Form No. J.(2)
Item No.1
Pallab/KS AR(Ct.)

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
FROM PRINCIPAL BENCH

HEARD ON: 26.06.2025
DELIVERED ON: 26.06.2025

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

M.A.T. 47 of 2025
With
I.A. No. CAN 1 of 2025

Sri Vinod Maurya.
Vs.
Union of India & Ors.

Appearance:-
Mr. Amales Ray, Sr. Adv.
Ms. Mousumi Bhowal ....for the appellant

Mr. Ratan Banik
Mr. Bishwaraj Agarwal
Mr. Saptarshi Banik ....for the CGST & CX Authority

Mr. Falguni Bandyopadhyay.........for the Union of India

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 20th June, 2025 in W.P.A. 1241 of 2025. In the said writ petition, the appellant/writ petitioner challenged an order passed by the Assistant Commissioner (HAEU) CGTST & CX, Siliguri Commissionrate dated 3rd June, 2025 passed under Section 129(3) of the Central Goods and Services Tax Act, 2017 (for brevity, "CGST Act, 2017") read with relevant provisions

of the State/Union Territory and Goods & Services Tax Act, 2017, and Integrated Goods and Services Tax Act, 2017 (for brevity, "IGST Act, 2017").

2. The goods, which are stated to belong to the appellant/writ petitioner viz. areca nuts were being transported in a vehicle bearing Registration No. AP39UN 9869 and was intercepted on 17th May, 2025 at about 9:15 p.m. in Jalpaiguri District. The goods were examined and the net weight of the goods alongwith the vehicle was taken and a weighment slip was generated.

3. The learned senior advocate appearing for the appellant would vehemently contend that no such weighment was made. However, this is touching upon the merits on which we do not wish to make any comment.

4. Be that as it may, in terms of the conclusion arrived at by the adjudicating authority, there is a difference of weight of 590 kgs, i.e. the total weight deducted by the unladen weight of the vehicle, as mentioned in the registration certificate book. Adjudication process was undertaken and an order of penalty was passed. There are three allegations against the petitioner. Firstly, with regard to the difference in the quantity of goods, secondly, the appellant could not produce any bill of supply or tax invoice and thirdly, no proof of payment either full or in part was produced.

5. The learned Single Bench by the impugned order refused to entertain the writ petition as there was an efficacious alternate remedy available to the appellant by way of an appeal before the appellate authority. It was made clear by the learned Single Bench that in the event, the appellant files a statutory appeal, the appeal will be decided on merits uninfluenced by any observation made in the impugned order. The appellant being aggrieved by such order, has preferred the present appeal.

6. We have elaborately heard Mr. Amales Ray, learned senior advocate assisted by Ms. Mousumi Bhowal, learned advocate for the appellant, Mr. Ratan Banik, learned advocate assisted by Mr. Bishwaraj Agarwal and Mr. Saptarshi Banik, learned advocates for the CGST & CX authorities including Mr. Falguni Bandyopadhyay, learned advocate appearing for the Union of India.

7. So far as the conclusion arrived at by the learned Single Bench for not entertaining the writ petition cannot be faulted and we are in full agreement with the said conclusion, as disputed questions of fact are involved to test the correctness of the order of penalty dated 3rd June, 2025.

8. Therefore, the learned Single Bench was right in relegating the appellant to avail the statutory appellate remedy. Therefore, we have to dismiss the appeal on the said ground.

9. Considering the penalty order, we find that apart from penalty being imposed under Section 20 of the IGST Act read with Section 129(1)(a) of the CGST Act, there is penalty of Rs.2,00,000/- (Rupees Two Lakh only) imposed on the vehicle for the conveyance of the goods and the conveyance and the vehicle was directed to be released upon payment of Rs.2,00,000/- (Rupees Two Lakh only) and such penalty was imposed under Section 20 of the IGST Act read with first proviso to Section 129 (6) of the CGST Act.

10. As we have already held that a writ petition was rightly not entertained, the appellant has to necessarily avail a statutory appellate remedy. Two things needs to be considered; firstly, if the vehicle is allowed to be retained by the Department, then it is bound to deteriorate and the owner of the vehicle will be put to prejudice. Secondly, with regard to the goods, which are

being detained and not seized till date, are perishable goods. Therefore, even assuming certain orders are passed by the statutory appellate authority or the revisional authority etc., by then, the goods will be of no value. Therefore, while affirming the order passed by the learned Single Bench and directing the appellant to file a statutory appeal within a period of 15 days from the date of receipt of the server copy of this order, we issue the following directions.

11. The respondents/department are directed to sell the goods, which are stated to be dried areca nuts by calling for a public auction and the appellant is also entitled to participate in such auction.

12. Upon the goods being sold and the successful bidder remitting the amount, the amount shall be retained by the department preferably in an interest bearing account and shall abide by the ultimate orders that may be passed by the appellate authority. As observed, the appellant will also be entitled to participate in the auction to be called for by the respondents authority.

13. So far as the vehicle is concerned, the respondents authority is directed to release the vehicle on payment of Rs.50,000/- (Rupees Fifty Thousand) and furnishing a bond of Rs.1,50,000/-(Rupees One Lakh Fifty Thousand) undertaking to produce the vehicle as and when required. This payment shall be subject to the outcome of the appeal before the statutory appellate authority.

14. The sale of the areca nuts shall be done at the earliest, preferably within a period of 45 days from the date of receipt of server copy of the order and the vehicle in question shall be released within seven days from the date on which the appellant remits a sum of Rs.50,000/- (Rupees Fifty Thousand)

and furnishes a bond of the remaining amount for the satisfaction of the respondents authority.

15. Thus, the appeal stands disposed of on the above terms.

16. No costs.

17. 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.)