

Tripura High Court

Progressive Enterprise vs The State Of Tripura And Others on 24 May, 2022

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HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.427 of 2022

Progressive Enterprise

..... Petitioner(s)

VERSUS

The State of Tripura and others

..... Respondent(s)

For Petitioner(s)

: Mr. B. Paul, Advocate.

For Respondent(s)

: Mr. Debalay Bhattacharya, G.A.,

Mr. P. Saha, Advocate,

Mr. S. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY Order 24/05/2022 (Indrajit Mahanty, C.J.) Heard learned counsel for the respective parties.

This writ petition has come to be filed by the petitioner, namely, Progressive Enterprise which was under contract with the private company under which the petitioner was transporting, installing and commissioning telecommunication materials throughout the State of Tripura. One such consignment containing 2(two) tax invoices, namely, vide No.312341823000561 valued at Rs.3,14,616.73/- dated 13.04.2022 and vide No.312341823000578 valued at Rs.12,53,941.83/- dated 13.04.2022 had been generated and 2(two) e-way bills against the said consignment and the consignment was being transported to Agartala from Guwahati by TATA Yodha vehicle bearing registration No.ASO1NC7115 and the said vehicle was transporting goods back to Guwahati. While the goods were being taken back from Tripura to Guwahati on a transport vehicle, on 26.04.2022 the Inspector of State Taxes, Churaibari inspected the vehicle and asked the driver to produce relevant documents. The driver is stated to have informed the Inspector that he is waiting for the fresh tax invoices and e-way bills for outward transportation of the telecommunication materials. He informed him that he had in his possession the e-way bill and the tax invoice under cover of which the goods had originally moved from Guwahati to Tripura.

It appears that on 27.04.2022 a physical search was carried out and the vehicle as well as the goods was seized and form 7 was issued. In the meanwhile, on the same date i.e. on 27.04.2022, Reliance Jio Infocommunication Ltd. generated 30(thirty) numbers of e-way bills for the purpose of outward transportation of the aforesaid goods which were seized. The issue involved was in spite of the new e-way bills provided by the driver-in-question, the authorities did not allow the goods to be moved and initiated proceedings against the petitioner.

The moot question that arises is that once the driver of the vehicle produces a valid e-way bill, the authorities concerned are responsible to honour the same and if any fault is found therein, action can obviously be taken up under the statute. But in the case at hand, the vehicle-in-question and the driver concerned produced the e-way bill prior to seeking permission to leave the State of Tripura and the e-way bill produced under Annexure-2 is the new e-way bill. It was obligatory on part of the statutory authorities to go through the same and if the same was found in order, to permit the transport of the machinery and/or consignment concerned.

It appears from the facts of the present case that the consignor had sent the goods to the State of Tripura, however, due to various reasons cited in the petition including non-availability of land, etc. the consignor sought to take back the goods from Tripura to Guwahati and the necessary e-way bill for such transportation was also provided. Consequently, we are of the considered view that Rule 138 (10) of the Central Goods and Services Tax Rules, 2017 which applies in the present case and in particular second proviso thereof conceivable situation where e-way bills can either be amended or reissued for the selfsame consignment, but bona fide reasons for such change must be justified. The only lawful inference therefrom is that the said Rule has been complied with by the petitioner consequent to which fresh e-way bills were issued and produced before the concerned authorities.

The Rule 138 (10) of the Central Goods and Services Tax Rules, 2017 is reproduced hereunder :

"(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

Sl. (1) No.	Distance (2)	Validity period (3)
1.	Upto [200 km.]	One day in cases other than Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
2.	For every [200 km.] or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
3.	Upto 20 km	One day in case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01, if required: [Provided also that the validity of the e-way bill may be extended within eight hours from the time of its expiry.] Explanation 1. - For the purposes of this rule, the "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2. - For the purposes of this rule, the expression "Over Dimensional Cargo" shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988)"

Accordingly, we find no justification in further detention of the goods at the Churaibari check-post and direct release the vehicle No. AS 01 NC 7115 and goods and e-way bill Nos. 8012 2345 5305, 8012 2345 5983, 8112 2345 5762, 8112 2345 5957, 8112 2345 6231, 8212 2345 5273, 8312 2345 5429, 8312 2345 5458, 8312 2345 5630, 8312 2345 5841, 8312 2345 6211, 8412 2345 6269, 8512 2345 5397, 8512 2345 6019, 8612 2345 5473, 8612 2345 5572, 8612 2345 5882, 8612 2345 5907, 8612 2345 6083, 8612 2345 6108, 8612 2345 6179, 8712 2345 5520, 8712 2345 6057, 8712 2345 6143, 8712 2345 6297, 8812 2345 5338, 8812 2345 6162, 8912 2345 5500, 8912 2345 6248, 8912 2345 6334 and the same shall be released forthwith.

Accordingly, the writ petition stands disposed of and any proceedings initiated against the petitioner shall stand quashed.

Pending application(s), if any, also stands disposed of. (S.G. CHATTOPADHYAY), J (INDRAJIT MAHANTY), CJ Pijush