

06.02.2024
Item No.15
gd/ssd

FMA/256/2023
IA NO: CAN/1/2023
M/S SARAF TREXIM LIMITED
VS
DEPUTY COMMISSIONER OF STATE TAX AND ORS.

Mr. Rituraj Chakraborty
..for the Appellant.

Mr. T.M. siddique,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
..for the State.

1. This intra court appeal by the writ petitioner is directed against the order passed by the learned Single Bench dismissing the writ petition filed by the appellant challenging the order passed by the authorities imposing penalty under the provisions of the WBGST Act on the ground that the e-way bill generated by the appellant for transporting the articles for export to Bangladesh had expired and, therefore, on the date and time when the vehicle was intercepted, the vehicle did not have a valid e-way bill. Therefore, penalty in terms of Section 129 of the Act has been imposed.

2. Affidavit-in-opposition has been filed by the department and reply has been filed by the appellant/writ petitioner.

3. We have elaborately heard the submissions of the learned advocate for the appellant and Mr. T.M.

Siddique, learned Government counsel appearing for the respondent.

4. The undisputed facts are that the goods in question were transported by the appellant in the vehicle bearing Registration No.WB-27-2590 accompanied by an e-way bill generated on 11.06.2022. The e-way bill was valid upto midnight on 13.06.2022. On 14.06.2022 the vehicle was intercepted at about 5.30 p.m. The authorities found that the e-way bill had expired at 12 midnight on 13.06.2022 and fresh e-way bill has not been generated. Consequently, it was held that the goods were transported without a valid e-way bill. Though the appellant had sought to explain the lapse on the ground that the vehicle met to the accident and there was a settlement made between the owner of the motorcycle and the owner of the truck carrying the goods, this also had added to the delay in the process and in any event on 15.06.2022 the second e-way bill was generated and at the time when the vehicle was intercepted, hardly 24 hours had expired from the time at which the first e-way bill had expired. In similar matters court has taken a view that unless and until it is established by the department that the transporter of the goods or the owner of the goods had an intention to contravene the provisions of the Act, the question of imposing penalty under Section 129 of the Act that too 200% would not be justified. Each case has to be

decided on the peculiar facts and circumstances and the court can definitely take into consideration the bonafide of the transaction and in the instant case the delay have been less than 24 hours.

5. We are of the view that it is not a case where penalty can be imposed that too 200%. The other factors which are also to be taken note of that the goods have been transported and the goods in question have been exported to Bangladesh.

6. Considering all these facts which we find to the peculiar case on hand, we are of the view that in the instant case no penalty can be imposed on the appellant.

7. Accordingly, the appeal is allowed. The order passed in the writ petition is set aside and the writ petition is allowed and the order of the penalty imposed on the appellant is set aside and quashed.

8. Since the appellant had paid the penalty during the pendency of the proceedings, the appellant is entitled to file an application for refund of the amount of the penalty collected which shall be considered and refund be effected as expeditiously as possible preferably within six weeks from the date of receipt of the server copy of this order.

(T. S. SIVAGNAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)