

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 22271 of 2024

Reserved on : 08.11.2024
Pronounced on: 14.11.2024

Excellent Polycon Private Limited

...Petitioner

-Vs-

The State Tax Officer, Bureau of Investigation,
(South Bengal), Kharagpur Zone & Ors.

...Respondents

Present:-

Mr. Anil Kumar Dugar
Mr. Rajarshi Chatterjee
Ms. Suman Sahani

.... for the petitioner

Mr. A. Roy, GP
Mr. Md. T.M. Siddiqui
Mr. Nilotpal Chatterjee
Mr. T. Chakraborty
Mr. S. Sanyal

.... for the State

Rajarshi Bharadwaj, J:

1. The present writ petition has been filed in relation to the order passed by the Appellate Authority herein respondent no.3 wherein the petitioner challenges the impugned order passed by the Appellate Authority under WBGST Act, 2017 confirming the order of the Adjudicating Authority imposing penalty for transporting goods after the expiry of the e-way bill.

2. The facts in a nutshell are that the petitioner is a registered company, duly constituted under Section 2(20) of the Companies Act, 2013, with its registered office at 24C, Rabindra Sarani, 3rd Floor, Kolkata 700073. The Petitioner holds valid registrations under the Central Goods and Services Tax (hereinafter referred to as 'CGST') Act, 2017, the West Bengal Goods and Services Tax (hereinafter referred to as 'WBGST') Act, 2017, and the Integrated Goods and Services Tax (hereinafter referred to as 'IGST') Act, 2017, under GST registration number 19AABCE9576H1Z5.

3. The Petitioner is a reputed organization engaged in the manufacture of various plastic products, including buckets and containers, at its manufacturing unit located in Ramchandrapur, Sonarpur, South 24-Parganas, Kolkata. The Petitioner has consistently complied with all legal requirements, including tax payments, filing returns and dispatching/receiving goods as per statutory mandates, with no history of tax evasion or involvement in defrauding the revenue.

4. On June 15, 2023, a regular customer of the Petitioner, one M/s Norton Chemicals & Specialties Private Limited, placed an order for 6,000 buckets of Bharatbenz Genuine Adblue and 61,750 buckets of Tata Genuine D.E.F. 20 litres, to be delivered to the customer's unit in Vidyasagar Industrial Park, Kharagpur, West Bengal, as per Purchase Order No. KHAPO123/10063/0. The order was fulfilled in parts. Therefore, on June 30, 2023, the Petitioner prepared and dispatched 7,632 buckets of Tata Genuine D.E.F. loaded onto vehicle No. NL01AC3911, accompanied by E-invoice IRN No. 675da306f39183e303497ba29f8319cbf71d58e-373b35191d515879cd598436, Manual Invoice No. EPPL/23-24/552, and E-way Bill No. 851324574898, all dated June 30, 2023, with the E-way bill validity expiring on July 1, 2023 at 11:59 PM.

5. The goods were in transit when the E-way bill expired at midnight on July 1, 2023. The Petitioner, due to unforeseeable circumstances, was not informed by the driver, who was inexperienced and unaware of the procedural implications of transporting goods with an expired E-way bill. The Petitioner's office had a half-day on July 1, 2023 and was closed on July 2, 2023 i.e., on Sunday, resulting in the expiry of the E-way bill going unnoticed. However, during transit on July 2, 2023, the Respondent No. 1 intercepted the vehicle near Basantpur, National Highway, and initiated physical verification. Following this, Respondent No. 2 issued a show-cause notice in Form GST MOV-07 on July 5, 2023, proposing a penalty of Rs. 1,98,316/- each under CGST and WBGST, citing violation of Section 68 of the said Act due to transportation on an expired E-way bill.

6. Upon notification, the Petitioner sought release of the detained goods by providing a bank guarantee and bond on July 7, 2023. However, on July 13, 2023, Respondent No. 2 demanded penalties in Form GST MOV-09, disregarding the Petitioner's submissions and the circumstances of the expired E-way bill.

7. Being aggrieved by the act of the respondent no.2 the Petitioner filed an appeal on the GST Portal on August 30, 2023, by paying 25% of the disputed penalty. The appellate proceedings conducted by respondent no.3 concluded with the confirmation of the initial order on June 19, 2024, rejecting the Petitioner's arguments on the grounds that they would set an undesirable precedent. Owing to the unfavourable order passed by the Appellate Authority the present petition has been preferred.

