

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

HEARD ON: 07.08.2025

DELIVERED ON: 07.08.2025

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

**M.A.T. 1088 of 2025
With
I.A. No. CAN 1 of 2025**

**Sandip Kumar Pandey & Anr.
Vs.
The Assistant Commissioner of State Tax
Bureau of Investigation (South Bengal) Durgapur Zone & Ors.**

Appearance:-

**Mr. Pranit Bag
Mrs. Rita Mukherjee
Mr. Ghanashyam Jha
Mr. Rowsan Kr. Jha**

.....For the Appellants

**Mr. Amitabrata Roy, Ld. G.P.
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal**

.....For the State

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

1. This intra-Court appeal by the appellants/writ petitioners is directed against the order dated 7th May, 2025 in W.P.A. 9544 of 2025. The appellants had filed the writ petition challenging an order passed under Section 129(3) of the Central Goods and Services Tax Act, 2017 read with the relevant provisions of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") dated 3rd October, 2024 by which

penalty has been imposed on the appellants/writ petitioners under Section 129 (1) (b) of the Act.

2. The learned Single Bench declined to interfere with the order and rendered certain findings on the merits of the matter but, however, since there was an appellate remedy provided under the Act, relegated the appellants/petitioners to avail such remedy. Aggrieved by the same, the appellants are before this Court by way of this intra-Court appeal.
3. We have elaborately heard the learned counsel appearing for the parties.
4. The following facts are not in dispute. The appellant No.1 had purchased readymade garments from M/s. Ghosh Enterprises for which a tax invoice dated 30th July, 2024 was raised by the vendor and the goods were to be shipped to New Delhi and the writ petitioner No.1 is the proprietor of Shyam Enterprises. The description of the goods have been mentioned in the tax invoice alongwith a HSN/SAC Code, quantity, number of pieces, the price per piece and the total amount payable including 5% IGST and the Grand Total being Rs.30,25,260/-.
5. The vehicle, which was carrying the goods bearing registration No.HR 38AB 7042 was intercepted by the Assistant Commissioner of W.B.G.S.T. on 21st July, 2024 at 10.00 hours at Kalla More, NH – 2. The reasons set out in Form GST MOV – 02 is with a view to verify the genuineness of the goods in transit, its quantity etc. and/or tendered documents, physical verification of the goods were carried out and the report was generated in Form GST MOV-04 dated 23rd July, 2024 and there appears to have been no discrepancy in the description of the goods, as found in the tax invoice. Show-cause notice was issued in Form GST DRC – 01 dated 26th July, 2024 alleging that a spot verification was done by the State Tax Officer,

Bureau of Investigation at the declared place of business of M/s. Ghosh Enterprises and it appears that Mr. Siddhartha Ghosh, the proprietor of M/s. Ghosh Enterprises had stated that he does not run any business under any GSTIN number and the registration certificate has not been obtained by him and the registration certificate has been fraudulently obtained by misusing his identity proof. Based on these allegations, which remained uncorroborated, the authority viz. the Assistant Commissioner came to the conclusion that the tax invoice furnished by the appellants/writ petitioners is fake as well as the way bill generated using the details in the tax invoice cannot be considered to be proper supporting document and hence, stands rejected and the case is liable to be disposed of in accordance with Section 129(1)(b) of the Act. Copy of the detailed notice was also appended to the said form. The appellants/writ petitioners appears to have not filed their reply to the show-cause notice but, however, when hearing notice dated 25th September, 2024 was issued, they filed a reply dated 27th September, 2024 contending that they had purchased the goods under the said tax invoice and generated the e-way bill and the same documents were submitted at the time when the vehicle was intercepted and the tax invoice, e-way bill and consignment note shows the details of the procurement of goods and that the appellants/writ petitioners are the owners of the goods.

6. Further, the appellants/writ petitioners stated that the payment details cannot be provided immediately because the payment in respect of the goods in question will be done within two weeks after the goods reaches the destination. The appellants referred to Rule 138A of the W.B.G.S.T. Rules and submitted that the goods were being transported with the valid

documents, as mentioned in the said Rule. Further, the appellants placed reliance on the CBIC Circular No.76/50/018-GST dated 31st December, 2018 and a decision of this Court. The authority, while adjudicating the show-cause notice came to the conclusion that the consignment was being transported without valid documents, which is in contravention of Section 68 of the W.B.G.S.T. Act and Rule 138A of the W.B.G.S.T. Rules and attracts penalty under Section 129 of the Act.

