

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 3651 of 2021

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M/s BURNPUR POLYFABS PVT. LTD., a company incorporated under the Companies Act, 1956, having its registered office at Kamalpur Village, P.O- Mithani, P. Burdwan, West Bengal, 713371, through its Managing Director Mr. Bimal Kumar Naredi, son of Shri Satya Narayan Naredi, aged about 40 years, resident of House/ Bldg: Narsingh Bandh, Landmark Nag Temple, Village/ Town: Asansol, P.O. & P.S. Burnpur, District- Bardhaman, West Bengal. Petitioner

Versus

1. The State of Jharkhand
2. The Commissioner of State Taxes, having its office at Project Bhawan, Dhurwa, P.O. Dhurwa, P.O. – Dhurwa, P.S. Jagannathpur, District- Ranchi, Jharkhand.
3. Deputy Commissioner of State Taxes, Intelligence Bureau, Dhanbad Division, Jharkhand, having his office at Near City Civil Court, Dhanbad, P.O. & P.S.-Dhanbad, District Dhanbad.
4. State Taxes Officer, Intelligence Bureau, Dhanbad Division, Jharkhand, having his office at Near City Civil Court, Dhanbad, P.O. & P.S.-Dhanbad, District Dhanbad. Respondents

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**CORAM : HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

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For the Petitioner : M/s. Nitin Kumar Pasari, Adv.
Ms. SidhiJalan, Adv.
Mr. Naveen Toppo, Adv.
Mr. ShubhamChoudhary, Adv.
Mr. Gaurav Kaushalesh, Adv.
Mr. RiturajSafalta, Adv.

For the Respondents : Mr. P.A.S. Pati, G.A.-II, Advocate.

12/21.12.2022: Heard learned counsel for the parties.

2. The instant writ application has been preferred for following reliefs:-

(a) For issuance of an appropriate writ, order or direction, directing upon the respondents to show cause as to how an officer of the State Taxes could carry out the proceedings under section 129 (1) and (3) of the Act, that too when he is not a Proper Officer under the Central Goods and services Tax Act, 2017, for an inter-state transaction, necessarily falling under the ambit of Integrated Goods and Services Tax Act, 2017, in the view of section 20 of the said Act, the proceedings, if any,

could be carried out only under the Central Goods and Services Act and the provisions of the said act has to mutatis mutandis apply.

- (b) For issuance of an appropriate writ, order or direction, directing upon the respondents to show cause as to when from the originating State till reaching the State of Jharkhand, genuine e-Way Bill were available, but only because of the fact that e-Way Bill had expired, if at all, would attract section 129 of the Act, 2017 in the absence of any intention to evade tax or contravention of provisions of the Act.*
- (c) For issuance of an appropriate writ, order or direction, for quashing and setting aside the order dated 03.09.21(Annexure-7) passed by the Ld. State Taxes Officer, Intelligence Bureau, Dhanbad Division, Dhanbad, whereby and whereunder, tax and penalty to the tune of Rs. 5,51,808/- has been imposed and the same has been paid for release of truck, on the ground that e-Way Bill had lost its validity without any finding of evasion of tax, which otherwise is also beyond jurisdiction.*
- (d) Consequent thereupon, the amount deposited by the petitioner for release of truck and goods be directed to be refunded.*

3. The brief facts of the case lie in very narrow compass. The Petitioner Company is having its Registered Office at Burdwan, West Bengal, and is engaged in the business of retailing of PP Woven Sack, PP Woven Roll, PP empty bags etc. On 12.08.2021, a Purchase Order was placed by M/s. ACC Ltd. Sindri, Dhanbad, to the Petitioner situated at Burdawan, West Bengal for supply of 1,60,000 pieces of PP empty Bags, which was duly dispatched by the Petitioner Company on 31.08.2021 under the cover of proper documents including E-way bill bearing no. 821176253881 dated 31.08.2021, valid till 01.09.2021, in truck bearing no. WB 37E 1135. While the goods were in transit, the truck was intercepted by the Officers of Investigation Bureau, Team A, Special Mobile Team, Dhanbad for verification/inspection, on which it was found that the E-way bill had expired and statement of the truck driver was recorded in Form GST MOV-01, directing him to station the vehicle along with goods at the office of Joint Commissioner of State Taxes (Admn.), Dhanbad in Form GST MOV-02. Pursuant thereto, physical verification was carried out and a report was issued in Form GST MOV-04, wherein no discrepancy was found in the description of goods and quantity as mentioned in the invoice. Owing to the fact that e-way bill had expired, an order of detention in Form GST MOV-

06 and Show Cause Notice in Form GST MOV-07 has been issued in the name of the truck driver, fixing 08.09.2021 as the date for Physical hearing. Since, M/S. ACC Ltd. Dhanbad, did not claim the ownership of the goods, the Petitioner Company deemed to be the owner of the goods. However, the Petitioner Company being a dealer registered outside State of Jharkhand would have to temporarily register itself in the name of driver in the State of Jharkhand for further proceedings. Pursuant thereto, the learned State Taxes Officer Jharkhand proceeded to *suo moto* register the truck driver in terms of Rule 16(1) of the Rules for payment of tax and penalty. On being informed about the entire incident, the Petitioner Company paid the entire demand of tax and penalty for release of goods and the vehicle after which an order in Form GST MOV-05 was issued, directing the release of vehicle and goods contained therein. Without providing any opportunity of hearing on the date fixed i.e. 08.09.2021, an order of demand and penalty has been passed u/s 129(3) of the Act in Form GST MOV 09 in a mechanical manner and in the name of the truck driver. On the ground of there being no evasion of tax and no contravention of Section 129(3) of the Act, the assessee preferred the writ petition. Another challenge has been made to the jurisdiction of State Taxes Officer on the ground that for a inter-state transaction falling within the purview of Integrated Goods & Services Tax Act 2017, the State Tax Officer has no jurisdiction to carry out the proceedings under Section of 129 of the Act. Although, the proceeding has been initiated against the truck driver, but since the truck driver is not registered as a dealer and the payment was made by the Petitioner Company, hence, the company has chosen to file the present writ petition being an aggrieved party.

4. Mr. P.A.S. Pati, learned G.A.-II has filed counter affidavit inter-alia challenging the maintainability of the writ petition, as also on merits and has contended that the efficacious remedy of appeal is available to assessee, since the dispute pertains to questions of fact, the Hon'ble Court may not entertain the writ petition and relegate the petitioner to prefer an appeal.

5. Having heard learned counsel for the parties and after going through the series of events, as also, taking into consideration that an efficacious alternative remedy by way of appeal is available to the petitioner under Section 107 of JGST Act, we therefore, grant liberty to the petitioner to

approach the appellate authority against the impugned order passed under Form GST MOV 09. On his approaching, the State Taxes Officer, Intelligence Bureau, Dhanbad Division, Dhanbad shall provide the GSTIN number so that the petitioner can prefer an appeal online. In case the appeal is not accepted online for any technical reasons, he would be at liberty to prefer an appeal manually before the appellate authority. The petitioner shall be at liberty to raise all the issues of facts & law and the grounds available to it in the appeal which shall be decided by the appellate authority in accordance with law.

6. Consequently, the writ petition is disposed of with the aforesaid direction and observation. Let it made be clear that this Hon'ble Court has not gone into the merits of the case of the parties.

(Aparesh Kumar Singh, A.C.J.)

(Deepak Roshan, J.)