

2022-TIOL-309-HC-KOL-GST

IN THE HIGH COURT OF CALCUTTA

WPA No. 11085 of 2021

ASHOK KUMAR SUREKA

Vs

**ASSISTANT COMMISSIONER
STATE TAX, DURGAPUR RANGE
GOVERNMENT OF WEST BENGAL**

Md Nizamuddin, J

Dated: March 01, 2022

Petitioner Rep. by: Mr Ankit Kanodia, Mr Himangshu Kumar Ray

Respondent Rep. by: Mr A Ray, Md T M Siddiqui, Mr Debasish Ghosh

GST

- Petitioner has challenged the order passed under section 129 of West Bengal Goods and Services Act, 2017 for detention of goods on the ground that e-way bill relating to consignment in question had expired one day before, i.e. in the midnight of September 8, 2019, and that the goods was detained in morning of September 9, 2019 on the grounds that the e-way bill has expired which is even less than one day and extension could not be made and petitioner submits that delay of few hours even less than a day of expiry of validity of tenure of e-way bill was not deliberate and willful and was due to break down of vehicle in question and there was no intention of any evasion of tax on the part of petitioner - The petitioner will be entitled to get the refund of penalty and tax paid on protest subject to compliance of all legal formalities: HC

Writ petition allowed

Case law cited:

Assistant Commissioner (ST) & Ors. v. M/s Satyam Shivam Papers Pvt. Limited & Anr - [2022-TIOL-07-SC-GST...referred](#)

JUDGEMENT

Per: Md Nizamuddin:

Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned order of the appellate Commissioner dated March 18, 2021 confirming the original order dated September 11, 2019 passed by the adjudicating authority under section 129 of the West Bengal Goods and Services Act, 2017 for detention of the goods in question on the grounds that the e-way bill relating to the consignment in question had expired one day before, i.e. in the midnight of September 8, 2019, and that the goods was detained in the morning of September 9, 2019 on the grounds that the e-way bill has expired which is even less than one day and extension could not be made and petitioner submits that delay of few hours even less than a day of expiry of the validity of the tenure of the e-way bill was not deliberate and willful and was due to break down of the vehicle in question and there was no intention of any evasion of tax on the part of the petitioner.

The petitioner in support of his contention has relied on an unreported decision of the Supreme Court **dated January 12, 2022 passed in Special Leave Appeal (C) No(s). 21132/2021 (Assistant Commissioner (ST) & Ors. v. M/s Satyam Shivam Papers Pvt. Limited & Anr.) = [2022-TIOL-07-SC-GST](#).**

Learned advocate appearing for the respondent could not make out a case against the petitioner that the aforesaid violation was willful and deliberate or with a specific material that the intention of the petitioner was for evading tax.

Considering the submission of the parties and the facts and circumstances of the case, this writ petition being WPA No. 11085 of 2021 is disposed of by setting aside the impugned order of the appellate authority dated March 18, 2021 as well as the order of the adjudicating authority dated September 11, 2019 and as a consequence, the petitioner will be entitled to get the refund of the penalty and tax paid on protest subject to compliance of all legal formalities.

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