

In The High Court at Calcutta

In The Circuit Bench at Jalpaiguri

Appellate Side

Ct.551 **10.12.25**

JPD

Item No.1 Sws.M

WPA 2144 of 2025

M/s. JJ Traders

Vs

Union of India & Ors.

Mr. P. Verma

Ms. Pooja Sah

....for the petitioner

Mr. Ratan Banik

Mr. Bishwaraj Agarwal

....for the respondents

1. This writ petition lays challenge to an order dated July 31, 2025, passed by the respondent No. 2, i.e. Assistant Commissioner (HAEU) Central GST & CX, Siliguri whereby penalties have been imposed upon the petitioner under Section 129 (1)(a) as well as Section 129(1)(b) of the WBGST Act of 2017/CGST Act of 2017 (hereafter "the said Act of 2017").
2. The case run in the writ petition is that, the petitioner is a dealer of areca nuts and has been conducting his business throughout India. On July 8, 2025, the petitioner sold 17,550 kgs. of areca nuts to one M/s. Surana Supri Centre situated in Nagpur,

Maharashtra. On July 11, 2025, while the goods were in transit to Nagpur, Maharashtra, the respondent no.2 intercepted the vehicle containing the petitioner's goods at Husludanga Toll Plaza, Jalpaiguri. Thereafter, an order for physical verification of the goods in Form GST MOV-02 was issued and on July 14, 2025, a physical verification report in form GST MOV-04 was issued indicating therein that there was a difference of 1300 kgs. in the weight of the goods disclosed in the tax invoice and the actual weight of the goods found by the authorities at the time of physical verification.

3. On the same day i.e. July 14, 2025, summons under Section 70 of the said Act of 2017 was issued by the respondent no.2 to the driver of the vehicle carrying the consignment directing him to tender written statement and to produce documents pertaining to the consignment. On July 17, 2025, an order of detention of consignment under Section 129(1) of the said Act of 2017 was passed.
4. Subsequently, on July 24, 2025, a show cause notice in form GST MOV-07 was

issued by the respondent no.2 to the petitioner thereby calling upon the petitioner to show cause as to why penalty to the tune of Rs.3, 57,200/- under Section 129(1)(a) as well as penalty of Rs.35,72,000/- under Section 129(1)(b) would not be imposed on the petitioner *inter alia* on the allegation that the existence of the petitioner's supplier was dubious and that the actual weight of the consignment found while physical verification exceeded the weight mentioned in the tax invoice by 1300 kgs. The said notice granted only three days' time to the petitioner to put in its reply and to avail of the opportunity of personal hearing.

5. It has been further contended that the petitioner filed its reply to the said notice to show cause through e-mail denying all the material allegations contained in the said show cause notice as regards the difference in weight and the statement made by the driver. It is asserted that along with the said reply, the petitioner also furnished all relevant details including copies of purchase invoices, E-way bill, Bank Statement, Tax

Report and GST Registration Certificate in support of the petitioner's contention.

6. It has also been asserted by the petitioner that on July 29, 2025, the petitioner was present in the office of the respondent no.2 along with his authorized representative to explain the factual matrix of the case and to avail of the opportunity of personal hearing but such personal hearing was not afforded and ultimately the order impugned was passed on July 31, 2025 rejecting the petitioner's reply dated July 28, 2025 filed in response to the show cause notice. The petition also mentions that a representation dated September 16, 2025 was made by the petitioner before the respondent GST authorities urging them to release the goods upon receipt of penalty under section 129(1)(a) of the said Act of 2017 since the goods are perishable in nature.
7. Mr. Verma, learned advocate appearing for the petitioner submits that the order impugned has been passed in total derogation of the principles of natural justice inasmuch as the petitioner was not heard personally despite the petitioner's proprietor being present in the office of the

respondent no.2 along with his authorized representative. It is further submitted that the respondent no.2 has passed the order without proper appreciation of the documents produced by the petitioner along with the reply to the notice to show cause.

8. Mr. Verma further submits that the order impugned in any case is liable to be interfered with inasmuch as the respondent no.2 has illegally invoked the provisions of Section 129(1)(b) of the said Act of 2017 when the petitioner whose name figures as the consignor in the invoices as well as the e-way bill has himself come forward and sought release of the goods. It is submitted that the petitioner is in any case entitled to get the detained consignment released in its favour upon payment of penalty in terms of section 129(1) of the said Act of 2017 without prejudice to its rights to challenge the order impugned before the appellate authority.
9. In order to demonstrate that the petitioner is entitled to be treated as the owner of the consignment, Mr. Verma relies on the circular dated December 31, 2018, issued by the Central Board of Indirect Taxes and

Customs whereby it has been clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. In support of his aforesaid contention, Mr. Verma also relies on a judgment of the Hon'ble Division Bench of this High Court in the case of **Sandip Kumar Pandey & Anr. vs. The Assistant Commissioner of State Tax Bureau of Investigation (South Bengal) Durgapur Zone, & Ors. (MAT 1088 of 2025 with IA No: CAN/1/2025** delivered on 07.08. 2025). Mr. Verma has also relied on a judgment of a Division Bench of the Hon'ble Allahabad High Court in the case of **Halder Enterprises vs. State of U. P.** reported at **[2023] 13 Centax 144 (All)** for the same proposition.

