

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

09 12.4.2024
Sc Ct. no.2

**WPA 660 OF 2024
With
I.A. No. CAN 1 OF 2024**

Ajay Kumar Prasad
proprietor of
M/s. Om Traders

Vs.

The Assistant Commissioner of
State Tax, Bureau of Investigation
(North Bengal) Alipurduar Zone & Ors.

Mr. Ankit Kanodia
Mr. Abhilash Mittal.

....For the Petitioner

Mr. Dilip Kumar Agarwal

....For the Respondent
State

Affidavit-of-service, filed in Court today, is
taken on record.

The petitioner is an assessee within the
meaning of ***The West Bengal Goods and Services
Act, 2017*** (for short 2017 Act). The petitioner
through this writ petition has challenged the entire
proceeding initiated against it by the authority
under ***Section 129*** of the 2017 Act.

Referring to the order under ***Section 129(3)***
of the 2017 Act dated ***March 12, 2024, at page
49*** to the writ petition, the petitioner submits that,
the entire proceeding stands vitiated being unlawful
and without jurisdiction. As an outcome of the

assessment proceeding under **Section 129** of the 2017 Act, the articles including the conveyance which were on transit were intercepted and an order of detention was passed dated **March 4, 2024, AnnexureP-3 at page 25** to the writ petition.

In view of the above, Mr. Ankit Kanodia, learned counsel appearing for the petitioner submits that, following the procedure of law the petitioner shall file an appeal under **Section 107** of the 2017 Act and he further submits that, in the meantime unless the articles are released, the business of the petitioner shall be jeopardized irreparably. In view of detention of the articles, the petitioner's business shall also face several civil consequences. He then refers to a **Circular** dated **April 13, 2018** circulated by the Ministry of Finance at **page 59** to the writ petition and submits that, procedure has been laid down under **Clause 2(I)** (at **page 61** to the writ petition) for release of articles by furnishing the necessary security in terms of the statute and in the mode and manner mentioned therein.

Learned counsel for the petitioner submits that, the petitioner is agreeable to furnish such security and thereupon the articles along with

conveyance can be released in favour of the petitioner.

Mr. Dilip Kumar Agarwal, learned State counsel appears for the respondents. He submits that, the petitioner has not submitted any application seeking release of the goods before the respondent no.1, the statutory authority and straightway has filed this writ petition though there is a provision for appeal under **Section 107** of the 2017 Act. The petitioner has not submitted any reply to the **Show Cause Notice**.

Mr. Ankit Kanodia, learned counsel for the petitioner, on instruction, submits that, the petitioner **undertakes to file the necessary appeal under Section 107 of the said 2017 Act** positively within a period of **ten days** from date.

Considering the submissions made on behalf of the parties and considering the materials on record, it appears to this Court that, since the statutory provision is there for release of the confiscated articles and conveyance, subject to strict compliance thereof such release can be directed.

In view of the above, subject to the **security being furnished** by the petitioner in terms of the provisions laid down under **Section 129(1)(C)** of the

2017 Act read with the provisions laid down under the said **CBIC Circular** dated **April 13, 2018** at **page 65** to the writ petition, to the satisfaction of the respondent no.1, the articles and conveyance which are detained and were intercepted by the authority shall be released positively within a period of **forty-eight hours** after receiving the said security from the petitioner.

The petitioner then shall file the appeal under **Section 107** of the said 2017 Act following the due process of law laid down under the statute positively within a period of **ten days** from today where the petitioner shall be at liberty to take whatever points it wishes to take challenging the procedure initiated by the authority against the petitioner under **Section 129** of the 2017 Act.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is made clear that, the appeal to be preferred by the petitioner shall be decided on its own merit in accordance with law and the appellate authority shall not be influenced by observation, if any, made herein. The appellate authority shall proceed in accordance with law as expeditiously as possible.

With the above observations and Directions the writ petition, **WPA 660 of 2024** stands ***disposed of***, without any order as to costs.

In view of the above, the connected application **I.A. No. CAN 1 of 2024** also stands ***disposed of***.

The parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)