

HIGH COURT OF TRIPURA
AGARTALA
W.P.(C) 338/2022

M/s Swapan Chandra De, represented by its owner Sri Swapan Chandra De, son of late Birendra chandra De, resident of 12, Central Road Extension, Town Pratapgarh, Agartala, West Tripura-799004

---- **Petitioner**

Versus

- 1. The State of Tripura**, represented by the Secretary Finance, Government of Tripura, New Capital Complex, Kunjaban, Agartala
- 2. The Commissioner of Taxes**, Government of Tripura, PN Complex, Gurkhabasti, Kunjaban, Agartala, Tripura
- 3. The Superintendent of State Tax**, Churaibari Enforcement Wing, North Tripura
- 4. Sales Tax Officer**, Class II (Superintendent of Taxes), Charge II, Jurisdiction: Charge II: Head Quarter, Tripura

----**Respondents**

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|-----------------------------------------------------|---|--------------------------------------------------------|
| For Petitioner(s) | : | Mr. BN Majumder, Sr. Advocate Mr. B. Paul, Advocate |
| For Respondent(s) | : | Mr. D. Bhattacharjee, GA Mr. K. De, Addl. GA |
| Date of hearing and delivery Of Judgment & Order | : | 29.03.2023 |
| Whether fit for reporting | : | Yes / No |

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT

(Amarnath Goud, ACJ)

Heard Mr. BN Majumder, learned senior counsel assisted by Mr. B. Paul, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharjee, learned GA assisted by Mr. K. Dey, learned Additional GA appearing on behalf of the respondents.

2. By means of filing this writ petition, the petitioner has prayed for the following reliefs:

- "(i) Issue Rule NISI;**
- (ii) Issue RULE calling upon the Respondent and each one of them to show cause as to why a writ in the nature of Certiorari, cancelling, quashing and setting aside the impugned order dated 01.04.2022 passed by the Respondent No. 3 and the demand dated 02.04.2022 passed by the Respondent no. 4 shall not be issued;**

(iii) Issue RULE calling upon the respondents to show cause as to why a Writ in the nature of Mandamus directing, commanding and mandating the Respondents to act in strict compliance of the direction passed by this Hon'ble Court in WP(C) No. 285 of 2022 dated 29.03.2022 shall not be issued;

(iii) Issue RULE calling upon the respondents to show cause as to why a Writ in the nature of Prohibition, prohibiting the state Respondents on acting in furtherance of the impugned order dated 01.04.2022 passed by the Respondent no. 3 and the demand dated 02.04.2022 passed by the Respondent no. 4, in any manner shall not be issued;

(iv) In the interim be kind enough to pass an order staying the operation of the impugned order dated 01.04.2022 passed by Respondent no. 3 and the demand dated 02.04.2022 passed by the Respondent no. 4, pending disposal of the Writ Petition;

(v) Pass an ad interim direction in terms of Prayer No (iv)

(vii) Pass any other order/orders as this Hon'ble Court deems fit and proper

A N D

In case the Respondents show cause or not Your Lordship may be pleased to hear the Petitioner make the rule absolute in terms of prayer No. (i), (ii), (iii), (iv) and (v) above."

2. The facts of the case, in brief, is that, the petitioner is a civil contractor and for the purpose of constructing and executing a Government Megal project, namely, Tripurasundari Temple, he purchased automatic self-loading concrete machine from its seller Podder and Podder Industries Pvt. Limited, Silchar, Assam to be delivered from the showroom-cum-office of the seller at Agartala on 08.03.2022 on payment of IGST and TCS. The seller obtained all necessary documents and e-way bill on 15.03.2022 and transported the same through a truck bearing registration no. HR 38 Z 6075 on the evening of 15.03.2022 and the e-way bill was valid till 17.03.2022. It is the further case of the petitioner that on the way the said vehicle developed some technical defect as such it could reach Churaibari only in the morning of 18.03.2022, and on the ground of expiry of e-way bill, the seller approached this court vide WP(C) 285 of 2022 and vide order dated 29.03.2022 this court directed to release the goods and the vehicle on giving undertaking or bond by the seller and directed the respondent no. 3 to provide appropriate information to the assessing officer, but the respondent no. 3 in violation of the said direction caused an assessment saddling taxable liability to the driver of the vehicle and further respondent no. 4 had issued demand notice to the petitioner. Hence, this writ petition.

3. During arguments, Mr. Nandi Majumder, learned senior counsel appearing for the petitioner has argued that the vehicle which was carrying the goods was detained by the respondents since the validity of the e-way bill had expired and issued show-cause notice upon the driver for imposition of cost under the CGST & SGST Act. Learned senior counsel has also argued that the vehicle was released by this court vide order dated 29.03.2022 and thereafter as per direction of this court, the seller had approached respondent no. 3 and prayed for allowing them to file a reply to the show-cause notice but, on that day itself i.e. on 01.04.2022, the respondent no. 3 had passed an order imposing tax and penalty on the driver of the vehicle, and on the following day the respondent no. 4 most arbitrarily had issued a demand order in violation of the courts' order. Learned senior counsel has also submitted that the notice was issued prior to filing of the writ petition, but after passing of the order in the writ petition, no notice was issued by the respondents. Learned senior counsel has further submitted that only due to mechanical defect of the vehicle, the validity of the e-way bill had expired

4. Refuting the submissions of learned senior counsel, Mr. D. Bhattacharjee, learned GA has fairly submitted that no show cause notice has been issued to the writ petitioner, but after passing of the judgment, notice has been issued under the driver under statute.

