

HIGH COURT OF TRIPURA
AGARTALA

W.P(C) No.1108/2018

TIRTHAMOYEE ALUMINIUM PRODUCTS.

Represented by Sole Proprietor, Shri Sankar Basak,
S/O Late Krishna Kumar Basak having his office at
Netaji Subhas Road, Agartala, West Tripura, PIN-
799001

..... *Petitioner(s)*.

Vrs.

1. State of Tripura,

Represented by the Principal Secretary to the
Government of Tripura in the Finance Department
having his office at New Capital Complex, PO-
Kunjaban, Agartala, District- West Tripura

2. Chief Commissioner of State Tax,

Government of Tripura, having his office at Kar
Bhavan, Palace Compound, PO- Agartala, District-
West Tripura, PIN-799001.

3. Inspector of State Tax

Government of Tripura, Churaibari Enforcement
Wing, having its office at Churaibari, PO-
Dharmanagar, District- North Tripura

4. HINDALCO Industries Ltd.

Represented by its Managing Director. Regd. Office,
Ahora Centre, 1st Floor, B-Wing, Mahakali Caves
Road, Andheri (East), Mumbai-400003

5. Union of India

Represented by the Secretary (Revenue), Ministry of
Finance, North Block, New Delhi-110001

..... *Respondent(s)*.

BEFORE

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Petitioner(s) : Mr. T. D. Majumder, Sr. Advocate.

For Respondent(s) : Mr. A. Nandi, Advocate.
Mr. Biswanath Majumder, CGC
Mr. Paramartha Datta, Advocate.
Mr. Raju Datta, Advocate.

Date of hearing and
Judgment & Order : **9th March, 2021.**

Whether fit for reporting : NO

JUDGMENT AND ORDER(Oral)

(Akil Kureshi, CJ)

Petitioner has challenged an order dated 5th November, 2018 passed by the Inspector of State Tax demanding Central Goods and Service Tax (CGST, for short) of Rs.1,48,425/- each and a similar sum under State Goods and Service Tax (SGST, for short) with penalties of Rs.4,12,291/- under CGST and SGST Act, 2017.

[2] Brief facts are as under:

Petitioner is a proprietary concern and is engaged in the business of manufacturing aluminium utensils and its unit is located at Agartala. The petitioner purchased certain aluminium products from Hindalco Industries Ltd. which is a Government of India company for a sum of Rs.19,46,014/- and would be supplied from Kolkata to be transported to Agartala by road. Invoice was generated by the Hindalco on 25.10.2018 which showed that the goods would be transported from Howrah west, Kolkata and would be delivered at the petitioner's unit at A.D Nagar Industrial Estate, Agartala. Hindalco also issued a Test Certificate and Packing Slip of the goods under transportation which gave full breakup of the number of items, their weight, chemical compositions as also the number of the truck in which the goods would be transported. In terms of the provisions of the GST Act and Rules thereunder, the consignor also generated the E-way bill from the official portal of the State agencies on 25.10.2018. According to the petitioner, due to a clerical error the distance from the place of origin to the ultimate destination i.e. from Howrah to Agartala, was shown as 470 Kms. instead of actual distance which was 1470 Kms. The petitioner would point out that as per sub-rule (10) of Rule 138 of the Central Goods and Services

Tax Rules, 2017, a transporter would have time of one day to transport the goods for every 100 Kms. of distance require to be travelled. The system thus automatically generated the validity period of five days for the E-way bill since the distance, as noted earlier, was erroneously shown as 470 Kms. instead of 1470 Kms.

[3] The goods arrived at Tripura border at Churaibari Check Post on 05.11.2018. The inspecting agency intercepted the goods and issued a memo of detention on the ground that the transporter had not produced valid E-way bill. On 5.11.2018 itself, a show cause notice was issued by the Inspector of State Taxes calling upon the petitioner to pay total GST of Rs.2,96,850/- and penalty of Rs.8,24,582/- under sub-clauses (a) and (b) of sub-section (1) of Section 129 of the CGST Act, 2017. He required the petitioner to appear before him on 19.11.2018 at 10.45 a.m. Strangely, having issued notice to the petitioner to appear on 19.11.2018, the Inspector of State Tax passed the impugned order on 05.11.2018 itself and confirmed the principal tax demand with penalties as noted. This order, the petitioner has challenged on the ground that validity of the E-way bill had expired on account of a clerical error which would not result into any tax liability. The penalty obviously was wrongly demanded.

[4] Learned counsel for the petitioner in addition to making factual submissions and taking us through the statutory provisions applicable, also drew our attention to the affidavits filed by the Central Government as well as Hindalco in which both the said respondents have supported the case of the petitioner of minor clerical error which would be condoned.

