

### **No Penalty if Assessee was bonafide and E-way bill gets expired during transit**

The Hon'ble Calcutta High Court in ***Perfect Enterprise v. State of West Bengal [W.P.A. No. 532 of 2023 dated June 15, 2023]*** set aside the penalty order passed by the Adjudicating Authority which was later upheld by the Appellate Authority and opined that, there is no penalty on the bonafide assessee if e-way bill gets expired while transporting goods.

#### **Facts:**

M/s Perfect Enterprise ("**the Petitioner**") purchased the goods from the supplier on April 20, 2022 and transported those goods from Kandla Port, Gujarat to Siliguri. The e-way bill was valid up to May 02, 2022.

The vehicle reached Siliguri on May 02, 2022 however, the stockyard was closed thus, driver parked the vehicle nearby and May 3, 2022 was National Holiday on account of Ed-UI-Fitr.

On May 04, 2022 at 3:20 AM the Revenue Department intercepted the vehicle and detained the goods and passed the detention order on the ground that vehicle was found in transit with an expired e-way bill and issued a Show Cause Notice dated May 7, 2022 ("**the SCN**") to the Petitioner and levied a penalty of INR 2,48,195.

The Revenue Department passed a demand order dated May 12, 2022 ("**the Impugned Order**") for demand of tax and penalty upon the driver of INR 4,96,390.

Aggrieved with the Impugned order the Petitioner filed an appeal before the Appellate Authority on January 31, 2023, which was rejected by the Appellate Authority.

Aggrieved by rejection of appeal the Petitioner filed writ before the Hon'ble Calcutta High Court and contended that the Petitioner was bonafide and there was no wilful misconduct committed by the Petitioner while transporting the goods.

**Issue:**

Whether the Petitioner is liable for penalty in case e-way bill expires during the transit?

**Held:**

The Hon'ble Calcutta High Court in ***W.P.A. No. 532 of 2023*** held as under:

- Relied upon, Judgement of Calcutta High court in the case of ***M/s Hanuman Ganga Hydro Projects Private Limited v. Joint Commissioner, State Tax Authority [WPA 1480 of 2022 dated July 6, 2022]*** wherein court held that where assessee had no mala fide intention to evade payment of tax, the orders passed by the Appellate Authority and the penalty were all set aside and quashed.
- Observed that, there is no other allegation against the Petitioner as e-way bill gets expired due to a national holiday while transporting the goods then there is no wilful misconduct committed by the Petitioner.
- Opined that, the Petitioner may apply for refund before the Revenue Department. Further, directed the Revenue Department to refund the penalty within 15 days from the date on which refund application filed by the Petitioner.
- Set aside the Impugned Order.

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