20. 07.05.2025
Court No.05.

(Pritam)

WPA 9544 of 2025

Sandip Kumar Pandey & Anr.

-Vs.-

The Assistant Commissioner of State Tax Bureau Of Investigation (South Bengal) Durgapur Zone, Asansole Unit & Ors.

Mrs. Rita Mukherjee,
Mr. Ghanshyam Jha,
Mr. Riddhiman Mukherjee,
Mr. Rowsan Kr. Jha
...for the petitioners.

Mr. Anirban Ray, Ld. G.P.,
Mr. Md. T. M. Siddiqui, Ld. A.G.P.,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal,
...for the State.

1. Affidavit-of-service filed in Court today be taken on record.
2. The petitioner no.1 carries on business in the name and style of Shyam Enterprises from its place of business at New Delhi and claims to be a registered taxpayer under the provisions of WBGST & CGST Act, 2017 (hereinafter referred to as the "said Act"). The petitioner no.1 in usual course had entered into agreement with Ghosh Enterprises based in Kolkata, for purchase of clothing items (in short the "said goods"). The petitioners claims that the Ghosh Enterprises as supplier issued tax invoice dated July 20, 2024 and an E-way bill dated July 21, 2024, including therein the name of the petitioner no.1 as a consignee, for transporting the goods from Kolkata to New Delhi. During

transit of the goods, the goods were intercepted at Asansole. The petitioner no.1 claiming to be the owner in respect of the said goods and had approached the authorities for release of the goods. According to the petitioners respondents did not adhere to the petitioners' request and had passed an order under Section 129(3) of the said Act dated August 3, 2024 in the name of the driver of the vehicle carrying in the consignment.

3. Being aggrieved, the petitioners had filed a writ petition before this Court, which was registered as WPA 23120 of 2024. By an order dated September 19, 2024, this Court upon taking note of the fact that the petitioners are interested to seek release of the goods by invoking the provisions to Section 129(1)(a) of the said Act, however, since at that stage, there was no formal application filed by the petitioner for invoking such provision, had granted liberty to the petitioner no.1 to apply before the respondents by invoking the provisions of Section 129(1)(a) of the said Act subject to the petitioner no.1 establishing his right to maintain such application.

4. Pursuant to the aforesaid, the petitioner no.1 made a formal application in this regard on September 23, 2024. Records would reveal that by an order dated October 3, 2024, the Assistant Commissioner of State Tax, Bureau of Investigation (South Bengal) by doubting the petitioners' right to seek release of the goods in question on the basis of the tax invoice and e-way bill and upon ascertaining that

the issuer of the tax invoice had disclaimed any transaction, the petitioners' claim for release of the goods under Section 129(1)(a) of the said Act was rejected. However, having regard to the provisions contained in Section 129(1)(b) of the said Act, the respondents had permitted the petitioners to seek release of the goods on payment of penalty as provided therein.

5. Mrs. Mukherjee, learned advocate appearing on behalf of the petitioners by drawing attention of this Court to the release order dated October 31, 2024 would submit that the petitioners having no other alternative, had sought for release of the goods by making payment of penalty equal to 50% of the value of the goods which, according to the petitioners, is much higher than the payment of penalty of 200% of the tax to seek release, by invoking provisions of Section 129(1)(a) of the said Act. She would submit that the respondent no.1 had no jurisdiction to decide the validity of the invoice. In this context, she has placed reliance on the Circular issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Tax and Customs dated December 31, 2018. By referring to para 6 of the aforesaid Circular, she would submit that once the petitioners were in a position to demonstrate that the invoice was in the name of the petitioners, the same should have closed the issue as regards the petitioners' ownership of the goods. The respondent no.1 by ignoring the GST Circular which is otherwise binding on him has

proceeded to pass the order dated October 3, 2024, the same cannot be sustained.

6. She would also submit that the Division Bench of this Court in an unreported judgment delivered in the case of ***Surojit Das v. Deputy Commissioner of State Tax*** in MAT 279 of 2023 in similar circumstances has allowed provisional release of goods under Section 129(1)(a) of the said Act on the basis of the invoice disclosed by registered taxpayer though the department had claimed the transaction to be fake. Having regard thereto, the order impugned should be set aside and the respondent no.1 be directed to accept the petitioner no.1 as owner of the goods.

7. Mr. Sanyal, learned advocate appears on behalf of the WBGST, he would submit that in the instant case, the very person who had issued the tax invoice in favour of the petitioner no.1 had come forward and claimed that the invoice in question was not issued by him and he does not run business of M/s. Ghosh Enterprises. In fact, the purported proprietor of Ghosh Enterprises had disclaimed to have obtained a registration certificate under the provisions of the said Act.

