

10.09.2026
Court No.10
DL/Item No.-22
[Milan]

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

WPA 24249 of 2024

**RATNAKA ENTERPRISES AND ANR.
VS
THE STATE OF WEST BENGAL AND ORS.**

Mr. Bijay Kumar Sharma
....for the Petitioners

Ms. Manju Agarwal, Ld. AGP.,
Ms. Ranjana Chatterjee,
Mr. Bijitesh Mukherjee,
Ms. Manasi Mukherjee

....for the State/Respondents

1. The present Writ Petition pertains to imposition of penalty @200% of tax under Section 129 (1a) of the West Bengal Goods and Services Tax Act, 2017, consequent upon expiry of E-Invoice No. RE/23-24/528 dated 26th September 2023 and E-Waybill No. 86134792638 dated 26th September 2023 valid upto midnight of 1st October 2023.
2. It is the case of the petitioners that the delay occurred due to reasons beyond their control and without any intent to evade tax. It is further submitted that the goods were transported under cover of a valid E-Waybill.
3. The Learned Counsel for the petitioners submit that penalty under Section 129 (1a) of the said act does not ensue automatically upon the mere expiry of the E-Waybill, and intent to evade tax is an essential ingredient for imposition of penalty @ 200%.
4. It is further submitted that in the present case, each and every document was maintained in order and the expiry of

the E-Waybill occurred due to traffic restrictions imposed by the Deputy Commissioner of Police. Since the date of expiry was a Sunday followed by a national holiday, an allegation of malafide intention to evade tax is unsustainable and the penalty imposed upon the petitioners is liable to be set aside.

5. It is further submitted that the respondent authorities have imposed penalty, despite the delay being occasioned by traffic restrictions. The petitioners cannot be penalized for a lapse attributable to the traffic department and the respondent authorities.

6. The Learned Advocate for the petitioners has already explained the reasons in paragraphs 11 of the Writ Petition and places reliance on paragraph nos. 10 to 12 of a judgment of the Division Bench of this Court in the case of **Hindusthan Biri Leaves & Anr. vs. Assistant Commissioner of State Tax, Bureau of Investigation, Durgapur Zone & Ors.** The relevant paragraphs 10 to 12 are set out herein below:

“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 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.”

7. The Learned Advocate for the state respondent authorities vehemently opposes the submission of the petitioners and submits that at the time of interception the E-Waybill of the petitioners was found to be invalid. The vehicle was intercepted by the respondent No. 3 being the Deputy Commissioner of Police at Taraganj Club in Coochbehar. The concerned respondent authorities has, therefore, rightly imposed penalty upon the petitioners.

8. The Learned Advocate for the state respondent further submits that the petitioners failed to take any steps to revalidate the E-Waybill which had already been expired and became invalid.

9. Heard both the parties and upon perusing the materials on record, this Court is satisfied that the petitioners have been able to make out a prima facie case for intervention at the stage. This Court has taken judicial notice of all documents annexed to the Writ Petition including the judgment relied upon by the petitioners and is of the considered view that the entire penalty imposed upon the petitioner pertains only to non-extension of E-Waybill, and imposition of penalty @ 200%, for failure to reach the destination within the validity period is in violation of the principles of natural justice.

10. The Division Bench of this Hon'ble Court in Hindustan Biri Leaves (Supra) has observed that even if a transporter seeks extension of the E-Waybill beyond the statutory period, such extension shall be allowed by condoning the delay in

seeking the same. In light of the said observation, this Court directs the appropriate authorities to refund the penalty amounting to Rs. 12,77,812/- (Rupees Twelve Lacks Seventy Seven Thousand Eight Hundred Twelve only) as evidenced by the challan being annexure P9 at page 63 of the Writ Petition.

11. The petitioners are directed to file an application before the proper officer within a period of two weeks from date and the penalty of Rs. 12,77,812/- (Rupees Twelve Lacks Seventy Seven Thousand Eight Hundred Twelve only) recovered from the petitioners shall thereafter be refunded forthwith, preferably within a period of 10 weeks from the date of filing of such application by the petitioner.

12. With the above observations, the writ petition being WPA 24249 of 2024 is disposed of accordingly without going into the merits of the case.

13. Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Smita Das De, J.)