Form No.J(2)

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1693 of 2025

M/s. Maa Kali Traders
-versus
Union of India & Ors.

For the Petitioner	:	Mr. Pulhit Verma, Adv. Ms. Pooja Saha, Adv. Mr. Gopal Roy, Adv.
For the Respondents	:	Mr. Dilip Kr. Agarwal, Adv. Mr. Bishwa Raj Agarwal, Adv.
Heard on	:	19.08.2025
Judgment on	:	19.08.2025

Raja Basu Chowdhury, J. (Oral):

1. The present writ petition has been filed inter alia challenging an order under section 129 (3) of the CGST Act, 2017 (hereinafter referred to as "the said Act"). It is petitioner's case that the petitioner is a dealer and is engaged in the business of trading dried arecanuts all over India. The petitioner also claims to be duly registered under the provisions of Central/Assam GST Act, 2017. It is also the petitioner's case that the petitioner in usual course of business had sold 29750 Kg of Dried Areca Nuts for a transaction value of Rs.62,47,500/- to one M/s. Trishul Arecanut Granule Private Limited situated in Chikkamagaluru, Karnataka

on FOB basis. The said goods were accompanied with valid documents and was booked with the transporter namely M/s. Ajay Goods Carriers for being transported to M/s. Trishul Arecanut Granule Private Limited at Karnataka. According to the petitioner, the E-way bills and the consignment note and the invoices also accompanied the goods from its place of loading in Assam. Unfortunately, the respondent no.2 had intercepted the conveyance alongwith the goods at Petrol Pump, Fatapukur area, Jalpaiguri, West Bengal on the premise of genuineness of the said goods in transit and the tendered documents required further verification.

2. The physical verification in respect of the aforesaid goods was conducted on 4th July 2025 and summons under section 70 was also issued to the driver inter alia, directing him to tender statement and produce documents. In course of physical verification discrepancies were noticed and accordingly order of detention was issued on 8th July 2025. Following the above, on 15th July 2025 a show cause notice was issued proposing penalty of Rs.6,07,000/-/- under section 129(1)(a) as well as penalty of Rs. 60,70,000/- under section 129(1)(b) alleging that the goods were being supplied in contravention of the said Act and Rules and that the consignor is selling only bills without actual procurement of goods and is selling goods of others under his GST credentials. The petitioner claims to have responded to the show cause beyond time on 21st July 2025, however, by then the order

under section 129(3) of the said Act was passed on 21st July 2025. Challenging the aforesaid order the instant writ petition has been filed. The petitioner is also interested to seek immediate release of the goods.

3. Mr. Verma, learned advocate appearing in support of the writ petition has invited attention of this Court to the E-way bills and the circular dated 31st December 2018 pointing out as to the persons who can be considered as the owner of the goods for the purpose of section 129(1) of the said Act. He also placed reliance on the judgment delivered by the Hon'ble High Court at Allahabad in the case of *Halder Enterprises v. State of U.P.* reported in [2023] taxmann.com 231 (Allahabad) on the issue when the person named in the invoice or other accompanying documents can be treated/recognized as an owner of the goods for the purpose of section 129(1) of the said Act. He has also placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of *Collector of Central Excise, Vadodra v. Dhiren Chemical Industries* reported in (2002) 2 SCC 127 in support of his contention that a circular issued by an authority is binding on the said authority. In the facts noted hereinabove he would submit that this Hon'ble Court may be pleased to set aside the order passed by the appropriate authority under section 129(3) of the said Act on 21st July 2017 and permit the petitioner to seek release of the vehicle and the goods as the goods at the time of interception was

accompanied by valid documents. He also seeks immediate release of the goods under section 129(1)(a) of the said Act.

