In The High Court At Calcutta

CIRCUIT BENCH AT JALPAIGURI

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 83 of 2026
Ratul Talukdar
Vs.
Union of India & Ors.

For the Petitioner	: Mr. Mainak Bose, ld. Sr. Adv. Mr. Shakeel Mohameed, Mr. Bikash Sinha.
For the Respondents	: Mr. Ratan Banik Mr. Bishwa Raj Agarwal.
Judgment reserved on	: 25.02.2026
Judgment delivered on	: 27.02.2026

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred praying for direction upon the respondent no. 2 to revoke the order impugned dated July 21, 2025 passed by the respondent no. 2 in FORM GST MOV-09 and for a further direction upon the respondent authorities to forthwith release the said goods and the said vehicle bearing registration No RJ 19 GJ 8990 to the petitioner.

2. **The petitioner's case is that:-**

- **i.** The petitioner has been holding a valid registration under Section 25 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act of 2017") with allotted GSTIN-18AWEPT2079E1ZB.
- **ii.** In course of his business, the petitioner sold a consignment of domestically grown dry betel nuts weighing 34,650 Kilograms to a trader carrying on business under the nomenclature of "A. P. Traders" at 22A, Mayur Vihar Phase 3 Road, East Delhi, Pin-110096 under Invoice No. 049 dated July 1, 2025. The said goods were despatched to the said trader in a goods vehicle bearing Registration No. RJ 19 GJ 8990 along with E-Way Bill bearing No. 8815 4851 2459 generated by the petitioner on July 1, 2025 at 1643 Hours and Transporter's Challan issued by Prime Logistic, Fancy Bazar, Guwahati.
- **iii.** While the said vehicle carrying the said goods was in transit and moving towards its destination through Fulbari, Jalpaiguri, the said vehicle carrying the said goods was intercepted by the authorised officer of the Headquarters, Anti-Evasion Unit, Siliguri CGST & CX Commissionerate, being the respondent No. 3 herein, on July 2, 2025 at around 2135 Hours. Upon such

interception, the driver of the said vehicle tendered the documents including the said invoice, E-Way Bill and Transporter's Challan to the respondent for verification.

iv. After verification of the tendered documents, the respondent No. 3 issued an order under FORM GST MOV-02 to the driver of the said vehicle on July 2, 2025 seeking physical verification/inspection of the goods under movement in accordance with sub-section (3) of Section 68 of the said Act of 2017. In the said purported order, the respondent No. 3 alleged that such physical verification and inspection of the goods was required, inasmuch as, *"prima facie the documents tendered were allegedly found to be defective, genuineness of the said goods in transit and/or tendered documents require verification and that the transport challan was issued by a non-existent entity."*

v. On July 4, 2025, the respondent No. 3 issued the physical verification report in FORM GST MOV-04 to the driver of the said vehicle informing the findings of physical verification. It was stated in the said report that during physical verification of the goods, it was allegedly found that there was **a shortage in quantity of goods** vis-a-vis the quantity mentioned in the invoice and the said goods were in transit under the **transport challan issued by non-existent entity.**

vi. On July 8, 2025, a purported **order** for detention of the said goods and vehicle was issued under subsection (1) of Section 129 read with Section 68(3) of the said Act of 2017 in FORM GST MOV-06 to the driver of the said vehicle.

vii. On July 15, 2025 the respondent No. 2 issued the purported **notice** under Section 129(3) of the said Act of 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017 in FORM GST MOV-07, the respondent No. 2, wrongfully and without jurisdiction, directed the petitioner **to appear on or before July 18, 2025 with documents to prove the ownership of the "seized goods" and the correctness of the declared value in the invoice.**

viii. It was further alleged in the said purported notice that the transporter, namely, Prime Logistics is a non-existent entity and the registration of the petitioner was suspended with effect from July 7, 2025. It is significant to mention here that the registration of the petitioner was suspended on July 7, 2025 i.e., after July 2, 2025 when the said vehicle carrying the said goods was intercepted by the respondent No. 3 on transit.

ix. The petitioner further states that the Board in its Circular dated December 31, 2018 clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. The Driver of the said vehicle was carrying the documents in terms of Rule 138A(1)(a) and (b) of the Central Goods and Services Tax Rules, 2017 which includes invoice and E-way Bill, and as such there is no violation of the provisions of Section 68 of the said Act of 2017. Thus, the provisions of Section 129 of the said Act of 2017 has no manner of application in the facts and circumstances of the case.