5. We have heard learned counsel appearing for the parties. We have also carefully perused the record.

6. From the record it is seen that the seller had submitted his prayer on 01.04.2022 to respondent no. 3 to allow him to file a reply to the show-cause notice dated 18.03.2022, but without considering the prayer of the seller, the

respondent no. 3 vide order dated 01.04.2022 issued a notice under Section 129(3) of the CGST and SGST Act, 2017 and under Section 20 of the IGST Act, 2017 imposing tax and penalty upon the driver of the vehicle. Section 129 of the GST Act, 2017 reads as under:

“129. Detention, seizure and release of goods and conveyances in transit.— (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section(3) or one lakh rupees, whichever is less;

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”

7. Thus, as per Section 129(3) of the said Act, the seizing officer has to issue notice specifying the penalty payable. Section 129(4) of the Act says that no penalty can be determined without giving the person concerned an

opportunity of being heard. Despite the said Act prohibits imposing tax and penalty, but the respondent no. 3 without giving any opportunity to the petitioner of being heard had passed the impugned order dated 01.04.2022.

8. It is also evident from the record that the validity of the e-way bill was upto 17.03.2022, but due to some mechanical defect the vehicle reached Churaibari on 18.03.2022, and by that time the validity of e-way bill has expired for which the vehicle was detained and seized and ultimately on 18.03.2022 the driver of the vehicle was informed regarding such seizure. Thereafter, the seller, Podder & Podder Industries Pvt. Limited filed a writ petition being WP(C) 285 of 2022, and this court vide order dated 10.12.2021 passed the following order:

[5] This Court is of the considered view since the transaction in question is between two registered dealers under the GST Act covered by the e-way bill and other documents where genuineness is not in doubt, vehicles carrying such goods ought to be permitted to continue with such carrying subject of course to either the check gate officer informing the assessing officer where the buyer is located and further direct the buyer to appear before the assessing officer to provide an opportunity to the buyer or seller to take such corrective steps as may be necessary in the matter. We are also in agreement with the learned counsel for the revenue that the movement of goods from one state to another is controlled by the taxation department under the GST regime on the e-way bill issue. Therefore, since the transaction admittedly is between two registered dealers located in two different states, there is no justification for stoppage in transit of the vehicle and goods.

[6] We are of the considered view that balance has to be brought between transportation of goods as well as the taxing event i.e. the sale or purchase of goods of service. In a case where there is no doubt that a transaction is made between two registered dealers and is covered by the necessary documents including the e-way bill even if the e-way bill has expired just prior to the date of entry into the State, such goods ought not to be stopped and instead an undertaking should be taken from the buyer or the seller and intimation should be provided to the assessing officer of both the parties before whom the buyer or seller may appear to make necessary compliance. Any hindrance in the movement of goods or fray amounts to an obstacle of the development of the nation.

[7] It would be appropriate also to take note of the fact that the vehicles stranded for which the department has been charging additional higher charges but the equipment loaded on the truck remains unutilized and the buyer is prevented from using that machinery for the contracts which have been given to him by the state and others. Therefore, to enhance the ease of business it is also necessary for the rule making authority to reconsider in their best wisdom whether the requirement of fixation of the period of time in the e-way bill is at all appropriate requirement in the circumstances?

[8] Accordingly, writ petition is disposed of directing the petitioner to appear before the check gate officer and to submit an undertaking or bond before the check gate officer and the check gate officer shall release the vehicle as well as the goods by accepting the

undertaking or bond and such information as may be appropriate be provided to the assessing officer of both the seller and buyer who may be at liberty to initiate appropriate action against the registered dealer who shall be duty bound in law to make such compliances failing which they shall be liable for whatever consequences law has prescribed.”

9. Despite specific direction passed by this court, the respondent no. 3 caused an assessment imposing tax and penalty under the Act and Rules. Even the respondents did not feel it necessary to issue any notice upon the petitioner in terms of the order passed by this court after passing of the judgment, which act is purely non-compliance of the order passed by this court.

10. In view of the above, the impugned order dated 01.04.2022 passed by the respondent no. 3 and the demand made by the respondent no. 4 imposing penalty and tax upon the petitioner by its order dated 02.04.2022 stands quashed and are set-aside.

11. Accordingly, the instant writ petition stands allowed. However, the respondents are at liberty to initiate steps in accordance with law. It is needless to observe that the earlier notice dated 18.03.2022 which got emerged into the impugned demand notice and though it is not challenged specifically, the demand raised is against violation of principle of nature justice as the show-cause notice has not been issued.

Pending application(s), if any, also stands disposed.

JUDGE

CHIEF JUSTICE (ACTING)