Form No. J.(2)
Item No.2
RP/PG AR(Ct.)

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

HEARD ON: 23.07.2025

DELIVERED ON: 23.07.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

WP.TT 13 of 2025

Dalmia Cement (Bharat) Limited
Vs.
Joint Commissioner, Commercial Taxes,
Raiganj Range (now known as Raiganj Zone),
Bureau of Investigation,
North Bengal & Ors.

Appearance:-
Mr. Parag Kothari ..... for the petitioner

Mr. T.M. Siddique, Sr. Adv., Ld. AGP
Mr. N. Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal ....for the State

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This writ petition has been filed challenging the order passed by the West Bengal Taxation Tribunal dated 4th March, 2025 in an application filed in RN-930 of 2013. The petitioner filed the said application before the learned tribunal seeking condonation of delay of 440 days in filing the application being CAN-51 of 2025, which was an application filed for recalling the order dated 1st December, 2023 by which the main application being RN-930 of 2013 was dismissed for default.

2. The learned tribunal was not inclined to exercise any discretion in favour of the petitioner on account of its conduct. Firstly, the earlier application was

filed supported by an affidavit, sworn to by an advocate's clerk, which the learned tribunal rightly did not accept.

3. The second application was filed seeking condonation of delay of 440 days in filing the application. Certain reasons were given by the petitioner, which did not find favour with the learned tribunal. Consequently, the application stood dismissed. Aggrieved by the same, the petitioner has preferred this writ petition.

4. We have elaborately heard Mr. Parag Kothari, learned advocate for the petitioner and Mr. Tanoy Chakraborty, learned advocate for the State. There can be no second opinion as regards the correctness of the order passed by the learned tribunal because if the facts and circumstances, which were placed before the tribunal were placed before this Court, in all probabilities, this Court also would have arrived at the same conclusion as that of the tribunal. But one issue, which persuades us to go into the merits of the matter is that the petitioner will be left remediless and it will be compelled to pay the entire penalty of Rs. 45,01260.00/- calculated @ 14.5% of the total value of 52956 bags of cement. Therefore, we are inclined to consider the correctness of the order passed by the Joint Commissioner, Commercial Taxes, Raiganj Range dated 16th July, 2013 by which the penalty was imposed.

5. It is made clear that this order shall not be treated as a precedent and it is passed considering the peculiar facts and circumstances of the case.

6. The facts, which are not in dispute are that cement was manufactured in the State of Jharkhand and stock transfer was effected to the godwn of the manufacturer in the State of West Bengal, for which transaction, the petitioner subsequently generated Form-F declaration, which satisfies the requisite condition for stock transfer, failing which goods were liable for payment of Central Sales Tax. Respondent/revenue cannot dispute this fact. Secondly, the

reason for imposition of penalty, that too @ 14.5% is on the ground that Way-bill was not generated in Form-50A and goods were shifted from the railway station to the godown of the petitioner and this came to light only when the officers of the department inspected the godown on 7th May, 2013. The consignment, which was despatched from Jharkhand on 2nd May, 2013 arrived at Dalkhola Rake Point on 5th May, 2013.

7. It is an admitted fact that on the said date, no Way-bill was generated in Form-50A. On information being received that a huge stock of cement was being shifted from the railway rake point, the officers of the respondent/department inspected the godown on 7th May, 2013. On the very same day, the petitioner had generated the Way-bill and it was placed before the authority. Thus, it is clear that on the date when the cement bags were moved to the godown from the railway station, there was no valid Way-bill. This would undoubtedly be a statutory violation but while imposing penalty, what is required to be seen is whether there was any intention on the part of the petitioner, who is a registered dealer to evade payment of tax.

8. The Hon'ble Supreme Court in ***Hindusthan Steel Ltd. v. State of Orissa : (1970) 25 Sales Tax Cases 211 SC*** observed that the *"liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out the statutory obligation is the result of quasicriminal proceedings and penalty could not ordinarily be imposed unless the party concerned either acted deliberately in defiance of law or was guilty of conduct which was contumacious or dishonest or that the dealer in question had acted in conscious disregard of his obligation"*. It was further observed *"penalty could not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation was a matter of*

discretion of the authority to be exercised judicially and on a consideration of all relevant circumstances."

