. When the driver of the vehicle could not pay the toll at the revised rates, the vehicle in question was not allowed to proceed ahead.

03. According to the petitioner, the rate of toll in respect of the Mustard Oil Cakes that were being loaded in the truck in question, as per SRO 138 dated 28.03.2013, was Rs. 70 per quintal and the same was revised to Rs. 235 per quintal in terms of SRO 156 dated 30.05.2016. It has been further submitted that another SRO bearing No. 177 dated 01.06.2016 came to be issued by the Government whereby operation of SRO 156 dated 30.05.2016 was kept in abeyance. On this basis, the petitioner has contended that toll in respect of the material that was being carried in the truck in question was liable to be charged at the rates mentioned in earlier SRO i.e SRO 138 dated 28.03.2013 and not in terms of SRO 156 dated 30.05.2016.

04. On 04.06.2016, an interim order came to be passed by this Court, whereby respondent No. 2 was directed to collect the toll in respect of vehicle of the petitioner at the rates prevalent prior to issuance of SRO 156 dated 30.05.2016 and to allow the vehicle to pass through the Toll Post subject to satisfaction of other requisite conditions.

05. However, an application bearing MP No. 2 of 2016 came to be filed by respondent-Excise Department seeking modification of the aforesaid order. In the said application, it was pleaded that the vehicle of the petitioner carrying Mustard Oil Cakes from Haryana to its destination to Jammu reached Toll Post, Lakhanpur on 31.05.2016 in the morning at 11.56 AM and the driver refused to

pay the toll at the revised rates in terms of SRO 156 dated 30.05.2016. According to the respondents, at the time when vehicle of the petitioner reached Lakhanpur Toll Post, SRO 156 dated 30.05.2016 was in operation, as such, the petitioner was under an obligation to pay toll tax at the rates specified in the said SRO. Since the petitioner could not pay the toll at the requisite rates, his vehicle was not allowed to proceed further. It was further pleaded that order dated 04.06.2016 is causing a great hardship to the respondent-State as during the period, SRO 156 dated 30.05.2016 was in force till 01.06.2016, as many as 7683 goods vehicles had crossed through Lakhanpur Toll Post and in case the vehicle of the petitioner is allowed to cross the Toll Post by charging the toll at the pre-revised rates, it will have adverse consequences as the State will have to refund a huge amount of money to the vehicle owners, who have crossed Lakhanpur Toll Post during the aforesaid period. This, according to the respondent-State, would cause huge loss to the state exchequer.

06. The aforesaid application of the respondents came up for consideration before this Court on 10.06.2016 and order dated 04.06.2016 came to be modified by providing that the petitioner shall deposit the requisite amount in terms of order dated 04.06.2016 before the Registrar Judicial of this Court within a period of one week and on deposition of the said amount, the same shall be released in favour of the respondent-State. It seems that pursuant to the aforesaid order, the amount stands deposited by the petitioner on 13.06.2016.

07. On 10.02.2022, an order came to be passed by this Court, whereby the respondents were asked to find out as to whether any speaking order with regard to the charging of higher rate of toll against the petitioner was passed by the

assessing authority and the respondents were also directed to find out rate of toll that was being levied on import of Mustard Oil Cakes when SRO No. 108 dated 31.03.2015 was in operation.

08. Pursuant to the aforesaid order, a supplementary affidavit dated 28.12.2022 came to be filed by the respondents. In the said affidavit, it has been submitted by the respondents that no speaking order was issued by the respondents. It has also been submitted that between 30.05.2016 to 31.05.2016, SRO 156 dated 30.05.2016 was in force and the same was kept in abeyance in terms of SRO 177 dated 01.06.2016. It has been further submitted that the vehicle of the petitioner was charged as per revised SRO 156 dated 30.05.2016 as it reached toll post Lakhampur on 31.05.2016. The respondents have also indicated that rate of toll that was being levied on Mustard Oil Cakes was Rs. 70 per quintal in terms of SRO 108 dated 31.03.2015.

09. Heard and considered.

10. Certain admitted facts which emerge from the pleadings of the parties are that the vehicle of the petitioner carrying Mustard Oil Cakes reached Lakhampur Toll Post on 31.05.2016. On 30.05.2016, a notification was issued vide SRO 156 by the Government, whereby toll on vehicles of various types of goods were revised. It is also not in dispute that prior to this notification, the toll was being chargeable in terms of notification bearing SRO No. 108 dated 31.03.2015. It is also an admitted fact that SRO 156 dated 30.05.2016 was kept in abeyance in terms of SRO 177 dated 01.06.2016. The question that arises for consideration is as to what rate the toll has to be charged in respect of the goods

that were imported by the petitioner in its vehicle, that was not permitted to proceed further from Toll Post Lakhanpur.

11. It is admitted case of the parties that the vehicle of the petitioner was not allowed to proceed further and cross Toll Post Lakhanpur when it reached there on 31.05.2016. It was allowed to cross the Toll Post Lakhanpur only pursuant to order dated 01.10.2016 passed by this Court. Vide the aforesaid order, the petitioner was directed to deposit the undisputed amount with the Registry of this Court, which he did on 13.06.2016, whereafter the vehicle of the petitioner was allowed to cross Toll Post Lakhanpur. This means that the vehicle of the petitioner had not crossed the Toll Post Lakhanpur on 31.01.2016 when SRO 156 dated 30.05.2016 was in operation. It was allowed to cross Toll Post Lakhanpur only on 13.06.2016. On the said date SRO 156 dated 30.05.2016 had been kept in abeyance in terms of SRO 177 dated 01.06.2016,, meaning thereby that at the time when vehicle of the petitioner crossed Lakhanpur Toll Post, revised rates as per SRO 156 were not applicable and instead the rates of toll as per the earlier notification were chargeable at that point of time. As per the supplementary affidavit filed by the respondents, the prevalent rate of toll at the relevant time was Rs. 70 per quintal in respect of import of Mustard Oil Cakes in terms of SRO 108 dated 31.03.2015. The petitioner has already deposited the amount of toll at the rates specified in SRO 108 dated 31.03.2015 with the Registry of this Court, therefore, the petitioner is not liable to pay any further toll charges to the respondents.

12. In view of the above, the writ petition is disposed of finally in terms of interim order dated 10.06.2016 and in case the Registrar Judicial has not

remitted the amount already deposited by the petitioner to the respondent-State, the same shall be done forthwith under the appropriate account head, details whereof shall be provided by the learned counsel for the respondents to the Registrar Judicial. The undertaking, if any, filed by the petitioner in terms of interim order dated 10.06.2016 shall stand discharged.

(SANJAY DHAR)
JUDGE

Jammu
11.03.2024
Karam Chand/Secy

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No

