

**IN THE HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 597 of 2025

Shekhar Kumar @ Shekhar Bagaria

VS.

The State of West Bengal & Ors.

For the petitioner	: Mr. Dhiraj Lakhotia Ms. Radhika Agarwal Ms. Meghana Joshi Ms. Khushi Kundu advocates
For the State	: Mr. Joyjit Choudhury, Ld.AAG Ms. Rima Sarkar advocates

Heard on : 03.04.2025

Judgment on : 03.04.2025

Hiranmay Bhattacharyya, J.:-

1. This writ petition is at the instance of a registered person under the West Bengal Goods and Service Tax Act, 2017(for short “the 2017 Act”) and is directed against the order of the Additional Commissioner, State Tax, West Bengal, Siliguri Circle dated November 14, 2014 vide Appeal Case No. GST/APP/174/2024-2025 thereby affirming the penalty order dated May 22, 2024 passed by the Proper Officer & Deputy Commissioner of State Tax, Bureau of Investigation, North Bengal Headquarter, Siliguri in order reference No. ZD190524037411K.

2. The conveyance carrying the goods in question was intercepted by a team of officials on 17th of May, 2024 at about 9:15 P.M at Sitaguri. It is alleged that at the time of interception the person in-charge of the conveyance could not produce any tax invoice relating to the movement of goods. In view there of the goods were detained by issuing an order of detention.
3. Thereafter, the authorities issued a show-cause notice proposing the penalty payable by the petitioner. In the said show-cause notice apart from the ground of non-production of tax invoice it was stated that the vehicle was intercepted at a point which is not en route geographically as per the declaration made in the E-Way bill.
4. The penalty proposed in the show-cause notice was however confirmed by the order dated May 22, 2024 passed by the adjudicating authority as the penalty proposed in the show-cause notice was duly paid. Accordingly, the authorities issued a release order and the goods were released thereafter.
5. Being aggrieved by the order imposing penalty upon the petitioner, an appeal under Section 107 of the West Bengal Goods and Service Tax Act, 2017 was preferred. The Appellate authority rejected the said appeal by the order dated November 14, 2024.
6. Being aggrieved by the order of the Appellate authority the petitioner has approached this Court by filing this writ petition.
7. The learned Advocate appearing for the petitioner submits that the person in-charge of a conveyance is not required to carry the physical copy of the tax invoice and the image of such invoice as available in the mobile of the person in-charge of the conveyance amounts to sufficient compliance of the provisions under Section 138A of the West Bengal Goods and Service Tax Rules, 2017(for short “the 2017 Rules”). In support of such contention he placed reliance upon a decision of a Co-ordinate Bench by an order dated April 3, 2023 in WPA 3415 of 2022 in the case of **J.K. Jain Buildtech India Pvt. Ltd-Vs-Assistant Commissioner, Revenue Bureau**

of Investigation North Bengal Head Quarter Siliguri & Ors. The learned Advocate for the petitioner further submits that mere deviation in the route with regard movement of the goods cannot be the ground for imposition of penalty under Section 129 of the 2017 Act. In support of such contention the said learned Advocate placed reliance upon the decision of the Hon'ble High Court of Karnataka in the case of **Joint Commissioner of Commercial Taxes (Appeals)-3, Bengaluru -Vs- Transways India Transport** reported at [2024] 164 taxmann.com 673 (Karnataka). The said learned Advocate also placed reliance upon a decision of the Hon'ble High Court at Allahabad in the case of **M/S Vishal Steel Supplier-Vs- State of U.P. and 3 Others** reported at **2024:AHC:113213** in support of the aforesaid contention. He further refers to a decision of the Hon'ble Division Bench of this Court in **FMA 136 of 2025** in the case of **Ashok Sharma-Vs-The State of West Bengal & Ors.** order passed on February 11, 2025 in support of his contention that Section 129 of the 2017 Act could not have been invoked if there is no intention to evade payment of tax.

8. Per Contra, Ms. Sarkar, the learned Advocate appearing for the State submits that Section 138A of the 2017 Act specifically provides that the physical copy of the tax invoice are to be carried by the person in-charge of a conveyance and upon being required to produce the documents prescribed under the said Rule the person in-charge of the conveyance shall be liable to produce the documents and allow inspection of the goods. She submits that since the provisions of the relevant statute and the rules framed thereunder were not complied with, the authorities were justified in detaining the goods and thereafter releasing the same upon payment of penalty.
9. Heard the learned Advocates for the parties and perused the materials placed.

10. Section 68 of the 2017 Act deals with inspection of goods in movement. Sub-section 3 of Section 68 empowers the intercepting officials to require the person in-charge of the conveyance to produce the documents prescribed and upon being required to do so the said person shall be liable to produce the documents and devices and also allow the inspection of the goods.
11. For the purpose of better appreciation of the contentions of the respective parties it would be beneficial to recapitulate the provisions laid down in Rule 138A of the 2017 Rules and for such purpose the relevant portion of the said Rules is extracted hereinafter.

