

Form J(1)

**CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI  
Constitutional Writ Jurisdiction  
Appellate Side**

**Present :  
The Hon'ble Justice Bibek Chaudhuri.**

**W.P.A. 314 of 2023**

**DRB Infrastructure Pvt. Ltd. & Anr.  
-Versus-  
The State of West Bengal & Ors.**

**For the Petitioner : Ms. Rima Sarkar Adv.  
Ms. Sidhi Sethia, Adv.**

**For respondent : Mr. Subir Kumar Saha, Adv.  
Mr. Bikramaditya Ghosh, Adv.**

**Heard & Judgment On : 10<sup>th</sup> February, 2023.**

**Bibek Chaudhuri, J.**

The petitioner No.1 is a construction Company who was entrusted with sub-contract for earth excavation, embankment/subgrade work and drain work on the four/six lane access controlled expressway at Jammu in the State of Jammu and Kashmir. In order to carry out the said work, petitioner No.1 transported its own machinery from Arunachal Pradesh to Jammu by two trailers through a third party consignment. On 26<sup>th</sup> December, 2022, the said trailers were incepted by respondent No.3. The driver of the vehicle was asked to produce e-way bill, tax invoice and delivery challans. The driver could produce the

e-way bill but failed to produce the tax invoice and delivery challans. Subsequently, the petitioner No.2 being the authorized representative of petitioner No.1 Company, personally met the adjudicating authority and on 21<sup>st</sup> January, 2023 he was informed that the trailer can only be released if petitioner No.1 pays penalty for a sum of Rs.7,00,000/-.

The petitioner refers to Circular No.80/54/2018-GST dated 31<sup>st</sup> December, 2018 and taking me to clause No.13.2 of the said Circular. It is submitted by her that any inter-state movement of goods for provision of service on own account by a service provider, where no transfer of title in such goods or transfer of goods to the distinct person by way of stock transfer is not involved, does not constitute a supply of such goods. Hence, it is clarified that any such movement on own account(not involving distinct person in terms of section 25), where such movement is not intended for further supply of such goods does not constitute a supply and would not be liable to GST.

Since the petitioner No.1 was transporting its own machinery from one place to another for execution of a particular work, no GST is payable in respect of the said goods.

The learned Advocate for the petitioners has also referred to the Circular relating to procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and convenience. Referring to sub-clause (d), (e) and (f) of clause 2, it is submitted by the learned Advocate for the

petitioner that respondent No.3 did not pass any order and communicate the order to the person in charge of the convenience. On the other hand, the respondent illegally detained the trailers concerning loss in business of the petitioner.

Learned Advocate for the respondents, on the other hand, draws my attention to Rule 138 A of the West Bengal Goods and Services Tax Rules, 2017. It is submitted by the learned Advocate for the respondents that on interception of a vehicle, it is the duty of person in charge of a convenience to produce the invoice or bill or supply or delivery challans as the case may be and a copy of the e-bill or e-way bill number either physically and or electronic mode.

He also refers to Rule 55 of the said Rules and submits that where there is no sold or supply goods, the goods can only be transported from one place to another with a delivery challans in lieu of tax invoice. The petitioners failed to produce delivery chllans and imposition of tax, is therefore, automatic consequence upon adjudication.

Since there is factual dispute inasmuch as according to the petitioner no adjudication was made by the adjudicating authority and as per the learned Advocate for the respondents, a show-cause notice was served but as the petitioners has not given any reply to such show-cause notice, the adjudication has not been made till date and no tax is also imposed as on this date.

In view of such submission and considering the fact that the learned Advocate for the respondents has served a copy of the show-cause notice to the learned Advocate for the petitioners, the petitioners are directed to submit a reply to the adjudicating authority within 3 days from this date and the adjudicating authority thereupon shall adjudicate as to whether that petitioner is liable to pay any penalty or not after giving opportunity to the petitioners or their authorized representative of hearing within a fortnight thereafter.

With the above direction, the instant writ petition is disposed of. However, there shall be no order as to costs.

**(Bibek Chaudhuri, J.)**

*Mithun*  
*Ct No.2.*  
*Sl No.12.*