

Form J(1)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 190 of 2023

Ashok and Sons (HUF)

Vs.

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

For the Petitioner : **Mr. Jagriti Mishra, Adv.,
Mr. Subham Gupta, Adv.,
Mr. Debayan Goswami, Adv.,
Mr. Reshab Kumar, Adv.**

For the State : **Mr. Subir Kumar Saha, Adv.,
Mr. Bikramaditya Ghosh, Adv.**

Heard & Judgment On : **6nd February, 2023.**

(Bibek Chaudhuri, J.)

By filing the instant writ petition, the petitioner has assailed and imposition of SGST and penalty for the year 14th March, 2022 passed by the Assistant Commissioner, Bureau of Investigation (North Bengal) Headquarter.

It is the case of the petitioner that the petitioner is the manufacturer/supplier of milestone Bitumen Emulsion and Allied products. The petitioner is a Registered Taxable Person duly registered under the GST Act with specific GSTIN number. In course of business,

the petitioner supplied 158 drums of Bitumen Emulsion containing 200 kgs in each drum, in all measuring about 31,600 kgs with invoice No.555/2021-22 dated 5th March, 2022 generating proper E-Way bill dated 5th March, 2022 which was valid up to 9th March, 2022 from Begusarai to Guwahati. For the purpose of transporting the said goods the petitioner paid IGST at the rate of 18% amounting to Rs.2,58,804. On payment of IGST E-Way bill was generated for transportation of the said goods from Begusarai to Guwahati. In course of transportation the good carriage suffered from breakdown and it was detained in a motor vehicle garage within the jurisdiction of Jalpaiguri. The vehicle was intercepted by the State Tax Officer on 12th March, 2022 and on inspection it was found that E-Way bill in respect of the consignment had expired. Subsequently, the Assistant Commissioner, Bureau of Investigation Headquarter imposed SGST at the rate of Rs.2,58,804/- and penalty on SGST to the tune of Rs.7,18,900 and asked the petitioner to pay the said tax with penalty. In order to release the vehicle the petitioner had to pay tax and the vehicle, but preferred an appeal before the appellate authority. By an order dated 23rd August, 2022 the appeal was dismissed.

Learned Advocate for the petitioner submits that validity of E-Way bill expired on the expiry of 9th March, 2022. The vehicle was intercepted on 12th March, 2022. Thereafter SGST and penalty was imposed as the E-Way bill has expired. It is submitted by the learned Advocate for the

petitioner that the petitioner has no intention to evade tax. He paid IGST at the rate of 18% on the value of the goods and procured E-Way bill. However, it was not within the control of the petitioner that there would be mechanical defect of the said truck. Under such circumstances, the respondent authority cannot impose any SGST and fine on the ground that the E-Way bill had expired.

It is further submitted by the learned Advocate for the petitioner that GST is a destination based tax, i.e., the goods and services will be taxed at the place where they are consumed and not at the origin or during its transit. So, the state where they are consumed will have the right to collect IGST. The petitioner did not evade tax. As the vehicle could not proceed due to breakdown from the territory of the State of West Bengal the petitioner is not entitled to pay any tax. In support of his contention the learned Advocate for the petitioner refers to a decision of this Court in **M/s Hanuman Ganga Hydroprojects Private Limited vs. Joint Commissioner, State Tax Authority, Siliguri Circle & Anr.** (WPA 1480 of 2022 dated 6th July, 2022). He also placed his reliance on the judgment of this Court dated 1st March, 2022 in WPA No.11085 of 2021 (**Ashok Kumar Sureka vs. Assistant Commissioner, State Tax, Durgapur Range, Government of West Bengal**).

Learned Advocate for the respondent, on the other hand, submits that if a vehicle with certain consignment is found in statutory condition for this together it is supposed under the GST Act that the said goods

are presumed to be delivered within the territory of the state itself. In the instant case the petitioner's consignment was found lying within the territory of the state for more than three days. The E-Way bill had expired. The driver of the vehicle stated that the vehicle suffered a breakdown. In support of his contention he failed to produce proper document. The petitioner had the opportunity to extend the validity of the E-Way bill when the goods vehicle was allegedly had mechanical defect. The petitioner did not take any step for extension of E-Way bill. When the E-Way bill has not been extended it would be presumed that the consignment was sent to the State of West Bengal. Therefore, Section 129 of GST Act empowers the authority to impose tax and penalties. Section 129 of the GST Act runs thus:-

129. Detention, seizure and release of goods and conveyances in transit.- (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this 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,—

- (a) on payment of the penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
- (b) on payment of the penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods

- does not come forward for payment of such tax and penalty;
- (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) [***]

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of tax and penalty under clause (a) or clause (b) or clause (1).

(4) [No penalty] shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under subsection (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”

Section 129 of the Central Goods and Services Tax Act, 2017 empowers the statutory authority to detain the vehicle and seize the

goods. The goods shall be released only on payment of penalty equal to 200% of the tax payable on such goods.

Under the fact and circumstances of the case this Court finds that the respondent authority is lawfully permitted to impose penalty under Section 129 as well as the SGST as the goods were found to be detained in the territory of the State.

In view of such circumstances, the ratio laid down in **M/s Hanuman Ganga Hydroprojects Private Limited** (supra) and **Ashok Kumar Sureka** (supra) are not applicable in the instant case.

For the reasons stated above, the writ petition is dismissed on contest however, without any costs.

(Bibek Chaudhuri, J.)