

12.03.2024
SL.11, Ct.3
R.Bhar

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Appellate Side**

W.P.A. 190 of 2023

Ashok And Sons (HUF)

-Vs.-

**Joint Commissioner, State Tax, Office of
the Senior Joint Commissioner, Siliguri
Circle And Ors.**

Mr. Jagriti Mishra
Ms. Ananya Bhattacharya
Ms. Mrinmayee Das

.....for the petitioner

Mr. Subir Kumar Saha
Ms. Rima Sarkar

.....for the State

The petitioner in the present writ petition is assailing the order dated 23.08.2022 passed by respondent no.1 thereby rejecting the appeal preferred against the adjudicating order dated 14.03.2022 passed by respondent no.2.

It is the case of the petitioner that the petitioner, a registered taxable person duly registered under the GST Act, is the manufacturer/supplier of bitumen emulsion and allied product. In the course of business, he supplied 158 drums emulsion containing 200kgs in each drum, in all measuring 31,600 kgs with invoice no. 555/2021-22 dated 05.03.2022. The e-way bill was valid for the period 05.03.2022 to 09.03.2022 from Begusarai to Guwahati. In the course of transportation, the goods carriage suffered a breakdown and it was parked in a motor vehicle garage within the jurisdiction of Jalpaiguri. The vehicle was intercepted by the said tax officer on 12.03.2022 and it was

found that e-way bill in respect of the consignment had expired.

In view of the same, vide the impugned order dated 14.03.2022, the respondent no.2 imposed SGST at the rate of Rs.2,58,804/- and penalty of SGST to the tune of Rs.7,18,900/-. In order to release the vehicle, the petitioner had to pay the taxes. Thereafter, he had filed an appeal before the appellate authority. Vide the impugned order dated 23.08.2022, the appellate authority dismissed the appeal.

Hence, in such circumstances, the petitioner has approached this Court by way of the present writ petition.

The predecessor Bench of this Court by an order dated 06.02.2023 had dismissed the present writ petition. The petitioner preferred an intra-court appeal being MAT 51 of 2023 titled as Ashok & Sons (HUF) vs. Joint Commissioner, State Tax & Ors. and the Hon'ble Division Bench vide order dated 28.11.2023 remanded the matter back to this Court for fresh adjudication.

Learned counsel for the petitioner submits that the consignment was in transit, however, unfortunately, the vehicle broke down and hence the same had to be stationed in a motor vehicle garage within the jurisdiction of Jalpaiguri. The vehicle had all the valid documents, however, the e-way bill expired on 09.03.2022. It is submitted by the petitioner that than expected, more time was taken for rectification of the defects in the goods vehicle and thus due to an inadvertent bona fide mistake, the e-way bill could not be renewed on time. However, it is

stated by the counsel for the petitioner that the petitioner had no intention to evade tax in any manner.

Learned counsel for the petitioner has relied upon a judgment of this Court in WPA 1480 of 2022 titled as *M/s. Hanuman Ganga Hydroprojects Private Limited v. Joint Commissioner, State Tax Authority, Siliguri Circle & Anr.*, a Division Bench judgment of this Court in MAT 470 of 2022 titled as *Assistant Commissioner, State Tax, Durgapore Range, Government of West Bengal v. Ashok Kumar Sureka, Proprietor of Subham Steel* and another judgment passed by the Gujarat High Court in *Synergy Fertichem Pvt. Ltd. v. State of Gujarat* reported in 2019 SCC OnLine Guj 6127.

Learned counsel for the respondent vehemently opposes the petition and points out that the e-way bill had expired on 09.03.2022 and no steps were taken by the petitioner for renewal of the same. However, in view of Section 129 of the GST Act, the respondent authorities were justified in imposing penalty.

Learned counsel for the respondent relies on a judgment passed by the Hon'ble Supreme Court in *Vardhan Associates Pvt. Ltd. v. Assistant Commissioner of State Tax Central Section* reported in 2023 SCC OnLine SC 1710.

This Court has heard the argument advanced by both the parties and examined the records of the present case. GST is a destination based tax i.e., the tax is levied at the place where the goods are consumed/serviceable. Section 129 of the GST Act empowers the tax authorities to detain and seize goods during transit if they suspect any non-compliance of the Act/Rules. Hence, failure to maintain proper documentation and non-compliance of the provisions

of the Act can lead to serious consequences. However, at the same time, the bona fide of the person has to be seen i.e., whether he was willfully trying to evade taxes or the circumstances were beyond his control which led to expiry of the e-way bill, at the time of imposing penalty. The judgment cited by the petitioner i.e., *Hanuman Ganga Hydroprojects Private Limited v. Joint Commissioner, State Tax Authority, Siliguri Circle & Anr., Assistant Commissioner, State Tax, Durgapore Range, Government of West Bengal v. Ashok Kumar Sureka, Proprietor of Subham Steel and Synergy Fertichem Pvt. Ltd. v. State of Gujarat* are relevant in this context.

In the present case, it is an admitted fact that the consignment was going from Begusarai to Guwahati and the e-way bill was valid from the period 05.03.2022 to 09.03.2022. It is also an admitted position that the goods vehicle broke down and the same had to be stationed in a motor vehicle garage. The respondent official intercepted the vehicle while it was stationed at the garage. There is no dispute with regard to the quantity and the description of the goods. The explanation offered by the petitioner that due to break down of the vehicle he could not transport the goods within the expiry of the e-way bill is accepted in the facts and circumstances of the present case. The vehicle was intercepted at the garage, thus proving the case of the petitioner that there was a break-down of the vehicle. Though this does not entitle the petitioner to violate the provisions of law to not have a valid e-way bill at all times. Only in the particular facts and circumstances of this case

the Court accepts the contention of the petitioner and holds that the petitioner did not have the intention to evade tax.

After going through the order of the adjudicating authority as well as the order passed by the appellate authority, this Court finds that the aforesaid authorities have not written any finding that there was any deliberate and willful attempt on the part of the petitioner to evade payment of tax. It is an admitted position that the petitioner had paid the amount of penalty levied by the adjudicating authority and the vehicle was released thereafter. This Court finds that there is no lack of bona fide on the part of the petitioner in the instant case for not extending the validity period of the e-way bill.

In view of the aforesaid discussion, this Court is of the considered view that in the absence of a willful attempt on behalf of the petitioner to evade tax, the respondent ought not to have levied penalty on the petitioner.

In view thereof, the present writ petition is allowed and the impugned orders dated 14.03.2022 and 23.08.2022 are set aside.

The respondents are directed to take necessary steps for refund of the amount of tax and penalty recovered from the petitioner pursuant to the aforesaid orders impugned in the present writ petition.

This Court however makes it clear that this order is being passed taking note of the peculiar facts and circumstances of this case as recorded hereinabove and the same cannot be treated as a precedent.

With the above directions, the present writ petition is disposed of.

No order as to costs.

(Gaurang Kanth, J.)