

Form No. J.(2)
Item No.4
Pallab/KS AR(Ct.)

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION APPELLATE
SIDE

HEARD ON: 09.09.2025

DELIVERED ON: 09.09.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

M.A.T. 1847 of 2024

With

I.A. No. CAN 1 of 2025

Hindusthan Biri Leaves & Anr.

Versus

Assistant Commissioner of State Tax, Bureau of Investigation, Durgapur Zone & Ors.

With

W.P.A. 8453 of 2024

Hindusthan Biri Leaves & Anr.

Versus

Assistant Commissioner of State Tax, Bureau of Investigation, Durgapur Zone & Ors.

Appearance:-

Mr. Anil Kumar Duggar

Mr. Rajarshi Chatterjee

.....For the Appellants

Mr. Saptak Sanyal

.....For the respondents

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioners is directed against the order passed by the learned Single Bench dated 8th April, 2024 in W.P.A. 8453 of 2024 holding that there is no scope for passing any interim order and the matter requires affidavits to be filed for final adjudication. Accordingly, directions were issued for filing affidavits. The appellants have filed this intra-Court appeal contending that the scope of the writ petitioners is very narrow and there are several decisions of the Hon'ble Supreme Court and

this Court, wherein orders imposing penalty under Section 129 of the C.G.S.T./W.B.G.S.T. Act were put to challenge and they were set aside as the only ground was that the e-way bill had expired. Therefore, it is submitted that the writ petition and the appeal may be disposed of by this common judgment and order.

2. We have heard the submissions of the learned advocate appearing for the respondents on the above submission.
3. With the consent of the learned advocates on either side, the writ petition as well as this appeal are disposed of by this common judgment and order.
4. The appellants had filed the writ petition challenging the order passed by the Senior Joint Commissioner, State Tax, Berhampore Circle, Murshidabad under Section 129(1), Section 129(3) read with Section 68(3) of the West Bengal Goods and Services Tax Act, 2017 read with the relevant provisions of the Central/Union Territory Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017 and Goods and Services (Compensation to States) Act, 2017 and the Rules made thereunder.
5. The assessee is a partnership firm engaged in the trading business of Biri (kendu leaves). They had placed an order with M/s. Shakti Swaroop Enterprise at Chhattisgarh and the supplier had submitted 329 bags of the said leaves and raised Invoice No.03/22-23 dated 21st July, 2022 on the appellants and the goods were loaded in a vehicle bearing Registration No.CG04HC9111 and the goods were to be delivered to the appellants at Krishnanagar, West Bengal. The vendor generated e-way bill No.8412 4104 1229, which was valid upto 27th July, 2022. The vehicle was intercepted by the authority on 29th July, 2022 at about 1:05 a.m. noting that the e-way bill had expired in the midnight of 27th July, 2022 and the goods were sought to be confiscated. The show-cause notice was issued and the appellants appeared before the authority and contended that since the goods were perishable, without prejudice to the rights and contentions, they had paid the penalty and the goods may be released. After the goods

were released, the appeal was preferred before the appellate authority. Various grounds have been raised and reliance was placed on the various decisions of the Courts, which have held that when the goods could not be delivered within validity period of e-way bill because of traffic blockage and while detaining the goods, the GST officer kept the same in the house of his relative instead of a designated place. Additional cost was imposed on the authority in view of the harassment faced by the assessee. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in Assistant Commissioner (ST) Vs. Satyam Shivam Papers (P.) Ltd. reported in [2022] 134 taxmann.com 241 (SC).

6. In the instant case, admittedly there is no other dispute or discrepancy raised by the Department except to state that the e-way bill had expired. Under the statute, the transporter or the owner of the goods or the supplier can extend the e-way bill within a period of 8 hours. If the said 8 hours time is given to the appellants, then the delay would be 17 hours. The appellants would state that the delay occurred on account of traffic blockage, which fact has not been disputed by the Department nor there is any record to dispute the said plea raised by the appellants.
7. That apart, there is nothing to indicate that there was an intention on the part of the appellants to evade the payment of tax and in such circumstances, imposition of penalty @ 200% per cent that too in a mechanical manner is not justified. Our view is supported by the decision
of the Division Bench in the case of Progressive Metals Pvt. Limited Vs.
The Deputy Commissioner, State Tax, Bureau of Investigation, South
Bengal, Durgapur Zone & Ors. in M.A.T. 562 of 2023 dated 28th April, 2022.
8. The distance between the place where the vehicle was intercepted and the place, where the goods were delivered was 200 kilometres to be covered within less than 4 hours.
9. Thus, considering the undisputed facts and the only allegation being that the e-way bill was not extended, we are of the view that it is not a case where 200% penalty should have been imposed on the appellants.

10. In Progressive Metals Private Limited (supra) more or less similar facts were considered by the Court and after taking note of Rule 138 of the W.B.G.S.T. Rules, which allows the transporter 08 hours time to seek for extension and if such allowance was granted in the facts and circumstances of the case, the delay was 01 hour and 35 minutes though in the case on hand, the delay after giving the 08 hours allowance, is 17 hours, the revenue has not been able to demonstrate lack of bona fides on the part of the appellants.
11. Therefore, we are of the clear view that the case on hand is not one such case, where 200% penalty could have been imposed.
12. Accordingly, appeal and the writ petition are allowed and the orders passed by the appellate authority and the original authority are set aside and the appropriate authority of the Department is directed to refund the penalty recovered from the appellants upon an application being filed by the appellants within eight weeks from the date of filing such application.
13. No costs.
14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)