8. Having regard thereto, since the validity of the invoice was in dispute and since the petitioner no.1's ownership in respect of the goods could not be established, the respondent no.1 refused to accept the petitioners' as owner of the goods which had been detained. However, having regard thereto the provisions contained in Section 129(1)(b)

of the said Act, the petitioners being otherwise entitled to, were granted liberty to seek release and the petitioners had since obtained release of the goods by making payment of the penalty as provided therein. He submits that in this context, there is no irregularity in the order and no interference is called for.

9. Heard the learned advocates for the respective parties and considered the materials on record. In this case, it transpired that the petitioner no.1 claims to have entered into a transaction with Ghosh Enterprises for supply of clothing items. It is the petitioners' case that the said Ghosh Enterprises acting on the order of the petitioner no.1 had issued a tax invoice and an e-way bill in the name of the petitioner no.1 for transporting the goods from Kolkata to New Delhi. The vehicle carrying the goods in question along with the goods were intercepted at Asansole on July 21, 2024. Since the petitioner no.1 was interested to invoke provisions of Section 129(1)(a) of the said Act to seek release of the goods in its capacity as owners in respect thereof, the petitioners approached the authorities. However, since the authorities did not acceded to the petitioners' prayer, a writ petition was filed before this Court. By an order dated September 19, 2024, this Court had permitted the petitioner no.1 to make a formal application to seek release of goods. Pursuant to the aforesaid and on the basis of the application of the petitioner no.1 the respondent no.1 had considered the

application and had concluded on the basis of the enquiry that the petitioners could not establish ownership in respect of the goods, which have been detained.

10. A perusal of the order, would demonstrate that the respondent no.1 had come to a finding that Siddhartha Ghosh, the purported proprietor of Ghosh Enterprises who was the named consignor of the petitioners' goods disclaimed that he had any registration certificate in the name of the Ghosh Enterprises or to have issued the tax invoice.

11. Although, the petitioners had relied on a circular dated December 31, 2018 issued by the CBDT to establish ownership, however, since the very basis of the petitioners' claim is in dispute, especially having regard to the statement given by Siddhartha Ghosh, the purported proprietor of M/s. Ghosh Enterprises, the respondent no.1 refused to accept the petitioner no.1 as the owner in respect of the said goods, however, had granted the liberty to the petitioner to seek the benefit of Section 129(1)(b) of the said Act.

12. I find that ordinarily a tax invoice is sufficient proof of ownership of goods, however, having regard to the fact that the named consignor on the invoice having come forward and having disclaimed the validity of the transaction and the factum of issuance of such tax invoice, the aforesaid circular in my view cannot come in aid of the petitioners to establish the ownership. Though Mr. Mukherjee by placing

reliance on the unreported judgment delivered in the case of ***Surojit Das*** (supra) would submit that the Division Bench by accepting the tax invoice as a valid document of ownership despite the respondents complaining the same to be fake, had permitted to release the goods under the provisions of 129(1)(a) of the said Act, I, however, find that in the said case, the Divisions Bench in the facts of such case had permitted provisional release without prejudice to the rights of parties and that the release was to abide by the result of the writ petition. In such case the consignor did not come forward to disclaim the validity of the transaction.

13. In the instant case the petitioners could not establish ownership over the goods. However, at the same time the aforesaid decision cannot be accepted as final as the petitioner no.1 has a recourse in the form of an appeal to establish its claim for ownership under the said Act. Admittedly, in this case, I find that an order under Section 129(3) of the said Act has already been passed. Considering that the statement of Siddhartha Ghosh has been relied upon in refusing to accept the petitioners as owner of the aforesaid goods, ordinarily the petitioners ought to have been afforded an opportunity to confront the said Siddhartha Ghosh. The petitioners must, therefore, be permitted to establish ownership of the goods before the Appellate Authority. If the respondents seek to rely on the statement of the Siddhartha Ghosh, the respondents must

make available such statement of Siddhartha Ghosh for the petitioners to respond to the same. The respondents should produce Siddhartha Ghosh as witness in the proceedings for the petitioners to cross-examine him, in the event the petitioners choose to file an appeal under Section 129(3) of the said Act. Having regard to the peculiar facts and circumstances of the case, I am of the view that if the petitioners file an appeal from the order passed under Section 129(3) of the said Act within a period of 4 weeks from date, the same shall be heard on merits and be disposed of within a period of 16 weeks from filing the appeal. The appellate authority shall hear out and decide the appeal on merits having regard to the observations made herein and upon giving an opportunity to the petitioners to establish the factum of ownership of the goods. The petitioner shall be given opportunity to file the appeal manually and the respondents are directed to assist the petitioner in filing such appeal.

14. With the aforesaid observations, the instant writ petitioner being WPA 9544 of 2025 is disposed of.

15. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.

(Raja Basu Chowdhury, J.)