[2023] 16 S.C.R. 1118 : 2023 INSC 1087

CASE DETAILS

VARDAN ASSOCIATES PVT. LTD.

v.

ASSISTANT COMMISSIONER OF STATE TAX CENTRAL SECTION & ORS.

(Civil Appeal No. 8302 of 2023)

OCTOBER 31, 2023

[HIMA KOHLI AND AHSANUDDIN AMANULLAH, JJ.]

HEADNOTES

Issue for consideration: Consignment was intercepted in the course of inter-state movement, as there was no valid E-way bill. High Court directed that the goods be released subject to payment of the entire amount of the Goods and Service Tax in cash and 50% of the penalty imposed also in cash while the remaining 50% by way of bank guarantee.

Central Goods and Services Act, 2017 – West Bengal Goods and Services Act, 2017 – Integrated Goods and Services Tax Act, 2017 – Appellant executed work contracts for GAIL in the State of UP in Auraiya district, including work in the State of West Bengal – It availed services of one M/s. HFC for mobilising a machine-the consignment (capital goods under CGST Act) used for execution of works contracts from Auraiya, UP to Durgapur, West Bengal, for which an E-way Bill was generated – However, as transportation was not done within the validity period of the E-way bill, the consignment was intercepted and order of detention was issued, at the time of entering the State of West Bengal – Consignment and the vehicle detained – Order of demand of tax and penalty passed – Eventually, High Court *inter alia*, directed that the goods be released subject to payment of the entire amount of the Goods and Service Tax in cash and 50% of the penalty also in cash while the remaining 50% by way of bank guarantee – Challenged – Present consideration confined only to the quantum of penalty:

Held: Appellant was saddled with tax – Law also provides for imposition of penalty – Ordinarily, this Court would have refrained from

interfering, but because there was an E-way bill that was generated and in view of the factual scenario which is not disputed that the appellant is the owner of the consignment and was using it in connection with its contractual obligations in Uttar Pradesh and then having a similar contract in West Bengal and no evidence had been placed on record showing that the consignment was to be sold/used for any other purpose in respect of any other party, the orders passed by the High Court varied – ₹ 54,00,000/- being the tax imposed is upheld however, penalty is reduced to 50% of the penalty imposed and would now be ₹ 27,00,000/- – ₹81,00,000/- be paid by the appellant (subject to payment already made) – Upon the same being done, the transportation vehicle as also the consignment be released – Present order passed u/Article 142 and shall not be a precedent. [Paras 18, 17, 19 and 20]

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No.21079 of 2022.

From the Judgment and Order dated 02.08.2022 of the High Court at Calcutta in WPA No.17452 of 2019.

Appearances:

R. Balasubramanian, Sr. Adv., Mehul Sharma, Karunakar Mahalik, Yash Tyagi, Manoranjan Mishra, Sarbendra Kumar. Advs. for the Appellant.

Balbir Singh, A.S.G., Rakesh Dwivedi, Sr. Adv., Ms. Madhumita Bhattacharjee, Ms. Urmila Kar Purkayasthe, Ms. Srija Choudhury, Mukesh Kumar Maroria, Rupender Sinhmar, Shlok Chandra, Shantnu Sharma, Naman Tandon, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

ORDER

Leave granted.

2. We have heard learned counsel for the parties.

3. The present appeal emanates from the final judgment and order passed by the learned Single Judge of the High Court at Calcutta (hereinafter

referred to as the "High Court") in Writ Petition bearing W.P.A. No.17452 of 2019 dated 2nd August, 2022 (hereinafter referred to as the "Impugned Judgment"), by which the said petition was dismissed.

