Item No.21
08.09.2025
Court. No. 1
GB

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

MAT 77 of 2025
With
CAN 1 of 2025

M/s. Assam Supari Traders
VS
Union of India & Anr.

Mr. Pulkit Verma,
Mr. Debanjan Das,
Ms. Pooja Sah
... *Appellant*

Mr. Dilip Kumar Agarwal,
Mr. Biswa Raj Agarwal
... *for the Respondents.*

1. This is an appeal from a judgment dated August 19, 2025, passed in WPA 1691 of 2025. In the writ petition the appellant challenged an order passed under Section 129(3) of the CGST Act 2017 (hereinafter referred to as the 'said Act').

2. The appellant claims to be a dealer, running a business of trading in dried arecanuts, all over India. The appellant claims to be duly registered under the Central and Assam CGST Act, 2017.

3. The case run by the appellant in the writ petition was that in the course of business, 34510 kg. of dried arecanuts of a value of Rs.90,89,934/- had been sold to M/s. Ansaar Traders, situated in

Chikkamangaluru, Karnataka on FOB basis. The goods were accompanied with valid documents and were booked with the transporter, M/s. Ajay Goods Carrier, for being transported to M/s. Ansaar Traders. The E-way bills, the consignment note and the invoices accompanied the goods from the place of loading. The vehicle was illegally intercepted along with the goods at Maynaguri More, Jalpaiguri on certain suspicion and accordingly an order was erroneously passed by the proper officer under Section 129(3) of the CGST Act, 2017.

4. It appears from the records that a physical verification was conducted on July 14, 2025 and summons were issued to the appellant, directing the appellant to make his statement and produce relevant documents. A show cause notice was issued by the authority on July 21, 2025 proposing penalty of Rs.8,65,708/- under Section 129(1)(a) as well as penalty of Rs.86,57,080/- under Section 129(1)(b), alleging that the supplier's existence was dubious.

5. The learned advocate for the appellant submits that the order is unreasoned and the same has been passed in violation of the principles of natural justice. He draws attention of the Bench, to the E-way bills and the circular dated December 31, 2018, issued by the Central Board of Indirect Taxes and Customs (CBIC), in support of the contention that

the appellant must be treated as the deemed owner as its name appeared on those documents.

6. According to Mr. Verma, the circular clarifies that for the purpose of Section 129(1) of the CGST Act, the consignor or the consignee should be deemed to be the owner. If the invoice or the document did not accompany the consignment, in that event the proper officer was to determine and declare the owner.

7. It is submitted that the Allahabad High Court in the matter of ***Halder Enterpirses versus State of U.P.*** passed in ***Writ Tax No.1297 of 2023,*** had applied the said provision to hold that the name of the person appearing in the invoice/document accompanying the goods, would be deemed to be the owner. Further reliance was placed in the decision of ***Sandip Kumar Pandey & Anr. versus The Assistant Commissioner of State Tax Bureau of Investigation (South Bengal) Durgapur Zone & Ors.*** passed in ***MAT 1088 of 2025***, wherein a Division Bench of the Court had held that Section 129 would have no application when the documents required to be carried under Rule 138A(1)(a) and (b) by the transporter was available at the time of interception. If the invoice showed that the goods were sent to the proprietorship firm

of a party, such party for all legal purposes would be the owner of the goods.

8. Mr. Verma further submits that the CBIC circular was binding on the authorities and all the relevant documents mentioned the name of the consignor, and the petitioner as the consignor should be deemed to be the owner of the goods.

9. Mr. Aggarwal submits that the learned trial Judge rightly relegated the appellant to the appellate forum. According to Mr. Aggarwal, the case made out by the appellant and the statement of the driver were at variance. The proper officer had held that the department had reasonable belief that the documents provided by the consignor did not substantiate the legitimacy of the goods in transit. The proper officer had assigned proper reasons.

10. Heard the parties. Perused the order of the writ court. The learned Judge held that the goods were intercepted along with the vehicle at Maynaguri More, upon following due procedure and upon affording opportunity to show cause. The officer had decided the matter by observing the principles of natural justice. The learned Judge also consulted the E-way bills, tax invoices and other related documents. Upon perusal of the statement of the driver which was recorded in the order of the proper officer, the learned Single Judge was satisfied that

there was some incongruity in the case made out by the appellant, especially having regard to the time and the place of loading of the goods. According to the learned Judge, the records revealed that the appellant could not produce any payment particulars about the mode of transportation of the goods purchased. The Judge noticed that the proper officer, upon considering all aspects, had noted that he had reasonable belief that the documents provided by the consignor did not substantiate legitimacy of the goods. There was also inconsistency in the quantity disclosed.

