

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 23.05.2025

DELIVERED ON: 23.05.2025

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

W.P.T.T. 61 of 2015

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I.A. No. CAN 1 of 2024

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CAN 2 of 2024

CJ DARCL LOGISTICS LIMITED

Vs.

DEPUTY COMMISSIONER OF SALES TAX, DUBURDIH CHECK POST & ORS.

Appearance:-

Mr. Shovit Betal

.....For the Petitioner

Mr. T. M. Siddique, Sr. Adv.

Mr. Saptak Sanyal

.....for the respondents/State

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re. CAN 1 of 2024

1. This application has been filed to set aside the order dated 18th December, 2023 by which the writ petition was dismissed for non-prosecution.
2. We have perused the application and we find the explanation offered by the petitioner for the advocate not being present when the matter was called is acceptable. That apart, we note that the writ petition was filed in the year 2015 and came up for hearing before the Court on 18th December, 2023.

3. Therefore, we are of the view that the order dismissing the writ petition for non-prosecution has to be recalled.
4. Accordingly, I.A. No. CAN 1 of 2024 is allowed and the writ petition is restored to the file of this Court, to be heard and decided on merits.

In Re. I.A. No. CAN 2 of 2024

5. This application has been filed to amend the cause title so that the name of the petitioner is changed from Darcl Logistics Limited to CJ Darcl Logistics Limited. Certificate of Incorporation issued by the Registrar of Companies dated 13th September, 2017 has been annexed to the application.
6. In the light of the above, the application, I.A. No. CAN 2 of 2024 is allowed and the cause title be accordingly corrected by the learned advocate appearing for the petitioner.

In Re. W.P.T.T. 61 of 2015

7. This writ petition has been filed by the petitioner challenging the order passed by the West Bengal Taxation Tribunal (for brevity, "the Tribunal") in RN – 1923 of 2013 dated 26th September, 2013. By the said order, the learned Tribunal allowed the application in part and reduced the quantum of penalty to Rs.2,10,000/-. Aggrieved by the same, the petitioner has filed this writ petition.
8. We have elaborately heard the learned advocate appearing for the petitioner and the learned Senior Counsel appearing for the respondents/State.
9. The only ground on which penalty was imposed is by stating that the transporter did not have a valid way-bill when the vehicle alongwith the consignment was detained at 10:56 am on 18th September, 2013. It is not in dispute that the driver of the vehicle had produced the copy of the consignment note dated 12th September, 2013 issued to the writ petitioner,

copy of the invoice of M/s. Reckitt Benckiser (India) Ltd., which also showed the value of the consignment. Thus, the identity of the goods, the weight, the value is not in dispute. The only ground on which penalty was imposed is on the ground that the driver of the vehicle did not have a way-bill when the vehicle was detained.

10. Admittedly, the vehicle was detained in the check post between Jharkhand and the State of West Bengal and the vehicle has not come into the State of West Bengal. Apart from that on a request made by the driver of the vehicle, the detaining authority had granted time to produce the way-bill till up to 10:52 a.m. on 19th September, 2013. It is also not in dispute that within the time permitted, the way-bill was generated on 20th September, 2013 at 08:19 a.m., which is about 45 hours from the time of detention.
11. Thus, the petitioner cannot be stated to have violated the law, but has produced the valid way-bill, much before the vehicle had crossed the check post between the two States.
12. More or less, an identical case was decided by the High Court of Karnataka in the case of ***Prakash Roadlines (P) Ltd. Vs. Commissioner of Commercial Taxes in Karnataka*** reported in ***(1991) 83 STC 49***, wherein the Court held as follows:-

“8. In the instant case the short ground on which the penalty has been imposed was solely because the driver failed to produce the prescribed documents at the time of checking the goods vehicle and the Commissioner assumes that production of the document subsequently would not exonerate the appellant from the liability to pay the penalty. In other words, the question will be whether the levy of penalty will be automatic and follows as a matter of course under section 28-A whenever the documents in question are not produced immediately on demand at the check post or barrier. In this context the principles stated in the decision of this Court in Sree Hajee Ahmed Bava’s case [1985] 60 STC 328, and by the Supreme Court in K.

