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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 23.08.2022*

+ **W.P.(C) 8585/2022**

NIRMAL KUMAR MAHAVEER KUMARPetitioner

Through: Mr Rahul Gupta with Mr Rakesh Kumar,
Adv.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX AND
ANOTHERRespondent

Through: Mr Anurag Ojha, Sr Standing Counsel
for R-1.

Mr Gautam Narayan, ASC with Ms
Pragya Barsaiyan, Adv. for R-2 & 3.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. We have heard the learned counsel for the parties at some length.
2. This writ petition is directed against the order dated 31.12.2021 passed by respondent no.2/Office of Appellate Authority (Delhi GST).
3. Respondent no.2 *via* the impugned order dated 31.12.2021, has sustained the demand raised by respondent no.3/Assistant Commissioner, Ward-112, Special Zone, Delhi, towards tax and penalty.

4. The amount demanded towards tax is Rs.2,33,100/-.An equal amount has been also demanded towards penalty i.e., Rs.2,33,100/-.

4.1 Thus, as is obvious, penalty has been imposed on the petitioner, at the rate of 100%.

4.2 In this regard, the respondent no. 3 appears to have taken recourse to the provisions of Section 129(3) of the Central Goods and Services Tax Act, 2017 [in short “CGST Act”].

5. What has emerged from the record, is that the impugned demand was raised against the petitioner on account of the fact that the e-way bill generated had expired. In other words, when the goods were intercepted, the e-way bill was no longer valid.

6. The record also shows, that the subject goods were being transported from Guwahati to New Delhi.

7. The e-way bill was valid till 28.09.2020.

7.1 The subject goods were intercepted on 29.09.2020 at 3:40 AM, by which time the e-way bill had expired.

8. On record, we have two e-way bills. These are marked as Annexure P-1 and Annexure P-3, appended on pages 25 and 30 of the casefile respectively.

9. A comparison of the two e-way bills, even according to Mr Gautam Narayan, who appears for respondent nos.2 and 3, shows that the vehicles were changed.

9.1 The explanation given across the bar, was that since the earlier vehicle had broken down, another vehicle was requisitioned for transporting the goods.

10. It appears, that the petitioner did not ask for extension of time for completion of journey. Resultantly, when the vehicle was intercepted, it was found that the e-way bill generated had already expired.

11. It is on this account, that a showcause notice was issued to the petitioner on 30.09.2020 in a prescribed form i.e., Form GST MOV-07.

11.1 This was issued as required under Section 129(3) of the CGST Act.

12. The reason given for issuance of the show-cause notice was “*goods not covered by valid documents*”. The proposed tax and penalty were also indicated in the said show-cause notice.

12.1 However, in consonance with the principles of natural justice, the petitioner was accorded seven days to file a reply with respect to the proposed demand made towards tax and penalty, and to appear before the concerned officer for a hearing on 07.10.2020.

13. We are informed that the petitioner paid the amount demanded towards tax and penalty, as he was keen that the goods reached the designated destination at the earliest.

13.1 The demand was liquidated on the same date on which it was made i.e., 30.09.2020.

14. Consequentially, the petitioner did not avail of the opportunity to demonstrate, that the goods could not reach their destination before the expiry of the validity period of the e-way bill.

15. It is not in dispute, that against the subject goods, the tax stands paid, and that the impugned demand has been raised, as noticed above, only for the reason that at the time of interception, the e-way bill was not valid.

16. This is not a case where the petitioner intended to evade tax. However, the impugned demand seeks not only the payment of tax, but also penalty.

17. Given the aforesaid circumstances, we are of the view, that the petitioner needs to be given another chance to establish, as to why the subject goods did not reach their designated designation before the expiry of the e-way bill.

18. Accordingly, the impugned order dated 31.12.2021 passed by respondent no. 2 is set aside.

19. The matter is remanded to respondent no. 2, to take a fresh decision in the matter, after giving the petitioner due opportunity to produce relevant material/evidence to establish its case, that the delay in transporting the

goods to their destination was on account of genuine reasons.

19.1 While carrying out this exercise, the concerned officer will also bear in mind, the provisions of section 126 of the CGST Act, which *inter alia* adverts to omission or mistake in documentation which is easily rectifiable.

20. Needless to add, respondent no. 2 will issue a notice, in writing, to the petitioner, indicating the date and time when he intends to hear the petitioner and/or his authorized representative, in support of his case.

21. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

AUGUST 23, 2022/pmc

W.P.(C) 8585/2022

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