4. Mr. Agarwal, learned advocate appears on behalf of the CGST authorities. He would submit that the petitioner has an alternative remedy in the form of an appeal and ordinarily this Court ought not to entertain the writ petition. He has also drawn attention of this Court to the statements made by the driver of the vehicle which is reflected in the order passed under section 129(3) and would submit that the case made out by the petitioner in the petition and the statements given by the driver are at variance and having regard thereto, the proper officer had rightly confirmed the penalty especially when no response was filed by the petitioner to the show cause. The response filed, was in fact beyond time on the date of passing of the order. As such the proper officer could have considered the response. He would submit that the instant case raises disputed question of fact as such this Court ordinarily, ought not to entertain the writ petition. The same deserves to be dismissed.

5. Having heard the respective parties and considering the materials on record, I notice that in the instant case the goods which the petitioner claims to be the owner had been intercepted with the transport vehicle at Petrol Pump, Fatapukur area, Jalpaiguri, West Bengal by the respondent no.2 on the ground of genuineness of the goods and the tendered documents, since the quantity of the goods mentioned in the invoice did not match with the goods

on the conveyance and required further verification. After following due procedure and upon affording opportunity of show cause the proper officer has decided the matter. I have considered the order. Though, the petitioner by relying on the circular dated 31st December 2018 would seek to impress upon this Court that the authority is obliged to treat the petitioner as the owner in respect of the goods since the petitioner has disclosed the E-way bills and the tax invoices and other related documents, and ought to have returned the goods, as the documents were in order, I, however, notice from the statement made by the driver as recorded in the order impugned that there is incongruity in the case made out by the petitioner especially having regard to the fact that the driver claims that the goods were loaded by Durga Transport, though the documents show Ajoy Good Carriers. It also appears from the records that the petitioner did not submit any response within the time specified. The belated response was filed on the date of the order. As such the proper officer did not get the opportunity to consider the response. There was mismatch in the weight of the goods and as recorded in the documents. I also notice that the proper officer upon considering all aspects had confirmed the penalty. It is true that a circular issued by the Department even if not binding on the petitioner, is binding on the Department and in this context I find no reason to take a contrary view to the manner in which a person is to be treated as the owner of the goods as specifically provided for in the circular. However, at the same time, I cannot also ignore the fact that the driver of the vehicle had given a statement which creates a cloud over the interest of the petitioner in respect of the said goods especially when the petitioner did not respond to the show cause in time. The show cause was issued on 15th July 2025, and the time to file the response was till 20th July 2025.

6. Mr. Verma has also, however, strenuously argued by placing reliance on the judgments delivered by Hon'ble Allahabad High Court in the case of *Halder Enterprises (supra*), to contend that once, the goods are accompanied by valid documents, the proper officer is bound to treat the person named in the invoice or other related documents as the owner and release the goods under section 129(1)(a) of the said Act. I, however, find that the aforesaid case is distinguishable on facts. No disputed question of fact arose in the said case. The point of maintainability on the ground of alternative remedy was also not raised in that matter. The only ground on which the goods had been detained was on the ground that the consignor consignee were declared as non-existent. Such is not the case here. The statement given by the driver has made the difference. The petitioner could not demonstrate that the order impugned is based on no evidence or is perverse especially when the petitioner had never contested by filing the response in time. From the receipted copy of the response it would appear that though the response is dated 18th July 2025, the same was submitted on 21st July 2025. No appropriate explanation is

available as to why the reply was filed belatedly. Be that as it may, I am of the view, it shall not be appropriate to decide on a cause attaching the genuinity of ownership of the petitioner in the light of the findings arrived at with supporting statement of the driver, especially when the appellate forum has been provided therefor, and when there are grave doubts as regards the procurement of the goods especially when there was no response filed in time. It is apparent that by the time reply was filed the order was passed. Needless to mention, that the petitioner is not rendered to remediless. The petitioner has a right to seek immediate release of the goods by relying on section 129(1)(b) of the said Act. If such application is made before the proper officer, he shall consider the same in accordance with law within two working days from the date of making such application. On such ground I am of not inclined to entertain the writ petition..

7. The writ petitioner is accordingly dismissed leaving it open to the petitioner to avail appropriate appellate remedy, if so advised.

8. There shall be no order as to costs.

9. All parties shall act on the basis of server copy of the order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J.)

R. Bose