P. Abdulla's case [1971] 27 STC 1, are very apposite. The State has no power to affect adversely the free flow of the inter-State trade. The state's competence is confined to regulate the intrastate transactions. The object of section 28-A is to provide a machinery to prevent evasion of tax under the Act. The purpose of section 28-A is not to collect revenue by the imposition of penalties. Section 28-A is not a charging provision at all. It is only a machinery provision. Secondly, penalties are levied under section 28-A(4), inter alia, for noncompliance with the provisions of sub-section (2) and the penalty shall not exceed the limits specified in sub-section (5). However, before levying the penalty the person in charge of the goods vehicle should be given a reasonable opportunity of being heard. Levy of penalty also may be for furnishing a false declaration under sub-section (2). The entire power is to effectuate a particular purpose that is to prevent evasion of tax payable under the Act.

9. *In the instant case, the Check Post Officer himself gave 24 hours' time to the driver to produce the documents. The documents produced by the driver read with the other documents produced before the appellate authority show that the goods were moving from Delhi to Madras via Bangalore. This apart, the appellate authority has given a specific finding that the papers produced by the driver and referred in the show cause notice issued to the driver clearly establish that 55 bundles of springs were covered by the G. C. Note and the way bill. For this purpose the total weight of the goods in the vehicle as shown in these documents were considered and compared. This is a very strong circumstance pointing out that 55 bundles of springs were reflected in the G.C. Note and the G.C. Note indicated that the goods were moving to Madras from Delhi.*

10. *The bona fides of the carrier-appellant in carrying the goods has not been found against it in any manner. The explanation that the goods were moving towards Madras also is not doubted. The penalty was imposed solely because of the alleged failure to produce the documents immediately on demand.*

11. *The Act does not impose a strict liability imposing penalty as a matter of course. Section 28-A (4) itself uses the word "may" and creates a discretionary power in the authority to levy the penalty. Before levying the penalty, explanation of the person liable to pay the penalty has to be considered. Therefore, this discretionary power could be exercised only for the purpose for which the power is created. The production of the documents in question immediately on demand should not be understood in isolation to create a liability provided the bona fides of the carrier and the purpose of carrying the goods are not*

doubted and found against the concerned persons. Even under sub-section (5) the maximum penalty that can be imposed is stated. Nowhere it provides for a minimum liability. It is also doubtful whether any minimum penalty could be prescribed for such an omission regarding sub-section (2). Both sub-sections (4) and (5) thus confer discretionary powers and all discretionary powers should be exercised judiciously. The exercise of the power and levy of penalty as a matter of course will be an arbitrary exercise of power and the very exercise of the power may be repugnant to the provisions of article 301. The right guaranteed under article 301 and its content will have to be applied even to the exercise of an executive power traceable to the law made by the competent Legislature. It has been pointed out by the Supreme Court that even if a law is valid without contravening any of the fundamental rights, still a particular order made under such a valid law may offend a fundamental right in a given case and in such a situation the executive order will have to be set aside. This is based on the principle that the content of the law is always to be within the bounds of the constitutional limitations governing the subject-matter of legislation and, therefore, any executive order under the State law cannot traverse beyond the said content.”

13. The above decision would squarely apply to the facts and circumstances of the case on hand.
14. Another decision of the Division Bench of this Court in the case of **HDFC Bank Limited Vs. Sales Tax Officer, Duburdi Checkpost & Ors.** reported in **(2014) SCC Online Cal 22659** would also support the case of the writ petitioner, wherein it was held that *“Interception of consignment of goods at the check-post cannot mean that it has been taken “across or beyond” the check post into the State of West Bengal for the purpose of application of the said provisions of the said Act”.*
15. Thus, the order passed by the authority imposing penalty is liable to be set aside. Consequently, the writ petition is allowed and the order passed by the learned Tribunal is set aside as also the order passed by the authorities levying penalty.

16. Since the petitioner has deposited the penalty amount as per the order passed by the learned Tribunal, the petitioner is entitled to file an application for refund, which shall be processed and amount be paid to the petitioner within 12 weeks from the date of receipt of server copy of this order.
17. No costs.
18. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)