28.07.2025
ML
Item No. 37
Ct.-05
Sayandeep

WPA 4321 of 2025

Amit Mines Private Limited & anr.
versus
Assistant Commissioner of State Tax, Bureau of Investigation (South Bengal) & ors.

Mr. Somnath Roy Chowdhury
Ms. Sanjana Jha
Ms. Sukanya Dutta
Mr. Avinash K. Jha
Mr. Partha Sathi Das
....for the petitioners
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu
......for the State

1. Challenging an order passed by the appellate authority dated 29th August, 2024 under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act), the instant writ petition has been filed. It is the petitioners' case that the petitioners' claim to be engaged in a business of iron and steel. In usual course, the petitioners had contracted for supply of 29.630 MTs of sponge iron from Shyam sel & power Limited. The aforesaid consignment of 29.630 MTs. of sponge iron was dispatched on 12th December, 2023 through the transporter, namely, Sri Balaji Constructions and Logistics for being delivered to Amit Metaliks Limited.
2. Records would reveal that while in transit the validity of the e-way bill generated on 3rd December, 2023 expired on the midnight of 13th/14th December, 2023

and the vehicle along with the goods were intercepted on 14th December, 2023 at around 1:39 p.m. From the notice in MOV 07 dated 25th December, 2023, it would transpire that the primary allegation in the said notice is with regard to the failure of the petitioners to re-validate the e-way bill within the period of 8 hrs. and that the distance of 29 kms. ought to have been covered ordinarily in 2 to 3 hours. The petitioners appear to have obtained release of the goods vide release order dated 27th December, 2023 upon payment of penalty as provided for in Section 129 (1)(a) of the said Act. The petitioners, however, did not respond to the above show-cause and an order under Section 129(3) of the said Act was passed on 27th December, 2023 itself.

3. Being aggrieved the petitioner had preferred an appeal. The appellate authority had disposed of the appeal by confirming the penalty vide order dated 29th August, 2024 by relying on the Judgment in the case of ***Pushpa Devi Jain v. Assistant Commissioner of Revenue, Bureau of Investigation, North Bengal Headquarters & ors.*** in WPA 178 of 2023.

4. Mr. Roy Chowdhury, learned advocate appearing for the petitioners would submit that though the petitioners had specifically made out a case that there had been breakdown of the vehicle and that the

petitioner had no intention to commit any tax fraud, such aspect had not been appropriately considered. He would submit that the appellate authority had failed to take note of the fact that there was no lack of bonafide and as such in the facts, no penalty could have been imposed. In support of his contention that the appellate authority was bound to consider the defence case, he has placed reliance on the judgment in the case of ***Asian Switchgear Private Limited v. State Tax officer, Bereau of Investigation, North Bengal, Head Quarters & Ors.*** reported in **2024(3) Goods and Services Tax Advices**. He has also placed before this Court judgment delivered by this Court in the case **of *M/s Maa Amba Builders & Anr. v. The Assistant Commissioner of Revenue, State Tax Bureau of Investigation, North Bengal HQ & Ors.***, reported in **2024(162) taxman.com 660 (Calcutta)**. According to him, the Judgment delivered in the case of ***Pushpa Devi Jain*** *(supra)* was interfered with by the Division Bench of this Court in the case of ***Pushpa Devi Jain v. Assistant Commissioner of Revenue, Bureau of Investigation, North Bengal Headquarters & Ors.,*** reported in **2024(3) Goods and Services Tax Advices 289** wherein the Division Bench had held that as there was no lack of bonafide of the appellant the authority could not impose penalty on the appellant. Having regard thereto, he would submit that the aforesaid imposition of penalty cannot be sustained.

5. Mr. Sanyal, learned advocate appears on behalf of the respondents. He would submit that there is no requirement for the respondents to establish *mens rea*. Further, having regard to the fact that despite being afforded with repeated opportunity, the petitioners could not explain out the circumstances leading to delay in transportation of the goods, and no documents to establish the defence case was placed on record, the order cannot be set to be unjust. No interference is called for.

6. Having heard the learned advocates appearing for the respective parties, I find that having regard to the Judgment delivered in the case of ***Asian Switchgear Private Limited*** *(supra)* and the Judgment delivered by this Court in the case of ***M/s. Maa Amba Builders & Anr.*** *(supra)* ordinarily, when a defence is set up the concerned authorities are required to take note of such defence. Although in the instant case, the petitioner did not set on a defence at the time of seeking release, the petitioner did prefer an appeal from the order passed under Section 129(3) and had categorically pleaded that there had been breakdown of the vehicle in paragraph 6 of the statement of facts filed in connection with the appeal.

To morefully appreciate the same, the relevant paragraph is extracted herein below:

> ***"6. The driver of the vehicle started journey on 12.12.2023 in the night. But unfortunately when it was near DVC More, the vehicle no. WB 37B 7070 broke down. Thereafter the driver searched out for a truck repairing shop but no repairing shop was there nearby of the place of breakdown. The driver of the vehicle had to wait till 8 a.m. on the next morning, i.e., on 13.12.2023 for opening of a truck repairing shop at very far from the place of breakdown of the vehicle. The driver went at the repairing shop and brought the mechanic from the said shop at around 10:30 a.m. Thereafter the mechanic started repairing, but it took a long time and ultimately the mechanic completed his job at around 1:30 p.m. on the next day, i.e., on 14.12.2023. But the driver could not notice that by that time, the validity of the E-Way Bill expired on 13.12.2023."***

7. I however find that the appellate authority has brushed aside such contention by recording that the petitioners has failed to file any supporting documents. Having regard to the case made out by the petitioners in relation to breakdown and attempts made to repair the same enroute, by a mechanic ordinary, documents may not be available. Further taking note of the fact that there had been only 15 hrs. delay, I am of the view, having regard to the peculiar facts, considering the petitioners' case that its vehicle had suffered a break down and there being no allegation or material on record to show that the petitioners were involved in wilful misconduct while transporting the goods, I am of the view that the penalty ought not to have been imposed. I, thus, proposed to and do hereby set aside the orders dated

27th December, 2023 passed under Section 129(3) of the said Act as also the appellate order dated 29th August, 2024 including the demand raised in GST APL 04. The petitioners having paid the penalty will be at liberty to apply for refund, which shall be considered by the authorities within two weeks from filing such application.

8. With the above observations and directions, the writ petition is disposed of.

9. All parties shall act on the basis of serve copy of this order duly downloaded from the official website of this Hon'ble Court.

(Raja Basu Chowdhury, J.)