

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

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

HEARD ON: 28.04.2022

DELIVERED ON: 28.04.2022

**CORAM:
THE HON'BLE ACTING CHIEF JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 562 OF 2023
With
I.A. No. CAN 1 of 2023**

**Progressive Metals Pvt. Limited
VERSUS
The Deputy Commissioner, State Tax,
Bureau of Investigation South Bengal,
Durgapur Zone & Ors.**

Appearance:-

Mr. Rajarshi Chatterjeefor the appellant

Mr. T.M. Siddique

Mr. Debasish Ghoshfor the respondents

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 6th February, 2023 in W.P.A.

1786 of 2023. By the said order, the learned writ Court declined to grant any interim order, though was inclined to entertain the writ petition and called for affidavits. The appellant being aggrieved by such order, has filed the present appeal.

2. With the consent of the learned counsels appearing on either side, the writ petition is taken up along with this appeal. The short issue involved in the case is whether 200% penalty could have been imposed in terms of section 129 of the WBGST Act, 2017.

3. The appellant was carrying goods, which were consigned to Larsen & Toubro Limited in West Bengal. The e-way bill generated on 7th May, 2022 at 3:46 PM was valid upto 8th May, 2022 11:59 P.M. The goods were shipped to the following address : Kankora, Near Shantiniketan Road, Trilokchandrapur, Bud Bud, Panagarh, Durgapur, Barddhaman, West Bengal-713148.

4. It is not in dispute that the vehicle along with the goods entered the Durgapur industrial belt within the validity of the e-way bill. The vehicle was intercepted on 9th May, 2022 at 9:35 AM at Durgapur and the vehicle was detained along with the goods on the ground that the e-way bill had expired on 8th

May, 2022 at 11:59 AM. The explanation given by the appellant was that it was a Sunday and the consignee had given instructions to unload the goods at a different location within the same area and in this regard the appellant had produced e-mail sent by the consignee stating that they had given instructions subsequently to unload the goods at a different location within the area to which the goods were sent as per the e-way bill. The original authority did not accept the explanation given by the appellant and imposed 200% penalty. An appeal was preferred against the said order to the Senior Joint Commissioner, State Tax, Chowringhee Circle, who by order dated 26th September, 2022 affirmed the order of penalty imposed by the original authority and dismissed the appeal petition. Aggrieved by the same, the appellant filed the writ petition.

5. We need not go into the various judgments, which were referred to by the learned advocate for the appellant and the learned advocate for the State as we are convinced that on facts, there was no intention on the part of the appellant to evade payment of tax. In any event, in terms of rule 138 of the WBGST Rules, if an e-way bill had expired, the transporter had 08 hours time to seek for extension of the time stipulated in the e-way bill. If that allowance is given, at the time

when the vehicle along with the goods were intercepted, it was delayed by about 01 hour and 35 minutes. The particular details given in the e-way bill will show that the area Durgapur has also been mentioned. It is not disputed that the vehicle was within the Durgapur industrial belt though not at Panagarh. Thus, considering the peculiar facts and circumstances of the case and in the absence of any material produced by the revenue to doubt the bona fides of the appellant, we are of the view that penalty should not have been imposed in this case.

6. The learned standing counsel appearing for the respondents/State had referred to the decision of the Hon'ble Supreme Court in **Chairman, SEBI v. Shriram Mutual Fund & Anr.** reported at **(2006) 5 SCC 361** for the proposition that the intention of the authority committing such violation becomes immaterial when there is a contravention of the statutory obligation.

7. Section 129 of the WBGST Act deals with detention, seizure and release of goods and conveyances in transit. Sub-section (1) of section 129 states that notwithstanding anything contained in the Act where any person transports any goods or stores any goods while they are in transit in

contravention of the provisions of the Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure shall be released upon payment of penalty as mentioned in the clauses under subsection (1) of section 129. Therefore, what is required to be considered in every case is whether there was a contravention of the provisions of the Act.

8. The revenue would rely upon rule 138 of the rules to state that the appellant ought to possess a valid e-way bill and admittedly when the vehicle was intercepted, time stipulated in the e-way bill had expired. Sub-rule (10) of rule 138 lays down the validity period for a e-way bill. The 2nd proviso in sub-rule (10) provides that in circumstances of an exceptional nature including trans-shipment, the goods cannot be transported within the validity period of the e-way bill. The transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01.

9. The third proviso states that the validity of e-way bill may be extended within 8 hours from the time of its expiry. Thus, the rules give certain latitude and therefore, the

conduct of the transporter is required to be examined bearing in mind that the rule itself provides for extension of the validity period of the e-way bill and the transporter has been given a latitude of 8 hours to seek for such extension.

10. If that benefit is granted to the appellant, then the delay would be about 1 hour and 35 minutes. Further, consignee Larsen & Toubro Construction had sent an e-mail on 15th May, 2022 stating that initially the goods were consigned to Kankora, Near Shantiniketan Road, Trilokchandrapur, Bud Bud, Panagarh, Durgapur, Barddhaman, West Bengal-713148. However, subsequently the consignee thought it to bring to another yard located at Degaule Avenue, Durgapur and the officer of the consignee accordingly, communicated the same. The consignee also expressed regret for the inconvenience caused and requested them to deliver the material at initial address only i.e. Panagarh, Durgapur. Admittedly the vehicle was within the area of Durgapur and even as per the revenue department, the distance between the place where the vehicle was intercepted and Durgapur was about 20 kilometres. There is no other allegation against the appellant.

11. Therefore, considering the peculiar facts and circumstances of the case, we find that this is not a case, where penalty that too 200% penalty should have been imposed.

12. For the above reasons, the writ petition is allowed and the orders passed by the appellate authority dated 26th September, 2022 as well as the original authority dated 15th May, 2022 are set aside. Consequently, the appeal as well as the connected application also stand disposed of.

13. There shall be no order as to costs.

14. 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)
ACTING CHIEF JUSTICE

I agree,

(HIRANMAY BHATTACHARYYA, J.)

K.S./Pallab, AR(Ct.)