

-Item No.4.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 01.12.2022

DELIVERED ON:01.12.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.1777 of 2022

with

I.A. No.CAN 1 of 2022

with

I.A. No.CAN 2 of 2022

Rumki Biswas.

Vs.

**Senior Joint Commissioner, Commercial Taxes,
Budge Budge Charge & anr.**

Appearance:-

**Mr. Vinay Kr. Shraff,
Ms. Priya Sarah Paul,
Ms. Priyanka Sharma**

...

for the appellant.

**Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. D. Ghosh,
Mr. Nilotpal Chatterjee,
Mr. V. Kothari**

....

for the State.

JUDGMENT

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

Re: I.A. No. CAN 1 of 2022

1. This is an application to condone the delay of 68 days in filing the instant appeal.

2. We have heard Mr. Vinay Kr. Shraff, learned counsel appearing for the appellant duly assisted by Ms. Priya Sarah Paul, learned Advocate and Mr. Debasish Ghosh, learned counsel appearing for the respondents/State.

3. We are satisfied with the reasons assigned in the affidavit filed in support of the application. Accordingly, the delay in filing the instant appeal is condoned.

4. The application for condonation of delay being I.A. No.CAN 1 of 2022 is allowed. There shall be no order as to costs.

Re: MAT 1777 of 2022

5. This intra Court appeal by the writ petitioner is directed against the order dated 4th August, 2022 passed in W.P.A. No.17507 of 2022. By the said order, the learned Single Bench declined to grant any interim order in favour of the appellant and aggrieved by same, the appellants are before this Court.

6. The challenge in the writ petition is to the order passed by the Senior Joint Commissioner of Commercial Taxes, Budge Budge Charge dated 5th June, 2022 affirming the order passed by the original authority dated 30th March, 2022 imposing 200% penalty on the ground that the appellant had violated the provisions of Rule 138 of WBGST/CGST Rules, 2017. Undoubtedly, the order passed by the appellate authority is an lengthy order. However, in our consider view, such cumbersome exercise need not have been done by the appellate authority as the short issue, which falls for consideration is whether there was any intention on the part of the appellant to evade payment of duty. If the appellant is able to give a satisfactory explanation that there was no intention to evade payment of duty, nothing more is required to be done and the proceedings could be dropped.

7. The case of the appellant is that they had generated part A of the e-way bill on 22nd March, 2022 and part - B was generated on 24th March, 2022. However, since the goods could not be loaded into the vehicle, the appellant appears to have cancelled part A e-way bill dated 22nd March, 2022 and generated new part A e-way bill on 24th March, 2022. When the vehicle was

intercepted, the driver was carrying part B of e-way bill in respect of which part A has been cancelled.

8. The question would be whether this would tantamount to intention to evade payment of duty or with a view to clandestinely move certain goods. In our prima facie view, it does not appear so and could be considered to be a bona fide error.

9. The learned Advocate appearing for the appellant would submit that the conduct of the appellant in generating a fresh part B within two hours of detention would clearly show that there was no intention to evade payment of duty.

10. As pointed out earlier, the order passed by the appellate authority is a lengthy order and certain decisions of the High Courts have also been referred to. Partly, the appellant has contributed to such an exercise by the appellate authority by placing reliance on the decisions of the various High Courts, which in our view, may not have been required to have been done as the short point, which was required to be canvassed before the appellate authority was to establish the bona fides of the

appellant and to prove that there was no intention to evade payment of duty. Since this aspect has not been adequately dealt with by the appellate authority and taking note of the peculiar facts and circumstances arising in the case on hand, we are inclined to remand the matter back to the appellate authority for a fresh consideration bearing in mind the conduct of the appellant, which we have culled out in the preceding paragraphs.

11. In the result, the appeal is allowed along with connected application. Consequently, the writ petition stands allowed and the order passed by the appellate authority dated 5th June, 2022 is set aside and the matter is remanded back to the appellate authority for fresh consideration on the aspect as to whether there was any wilful intention on the part of the appellant to evade payment of duty.

12. The appellant would be entitled to place all the materials in support of their claim without unnecessary burdening the appellate authority with decisions of the various Courts, which we find is not required to be placed before the appellate authority as the matter is entirely factual.

13. There shall be no order as to 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, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)