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16.06.2023.
Ct. 3
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**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side**

WPA 509 of 2023

**DRB Infrastructure Pvt. Ltd.
-versus-
State of West Bengal and Ors.**

Mr. Bharat Raichandani
Mr. Debajit Kundu
... for the petitioner.

Mr. Subir Kumar Saha
Mr. Bikramaditya Ghosh
... for the State.

Counsel for the respective parties are
present.

The petitioner has filed present writ
application praying for direction for release of the
trailers loaded with machines/equipment sent by E-
way bill dated 22.12.2022 transported from
Arunachal Project site to the project site of Jammu
and Kashmir through the State of West Bengal.

The petitioner is a construction company
who was entrusted with the 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
Kashmir. In order to carry out the said work, the

petitioner transported its own machinery from Arunachal Pradesh to Jammu by two trailers through a third party consignment. On 26.12.2022, the respondent no.3 had intercepted the said trailers. By an order dated 15.02.2023, the respondent no. 3 has imposed penalty upon the petitioner for a total amount of Rs. 8,13,600/- for violation of the provisions of Section 31, 68 and Section 129(1) of the WBGST/CGST Act 2017 and Rules 45 and 55 of the WBGST/CGST Rules 2017.

Counsel for the petitioner submits that the petitioner has made representation for release of the trailers as the machinery are used machinery and for the purpose of carrying out the work awarded to the petitioner as sub-contract, the petitioner was transporting the same from Arunachal Pradesh to Jammu Kashmir through West Bengal but the authorities have not released the same and have imposed penalty and accordingly, the petitioner has filed the present writ application.

Counsel for the petitioner submits that since the machinery has been seized and lying with the respondent no.3, the petitioner's work has been hampered and the petitioner is not in a position to carry out the work awarded to the petitioner at Jammu and Kashmir and accordingly, the counsel

for the petitioner prays for release of the seized machinery so that the petitioner can take the said machinery for completion and execution of the awarded work.

Per contra, counsel for the State submits that the petitioner has filed this application with respect of release of machinery seized by the respondent no.3 in violation of the provision as mentioned above and if the petitioner is ready and willing to submit bank guarantee with respect of penalty imposed by the respondent no.3 by the order dated 15.02.2023, an order can be passed for release of the said machinery on interim basis till the disposal of the proceeding before the competent authority.

Considered the rival submission of the respective parties. Perused the materials on record and the impugned order.

The petitioner has also challenged the order passed by the respondent no.3 dated 15.02.2023 and as such this Court is of the view that the writ petition can only be disposed of only after exchange of affidavits and accordingly, the respondents are directed to file affidavit-in-opposition within three weeks; reply thereto, if any, be filed within two weeks thereafter.

In the meantime, the respondent no.3 is directed to release the trailers loaded with machinery and equipment on furnishing of Bank Guarantee equal to the amount as per the order dated 15.02.2023. The Bank Guarantee shall be valid initially for a period of six months and the same can be extended from time to time. The respondent no.3 is directed to release the said machinery within a week on receipt of the Bank Guarantee from the petitioner.

Let the matter appear before the next Circuit Bench.

(Krishna Rao, J.)