8. The Learned Counsel appearing on behalf of the petitioner has submitted that the Respondents Nos. 1 and 2 exceeded their statutory authority under the CGST/IGST Acts by intercepting, detaining and imposing penalties based solely on the expiry of the E-way bill, neglecting the

surrounding extenuating circumstances. It is further submitted that Respondent No. 3 erred in upholding the order dated July 13, 2023, as it failed to account for the unintentional nature of the E-way bill lapse and the driver's lack of knowledge of the procedural requirements.

9. The Petitioner asserts that no attempt was made to evade tax or redirect the goods to a different party, as the vehicle was found close to the petitioner's customer's unit, with all documentation intact and accurately reflecting the transaction details. The purpose of the E-way bill system is to document goods movement and prevent clandestine transactions, which was fulfilled in this case, as the E-way bill was generated and validated prior to the journey. Therefore, the detention and penalty imposition were unduly harsh and unwarranted.

10. The petitioner avers that the transaction was recorded in its books, reported in GSTR-1 and GSTR-3B, and the petitioner's customer availed input tax credit in GSTR-3B based on the corresponding transaction in GSTR-2A, negating any chance of tax evasion. The petitioner further submits that the Respondents acted without jurisdiction by imposing penalties based solely on procedural lapses. It contends that such action was arbitrary and in excess of the statutory mandate.

11. The Petitioner further asserts that, since tax was duly paid and no discrepancy was found upon inspection, the penalty is legally untenable. Moreover, as both E-way bill and E-invoice were generated, any presumption of suppressed outward supply or tax evasion is ill-founded. Therefore, the petitioner highlights that Respondent Nos. 1 and 2 ignored the compelling circumstances and the recorded facts in the GST Portal, opting instead to impose a penalty under section 129 (1)(a) of the GST Act/WBGST Act on hyper-technical grounds that bore no financial impact on the revenue.

12. Submissions of the Learned Counsel appearing for the respondent no.3 is that the respondent authorities have reviewed the orders and the case facts.

According to Rule 138(10) of the WBGST Rules, 2017, read with Notification 31/2019-CT dated June 28, 2019, the validity of an E-waybill can be extended within 8 hours after its expiry. Thus, it has been submitted that the registered taxpayer (RTP) herein, the petitioner had both the option and opportunity to extend the E-waybill's validity after its expiration, but did not do so. The E-waybill's validity could have been extended electronically through the common GST portal at any time, regardless of weekends, public holidays or national holidays. It is the responsibility of the transporter or RTP herein, the petitioner to extend the E-waybill's validity, and the Adjudicating Authority has no discretion in this matter. In view of these facts, the respondent authority submits that the petitioner's appeal is irrelevant, especially as the vehicle was intercepted nearly 15 hours after the E-waybill expired. Excusing this negligence by the petitioner could set an undesirable precedent owing to which the respondent saw no grounds to interfere with the Adjudicating Officer's order.

13. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court opines that while procedural compliance under the GST framework is crucial, penalties imposed purely for procedural lapses without evidence of tax evasion or malicious intent may not serve the legislative intent. Given the absence of any attempt to divert the goods or evade tax, and based on the petitioner's compliance record, this Court observes that imposing a penalty was unwarranted in this instance. This Court therefore, emphasizes that rules, including those on e-way bill validity, should be applied contextually, taking into account the facts and intentions involved.

14. In ***HanumanGanga Hydropojects (P.) Ltd. v. Joint Commissioner, State Tax Authority, Siliguri*** reported in [2022] 142 taxmann.com 348 (Calcutta), the Hon'ble Calcutta High Court observed that-

"17. After going through the order of adjudicating as well as the order passed by the appellate authority, this Court finds that the aforesaid authorities have not returned any finding that there was any deliberate and wilful attempt on the part of the writ petitioner to evade payment of tax. In order to justify invocation of the power to impose penalty in terms of the said Act, it is necessary that such authority arrives at a definite finding that there was a deliberate and willful attempt on the part of the assessee to evade tax or there is lack of bona fide.

18. This Court already held that there is no lack of bona fide on the part of the writ petitioner in the instant case for not extending the validity period of the E-Way bill within the aforesaid short period of time. It is also not a case of wilful attempt on the part of the writ petitioner to evade payment of tax"

15. For the foregoing reasons and the judgment in ***Progressive Metals (P.) Ltd. v. Deputy Commissioner, State Tax in MAT 562 of 2023***, this Court finds that the penalty imposed by the respondents to be excessive and not aligned with the principles of natural justice. This Court, therefore, set aside the orders of the Appellate and Adjudicating Authorities, holding that the penalty imposed on the petitioner was unwarranted given the petitioner's established compliance and the absence of intent to evade tax.

16. All pending applications are accordingly disposed of.

17. There shall be no order as to costs.

18. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

14.11.2024

PA (BS)