BRIEF FACTS:

4. The appellant, being a company, carries on the business of horizontal directional drilling using trenchless methodology for underground utilities - oil/gas, telecom and power. The appellant functions as a contractor and is duly registered under the Central Goods and Services Act, 2017 (hereinafter referred to as the "CGST Act") and the West Bengal Goods and Services Act, 2017 (hereinafter referred to as the "WBGST Act"). For many years, the appellant executed work contracts of the Gas Authority of India Limited (hereinafter referred to as "GAIL"), including work in the State of West Bengal for Dobhi-Durgapur Gas Pipeline Section. Prior to this, the appellant had executed work for GAIL in the State of Uttar Pradesh in Auraiya district.

5. Insofar as the execution of the work in Durgapur is concerned, on 30th May, 2019, the appellant availed of the services of M/s. Hariom Freight Carriers (hereinafter referred to as "HFC") for mobilising one machine being XCMG HDD Machine XZ6600(hereinafter referred to as the consignment") weighing approximately 68 tons from its previous/old work site at Auraiya, Uttar Pradesh to the new site at Durgapur, West Bengal. The said machine which is used for execution of works contracts by the appellant, who is its sole owner, is '*capital goods*' as per Section 2(19)[1], CGST Act. The appellant complied with the provisions of the CGST Act relating to movement of capital goods, before initiating the movement from Auraiya, Uttar Pradesh to Durgapur, West Bengal by generating E-way Bill on 30th May, 2019, bearing No.791074700465 after paying the requisite tax amount required under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act").

6. The validity of the said E-way bill was till 9th June, 2019. As transportation was not done within the validity period of the E-way bill, finally the consignment was intercepted on 17th June, 2019 and upon

1 *'(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;'*

inspection, an order of detention was issued by the respondent No.1, at the time of entering the State of West Bengal, under Section 129(1), CGST Act and Section 129(1), WBGST Act read with Section 20, IGST Act under Form GST MOV-06 No.703 dated 18th June, 2019. Pursuant thereto, the consignment as well as the vehicle carrying the same were detained by the respondent No.1.

7. Thereafter, the respondent No.1 issued a notice under Section 129(3), CGST Act and Section 129(3), WBGST Act read with Section 20, IGST Act, being Form GST MOV-07 No.712 dated 19th June, 2019, asking the appellant to show-cause, within seven days from the date of the receipt of the notice, as to why the proposed tax of ₹ 54,00,000/- (Rupees Fifty four lakhs) and penalty of ₹ 54,00,000/- (Rupees Fifty four lakhs) be not imposed, indicating that failure would lead to initiation of further proceedings under the provisions of the CGST, WBGST or IGST Acts. On 24th June, 2019, the appellant filed its reply. However, upon consideration of the reply filed by the appellant, on 27th June, 2019, an order of demand of tax and penalty under Form GST MOV-09 vide Order No.803 was passed by the respondent No.1 and the proposed tax and penalty in terms of the notice dated 19th June, 2019, was confirmed.

8. The appellant, aggrieved by the said demand order, preferred an appeal, against the same on 19th July, 2019 before the Appellate Authority, after depositing 10% of the tax demand, i.e., ₹5,40,000/- (Rupees Five lakh forty thousand) in terms of Section 107(6), IGST Act. On 2nd July, 2019, Form GST DRC-07 with Reference No.ZA190719000030Y was issued raising a demand of tax of ₹54,00,000/- (Rupees Fifty four lakhs) and a penalty of ₹54,00,000/- (Rupees Fifty four lakhs) totalling to ₹1,08,00,000/- (Rupees One crore and eight lakhs) was imposed. On 31st July, 2019, the appellant communicated to the respondent No.1 that it had filed an appeal before the Appellate Authority after having deposited 10% of the tax demand and that a bank guarantee had been arranged in favour of the respondent No.1 being the amount of demand, as per the order dated 27th June, 2019. A copy of the said bank guarantee was submitted before the respondent No.1 with a request to give formal permission of release of goods on execution of bond in Form GST MOV-08 and submission of bank guarantee. It was further assured by the appellant to the respondent No.1 that the bond under Form