3. On hearing the learned counsels for the parties and on perusal of the materials on record more so the impugned order dated 21.07.2025 issued vide order no. 24/25-26, it appears that at page 2 of the order, the details of consignor and consignee has been provided along with details of transporter and owner of the vehicle, though it is noted at column 5 that the transporter is a non-existent entity.

4. It appears that the said order has been passed by imposing the following penalty:-

> ***"11.*** *In view of the facts and circumstances discussed above, I hereby calculate and confirm the penalty in the following manner:-*
> ***(i)*** *I confirm the penalty of Rs. 8,31,600/- (Eight Lakhs Thirty One Thousand Six Hundred) only under Section 20 of the IGST Act, 2017 read with clause (a) of sub-section (1) of Section 129 of CGST Act, 2017 where the owner of the goods comes forward for payment of above penalty.*
> ***(ii)*** *I confirm the penalty of IGST amounting to Rs. 83,16,000/- (Eighty Three Lakhs Sixteen Thousand) only under Section 20 of the IGST Act, 2017 read with clause (b) of sub-section (1) of the Section 129 of the CGST Act, 2017, where the owner of the goods does not comes forward for payment of above penalty.*
> ***(iii)*** *I further confirm a penalty of Rs. 2,00,000/- (Two Lakh) only under Section 20 of the IGST Act, 2017 read with ftrst proviso of sub-section (6) of the Section 129 of the CGST Act, 2017 and sub-section (3) of section 129 ibid, against conveyance of the goods and the conveyance shall be released on payment by the transporter of the said penalty.........."*

5. The petitioner herein is the proprietor of the consignor in the present case and has filed documents in support of his proprietorship.

6. It appears from page 4 of the impugned order that admittedly the consignment was intercepted by the respondent on 02.07.2025 and physical verification was done on 07.04.2025 on weighing the goods, against invoice.

7. The respondents herein found that the transporter "prime logistic" is non-existent on verification. It has been further stated that neither the consignor nor the consignee came to claim the goods and as such the respondent found the consignor and consignee also to be fraudulent entities.

8. The respondent then proceeded to hold as follows:-

> *"…………In this case, the same non-existent transporter details are found in the E-way bill (copy of consignment note of the transporter also provided by the driver) also both the consignor M/s Talukdar Enterprises, GSTIN 18AWEPT2079E1ZB and consignee M/s A P Traders, GSTIN 07CEIPP1150G1ZN are* ***new registrant having taken GST registration on 27.05.2025 & 16.06.2025 respectively.*** *The GSTIN Status of* ***M/s Talukdar Enterprises is "Suspended (Effective from 07/07/2025)".*** *The GSTIN Status of* ***M/s AP Traders is –"Suspended (Effective from 04/07/2025)"…………..."***

9. Hence the prosecution and the writ petition herein.

10. Learned counsel for the petitioner has relied upon the judgment of the Division Bench of this Court passed in **MAT 2 of 2026** ***Riya Das vs Inspector of CGST & CX, Headquarter, Anti Evasion Unit, Siliguri Commissionerate & Ors.*** **Dated 9th January, 2026,** wherein the Court relying upon the judgment in ***M/s. J.J. Traders vs Union of India & Ors. in WPA 2144 of 2025, decided on 10.12.2025 and S.N. Trading Company & Anr. Vs Union of India & Ors.,*** **MAT 48 of 2025, decided on 26.06.2025** held that in the said case the ownership of the seized consignment was not in dispute and accordingly directed as follows:-

> ***"20.*** *In such facts and circumstances, considering the perishable nature of the seized consignment and taking the appellant as the owner of the seized consignment and the offer of the appellant to secure the amount claimed as against the owner of the consignment, we direct the appellant to deposit the sum of Rs.5,23,264/- with the respondent authorities within a period of 7(seven) days from date by way of a bank draft or equal instrument.*
> ***21.*** *Upon such deposit being made, the respondent authorities will release the seized consignment in favour of the appellant forthwith.*
> ***22.*** *The amount deposit shall abide by the result of the pending writ petition."*

11. The respondent CGST has also relied upon the judgment of a Division Bench passed in ***S.N. Trading Company (Supra)*** which has been relied upon by the Division Bench in ***Riya Das (Supra).***

12. The Division Bench in ***S.N. Trading Company (Supra)*** had upheld the order of the learned Single Judge who had relegated the appellants to avail the statutory appeal remedy, but directed the return of the seized vehicles on certain terms and conditions and also directed public auction of the perishable goods, permitting the appellants to participate in such auction.