10. Mr. Verma further submits that in terms of the judgment rendered by the Hon'ble Supreme Court in the case of **ASP Traders v. State of Uttar Pradesh** reported at **[2025] 176 taxmann.com 782 (SC)** a final order in FORM GST MOV-09 can be passed only after giving an opportunity of being

heard. It is submitted that in the case at hand no opportunity of personal hearing has been granted.

11. Mr. Agarwal, learned advocate appearing for the GST authorities while countering the submissions of Mr. Verma, submits that in the case at hand the petitioner has not been able to demonstrate that the petitioner has procured the subject goods (i.e. the areca nuts) from a genuine supplier. It is submitted that the statement of the petitioner's driver, the absence of E-way bill for inward supplies of goods and the fact that tax invoices relating to the alleged purchase of the goods by the petitioner from its supplier evince dates post the interception of the vehicle, taken collectively establish that the petitioner has not procured the goods from any genuine supplier and as such the petitioner is not the owner thereof. It is submitted that the existence and genuineness of the petitioner's supplier and the transaction are in doubt.
12. It is further submitted that the circular dated December 31, 2018 relied on by the petitioner is to be applied only in cases

where invoices or the specified documents accompanying the consignment are absolutely in order and beyond doubt. It is submitted that in the case at hand although the invoice and the E-way bill show that the weight of the goods as per the invoice was 17,500 Kgs yet upon weighment by the GST authorities at the time of physical verification the same was found to be 18800 kgs (i.e. there was an excess of 1300 kgs).

13. It is then submitted that since the genuineness of the petitioner's supplier has not been established and there is discrepancy in the goods, the circular dated December 31, 2018 cannot be resorted to by the petitioner.
14. It is further submitted that the petitioner's contention that the petitioner was not provided an opportunity of personal hearing, is baseless inasmuch as immediately after the hearing, the petitioner wrote an e-mail dated July 31, 2025 to the respondent authorities (annexed at page 55 of the writ petition) thereby attaching the tax invoice and e -way bill but no objection of the nature raised in the writ petition was put forth then. It is submitted that in the

absence of any contemporaneous objection as regards non-affording of opportunity of personal hearing the stand now taken by the petitioner is clearly an afterthought and the same should not be countenanced.

15. Mr. Agarwal further submits that this Court should not interfere with the order impugned under Article 226 of the Constitution of India inasmuch as the petitioner has an effective alternative remedy in the form of an appeal before the appellate authority under Section 107 of the said Act of 2017.
16. Heard learned advocates appearing for the respective parties and considered the material on record.
17. It is now well settled that existence of an alternative remedy does not bar entertainment of a writ petition if it can be demonstrated that the case with which the writ court has been approached falls within any of the four categories i.e, if there is violation of principles of natural justice or there is a case of infringement of fundamental rights or there is a challenge to the vires of a statute or the impugned action by an authority answering the definition of

State within the meaning of Article 12 of the Constitution of India which is wholly without jurisdiction.

18. In the case at hand although the petitioner has alleged that the petitioner was not given personal hearing despite the petitioner being personally present in the office of the respondent no.2, yet, in the peculiar factual setting of the case the truth of the petitioner's assertion would not be so effectively ascertainable on the basis of affidavit evidence in a writ proceeding as in the statutory appellate proceeding. To wit, it is not the petitioner's case that no notice of personal hearing was served upon the petitioner but, it is rather his case that in terms of the notice he appeared before the authorities but the authorities have not heard him. The order impugned however records that none appeared for the petitioner before the respondent GST authority. Such a matter would require a deeper probe and that can be better undertaken by the appellate authority under Section 107 of the said Act of 2017.
19. This Court has gone through the order impugned. The same reveals several factual

issues appreciation whereof should and could be best done by the appellate authority. The order under challenge has delved deep into the matter and has returned several factual findings which, this Court should be extremely slow to enter into in a proceeding under Article 226 of the Constitution of India more so when a full-fledged remedy in the form of an appeal is available to the petitioner. In such regard the relevant portion of the order impugned in this writ petition is extracted hereinbelow:-

“3. The goods in movement were thoroughly examined under the provisions of subsection (3) of Section 68 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, and physical verification were done on 14.07.2025 in the presence of two pancha and the driver of the conveyance and a report was drawn in FORM GST MOV-04 dated 14.07.2025. Physical examination of the goods and the documents revealed following discrepancies-

(a) The Quantity of goods as per invoice is 17500 kgs whereas on weighment it was found to be 18800kgs. Thus there is an excess of 1300 kgs.

(b) For verification of genuineness of procurement of goods by the said supplier, E-way bill date for their inward supplies were verified from the said E-way Bill portal and it was noticed that there is no inward E-way bill for goods. Further, as per statement of the driver, the supplier existence is dubious and requires further verification of procurement of goods as well as genuineness of suppliers is required.