GST MOV-08 as well as bank guarantee would be executed immediately after receiving permission from the respondent No.1. However, the appeal was not decided and thus, the appellant filed a writ petition[2] before the High Court at Calcutta against the order dated 2nd July, 2019. This writ petition was disposed of by the High Court by order dated 21st August, 2019, directing the Senior Joint Commissioner of State Tax, Central Section, who was the Appellate Authority, to decide the appeal of the appellant at the earliest and preferably by 28th August, 2019. The appellant also filed a writ petition[3], *inter alia*, praying for consideration of the applications dated 31st July, 2019 and 2nd August, 2019, for submission of full amount through bank guarantee and provisional release of the consignment in terms of Section 129(1)(c), WBGST Act and not to give effect to the demand order dated 27th June, 2019. Further, as an interim measure, it was prayed that the respondents be directed not to give effect and/or further effect to the order dated 27th June, 2019.

9. On 18th September, 2019, the High Court, *inter alia*, directed that the goods may be released subject to payment of the entire amount of the Goods and Service Tax (hereinafter referred to as "GST") of ₹54,00,000/- (Rupees Fifty four lakhs) in cash to the Authority, out of which, ₹5,40,000/-(Rupees Five lakhs and forty thousand) had already been paid with the further direction that the appellant shall also pay 50% of the penalty of ₹ 54,00,000/- (Rupees Fifty four lakhs), i.e., ₹27,00,000/- (Rupees Twenty seven lakhs) in cash and the remaining 50%, i.e., ₹27,00,000/- (Rupees Twenty seven lakhs) by way of bank guarantee which should be valid for a year and be renewed every year till the disposal of the writ petition. Thereafter, the impugned judgment was passed which is under challenge in the present proceeding.

SUBMISSION BY THE APPELLANT:

10. Learned counsel for the appellant submitted that though there may have been some fault on the part of the appellant with regard to the E-way bill not being valid on the day when the actual transportation of the consignment took place but the same was due to the fact that HFC could not make available any vehicle for transportation in Auraiya, Uttar Pradesh which fact was

2 Writ Petition No.15959(W) of 2019
3 Writ Petition No.17452(W) of 2019

never intimated/conveyed to the appellant, and this was the reason as to why fresh E-way bill for interstate transfer of the said consignment could not be generated by the appellant. It was further submitted that even after depositing 10% of the tax amount, which was required for filing an appeal and the appellant being ready to pay the remaining amount of the tax and to give a bank guarantee for the penalty, the respondents had denied release of the consignment which was arbitrary.

11. It was next submitted that the consignment has remained uncared till now and must have been damaged. Ultimately, the consignment was the property of the appellant, who was merely transporting the same from Uttar Pradesh to West Bengal and thus, there should not be any GST imposed and in this regard, actually an E-way bill was generated, but unfortunately, validity of such transportation had elapsed due to factors, which the appellant was unaware of and were beyond its control. Thus, it was submitted that in such a background, the appellant should not be saddled with huge financial consequences which would be inequitable, unjustified, arbitrary and disproportionate. The movement of the consignment was in the nature of an "inter unit transfer" of capital goods from one place to another and not a result of any transaction of sale/purchase of goods between two parties, making it liable for taxation under the GST regime.

12. Finally, learned counsel submitted that as notice had been issued on the limited point of quantum of penalty, this Court may consider the circumstances under which the entire episode happened and protect the appellant as imposition of such heavy amount(s) would lead to serious financial hardship and cripple the appellant from carrying out its business.

SUBMISSIONS BY THE RESPONDENTS NO.1, 2, 3 AND 5:

13. *Per contra,* learned counsel for the respondents submitted that appellant has not made out any case for interference since the admitted position is that on the day when the consignment was intercepted in the course of inter-state movement, there was no live/valid E-way bill which exempted payment of the GST and in the absence of the same, imposition of GST and the attendant penalty is justified both, in law as well as on facts. It was submitted that the Authority which has passed the underlying impugned order, exercising the power under the relevant Acts had no option but to pass such an order in view of the admitted factual position and as such, no

infirmity or fault can be attributed to the course adopted by the concerned respondents.