11. Although His Lordship was of the view that the circular was binding, His Lordship held that the fact that the driver of the vehicle had given a statement which created a cloud on the interest of the appellant in the subject goods, the applicability of the circular at that stage could not be decided. The time of procurement and loading of the goods did not match either with the E-way bills or with the statement of the driver. Thus, disputed questions of fact were involved in the matter.

12. Mr. Verma's submission that the procurement of documents and ownership could be established by the GPS tracking map along with the photographs and other related document was considered. His Lordship considered the decision of the Allahabad

High Court and of the coordinate Bench and came to a specific finding that those decisions were distinguishable on facts. In those cases, no factual discrepancies had arisen, like in the present case, inasmuch as, the procurement of the goods by the appellant had not been established. The loading thereof by the appellant, at the appellant's premises, was disputed. Hence, the ownership of the appellant or the interest of the appellant in the goods were found to be doubtful.

13. When the decision making process was not vitiated either by perversity or patent illegality or for non-consideration of evidence on record. His Lordship had rightly allowed the appellant to prefer a statutory appeal as per law. However, His Lordship being mindful of the fact that the appellant had a right to seek immediate release of the goods, relegated the appellant to apply under Section 129(1)(b) of the said Act.

14. We offered that the goods may be sold in auction and proceeds may be directed to be kept in a separate interest bearing account subject to the result of the petitioner's challenge, but the appellant does not agree and submits that the proper market value would not be fetched.

15. We have considered the rival contentions of the parties. We are conscious of the limited scope of

interference in an intra court appeal. We do not find that the learned Judge had missed out any of the arguments made by the either of the parties or had failed to consider the relevant laws and the decisions cited by the appellant. His Lordship distinguished the decisions relied upon by Mr. Verma, by relying on the statement of the driver. We do not find that the learned Single Judge had either acted illegally and/or with material irregularity while arriving at the conclusion that the disputed facts which emerged in the proceeding should be adjudicated by the appellate authority and not by the writ court. The scope of this appeal is restricted to the adjudication of the legality of the order impugned. This Bench cannot probe deeper into the facts. Unless the decision is either shocking to the conscious or suffers from perversity, or is patently illegal, the finding of a learned Single Judge in the writ petition, should not be interfered with.

16. With regard to Mr. Verma's contention that the order passed by the authority itself reflects non-application of mind, as penalty under both Section 129(1)(a) and (b) under the CGST Act 2017 could not be imposed simultaneouly, we are of the view that the order was passed in respect of four noticees. Hence, the owner would be governed by the finding and the penalty imposed under Section 129(1)(a)

and the person who seeks release, not being able to establish ownership of the consignment, will be governed by the penalty imposed under Section 129(1)(b). In any event, this aspect is also a matter which can be raised before the appellate authority along with all the submissions which Mr. Verma has made.

17. With regard to non-supply of reasons in the order by the authority, we quote the following portion from the order under Section 129(3) of the CGST Act:-

> *"Upon thorough examination of the reply submitted by the consignor and the supporting documents provided in an attempt to justify his claim, the department has arrived at the following findings:*
>
> *i) The consignor has neither submitted any documents nor submitted any payments particular about the mode of transportation of goods purchased by him. Also, no transporter details are available in the purchase invoices submitted by the consignor. The absence of any such records casts doubts on the genuineness of the procurement of goods and concerns about the authenticity of the movement of goods.*
>
> *ii) The consignor has not submitted any documents substantiating his claim that the goods have been loaded from his premises i.e. Rupahi and not from Nagaon as stated by the*

person in charge of the conveyance. The absence of any such records further casts doubts on the genuineness of the supplier of goods.

In light of the above findings the department has reasonable belief that the documents provided by the consignor do not substantiate the legitimacy of the goods in transit. The consistencies in quantity disclosure, the absence of valid purchase documents, and the lack of financial trial collectively lead to the interference that the consignee has not been able to satisfactorily establish the lawful procurement and movement of the goods."

18. Thus, the appellant should prefer the statutory appeal. Let such appeal be filed within a period of two weeks before the appellate authority. The appellate authority will decide the issue upon giving a hearing to the appellant.

19. As the appellant insists on expeditious disposal of the appeal and submits that the appellate authority be directed to dispose of the appeal within four weeks, this Court allows such submission and directs the authority to dispose of the appeal within four weeks from receipt of the appeal petition.

20. Needles to mention, the appellant will not seek adjournments and will cooperate with the authority. The appellant may produce additional documents, if the same are relevant for disposal of the appeal.

21. Accordingly, the appeal and the connected application are disposed of.

22. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Prasenjit Biswas, J.)