Sl. No.37

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

M.A.T. 108 of 2024
with
CAN 1 of 2024
with
CAN 2 of 2024

Mohammad Shamasher
-Vs-
The State of West Bengal & Ors.

For the Appellants	:	Mr. Sandip Choraria, Adv. Mr. Rajeev Parik, Adv., Ms. Pratusha Dutta Chowdhury, Adv.
For the State	:	Mr. Subir Kr. Saha, Ld. AGP, Ms. Rima Sarkar, Adv.
Heard on	:	22.01.2025
Judgment on	:	22.01.2025

Joymalya Bagchi, J. :-

Re: CAN 2 of 2024.

1. The application being CAN 2 of 2024 has been filed under Section 5 of the Limitation Act for condonation of delay in filing the present Appeal.

2. Having considered the averments in the application for condonation of delay being CAN 2 of 2024 and being satisfied with the explanation given, we are inclined to condone the delay in preferring the present appeal.

3. The application being CAN 2 of 2024 is allowed.

Re: MAT 108 of 2024
with
CAN 1 of 2024.

4. Appellant has assailed the judgment and order dated 24th May, 2024 passed by the Hon'ble Single Judge dismissing his challenge to the impugned order of penalty under Section 129(3) of the West Bengal GST Act, 2017 imposing a penalty equal to 200% of tax payable i.e. Rs.9,93,080/- only.

Facts:-

5. The brief facts giving rise to the appeal are as follows:-

6. Officials of Bureau of Investigation, North Bengal Alipurduar had detained a JCB machine bearing registration mark No.NL01N8041 on 21.04.2023. On enquiry, the driver of the vehicle failed to produce any document in support of the transportation of goods loaded in the vehicle. Upon searching the vehicle number for E-way bill verification in the e-way officer App, it is found that one E-way bill bearing No. 871305331205 dated 18.04.2023, was generated by one M/s Akifa infrastructure, Abgilla Nezam Colony, near Devi Astmanpur, Gaya, Bihar against the transportation of the JCB machine loaded in the vehicle from Arunachal

Pradesh to Bihar. As per the said E-way bill, one unregistered person (URP) namely Pisi Suriya Singhpo of Arunachal Pradesh was sending the said JCB to M/s Akifa Infrastructure of Gaya, Bihar. The transaction was mentioned as ‘regular’ and Type was mentioned as ‘inward- job work Returns’.

7. The driver of the vehicle failed to produce original/duplicate copy of the tax invoice/delivery challan/E-way bill at the time of interception as per the GST law. Statement of the driver was recorded and during physical verification of the vehicle, various documents including a delivery challan was submitted. Inspection of the delivery challan revealed that there were material discrepancies and it did not contain particulars as prescribed under Rule 55 CGST/WBGST. It was not signed by the consignor or its authorized representative. From the release letter accompanying the delivery challan it appears it was issued in respect of release of a Hyundai Excavator 215 issued by M/s. B. G. Enterprise, Arunachal Pradesh. However, E-way bill produced by the driver for transportation shows the consigner was one Pisi Suriya Singhpo of Arunachal Pradesh, an unregistered person.

8. Accordingly, a case was registered with case No. APD/R/W/37/23-24 on 21.04.2023. Subsequently, a detention order dated 23.04.2023 was passed and show cause notice was issued upon the appellant. On 03.05.2023 an order of penalty confirming 200% tax came to be passed. The order was affirmed by appellate authority. In the meanwhile, the

Petitioner submitted bank guarantee equal to a sum of penalty imposed and the detained goods and vehicle was released.

9. The Appellant assailed the order of the adjudicating authority as well as the Appellate Authority before this Court in WPA 85 of 2024. Vide Judgment dated 01.02.2024, the Hon'ble Single Judge remanded the matter for reconsideration. Pursuant to the said remand, respondent authority reconsidered the issue and passed the impugned order dated 27.03.2024 reaffirming the penalty. This was again challenged in the present writ petition which was dismissed by the Hon'ble Single Judge vide the impugned order dated 24.05.2023.

Arguments at the Bar:-

10. Mr. Choraria contends the adjudicating authority ignored the observations made by the Hon'ble Single Judge in WPA 85 of 2024 and sat in appeal over the said findings. He reiterates failure to carry the delivery challan by the driver of the vehicle was an inadvertent error and there was no intention to evade tax liability. Impugned penalty was excessive and liable to be set aside.

