

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 02.08.2025

DELIVERED ON: 02.08.2025

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

F.MA. 1237 of 2025

With

I.A. No. CAN 1 of 2025

M/s. Appollo Plywood Industries & Ors.

Vs.

**The Assistant Commissioner of Revenue,
State Tax, Bureau of Investigation, North Bengal & Ors.**

Appearance:-

Mr. Sandip Choraria for the Appellants

Mr. Tanoy Chakraborty

Mr. Saptak Sanyalfor the State

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal filed by the writ petitioners is directed against the order passed by the learned Single Bench in WPA 3188 of 2025, by which the learned Single Bench held that there is no scope for passing any interim order and directed affidavit-in-opposition to be filed.
2. Since the issue involved in this appeal as well as in the writ petition lies in a narrow campus, with the consent of the learned advocates appearing on behalf of either side, this appeal along with the writ petition i.e. WPA 3188 of 2025 is taken up for hearing and disposed of by this common judgment and order.
3. The appellants filed the writ petition challenging the order passed by the appellate authority dated November 22, 2024 under Section 107 of the

WBGST/CGST Act, 2017(for brevity “the Act”). By the said order, the appellate authority confirmed the penalty imposed on the appellants i.e. Rs.7,31,661.00/- under Section 129 of the Act on the ground that the goods were being transported without a valid e-way bill. Section 129 of the Act deals with detention, seizure and release of goods and conveyances in transit. Sub-section (1) of Section 129 commences with a *non-obstante* clause stating that notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,- (a) on payment of penalty equal to two hundred per cent, of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods come forward for payment of such penalty. The other sub-clauses/sub-sections in Section 129 may not be of relevance to the case on hand.

4. Rule 138 of the West Bengal Goods and Services Tax Rules 2017 falls in Chapter XVI of the Rules, which deals with E-Way Rules. Section 138 deals with information to be furnished prior to commencement of movement of Goods and generation of e-way bill. It is not in dispute that the appellants/writ petitioners had generated the e-way bill on March 28, 2024 and the goods were transported from the State of Manipur to Raiganj in the State of West Bengal covering a distance of 1095 kms. Sub-rule (10) of Rule 138 deals with the validity period of the e-way bill, which is being generated by the transporter/owner of the goods. The second proviso under sub-rule (10) of

Rule 138 states that provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B of FORM GSTEWB-01, if required. The fourth proviso states that provided also that the validity of the e-way bill may be extended within eight hours from the time of its expiry. Thus, the scheme and the rules does provide for an extension beyond the period of expiry of e-way bill.

5. As noted above, the e-way bill in the instant case was generated on March 28, 2024 and the goods commenced its movement from the State of Manipur to cover a distance of 1095 kms. The e-way bill expired in the midnight of April 3, 2025 and by applying the third proviso under sub-rule (10) of Rule 138, the appellants could have extended the validity of the e-way bill upto 8.00 a.m. on April 4, 2025. However, it was not done so and the vehicle continued to move and about 90 kms. distance from the destination where the goods had to be delivered, the vehicle was intercepted on April 4, 2025 at 3.10 p.m. At the time when the vehicle was intercepted and detained, admittedly, the e-way bill had expired. However, there is no allegation against the appellants with regard to the quantity of the goods, the nature of the goods, the invoice details and other documents and the only charge against the appellants is that the e-way bill was not extended beyond the midnight of April 3, 2025.
6. Undoubtedly, transporting the goods without a valid e-way bill may result in an action to be initiated under Section 129(1) of the Act. However, it is not in all cases, where the e-way bill had expired. The authority can come to the conclusion that the penalty @ 200 per cent of the tax payable should be imposed. In the instant case, the appellants pleaded certain facts before the authorities stating that the highway was blocked due to political rally and the

visit of the Hon'ble Chief Minister post-cyclone in Jalpaiguri District where relief material was distributed to the general public of the area and therefore, the vehicle had to be diverted and this caused the delay and it is stated that the driver was not fully conversant that the e-way bill has to be extended, more particularly, when the vehicle had to cover only a distance of about 90 kms. to reach the destination. The copy of the weather report generated from the website of the Meteorological department has also been produced to justify the stand taken by the appellants that due to inclement weather and other conditions, the vehicle could not move at the desired pace.

7. Primary issue required to be considered is whether there is any intent to evade payment of tax. There is no such allegation against the appellants. That apart, the reasons given by the appellants, which led to the blockage of the Highway has not been disputed or dealt with by the original authority or the appellant authority. In such circumstances, it has to be seen whether the penalty @ 200 per cent has to be imposed. In the absence of any intent to evade payment of tax, in all cases where e-way bill has expired that too within less than 24 hours, the authority should take an informed decision and consider other aspects as well. In the instant case, the parties have not disputed any other document, nor the nature of the goods, nor its weight or any other documents concerning the vehicle in which the goods were being transported. Therefore, we are of the view that this is not a fit case where 200 per cent penalty should have been imposed on the appellants. In more and less similar circumstances in the case of **Assistant Commissioner, State Tax, Durgapore Range, Government of West Bengal Vs. Ahok Kuamr Sureka, Proprietor of Subham Steel: MAT 470 of 2022 dated May 12, 2022** the Court dismissed the appeal filed by the State and affirmed the order passed by the learned Single Bench which had set aside the penalty.

8. In any event, when the statute mandates that there should be a valid e-way bill, the appellants cannot shirk such responsibility. However, we will take note of the attending circumstances, which appeared to have prevented the appellants from getting the e-way bill valid within the eight hours. However, for the default committed by the appellants, which resulted in the movement of the goods without a valid e-way bill on April 4, 2025 up to 3.10 p.m. would definitely warrant a notional penalty and not penalty @ 200 per cent.
9. In the result, the appeal as well as the writ petition is allowed and the orders passed by the appellant authority and original authority levying penalty on the appellants @ 200 per cent is set aside and the penalty is reduced to Rs.25,000/-
10. The appellants having already remitted the entire penalty amount, the parties are directed to deduct Rs.25,000/- from the amount already remitted and refund the balance to the appellants within a period of three weeks from the date of receipt of server copy of this judgement and order.
11. In order to facilitate the refund, Rs.25,000/- which shall be recovered as penalty shall be equally divided towards the penalty under WBGST/CGST Act and the remaining amount be accordingly refunded under the respective enactments.
12. No costs.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)

