

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

**HEARD ON: 20.06.2025
DELIVERED ON: 20.06.2025**

**PRESENT:
THE HON'BLE JUSTICE GAURANG KANTH**

W. P. A. 1240 OF 2025

**S N TRADING CO. & ANR.
VERSUS
UNION OF INDIA & ORS.**

Appearance:-

Mr. Amalesh Ray, Sr. Adv
Mr. Nigam Mittal, Adv

.....**For the Petitioner**

Mr. Ratan Banikaul, Adv
Mr. Bishwaraj Agarwal
Mr. Saptarshi Banik, Adv

..... **For the respondents**

JUDGMENT

Gaurang Kanth, J. :-

1. The petitioner has filed the present writ petition challenging the order dated 02.06.2025 passed by the Assistant Commissioner (HAEU), CGST & CX, Siliguri Commissionerate under Section 129(3) of the Central Goods and Services Tax Act, 2017, read with corresponding provisions of the State GST Act, 2017, the Union Territory GST Act, 2017, and the Integrated GST Act, 2017.

2. It is the case of the petitioner that the petitioner No. 1, acting as consignor, dispatched 350 bags of Assam dried areca nuts having a net weight of 24,500 kg to the consignee, M/s Vamika Traders, situated at Kanpur. The goods were transported through a vehicle bearing registration No. UP14HT 7566 belonging to Nagpur Assam Roadlines. The goods were accompanied by all requisite documents, including the e-way bill, e-invoice, and consignment note, as mandated under Rule 138A of the CGST Rules, 2017. As per the tax invoices, the net weight was mentioned as 24,500 kg (350 bags), with the gross weight recorded as 24,850 kg. thereby amounting to a taxable value of Rs. 32,52,500/-, attracting a total tax liability of Rs. 1,77,625/-.
3. On 16.05.2025, the officers of the Headquarters Anti-Evasion Unit (CGST & CX), Siliguri Commissionerate, intercepted the said vehicle near Pradeep Hotel, Fulbari, and detained it for physical inspection. A weighment report dated 17.05.2025 was prepared, indicating that the gross weight of the vehicle along with goods was 36.310 MT, while the unladen (tare) weight of the vehicle was recorded as 11.390 MT. Based on this, the net weight of the goods was found to be 26.920 MT, implying that there was an excess of 420 kg of goods.
4. Subsequently, a detention order dated 19.05.2025 was passed. Thereafter, a notice under Section 129(3) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 was issued on 26.05.2025 and served upon the petitioner. The petitioner submitted a reply on 27.05.2025.

5. The Assistant Commissioner (HAEU), CGST & CX, Siliguri Commissionerate passed the final order dated 02.06.2025, wherein the taxable value of the goods was assessed at the rate of Rs. 240/- per kg, instead of the declared rate of Rs. 145/- per kg as per the tax invoices. The petitioner contends that the invoice-declared value qualifies as the "transaction value" under Section 15 of the CGST Act, and, therefore, must be accepted unless proven otherwise by the respondent with cogent evidence.
6. Aggrieved by the said order, the petitioner has approached this Court by filing the present writ petition.
7. During the course of the argument, this Court pointed out to the learned senior counsel for the petitioner that the impugned order dated 02.06.2025 is appealable under Section 107 of the CGST Act, 2017 and inquired why he is not availing the statutory remedy of appeal. The learned senior counsel for the petitioner submits that the impugned order suffers from lack of jurisdiction and that insisting on the statutory pre-deposit for filing an appeal would result in grave injustice, especially when the tax liability has been determined on the basis of unsubstantiated market value rather than the declared transaction value. Learned Senior Counsel for the Petitioner relied upon 2022 (16) SCC 447 to substantiate that appeal is not the appropriate remedy for him in the present case.
8. Learned counsel further submits that the conclusion regarding excess goods (420 kg) was arrived at by using a weighment slip which does not conform to any statutory procedure under the CGST Act or Rules. It is

contended that the respondent ought to have physically weighed the goods in the presence of the driver. The reliance on the weighment slip, allegedly not authenticated or accurate, is therefore misplaced. Moreover, the market rate of Rs. 240/- per kg used by the respondent has no legal basis, especially when the transaction value of Rs. 145/- per kg is duly supported by proper documentation. Learned Counsel for the Petitioner submits that the Respondent authorities relied upon reasons which were not part of the show cause notice and hence there was no occasion for the Petitioner to counter these points. It is also the contention of the learned senior counsel for the petitioner that the maximum tax penalty imposable in the present case cannot exceed more than Rs. 5000/-.

