

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

WPA 1031 of 2025

Hari Rama Constructions @ Moka Ramakrishna.

Vs.

State of West Bengal & Ors.

For the petitioner	: Mr. Dhiraj Lakhotia, Adv. Ms. Radhika Agarwal, Adv. Mr. Meghana Joshi, Adv. Ms. Khushi Kunden, Adv.
For the State respondent	: Mr. Momenur Rahman, Adv. Mr. Pretom Das,
Heard On	: 09.7.2025
Order On	: 09.07.2025

Om Narayan Rai, J.

1. The petitioner has approached this Court assailing an order dated March 28, 2025 passed by the appellate authority under Section 107 of the West Bengal Goods and Services Act, 2017, whereby the petitioner's appeal against the order dated August 8, 2024 passed by the adjudicating authority was dismissed and the penalty imposed upon the petitioner was confirmed.

The petitioner is a partnership firm, which had moved its own construction equipment namely, one Volvo EC210D Crawler Excavator along with its ancillary attachments from the site of job at Lungthul(L) in Manipur to the other project site at Jharkhand. Such necessitated was existed in view of the completion of job at the earlier site at Lungthul(L). The petitioner moved from the said site at Lungthul(L) upon generating an e-way bill dated July 24, 2024 and a delivery a challan of the same date was also issued in such regard.. The e-way bill(Annexure P-1 at page 25 of the writ petition) evidences the details of delivery challan.

2. On July 30, 2024, the petitioner's vehicle was intercepted by the respondent no.2 at Jugibhita for inspection the goods and documents in transit.

3. At the time of inspection of the petitioner's goods, the driver and person-in-charge of the vehicle tendered tender the e-way bill along with relevant purchase invoice and work order to the inspecting officer but the driver was unable to produce a physical copy of the delivery challan, although a photo copy thereof was available as a part of the e-way bill in digital form(Soft Form).

4. The driver's statement was recorded and order dated July 31, 2024 in form GST MOV-2 was issued by the proper officer directing physical verification of the goods conveyance under Section 68(3) of the said Act on the ground of non-production of the physical copy of the delivery challan.

5. The proper officer did not find any discrepancy in the goods that were being transported by the petitioner.

6. Thereafter, on August 2, 2024, the respondent no.2 i.e. Assistant Commissioner issued an order of detention in FORM GST MOV-06 under Section 129(1) of the CGST/WBGST Act, 2017 read with Section 230 of the IGST Act, 2017.

7. On August 10, 2024 a notice under Section 129(3) of the WBGST Act and CGST Act, 2017 read with Section 20 of the IGST Act was issued by the Assistant Commissioner of Revenue to the petitioner's driver(person in-charge of the vehicle) to show cause as to why penalty would not be imposed for contravention of the provisions of WBGST/CGST Act, 2017 and IGST Act, 2017 as also as well as the Rule 138 and 138A WBGST/CGST Act, 2017.

8. Thereafter, an order of demand and tax of penalty (adjudication order) was passed on August 8, 2024. The petitioner paid the penalty and got the goods released from the custody of the respondents.

9. The petitioner carries the said order dated August 10, 2024 in appeal before the appellant authority under Section 107 of the said Act of 2017. The appellate authority rejected the petitioner's appeal by order dated March 28, 2025, which has been impugned in the present writ petition.

10. Mr. Lakhotia, learned counsel appearing for the petitioner invites the attention of this Court to the appellate order dated March 28, 2024 and submits that appellate authority has recorded a clear finding that the case before it was neither one pertaining to levy of tax nor one which related to escapement or evasion of tax but the case was one of violation of the regulatory provisions in case of movement of goods under Section 68 of WBGST Act read with corresponding sections of the CGST Act and Section 20 of IGST Act. It is submitted that it is clear from the aforesaid that there is no amount of tax involved in the instant proceeding. It is further submitted that the facts of the case itself would make it evident that the petitioner had no intention to evade tax and that the failure on the part of the petitioner's driver to produce the delivery challan physically at the time of inspection was a minor aberration.

11. In support of his contention that if there was no intention to evade tax and there was no dispute as regards the quality and quantity of the goods in transit, the provisions of

Section 129 of the said Act of 2017 should have been invoked, learned counsel for the petitioner relied on the following decisions:

1. *Ashok Sharma Vs. State of West Bengal*, reported in (2025) 171 taxmann.com 682(Cal)
2. *Kamal Envirotech(P) Ltd. Reported in (2025) 170 taxmann.com 598(Delhi)*
3. *Shekhar Kumar @ Shekhar Bagaria Vs. State of West Bengal*, reported in (2025) taxmann.com 233(Cal).

12. Mr. Rahaman, learned counsel appearing for the State respondent submits that it was mandatory for the person-in-charge of the vehicle to produce the delivery challan at the time of inspection and non-production thereof would definitely entail impose of penalty under applicable laws. It is submitted that the order passed by the adjudicating authority and the appellate authority are valid and proper and the same deserve no interference. It is further submitted that as the petitioner already paid the penalty, therefore, there is deemed admission of violation of the relevant provisions on the part of the petitioner and the appellate order can no longer be challenged.

13. Heard learned advocates appearing for the parties and considered the material on record.

14. Upon a plain reading of the provision of Section 138A of the WBGST Rule 2017, it is apparent that a person-in-charge of a vehicle or goods is required to produce the delivery challan at the time of inspection of the goods. Indeed, such mandate of the law cannot be read to mean that in all cases including cases where although the delivery challan is in existence and can be produced later yet for some reason the person in charge of the vehicle or goods is unable to produce the same at the time of inspection, such person should be saddled with penalty, even if such person can produce or has produced the delivery challan before the relevant authority later on.

15. It is settled law that a provision must be read meaningfully. A provision pertaining to penalty can only be attracted in a situation where it can be demonstrated that the person sought to be visited with penalty has violated the law on purpose or with an intention to violate the spirit and object of the law.

16. The very grain of the WBGST Act or the CGST Act is to ensure that taxes are paid in accordance with the provision contained therein and till such time such object is achieved and no intention is shown to exist to defy the law, penalty should not be imposed.

17. In the case at hand, it is evident that the petitioner did possess the delivery challan. It is also the case of the respondent that e-way bill was there. The e-Way bill contains the details of delivery challan. In such a situation, it would be a very pedantic reading of the relevant rule if a person in possession of e-Way bill, having paid taxes would stand to be penalized for the violation of a mere letter of law for being unable to produce delivery challan at the time of inspection.

18. The decisions of the Hon'ble Division Bench in the case of Ashok Sharma(Supra) and the Co-ordinate Bench of this Court in case of *Shekhar Kuamr(supra)* as well as of the Delhi High Court in the case of *Kamal Envirotch(P) Ltd. (Supra)* clearly apply to the fact of the present case.

19. As regards the contention of Mr.Rahaman that since the petitioner has already paid the penalty he should be deemed to have admitted violation of law, I am afraid such contention cannot be accepted. It is settled law that an order can be challenged in appeal even after compliance and an appeal can always be preferred upon complying the order, subject to the result of the appeal. The case had hand is exactly so. In such view of the matter, the order dated March 28, 2025 passed by the appellate authority under Section 107 of the WBGST Act read with CGST ACT, 2017 as well as the order dated August 8, 2024 passed by the Assistant Commissioner of Revenue(North Bengal), Siliguri are set aside.

20. The petitioner shall be at liberty to approach the respondent authority seeking refund of the penalty already paid by the petitioner. If such approach is made, the relevant respondent authority shall refund the penalty paid by the petitioner immediately but not later than a period of six weeks from the date such approach is made.

21. Urgent certified photo copy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)