13. The matter in ***S.N. Trading Company (Supra)*** travelled up to the Hon'ble Supreme Court and the Supreme Court in Special

Leave to Appeal (c) No. 22173 of 2025, vide an order dated 19.11.2025 passed the following order:-

> ***"16**. We want to know four things from the petitioner: (1) How did the partnership firm procure the consignment of areca nuts? (2) From where did they procure it? (3) For whom did they procure it? and (4) The entire consignment of areca nuts was being transported and was to be delivered at which place?*
>
> ***17**. More importantly, the petitioner needs to explain the discrepancies as mentioned in the notice issued under Section 129 (3) of the Central Goods and Services Tax Act, 2017 (for short "the Act, 2017") more particularly three things:-*
>
> *a) The gross weight of goods along with conveyance is found to be 36.31 MT in the weighment slip produced the river after interception. The tare weight of conveyance is mentioned to be 11.390 MT in the weighment slip as provided by the driver cum person charge of the conveyance at the time of Interception. Therefore, the net weight of the goods in the conveyance is found to be 24.920 MT (Gross weight minus tare weight), which is not matching with the quantity of goods mentioned in the invoice as well as E-way Bill tendered by the driver cum person in charge. Hence Excess goods weighing 420 kgs was found in the conveyance.*
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> *b) Time of issuance of E-Way Bill was before the time of weighment of goods in the invoice vide Slip No.29851 Dated 13.05.2025*
>
> *c) Weight mentioned in the Invoice is less than the weight mentioned in weighment.""*

14. The Hon'ble Supreme Court on 19.11.2025 finally dismissed the Special Leave Petition on the observation that the Court did not find any good ground to interfere with the impugned order passed by the High Court and **as such the order dated 26.06.2025 of the Division Bench in MAT 48 of 2025 stands.**

15. In the present case, this Court finds that the facts herein are similar to the observation of the Supreme Court in Paragraph 17 of SLP against the judgment in ***S.N. Trading Company (Supra).***

16. In the judgment of ***Riya Das (Supra)*** relied upon by the petitioner, the Division Bench has passed orders only regarding release of the seized consignment. The petitioner herein has not only prayed for release of the vehicle and the seized perishable goods, but has also prayed for setting aside of the order dated July 21, 2025 passed by the respondent no. 2.

17. Thus in view of the judgments relied upon by the parties herein and as discussed above and also keeping in mind the view of the Single Bench in WPA 1240 of 2025 dated 20.06.2025, the petitioner is at liberty to prefer a statutory appeal under Section 107 of the CGST Act, 2017 within 30 days from the date of this order. Period of limitation is extended for 30 days in the interest of justice. The impugned order in the present case shall remain stayed for 30 days. In case no appeal is preferred within 30 days, the order of stay shall stand vacated automatically and the respondent authorities shall be at liberty to proceed in accordance with law.

18. Now relying upon the view taken by the Division Bench of this High Court in MAT 48 of 2025. It is directed that the respondents/department shall sell the goods, which are stated to be dried areca nuts by calling for a public auction and the appellants are also entitled to participate in such auction.

19. 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. It is to be noted that the appellants will also be entitled to participate in the auction to be called for by the respondents authority.

20. 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 also be subject to the outcome of the appeal before the statutory appellate authority.

21. 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 appellants remit a sum of Rs.50,000/- (Rupees Fifty Thousand) and furnishes a bond of the remaining amount as directed for the satisfaction of the respondents authority.

22. The writ application stands disposed of.

23. All connected application, if any, stands disposed of.

24. Interim order, if any, stands vacated.

25. Urgent Photostat certified copy of this Judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]