9. Learned senior counsel for the petitioner has relied on the judgment in ***Kamal Envirotech (P). Ltd. Vs. Commissioner of GST*** report as ***(2025) 170 Taxmann.com 508 (Delhi)***, ***Amplus Kn One Power (P.) Ltd. Vs. Assistant Commissioner State Tax***, reported as ***(2024) 166 Taxmann.com 479***, Order dated 11.03.20024 passed by this Court in ***WP No. 365/2024, M/s. Tiwari Furniture Vs. State of West Bengal and Ors.*** Order dated 11.02.2025 passed by this Court in ***FMA 136/2025 Ashok Sharma Vs. The State of West Bengal*** and Order dated 14.03.2022 passed by the Punjab & Haryana High Court in ***CWP 25057/2021, M/s. Raghav Metals Vs. State of Haryana and others*** to substantiate that no penalty can be imposed unless the Assessee has no intention to evade tax. He further relied upon ***Bishnu Supply Co. vs. State of UP*** reported ***(2024) 167 Taxmann.Com 350*** and

Rajeev Traders vs. Union of India reported in **(2022) 142 Taxmann.Com 420**, to substantiate that penalty cannot be imposed by enhancing the valuation of goods. He relied upon **2024 (161) Taxmann.Com 205 and 2009 (9) SCC 466** to establish that respondents can not incorporate new grounds at a later stage which were not part of the record.

10. Learned counsel for the respondent raises a preliminary objection regarding the maintainability of the writ petition, asserting that the petitioner has bypassed the statutory appellate remedy under section 107 of the CGST Act. He further submits that as per the driver's statement dated 18.05.2025, the transporter mentioned in the documents was Nagpur Assam Roadlines, while the goods were loaded by Surendra Roadlines. The driver expressed ignorance about the consignor, consignee, and the stated transporter, and also noted that the loading point lacked any identification. The respondent contends that the weighment was conducted in presence of the driver and two independent witnesses following the usual administrative practice in such matters. The valuation at Rs. 240/- per kg was based on prior similar consignments and prevailing market rates. There were too many discrepancies and hence the respondent authorities rightly doubted the genuineness of the transaction and imposed the penalty. Further, there is no procedural irregularity and violation of natural justice which warrants the interference of this court. The petitioner can always file a statutory appeal and take all his grounds therein.

11. This Court has carefully considered the submissions of both parties and examined the records placed on file.
12. In the present case, the respondent authorities, after detaining the goods in question and conducting a weighment exercise, concluded that there was an excess quantity of 420 kg of Assam dried areca nuts, beyond what was declared in the tax invoice and accompanying documents. The said conclusion was drawn based on a weighment slip, which recorded the gross weight of the loaded vehicle as 36.310 MT and the unladen weight as 11.390 MT, thus indicating a net load of 26.920 MT. The declared net weight in the documents, however, was only 24,500 kg. The court notes that the petitioner has not placed on record any reliable material to dispute the said weighment figures.
13. Furthermore, the impugned order records that the documents submitted by the petitioner including the tax invoice, e-way bill, and consignment note do not disclose the approximate weight of each bag, which could have served to rebut the respondents' inference of excess quantity. Although, the petitioner was granted an opportunity to respond to the notice issued under Section 129(3), yet no supplementary documents, such as the original purchase invoice from the supplier, weighment certificate issued at the time of loading, or proof of bank transaction showing consideration paid by the consignee, were submitted to establish the genuineness of the transaction. The bank statements of the petitioner, as examined by the authority, also do not reflect any payment either in full or part by the consignee M/s Vamika Traders. These omissions, when considered cumulatively, give

rise to a legitimate doubt regarding the authenticity of the movement of goods and the genuineness of the transaction, especially in light of the driver's own statement that he was unaware of the consignor or consignee and that the goods were loaded by a different transporter than the one named in the documents.

14. This Court has carefully examined the impugned order dated 02.06.2025 in the context of the material available on record, the statutory provisions under the CGST Act, and the principles of natural justice. The impugned order reflects due application of mind to the facts and submissions presented. The order sets out the factual matrix, records the reply submitted by the Petitioner, and provides cogent reasons for rejecting the same. No procedural impropriety, manifest illegality, or violation of the principles of natural justice has been demonstrated by the Petitioner. The authorities have acted within the scope of their powers under Section 129(3) of the CGST Act, and their conclusions are based on a reasonable appreciation of the available evidence. The valuation adopted by the Respondent, although disputed by the Petitioner, cannot be adjudicated upon by this Court in the present writ jurisdiction, as it involves factual determinations that are more appropriately examined in the appellate proceedings under the statutory framework. The power of judicial review under Article 226 of the Constitution does not extend to reappraisal of evidence or substitution of factual findings, particularly when an efficacious alternative remedy is available under the statute.

15. In light of the foregoing discussion, this Court is of the considered view that the writ petition is devoid of merit and does not warrant interference under Article 226 of the Constitution. Accordingly, the present writ petition stands dismissed. However, the Petitioner is granted liberty to pursue the remedy of statutory appeal under Section 107 of the CGST Act, 2017, if so advised. In the event the Petitioner prefers such an appeal within the time prescribed under law, the appellate authority shall consider and dispose of the same expeditiously and strictly in accordance with law, without being influenced by any observations made in the present order, which are confined to the adjudication of the writ petition on the limited question of maintainability and procedural propriety.
16. Since no affidavit is called for, allegations made in the petition are deemed to have been denied.
17. Certified copy of this judgment, if applied for, be given to the learned Advocates for the parties on usual undertaking.

(Gaurang Kanth, J.)