[5] On the other hand, learned special counsel Sri A. Nandi appeared for the State Government and opposed the petition contending that the transporter was carrying the goods without valid E-way bill. The Tax Inspector was within his right to demand taxes and penalties. In any case, statutory appeal against the impugned order is available which the petitioner has not availed of.

[6] Having thus heard learned counsel for the parties and having perused documents on record, it emerges indisputably that the defect of the goods in transporting without valid E-way bill was as a result of a minor oversight and a clerical error. Things which are not seriously disputed are:

- (i) That the goods were being transported from Howrah to Agartala;
- (ii) Approximate distance between the two places is close to 1500 Kms;
- (iii) Mentioning the distance of 470 Kms was thus clearly a typographical error;
- (iv) The goods were sold by Hindalco which is a Government of India company;
- (v) The goods were duty paid and all taxes were already collected by the seller which formed part of the bill which the petitioner would pay;
- (vi) It was solely on account of incorrect distance being shown while generating the E-way bill that at the rate of one day per 100 Kms., the E-way bill was generated with the validity of 5 days

instead of 15 days' validity which should have been provided had correct distance been mentioned.

(vii) There is no dispute that the goods were sold by way of inter-state sale and on such basis, applicable tax was paid.

[7] In view of such undisputable facts, we do not think that the Inspector of State Tax had the power to demand GST with penalty. Central Board of Indirect Taxes and Customs, has issued a circular dated 14th September, 2018 clarify the manner in which such clerical errors would be dealt with. The relevant portion of this circular reads as under:

“2. Various representations have been received regarding imposition of penalty in case of minor discrepancies in the details mentioned in the e-way bill although there are no major lapses in the invoices accompanying the goods in movement. The matter has been examined. In order to clarify this issue and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the CGST Act’) hereby clarifies the said issue hereunder.

5. Further, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under Section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

- a) *****
- b) *****
- c) *****
- d) Error in one or two digits of the document number mentioned in the e-way bill;
- e) *****
- f) *****

6) In case of the above situations, penalty to the tune of Rs.500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the

situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.”

[8] As per this circular thus in case the goods are accompanied by an invoice as also an E-way bill, proceedings under Section 129 of the CGST Act, 2017 should not be initiated if there is a error of one or two digits in a document number mentioned in the E-way bill. In such a situation, at best, penalty of Rs.500 & 1000/- under State and Central GST may be collected under Section 125 of the Act. In tune with these clarifications, even the Central Government in its reply has stated that:

“4. That, as to the contents of Para 5 of the instant writ petition the answering respondent submits that the E-way Bill under reference showed the place of dispatch of goods to be Howrah, West Bengal, 711302 and place of delivery at Agartala Tripura-799003. Only error recorded was the wrongful depiction of distance in Kilometers. It is seen that 470 kilometers has been shown in place of 1470 kilometers. This is a minor lapse on the part of the consigner/transporter and the procedure to deal with such incidence is spelt out in CBEC, Government of India, Ministry of Finance, Department of Revenue under Circular No. 64/38/2018-GST, dated 14-09-2018 issued form file No. CBEC/20/16/03/2017-GST.”

[9] Hindalco has also filed an affidavit in which it is stated as under:

“9. That with reference to the Statements made in paragraph 5 of the writ petition, I say that it is true that the Consigner i.e. Hindalco’s godown issued e-way bill on 25.10.2018 showing 470 Kms as distance whereas the actual distance from Howrah to Agartala is 1470 Kms.

10. That with reference to the Statements made in Paragraph 6 of the writ petition, I say that in the e-way bill at page 30 of the writ petition it is categorically stated that the goods were being dispatched from Howrah, West Bengal and being delivered to Tirthamoyee Aluminium Products at Agartala, Tripura – 799003. I further say that the distance between Howrah to Agartala is approximately 1500 Kms and due to clerical error the distance was reflected as 470 Kms instead of 1470 Kms because of which the validity of the e-way bill expired on 30.10.2018.”

[10] In view of such facts, we do not find that it is a fit case where we should relegate the petitioner to appeal remedy, more importantly when the order passed by the Inspector of State Tax suffered from gross irregularity of no hearing been granted to the petitioner. As noted, the said authority issued a notice of personal hearing making it returnable on 19.11.2018, long before that however, on 05.11.2018 i.e. a date on which he issued the notice, he passed a separate order confirming the demand of tax with penalty. This was wholly impermissible since he does not treat this order as a tentative demand but as a mandatory demand.

[11] In the result, impugned order dated 05.11.2018 is set aside. Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of.

(S. G. CHATTOPADHYAY),J.

(AKIL KURESHI),CJ.

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