[138A. Documents and devices to be carried by a person-in-charge of a conveyance.

(1) 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 or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel:

[Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in PART A of FORM GST EWB-01.]

[(2) In case, invoice is issue in the manner prescribed under sub-rule (4) of rule 48, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.]

12. Clause (a) of sub-Rule (1) of Rule 138A of the 2017 Rules states that the person in-charge of a conveyance shall carry the invoice or bill of supply or delivery chalan, as the case may be. Clause (b) of sub-Rule (1) of Rule 138A speaks of a copy of the e-way bill. Sub-Rule 2 of Rule 138A deals with invoices issued in the manner prescribed under Sub-Rule (4) of Rule 48. It states that such invoice may be produced electronically for verification by the proper officer in lieu of physical copy of such tax invoice.
13. Upon a conjoint reading of Sub-Rule 1(a) and Sub-Rule 2 of Rule 138A of the 2017 Rules, this Court holds that the person in-charge of a conveyance shall carry the physical copy of the tax invoice, except in cases falling under sub-Rule (2) of Rule 138 A of the 2017 Rules.
14. The view of this Court is also supported by the decision of the coordinate Bench in J. K. Jain Buildtech India Pvt. Ltd. (*supra*).
15. It is not the case of the petitioner that the tax invoice was produced electronically. Therefore, the person in-charge of the conveyance was under a statutory obligation to carry the physical copy of the tax invoice. For such reason, this Court is not inclined to accept the contention of the learned Advocate for the petitioner that displaying the image of the tax invoice from the mobile set of the person in-charge of the conveyance amounts to sufficient compliance of the requirements under Rule 138A(1)(a) of 2017 Rules.

16. Now, this Court has to consider the other ground raised in the show-cause notice for imposition of penalty.
17. It has alleged in the show-cause notice that the conveyance was intercepted at a point which is not en route geographically as per the declaration made in the e-way bill.
18. The learned advocate appearing for the State, in course of her argument could not point out either from the 2017 Act or from the Rules framed thereunder any provision which casts an obligation upon the selling dealer to disclose the route to be taken during the transportation/ movement of goods.
19. In ***M/S Vishal Steel Supplier*** (*supra*) the Hon'ble High Court at Allahabad noted that there was a provision under the VAT Act to disclose the route during transportation of goods to reach its final destination whereas under the GST Act, there is no specific provision which bounds the selling dealer to disclose the route to be taken during transportation of goods. The Hon'ble Court opined that once the legislature in its wisdom has chosen to delete the said provision, the authorities were not correct in passing the seizure order even if the vehicle was not on regular route or on different route.
20. In ***Transways India Transport*** (*supra*) it was held that merely because of the fact that a particular direction was preferred for delivery of consignment to the place destined for, an inference cannot be drawn with regard to the intention to evade taxes.
21. This Court holds that mere change of route or even if the conveyance is intercepted at a location which may not be en route geographically as per the declaration made in the e-way bill, cannot be a ground for invocation of the provisions of Section 129 of the 2017 Act as no interference can be drawn in such cases that there was intention to evade taxes.

22. It is not in dispute that the e-way bill was produced at the time of inspection of the goods carried by the conveyance. It is not the case of the revenue that there is any discrepancy as to the quality or quantity of the goods as mentioned in e-way bill with that found at the time of physical inspection of the goods which were in the conveyance.
23. The appellate authority in its order dated January 16, 2025 has not returned any finding that there was any intention on the part of the petitioner to evade the payment of taxes. Though the petitioner may not have produced the tax invoices either before the adjudicating authority or before the appellate authority but the fact remains that a copy of such tax invoice has been annexed to this writ petition. It is also not the case of the revenue that there has been any default or short payment in payment of taxes, duty. The veracity of the tax invoice which is annexed to this writ petition has also not been questioned by the revenue in course of hearing of this writ petition.
24. The Hon'ble Division Bench in **Ashok Sharma** (*supra*) held that in case there is no dispute as to the quantity or quality of the goods and also that there is no intention to evade payment of tax the provision under Section 129 of the 2017 Act could not have been invoked. The said decision shall squarely apply to the facts of the case on hand.
25. This Court accordingly holds that there was no justification for invocation of Section 129 of 2017 Act.
26. For all the reasons as aforesaid, the order passed by the appellate authority dated November 14, 2024 affirming the penalty order passed by the original authority dated May 22, 2024, are set aside. The writ petition stands allowed.
27. Petitioner will be at liberty to approach the concerned authority for refund of the penalty already paid by the petitioner. If such an approach is made, the authority shall refund the amount as expeditiously as possible but

positively within a period of three weeks from the receipt of a server copy of this order along with the copy of the application directed to be submitted in terms of this order.

28. There shall be, however, no order as to costs.
29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)