

**24.1.2023**

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**WPA 1271 of 2023**

M/s. OFB Tech Private Limited  
Vs  
State of West Bengal & Ors.

Mr. Vinay Kr. Shraff,  
Ms. Priya Sarah Paul  
Ms. Priyanka Sharma  
... For the Petitioner.

Mr. A. Ray, Ld. GP.,  
Mr. T. M. Siddiqui,  
Mr. N. Chatterjee,  
Mr. V. Kothari  
... For the State.

Heard learned Advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order of the Appellate Authority under WBGST Act, dated 12<sup>th</sup> September, 2022, dismissing the appeal of the petitioner and confirming the order in original dated 17<sup>th</sup> December, 2021 imposing penalty and tax under relevant provision of the WBGST Act, on the ground that at the time of interception of the vehicle in question it was not having e-way bill which was intercepted on 9<sup>th</sup> December, 2021. The case of the petitioner is that petitioner was carrying the goods in question having valid e-way bill generated on 7<sup>th</sup> December, 2021 and was valid till 10<sup>th</sup> December, 2021 and before the expiry of the e-way bill relating to the said vehicle in question, there was a break down of the same and it could not move and remained stationary and at the time when the break down took

place, e-way bill was very much valid and had not expired. Thereafter, arrangement was made for another vehicle in which the very same goods in question was shifted. It is the case of the petitioner that at the time of interception of the second vehicle in question in which the same goods in question was shifted it was not having any e-way bill but immediately within three minutes after interception of the second vehicle in question new e-way bill was generated and explanation by the petitioner for generation of the new e-way bill in connection with the second vehicle in question is that it could not anticipate the registration number of the vehicle for which as per rule e-way bill has to be generated and immediately after loading of the very same goods in question it generated the fresh e-way bill relating to the said vehicle though it was done within three minutes after interception of the same.

Considering the facts and circumstances of the case as appears from record and submission of the parties and on perusal of the impugned order of the Appellate Authority, I am of the view that the case of the petitioner as made out in this with petition regarding the break down of the vehicle in question and generation of new e-way bill generated in respect of the same goods in question within three minutes

after the interception of the vehicle in question by the respondents, has not been properly considered by the Appellate Authority for rejection and dismissal of the appeal on this ground is too much technical in this case as appears to this court from the facts and circumstances of the case.

Accordingly, the impugned order dated 12<sup>th</sup> September, 2022 along with the rectification order dated 16<sup>th</sup> November, 2022 are set aside and the matter is remanded back to the Appellate Authority concerned to pass a fresh speaking order in accordance with law after giving an opportunity of hearing to the petitioner or its authorised representative and after taking into consideration the observation made in this order on the issue raised by the petitioner, within a period of 12 weeks from the date of communication of this order.

With this observation and direction, this writ petition being WPA 1271 of 2023 is disposed of.

**( Md. Nizamuddin, J. )**