

11.02.2025
Item No.5
RP/SM
Ct. No.01

FMA 136 of 2025
with
CAN/1/2024

Ashok Sharma
Vs.
The State of West Bengal & Ors.

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Mr. Subal Saha
Mr. Sushant Bagaria
Mr. Piyas Choudhury
Mr. Amit Saha

....For the Appellant

Mr. Anirban Ray, G.P.
Md. T.M. Siddiqui, Sr. Adv.
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

....For the State

1. This intra court appeal is directed against the order dated 17th December, 2024, passed in WPA No.26591 of 2024. The writ petition was filed by the appellant praying for issuance of a writ of mandamus to cancel the show-cause notice dated 27th June, 2024, the unsigned summary of show-cause notice of 5th July, 2024 and the order of demand for tax and penalty dated 15th July, 2024, in GST Form MOV-09, summary of order dated 16th July, 2024, passed by the respondent No.3 and the order passed by the Appellate Authority, namely, respondent No.6 dated 4th October, 2024. The appellant had exhausted all the remedies available under the provision of Central

Goods and Services Tax Act, 2017 and the Rules framed thereunder and thereafter filed this writ petition. Learned Single Bench after examining the factual position did not agree with the submissions made on behalf of the petitioner resulting in the writ petition being dismissed.

2. The crux of the issue is whether detention of goods, which were carried in a vehicle under the cover of three invoices, were different from the goods which were actually found in the vehicle during the course of inspection; whether there was an intent to evade payment of tax and whether the appellant/writ petitioner was guilty of suppression of facts with a view to evade payment of tax.
3. We have perused the three notices and we find that there is no split up details as regards the nature of the goods, which were carried but the broad classification has been mentioned in the invoices. It is not in dispute that the quantity or the weight of the goods, which were carried in the vehicle, has been found to be correct by the department on physical verification and there is no discrepancy. Apart from that gross description of the product as contained in the invoices also does not show any change of product carried in the vehicle. The inspecting authority appears to have made a roving enquiry and went beyond the description of the goods as described in three invoices

and has recorded information regarding the size of the pipe, shutter, TMT Bar which detail was not mentioned in the invoices. Therefore, the question of invoking Section 129 of the Act does not arise in the facts and circumstances of the case. That apart, the authority has not been able to pinpointedly show that the appellant had an intention to evade payment of tax. This is more so, HSN classifications of goods are identical and this is not being disputed by the Department. Therefore, it is not the case where procedures under Section 129 of the Act could have been drawn and the goods could have been detained and penalty could have been imposed. It may be a different matter if during the process of adjudication the authority has taken up the case with regard to classification of the products, which is not the case on facts before us. Therefore, we find that the order passed by the Appellate Authority affirming the order passed by the Original Authority and the penalty imposed on the appellant calls for interference. Accordingly, the appeal is allowed and the order passed in the writ petition is set aside. Consequently, the writ petition is allowed and the orders impugned in the writ petition are set aside and quashed. However, the appellant is at liberty to seek for refund of the pre-deposit which was made during the time of filing of the appeal.

4. In the light of the above order, the authorities are directed to release the vehicle along with the goods within four days from the date of receipt of the server copy of this order.
5. The appeal and the connected application are, thus, disposed of.
6. Urgent Photostat copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of usual formalities.

(T.S SIVAGNAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)