14. Learned counsel further submitted that the Court would also consider the facts that in such a matter where the Consignment was to be shifted from Auraiya, State of Uttar Pradesh to Durgapur, State of West Bengal and the validity period of the generated E-way bill was from 30th May, 2019 till 9th June, 2019, i.e., more than ten days whereas, the consignment ultimately crossed the state borders only on 17th June, 2019, i.e., after a delay of over one week from the date of expiry of the E-way bill. The appellant cannot simply plead ignorance of such factum, as it was required to be vigilant of the consignment being transported, if at all it was for the purpose of doing work by the appellant itself at a different place and by way of *"inter unit transfer of capital goods from one place to another"*. It was contended that even HFC to which, as per the appellant, the work of transportation of the consignment was entrusted, was fully aware of the period of expiry/validity of the E-way bill. If there was a genuine difficulty of not having an available transportation vehicle at the relevant time, the appellant could not/would not have agreed to transport the same within the time-period of the E-way bill. But from the conduct of both, HFC and the appellant, it does not appear that such a plea was bonafide or genuine.

15. Learned counsel summed up, submitting that in any view of the matter, the appellant as well as HFC being in the business of such transactions, cannot plead ignorance of law. It was advanced that the mere fact that an E-way bill had been generated, and was used mistakenly beyond the validity period, cannot be accepted, much less in taxation matters where the time-period fixed for certain acts by the person, is required to comply with the same is strict, without any discretion either to the person concerned or to the authorities to relax the timelines. The only way going forward was to generate a fresh E-way bill, which has not been done.

16. On the point of quantum of penalty limited to which notice was issued, it was submitted that from the sequence of facts, it is obvious that the conduct of the appellant does not entitle it to any leniency, especially in tax matters, where the parties have to be very serious as government revenue is involved; which in turn has an effect on the very functioning of the Governments, both at the Central and State levels.

DIRECTIONS:

17. Having considered the matter, the Court wishes to confine its consideration only to the quantum of penalty, as was made clear vide order dated 8th December, 2022. It is not in doubt that *stricto sensu*, the appellant cannot shirk from its responsibility of complying with the requirement in law to generate a fresh E-way bill, if for any reason the consignment had not been transported. However, viewing the factual scenario, which is not disputed, i.e., the appellant is the owner of the consignment and was using it in connection with its contractual obligations in Uttar Pradesh and then having a similar contract in West Bengal and no evidence has been placed on record that shows that the consignment was to be sold/used for any other purpose in respect of any other party, this Court is persuaded to interference.

18. The appellant has been saddled with the tax amount of ₹ 54,00,000/- (Rupees Fifty four lakhs). The law also provides for imposition of penalty. Ordinarily, we may have refrained from interfering, but because there was an E-way bill that was generated and in view of the discussions made hereinabove, we are inclined to vary the orders passed by the High Court.

19. In our opinion, ends of justice would be served if the penalty amount is reduced to 50% of the penalty imposed, i.e., ₹27,00,000/- (Rupees Twenty seven lakhs). Therefore, ₹54,00,000/-(Rupees Fifty four lakhs) being the tax imposed, is upheld and penalty would now be ₹27,00,000/- (Rupees Twenty seven lakhs), totalling to ₹81,00,000/- (Rupees Eighty one lakhs), which shall be paid by the appellant. The said amount, subject to payment(s) already made, shall be deposited with the concerned Authority on or before 29th February, 2024. Upon the same being done, the transportation vehicle as also the consignment shall be released to their rightful owners expeditiously. At the same time, the appellant is cautioned to be vigilant in future.

20. The appeal stands disposed of in the afore-elucidated terms. It is made clear that this order has been passed under Article 142 of the Constitution of India and shall not be treated as a precedent. Pending application stands disposed of.

Headnotes prepared by:
Divya Pandey

Appeal disposed of.