Form No. J.(2)
Item No.5

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 MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 2312 of 2024
With
IA No. CAN 1 of 2024

Truth Udyog Metal and Steel Private Limited & Anr.
Versus
The Deputy Commissioner, State Tax, Bureau of Investigation (South Bengal), Durgapur Zone & Ors.

Appearance:-
Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
.....For the Appellants
Mr. A. Ray, Ld. G.P.
Mr. T. M. Siddique, Sr. Adv.
Mr. N. Chatterjee
Mr. T. Chakraborty
.....For the State

JUDGMENT

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

1. In this intra-Court appeal by the writ petitioners is directed against the order dated 16th December, 2024 in W.P.A. 29358 of 2024 passed by the learned Single Bench declining to grant any interim order but directing affidavits to be exchanged.

2. At the request made by the learned advocates for the parties and with their consent, the writ petition as well as this appeal are disposed of by this common order and judgment.

3. The short issue, which falls for consideration is whether the appellate authority viz., the Senior Joint Commissioner of Revenue, Bally Circle was justified in

dismissing the assessees' appeal by an order dated 4th October, 2024 confirming the order of penalty imposed on the appellants under Section 129(1) of the G.S.T. Act, 2017.

4. It is not clear as to how the adjudicating authority and the appellate authority had invoked Section 129 of the Act since, the facts of the present case shows there appears to have been no intention to evade the payment of tax. The only reason for imposing the penalty is that in the e-way bill generated by the appellants in favour of M/s. CRM Ispat Private Limited dated 8th July, 2023 for outward supply, the despatch was shown to be made from Durgapur, West Bengal, Pin – 713212. The authorities are of the opinion that the full details of the company, which despatched the goods, which were sent to the appellants/customer was not disclosed. However, on a comparison of the e-way bill raised on 6th July, 2023 alongwith the tax invoice raised by the appellants show that the goods moved in the same vehicle bearing registration No. W.B. 41D 1508. The appellants' explanation before the authorities was that in cases of direct despatch of goods from supplier to customer, in order to avoid the disclosure of details of the supplier to the customer, the trade practise is to only mention the place of despatch rather than giving the total details of the supplier. Therefore, the appellants contended that in the e-way bill, which was generated by them it had mentioned only the place of despatch as West Bengal, 713212. The pin code matches with that of M/s. Shova International, the appellants' supplier.

5. In any event, the e-way bill is generated based on an application made in the portal and in Part – A of the e-way bill, one of the details is to be furnished is place of despatch in which the appellants had mentioned as West Bengal, 713212 and this detail, which was disclosed while making the application was accepted and the e-way bill stood generated. Therefore, merely because the appellants did not disclose the name of the company and the full particulars of his supplier, cannot

be stated to be a ground that the appellants had intention to evade the payment of tax.

6. Thus, in the peculiar facts and circumstances of the case, the power under Section 129(1)(a) of the Act could not have been invoked.

7. For the above reasons, the appeal and the application (IA No. CAN 1 of 2024) are allowed, the order passed by the appellate authority as well as the original authority are set aside and the appellants are entitled to apply for refund of the penalty, which was remitted by them without prejudice to their rights and contentions and if such application is filed, the same shall be dealt with in accordance with law.

8. No costs.

9. 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.)