7. On going through the show-cause notice, we find that the authority accepted the stand taken by Mr. Ghosh as “Gospel Truth” without conducting any verification and without putting the appellants/writ petitioners on notice about the stand taken by M/s. Ghosh Enterprises and straightway proceeded to hold that the transport of the goods was without valid documents. It is rather surprising as to how the Department accepted the stand taken by Mr. Siddhartha Ghosh without any verification on the date when the goods were detained, on the date when spot inspection was made by the authority in the premises of the M/s. Ghosh Enterprises and more particularly, when the GSTIN of the M/s. Ghosh Enterprises was active as of August 1, 2024.
8. Assuming a case where goods have been transported and there is suspicion with regard to place of origin of the case or such other matters, normally the tax authorities cause verification and if the consignee/selling dealer takes a stand that he has not issued the tax invoice and he has no role to play for the transport of the goods, immediately the Department will cause verification of the correctness of the stand taken by the consignee/selling dealer.

9. In the case on hand, it is rather surprising that no such verification was caused before issuance of show-cause notice to the appellants/writ petitioners and they accepted the stand taken by Mr. Ghosh as absolute true. The authority has erred in doing so, which has ultimately resulted in issuance of order of penalty.
10. Section 129 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 subject to the conditions stipulated in Clauses (a), (b) and (c) of sub-section 1 of Section 129.
11. Section 68 of the Act deals with inspection of goods in movement. Sub-section (1) of section 68 states that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed. Sub-section (2) states that the details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed. Sub-section (3) states, where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for

verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

12. The documents and devices, which are as prescribed under Rule 138A of the Rules, deals with documents and devices to be carried by a person-in-charge of a conveyance. The sub-rule (1) states that the person in charge of a conveyance shall carry— (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner.
13. It is not in dispute that the vehicle, on the date when it was intercepted and the goods were detained, the documents to be carried as stipulated under Rule 138A(1)(a) and (b) were carried by the transporter, who is the second appellant/writ petitioner. Therefore, on the date when the vehicle was intercepted and the goods were detained, there is no contravention of Section 68 read with Rule 138A. If such be the position, Section 129 would have no application to the facts and circumstances of this case. Apart from that, the department has not been able to establish that there was an intention to evade payment of tax by the appellants/writ petitioners, which is a pre-requisite to invoke the power under Section 129 of the Act.
14. The Circular issued by the CBIC 31st December, 2018 is of relevance. The Circular has clarified certain issues in Serial No.6 of the Circular. The issue was “who will be considered as the owner of the goods for the purposes of Section 129(1) of the CGST Act?” It was 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 the instant case, the invoice and the stipulated documents clearly show that the goods were sent to the proprietorship firm of the appellants/writ petitioners and for all legal purposes, the appellants/writ petitioners is deemed to be the owner of the goods.

15. It may be a different case if the department had caused a verification of the stand taken by M/s. Ghosh Enterprises and before coming to a conclusion that his stand is correct, the appellants/writ petitioners ought to have been put on notice, otherwise, it would be in violation of the principles of natural justice as the appellant is being condemned without being heard.
16. If the procedure adopted by the Department in the instant case, is followed in other cases, it may lead to various other consequences, which undoubtedly, would be against the interest of Revenue.
17. It appears that subsequently the registration of M/s. Ghosh Enterprises had been cancelled. However, there is no record placed before the Court to support such a stand. Even assuming the registration certificate of M/s. Ghosh Enterprises was subsequently cancelled, it can have no impact on the genuineness of the transaction done by the appellant as the vehicle was detained alongwith the goods for the purpose of verification of the genuineness of the goods in transit i.e. its quantity etc., and/or tendered documents require further verification. Therefore, the action initiated against the appellants/writ petitioners based on an uncorroborated stand taken by Mr. Siddhartha Ghosh is wholly illegal and unsustainable in law.
18. Accordingly, the appeal is allowed along with the connected application (I.A. No. CAN 1 of 2025). The order passed in the writ petition is set aside and the order imposing penalty under Section 129(1)(b) is set aside. The respondents/Department are directed to refund the penalty collected from

the appellants/writ petitioners within a period of eight weeks from the date of receipt of server copy of this judgment and order.

19. No costs.
20. 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.)