

Form No.J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 13141 of 2024

Gopal Nondy

Versus

**Assistant Commissioner of State Tax, Bureau of Investigation
South Bengal, Kharagpur Zone & Ors.**

For the petitioner : Mr. Arya Das
Mr. Amit Kumar Shaw

For the respondents : Mr. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

Heard on : 12.06.2024 & 13.06.2024

Judgment on : **13.06.2024**

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is retained with the records.
2. The present writ petition has been filed, inter alia, challenging the order dated 27th December 2023 passed by the appellate authority under Section 107 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act").
3. The petitioner is the proprietor of Arpan Enterprise and is registered under the provisions of the said Act. The petitioner claims to have received certain orders from M/s Apex Auto

Private Limited having its place of business outside the State of West Bengal at Jamshedpur (hereinafter referred to as the “principal”) for executing certain job work in respect of certain “Railway Component” (hereinafter referred to as the “consignment”). Pursuant to and in furtherance of the aforesaid contract executed between the petitioner on one hand the said principal, the petitioner received 22 pieces of consignment aggregating an invoice value of Rs.5,92,623.20/- from the said principal against two separate purchase orders dated 4th November 2022 and 21st November 2022 respectively. The aforesaid consignment was transported from Jamshedpur to the petitioner’s place of business in the State of West Bengal through a transporter namely, CARCA Rapid Solutions Private Limited under two separate e-way bills both dated 23rd November 2022, for invoice amount of Rs.96,509.30/- and Rs.4,96,113.90/- respectively aggregating to Rs.5,92,623.20/-.

4. It is the petitioner’s case that when the petitioner was in the process of returning the consignment upon executing the job work and had loaded the same in a vehicle, the same was intercepted and detained on 24th/26th November, 2022 within the State of West Bengal at Nimpara, Paschim Medinipur by the respondent no. 1. As would appear from the order of detention dated 26th November 2022, the consignment was detained only on the ground that the documents tendered were found to be

defective and that no e-way bill was produced for movement of the goods in question. On a physical verification conducted on the said date, no other discrepancy apart from what was indicated in the detention order was identified by the respondents. The same was followed by an order under Section 129(3) of the said Act dated 27th November 2022, whereunder the proper officer had determined the penalty payable by the petitioner.

5. Records would reveal that the petitioner had obtained release of the aforesaid consignment by making payment of penalty in terms of Section 129(1)(a) of the said Act and consequent thereon an order dated 29th November 2022 was passed, releasing the consignment and the conveyance which had been so detained. The petitioner has subsequently preferred an appeal challenging the said order dated 29th November 2022, determining penalty payable by the petitioner in terms of Section 129 of the said Act. The said appeal was rejected on 27th December 2023 by confirming the order dated 29th November 2022 passed by the proper officer.
6. Mr. Das, learned advocate appearing for the petitioner by drawing attention of this Court to the purchase order appearing at page 24 of the writ petition submits that it is not in dispute that the petitioner had been entrusted to carry out certain job works on contractual basis. By placing reliance on Section 15 of the said

Act, he submits that value of the taxable supply is required to be determined in terms of the said Section and since, the petitioner was carrying out job work, the petitioner had indicated the value of the supply of goods in the invoices on the basis of the transaction as is required to be done in terms of Section 15 of the said Act. He submits that since, the transaction value did not exceed Rs.50,000/-, the petitioner was, therefore, not required to generate e-way bill. This aspect was completely over-looked both by the proper officer as also by the appellate authority while passing the orders impugned.

7. By placing reliance on a trade circular no. 30/2018 dated 17th September 2018 it is submitted that after executing the job work, when the job workers returns the goods to the principal, such goods are required to be accompanied by a challan and no other documents. By further drawing attention of this Court to clause 9.4 of the said circular it is submitted that in respect of supply of job work services, although job workers are liable to pay GST, such payment is required to be made on the basis of the invoice at the time of supply of such services and the time of supply of services is required to be determined in terms of Section 13 read with Section 31 of the said Act. He submits that the proper officer at the first instance had committed an irregularity while determining the value of the supply of goods in respect of the job

work on the basis of the value of the goods and not on the basis of the transaction, for execution of the job work.