Considering above, it appears that the Supplier i.e. M/s. M/s. J J Traders [GSTIN: 18AXMPA5950C1ZM] Dhakiajuli, Tezpur, Assam- 784110 is procuring and supplying dries areca nut procured from other source evading duty and reflecting under his own firm under the guise of their own GST credential and Bills. As such, a detailed verification is imperative to unearth further violations including tax evasion, in the interest of revenue.”

20. This Court of the considered view that in view of the aforesaid findings and in view of the fact that this is neither a case of “no notice no hearing” nor can the order impugned and the act of the respondent GST authorities be said to be wholly without jurisdiction, this case does not come within

the range of any of the four exceptions that can persuade this Court to exercise its highly prerogative writ jurisdiction under Article 226 of the Constitution of India. It would, therefore, not be proper for this Court to intervene in this matter at this stage. It would be best to leave the petitioner free to approach the appellate authority in terms of Section 107 of the said Act of 2017.

21. However, since it is the petitioner's case that the petitioner deals in areca nuts which has a short shelf life therefore the question as to whether goods and conveyance should be released in favour of the petitioner upon accepting payment of penalty in terms of section 129(1)(a) of the said Act of 2017 may now be considered.
22. Mr. Verma has heavily relied on the Circular dated December 31, 2018, issued by the Central Board of Indirect Taxes and Customs to contend that the petitioner must be deemed to be the owner of the goods once the petitioner's name is found on the invoice and the e-way bill.
23. This Court would have readily agreed with Mr. Verma if the invoice on which the

petitioner relies had not been questioned. The extract of the order impugned reproduced hereinabove would reveal that the relevant GST authority has concluded that the petitioner *“is procuring and supplying dried areca nut procured from other source evading duty and reflecting under his own firm under the guise of their own GST credential and Bills”* for the purpose of *“tax evasion”*. This Court is of the considered view that the said Circular cannot be applied to such cases where the very transaction or the genuineness thereof doubted and where the invoices and/or the e-way bill are/is under question.

24. It cannot be doubted that a circular issued by the Central Board of Indirect Taxes & Customs would be binding on all its officers but at the same time there can also not be any cavil to the proposition that a circular issued by the Board whether instructive or clarificatory or otherwise has to operate within the statutory framework and has to be applied only when there is no doubt raised regarding the genuineness of the consignment and the transaction and the

documents are in order. The said Circular should not be treated as shield to ward off legal scrutiny and shelve legal action in cases involving undisclosed transactions, and/or dubious invoices and bills.

25. Insofar as the judgments relied on by the petitioner are concerned, as regards the judgment in the case of **Sandip Kumar Pandey & Ors.**(supra), it would be clear from paragraph 4 thereof that the Hon'ble Division Bench had applied the said circular since in the said case neither was the purchase done by the appellant before the Court in dispute nor was there any discrepancy as regards description of the goods. In the case in hand, the authority has doubted the existence of the supplier of the petitioner and has cited discrepancy in the weight of the goods.
26. **Halder Enterprises** (supra) was also not rendered in there was no case where the genuineness of the transaction of procurement of the goods by the person concerned from its supplier was doubted.
27. The legal principle that a final order in form GST MOV-9 must be passed only after granting the person concerned an

opportunity of hearing, in support whereof the judgment rendered by the Hon'ble Supreme Court in case of **ASP Traders** (supra) has been relied on by the petitioner, is salutary and binding. However, in the present case where admittedly a notice of hearing has been served upon the petitioner and where the petitioner's assertion that the petitioner was not heard despite being physically present has been contested and refuted by the respondents it cannot be said with satisfaction on the basis of the material on record at this stage that the petitioner was not afforded an opportunity of hearing. As recorded earlier, the said aspect would require a discreet factual enquiry which should be undertaken by the appellate authority.

28. For all the reasons aforesaid, this Court is of the view that the petitioner should be left free to approach the appellate authority under Section 107 of the said Act of 2017 by filing an appeal against the order impugned. If such appeal is filed within a period of one week from date, the same shall be decided in accordance with law within a period of

four weeks without granting any unnecessary adjournment to the petitioner.

29. As regards the prayer for release of goods and conveyance, keeping in view the assertion that the goods in question i.e. areca nuts have a limited shelf life, this Court is of the view that in order to balance equities, if the petitioner pays the amount of penalty determined by the order dated July 31, 2025 in terms of Section 129 (1)(a) of the said Act of 2017 and furnishes security for the balance sum determined under Section 129(1)(b) of the said Act of 2017 in the said order dated July 31, 2025 in the form of bank guarantee in favour of the respondents, the respondent GST authorities shall release the petitioner's goods and conveyance within two days of payment of such penalty and furnishing of such security in the form of bank guarantee as aforesaid.
30. The respondents-GST authorities shall provide GST ID and password to the petitioner in order to enable the petitioner to file the appeal, if so required.
31. It is clarified that this Court has not gone into the merits of the petitioner's case and

all points are left open, to be decided by the appellate authority, strictly in accordance with law, without being influenced by any observation made hereinabove.

32. WPA 2144 of 2025 stands disposed of with the above observations.
33. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai , J.)