11. On the other hand Ms. Sarkar submits that the issue which persuaded the adjudicating authority to impose penalty was not failure to carry delivery challan simplicitor but the fact that the release letter accompanying the challan subsequently submitted by the appellant did not match the E-way bill in material particulars and exposed the intention to evade tax.

Discussion & analysis:-

12. The following facts are admitted:-

(a) A JCB machine bearing registration mark No.NL01N8041 was detained by Bureau of Investigation, Alipurduar on 21.04.2023, *inter alia*, on the ground that the driver was not carrying original /duplicate copy of tax invoice or delivery challan.

(b) During physical checking of the goods on 22.04.2023 a delivery challan showing release of JCB by "Damik Gamesh Proprietor of M/s. B. G. Enterprise, Ghandhi Market, Daporijo, Arunachal Pradesh" issued by M/s. B.G. Enterprise, Arunachal Pradesh was placed on record.

(c) It may be appropriate to note as per the E-way bill generated by the appellant's firm, the consigner was one Pisi Suriya Singhpo of Arunachal Pradesh, an unregistered person. However, delivery challan was issued by a different entity i.e. "B. G. Enterprise, Ghandhi Market, Daporijo, Arunachal Pradesh (GSTN 12B0RPG6791N1Z8"), a registered dealer.

13. Hence it is an admitted position that there were discrepancies in the E-way bill and the delivery chellan, i.e, the delivery challan subsequently submitted by the appellant does not match the E-way bill generated in favour of Pisi Suriya Singhpo of Arunachal Pradesh. Noticing the aforesaid discrepancy the adjudicating authority imposed penalty.

14. In the first round of litigation, the order of penalty imposed had been set aside by the Hon'ble Single Judge and the matter was remanded back for fresh consideration.

15. Relying on certain observations made by the Hon'ble Single Judge in WPA 85 of 2024, Mr. Choraria contends that the adjudicating authority ought not to have gone into the mismatch between E-way bill generated by his client and the delivery challan submitted later on.

16. For effective adjudication, it may be apposite to quote the relevant observations of the Hon'ble Single Judge in WPA 85/2024 as follows;

> "*In the present case there was a valid e-way bill in support of the transportation. It is only because of non production of the delivery challan that the penalty has been assessed and imposed. Though possession of all document in support of transportation is the fundamental requirement of law, but as it appears that, the petitioner did not have intention to evade tax, accordingly, imposition of penalty at the rate of 200% of the tax payable appears to be highly disproportionate and not in accordance with the provisions of law.*
>
> *In view of the above, the impugned order passed by the adjudicating authority affirm by the appellate authority is liable to be set aside and is accordingly set aside. The adjudicating authority is directed to revisit the issue in line with the discussions made hereinabove and pass a reasoned order. A decision shall be taken at the earliest but positively within a period of eight weeks from the date of communication of this order.*"
>
> (emphasis supplied)

17. We do not find merit in the contentions raised by the appellant for the following reasons.

i) In respect of the submission that the adjudicating authority travelled beyond the remand order, we note that in the earlier round of litigation, Hon'ble Single Judge had observed penalty had been imposed due to non-production of delivery challan only and there was no intention to evade tax. There was no finding on the issue of mismatch between the e-way bill and the delivery challan *vis-à-vis* appellant's intention to evade tax. Given this situation, the adjudicating authority as a fact finding body was not precluded from going into the aforesaid issue.

ii) Secondly, in respect of intention to evade tax, we find that as per the E-way bill generated by the appellant, the consignor is one Pisi Suriya Singhpo of Arunachal Pradesh who is an unregistered person whereas the delivery challan subsequently placed on record was not signed by the consignor and was accompanied by a release letter issued by one M/s. B. G. Enterprise, a registered person under the GST Act. This mismatch is not an inadvertent one but gives opportunity to conceal the identity of the actual user (a registered person) of the inward services supplied and thereby evade payment of GST on such supply.

iii) Thirdly, the E-way bill foot print is easily available to the tax authorities, hence the name of an URP has been intentionally declared in the E-way bill with the intention to conceal the actual recipient of the rental/lease service of the said JCB machine by a registered person with the sole intention to evade the tax liability.

Conclusion:-

18. In light of the aforesaid discussion, we are of the opinion that the findings of the Hon'ble Single Judge are well merited and does not call for interference.

19. Accordingly, the appeal and the connected applications are dismissed.

20. There shall be no order as to costs.

I agree.

(Gaurang Kanth, J.) **(Joymalya Bagchi, J.)**