8. By drawing attention of this Court to Rule 138 of CGST/WBGST Rules 2017 (hereinafter referred to as the “said Rules”) it is submitted that an e-way bill is required to be generated provided the consignment value exceeds Rs.50,000/-. Admittedly, according to the petitioner in this case, since the consignment value did not exceed Rs.50,000/-, no e-way bill was generated. There is no irregularity on the part of the petitioner in not generating the e-way bill and the consignment not being accompanied by an e-way bill. This aspect was not properly considered both by the proper officer as also by the appellate authority. In the facts as noted above, it is submitted that this Court may be pleased to set aside the orders impugned and direct the respondents, either to refund or to adjust the penalty already paid by the petitioner against future levy of GST.
9. Mr. Siddiqui, learned advocate appearing for the respondents on the other hand submits that the arguments canvassed by the petitioner before this Court are not supported by proper disclosure. The job work contract has not been disclosed and as such, in absence of such job work contract, the proper officer had determined the value of the consignment on the basis of the value of goods and not on the basis of the contract. He, however, acknowledges the fact that the aforesaid issue requires proper

consideration on the basis of appropriate disclosure to be made by the petitioner.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record.
11. In this case, it may be noticed that the petitioner is a job worker. From a perusal of Explanation-2 of Rules 138 of the said Rules, it would appear that for the purpose of the said Rule, the consignment value of the said goods shall be the value determined in accordance with the provisions of Section 15 of the said Act, so declared in an invoice, a bill of supply or delivery challan as the case may be. To morefully appreciate the same, Rule 138 (1) of the said Rules and Section 15 of the said Act is extracted hereinbelow:-

“138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-(1) *Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—*

- (i) in relation to a supply; or*
- (ii) for reasons other than supply; or*
- (iii) due to inward supply from an unregistered person,*

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided further that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory

tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.”

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Section 15 : Value of taxable supply.

(1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) *The value of supply shall include--*

(a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

(b) *any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*

(c) *incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*

(d) *interest or late fee or penalty for delayed payment of any consideration for any supply; and*

(e) *subsidies directly linked to the price excluding subsidies provided by the Central Government and the State Governments.*

Explanation.--For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) *The value of the supply shall not include any discount which is given--*

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if--

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation--For the purposes of this Act,--

(a) persons shall be deemed to be related persons if--

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

12. Although, it has been strenuously argued by Mr. Das that the value of the goods ought to be the transaction value, however, I notice that in terms of Section 15 of the said Act where the value of supply of goods or services cannot be determined under sub-Section (1) of the said Section the same shall be determined as may be prescribed. In the instant case, I find that the petitioner chose not to disclose the contract in question, though a reflection thereof is available in the purchase order.
13. Records, however, do not reveal that the proper officer had proceeded to ignore the transaction value by recording that the same is not possible to be determined in accordance with Section 15(1) of the said Act. In fact, the aforesaid aspect has not been considered either by the proper officer or by the appellate authority. As to whether or not the petitioner is required to generate e-way bill, would however depend on the determination of the transaction value in respect of the goods in question and the same would be required to be gone into on the basis of the facts.

14. Since admittedly, the aforesaid aspect has not been considered either by the proper officer or by the appellate authority, I remand back the matter to the appellate authority for re-determination of the aforesaid issue. I, further direct the petitioner to disclose all documents in connection with the job work for the proper officer to identify the transaction value of the goods/consignment. Such disclosure must be made by the petitioner within a period of 3 weeks the date of communication of this order. The appellate authority, on the basis of the disclosure made by the petitioner, shall decide the appeal in accordance with the observations and directions made hereinabove within 3 weeks from the date of communication of this order on the basis of the disclosures to be made by the petitioner.
15. As a sequel thereto, the order dated 27th December 2023 passed by the appellate authority is set aside.
16. It is made clear that if the petitioner fails to disclose the documents within the time as specified above, the appellate authority shall hear out and dispose of the appeal on merits in accordance with law.
17. With the above observations and directions, the writ petition being WPA 13141 of 2024 is accordingly disposed of.

18. Since, I have not called for any affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents.
19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)