Form No. J.(2)
Item No. 04

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 21.01.2025

DELIVERED ON: 21.01.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 2311 of 2024
With
I.A. No. CAN 1 of 2024

Truth Udyog Metal and Steel Private Limited & Anr.
Vs.
The Deputy Commissioner of Revenue, Bureau of Investigation (South Bengal) Howrah Zone & Ors.

Appearance:-
Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan ....**for the appellants**

Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddique, Sr. Adv.
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. S. Sanyal ....**for the respondents**

JUDGMENT

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

1. This intra-Court appeal by the writ petitioners is directed against the order dated December 16, 2024 in W.P.A. 29360 of 2024 by which the learned Single Bench directed affidavits to be exchanged.

2. At the request of the learned counsels appearing for the parties and with their consent, the writ petition is also taken up for hearing along with this appeal and are disposed of by this common judgment and order.

3. The appellants had challenged an order passed by the appellate authority viz. the Senior Joint Commissioner of Revenue, Bally Circle dated October 5, 2024 by which the penalty imposed on the appellant under section 129 (1)(a) of the GST Act, 2017 was affirmed and the appeal came to be rejected.

4. We need not labour much to examine as to whether the reasoning given by the learned Single Bench was justified or not as on facts, we are convinced that there cannot be any intention or much less a willful intention on the part of the appellants to evade payment of tax. We say so because the vehicle was intercepted at 6.00 p.m. on the stated date when the vehicle was proceeding towards the weigh-bridge for weighment. After completion of the weighment, the E-way bill was generated on June 15, 2023 at 6.56 p.m. Even assuming that there is a delay, the delay cannot be construed to be one with a willful intention to evade payment of tax.

5. Therefore, considering the peculiar facts and circumstances of the case, we are of the view that it is not a case, where penalty could have been imposed on the appellants under section 129(1)(a) of the Act.

6. The appellants, without prejudice to their rights and contentions have remitted the penalty amount of Rs. 1,75,716/-.

7. In the light of the above, the appeal as well as the writ petition are allowed and the order passed by the appellate authority dated October 5, 2024 and the order passed by the adjudicating authority dated July 05, 2023 are set aside.

8. The appellants are at liberty to seek for refund of the penalty amount, which was remitted by them and if such application is filed, the same shall be dealt with in accordance with law.

9. No costs.

10. 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.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)