9. This decision of *Hindusthan Steel Ltd. (supra)* was relied on by the Hon'ble Division Bench of this Court in the case of ***Zarghamuddin Ansari (Anwar) v. Commercial Tax Officer & Ors. : (2001) 38 STA 129 (Cal. HC.).***

10. In ***Kodak India Limited v. Deputy Commissioner, Commercial Taxes, Midnapore Circle & Ors. : (2003) 41 STA 132 (Cal. HC)***, the Hon'ble Division Bench of this Court was considering a case of imposition of penalty upon seizure of consignment due to non-production of permit, wherein the Court took into consideration the decision of the Hon'ble Supreme Court in *Hindusthan Steel Ltd. (supra)* and the decision of the Hon'ble Division Bench of this Court in *Zarghamuddin Ansari (Anwar) (supra).*

11. In ***Ferring Pharmaceuticals Private Limited & Anr. v. Assistant Commercial Tax Officer & Ors. : (2006) 47 STA 236 (Cal. HC)***, the Hon'ble Division Bench was considering the correctness of the order passed by the tribunal, which affirmed the imposition of penalty on the dealer. It was pointed out that since there was no attempt on the part of the petitioner therein to evade payment of tax and as there was bona fide mistake, penalty cannot be sustained and was set aside and a direction was issued to refund the penalty realised from the petitioner therein. In the case on hand, the respondent has nowhere stated that there has been an intention on the part of the petitioner to evade payment of tax.

12. It is no doubt true that there was a statutory obligation on the part of the petitioner to generate the Way-bill, which it had done only on 7th May, 2013, which ought to have been done on 5th May, 2013 before the goods were despatched to the godown from the railway rake point. Certain reasons have been assigned by the petitioner in not being able to do so including glitches in

the system etc., which has not been established beyond reasonable doubt. Nonetheless, the fact that the goods were not an inter-State sale but an inter-State stock transfer from the manufacturing unit of the petitioner to the godown of the petitioner in the State of West Bengal, which stood established on production of Form-F declaration. That apart, going by the past business activities of the petitioner, there has been continuous movement of cement bags from the place of manufacture, which is situated in the State of Jharkhand to the State of West Bengal on stock transfer and there appears to have been no antecedent on the part of the petitioner to evade payment of Tax. Therefore, we are convinced to state that non-generation of the Way-bill can be construed to be a clerical error for which there is discretion vested with the Commissioner to impose lesser penalty than the penalty provided in the table under sub-section (1) of section 77.

13. Therefore, we are of the view that the petitioner should have exercised more caution and care especially when the petitioner is a very large business house and has been carrying on such activities for a prolonged period of time. There has been some carelessness and clerical mistake on their part and therefore, penalty has to be imposed but not @14.5% imposed by the authority.

14. Accordingly, the writ petition is allowed. The order passed by the learned tribunal is set aside and the order passed by the authority imposing penalty @ 14.5% is modified and the rate of penalty is reduced to 5% of the fair market value of the seized goods on the date of seizure.

15. The petitioner has deposited a sum of Rs. 13,00,000/- (Rupees Thirteen Lakhs) for the purpose of release of the goods, which was released pursuant to a direction issued by the learned tribunal. The 1st respondent authority is directed to calculate the fair market value of the cement bags on the date of seizure and calculate the penalty @5% thereon and deducting the amount of

the penalty so arrived at from Rs. 13,00,000/- (Rupees Thirteen Lakhs) deposited by the petitioner, refund the balance to the petitioner.

16. Entire exercise shall be shall be completed within a period of three months from the date of receipt of server copy of this judgment and order.

17. It is made clear that in respect of the amount, which has been directed to be refunded after deduction of the penalty @ 5%, shall not carry any interest.

18. No costs.

19. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)