

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

Present :- Hon'ble Justice Amrita Sinha

WPA 3374 of 2022

**Abinash Kumar Singh
Vs.
The State of West Bengal & Ors.**

| | | |
|-------------------------|----|--|
| For the writ petitioner | :- | Ms. Sweta Mukherjee, Adv. Mr. Debajit Kundu, Adv. |
| For the State | :- | Mr. Subir Kumar Saha, AGP. Mr. Bikramaditya Ghosh, Adv. |
| Heard on | :- | 27.02.2023 |
| Judgment on | :- | 03.03.2023 |

Amrita Sinha, J.:-

The order of affirmation of the appellate authority and the order of the adjudicating authority imposing penalty upon the petitioner for transporting goods against an expired e-way bill both are under challenge in the present writ petition.

The petitioner was transporting goods against an e-way bill which was generated on 23rd April, 2022. The vehicle of the petitioner was checked at the Cooch Behar check post on 28th April, 2022. The petitioner alleges that despite producing all necessary documents in connection with the consignment, the check post authority kept the vehicle waiting and deliberately did not issue gate pass permitting the vehicle to leave the check post. The vehicle was ultimately issued gate pass on 2nd May, 2022, by which time, the e-way bill expired on 30th April, 2022.

After the vehicle was released from Cooch Behar and was on the way to the final destination, the same was intercepted and being found that there wasn't a valid e-way bill, Form GST MOV-01 and GST MOV 02 were issued with

a prima facie opinion that the consignment was not supported by any valid documents. A detention order was issued in Form GST MOV 06 and show cause notice issued in Form GST MOV 07 dated 5th May, 2022 in the name of the driver with a proposal for imposition of penalty under Section 129 of the West Bengal Goods and Services Tax Act, 2017.

The petitioner submitted reply on 9th May, 2022. A further show cause notice was issued in the name of the petitioner and he duly submitted reply to the same. The adjudicating authority considered the reply and not being satisfied with the reasons mentioned therein for transporting the goods without a valid e-way bill, imposed penalty upon the petitioner. On payment of the penalty amount, the vehicle of the petitioner was released.

The petitioner contends that he ought not to be imposed the penalty amount as the petitioner was in no way responsible for the delay in issuing the gate pass at Cooch Behar. Had the gate pass been issued by the authority immediately upon verification of the documents, then the consignment could have been delivered within the validity period of the e-way bill.

It has been represented that the concerned authority deliberately detained the vehicle for an unusually long period of time and despite repeated requests, did not issue the gate pass permitting the petitioner to move on.

It has been argued that there was no intention on the part of the petitioner to evade tax as he had paid the tax in the first place, and as such, the petitioner ought not to be saddled with penalty.

In support of the aforesaid contention the petitioner relies on the decision passed by this Court on 12th May, 2022 in MAT 470 of 2022 with IA CAN 1 of 2022; *Assistant Commissioner, State Tax, Durgapore Range, Government of West Bengal -vs- Ashok Kumar Sureka, Proprietor of Subham Steel* and the judgment dated 6th July, 2022 in WPA 1480 of 2022 in *M/s. Ganga*

Hanuman Hydroprojects Private Ltd. -vs- Joint Commissioner, State Tax Authority, Siliguri Circle & Anr.

Prayer has been made for setting aside the impugned order passed by the adjudicating authority and the appellate authority.

The respondent authority opposes the prayer of the petitioner. It has been submitted that the action of transporting any goods without a valid e-way bill is impermissible in law. The authority intercepted the vehicle and as no valid e-way bill was produced, penalty was imposed.

Reliance has been placed on the provision of Section 129 of the Act which permits detention of goods if the same is transported in contravention of the provision of the Act and the corresponding Rules.

It has been contended that the intention of the transporter whether or not to evade payment of tax is not the relevant consideration for imposition of penalty if the goods are found to be transported without a valid e-way bill. There is provision in the Act for generating fresh e-way bill if, for any reason, the goods cannot be transported within the validity period of the said e-way bill.

It has been submitted that the ratio laid down in M/s. Hanuman Ganga (supra) and Ashok Kumar Sureka (supra) will not be applicable in the facts and circumstances of the instant case. Reliance has been placed on the judgment delivered by this Court on 6th February, 2023 in WPA 190 of 2023 in ***Ashok and Sons (HUF) -vs- Joint Commissioner, State Tax, Office of the Senior Joint Commissioner, Siliguri Circle & Ors.***

Prayer has been made for dismissal of the writ petition.

I have heard and considered the rival contentions of both the parties. It is not in dispute that when the vehicle of the petitioner was intercepted, the same did not have a valid e-way bill. The e-way bill, on the basis of which the goods were transported, expired prior to the vehicle reaching the final destination.

There may or may not be valid reasons for not being able to transport the goods within the validity period of the e-way bill. The petitioner may not have any intention to evade tax; but can that be a valid ground to transport goods without a valid e-way bill?

The Act is very clear on the issue. Law bars transportation of certain goods beyond a particular distance without a valid e-way bill. The petitioner being aware of the legal requirement generated the e-way bill prior to transportation of the goods. Due to some unknown reason there was delay in issuing gate pass at the check post for which the transportation got delayed resulting in non-delivery of goods within the stipulated time period. Law prescribes generation of fresh e-way bill for transportation of goods if the same cannot be delivered on time.

Every transporter, prior to commencement of movement of goods exceeding value of rupees fifty thousand, is mandatorily required to furnish information relating to the goods electronically, on the common portal and the goods are required to be transported within the validity period as mentioned in the e-way bill. If, for exceptional circumstances, the goods cannot be transported within the period mentioned in the e-way bill, then there is provision for extending the validity period after updating the details in the portal. There is no provision to transport goods with an e-way bill which stood expired on the date of transportation.

It is the duty of the owner/transporter/consignor/consignee to keep track of the consignment and do the needful for transporting the goods in accordance with law. The interception and detention of goods without valid documents are permissible in law. The authority intercepting the vehicle in the course of movement is not supposed to appreciate the reasons as to why the vehicle was moving without a valid e-way bill.

If the contention of the petitioner is to be accepted, then the authority will be flooded with a plethora of reasons from the errant transporters for not being able to deliver the goods within time. In such a situation, the authority may exercise discretion either to accept or reject the ground put forth for explaining the delay in transportation. The same will give rise to an anomalous situation when the authority may adopt pick and choose method as per their choice and tend to exercise discretion arbitrarily. Law does not provide such unbridled power and right to the authority. In case of statutory violations, the statutory consequential steps are required to be undertaken.

Transportation of goods with a proper e-way bill is one of the salient features of the Act. There is no scope to dilute the said provision of law for granting relief to an errant transporter. The Act cannot and ought not to be interpreted in such a manner that the very essence of the same is lost. Section 129 of the Act opens with a non obstante clause which lends a mandatory character to the same. The petitioner may or may not be directly responsible for the delay in issuance of the gate pass, but he is certainly at fault in transporting goods without a valid e-way bill.

The judgments of M/s. Hanuman Ganga (supra) and Ashok Kumar Sureka (supra) do not lay down any proposition of law and both the Hon'ble Benches specifically recorded that the said decisions were passed in the peculiar facts and circumstances of the said case and cannot be treated as precedent.

The appellate authority considered all the grounds raised by the petitioner in the appeal and passed order applying the corresponding law. The said order is a perfectly reasoned one and does not call for any interference by the Court.

In view of the same, no relief can be granted to the petitioner in the instant case. The writ petition fails and is hereby dismissed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)