

Form J(2)
Sl.No.17
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In the High Court at Calcutta

In the Circuit Bench at Jalpaiguri

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

WPA 2193 OF 2025

With

I.A. No. CAN 1 OF 2025

Sri Santosh Kumar Sah

Vs.

Union of India & Ors.

For the petitioner : Mr. Govind Krishna Dixit, Adv.
Ms. Anasua Chakravarti, Adv.

For the Respondent Nos.1,2 & 3
: Mr. Ratan Banik, Adv.
Mr. Bishwaraj Agarwal, Adv.
Mr. Spandan Dutta, Adv.

For the Respondent No.4
: Mr. Abhijit Chatterjee, Sr. Adv.
Mr. Arnab Chakraborty, Adv.
Mr. Aniket Chaudhury, Adv.
Mr. Abhilash Mittal, Adv.
Mr. Nigam Mittal, Adv.

Heard on : May 15, 2026

Judgment on : May 15, 2026

[In Court]

Aniruddha Roy, J. :

1. On the prayer of Mr. Abhijit Chatterjee, learned Senior Advocate (VC),
appearing for the respondent no.4, time to file affidavit-in-opposition

stands extended till today and the affidavit-in-opposition, filed in court today, is taken on record.

Facts :

2. This is a hearing matter upon affidavits being exchanged.
3. The petitioner has prayed for quashing of a criminal proceeding through the instant writ petition in connection with **C.R. Case No.530 of 2025** arising out of the complaint dated **April 1, 2025** filed by the Superintendent, Siliguri CGST and Central Excise Commissioner and the subsequent Charge Sheet dated **August 6, 2025** alleging offences punishable under the various provisions of **Section 132** of the **CGST Act, 2017**. The criminal complaint and the connected criminal proceeding arising therefrom are pending before the jurisdictional criminal Court, Siliguri.
4. The petitioner was arrested and then has been enlarged on bail. The petitioner states that, the arrest was also illegal, unlawful and without jurisdiction.

Submissions :

5. Learned Advocate appearing for the petitioner submits that, there has been a gross violation of the **Circular** dated **July 6, 2022**, issued by the **Government of India, Ministry of Finance, Department of Revenue, Central Board for Indirect Taxes and Customs**, wherein with regard to the issues raised under **Serial No.1** of the said memo, it has been stated that, the registered person who issued the tax

invoice to another registered person without any underline supply of goods or services or both, shall be liable for penal action under **Section 122** of the CGST Act for issuing tax invoices without actual and effective supply of goods or service or both.

6. The further case of the petitioner is that, the guidelines of launching of prosecution under CGST Act, 2017 under **Instruction No.4/2022-23** dated **September 1, 2022** more particularly, **sub-paragraph 7.1.1** has been violated as the prosecution complaint was not filed within the timeframe indicated in the said instruction.
7. It is further submitted that, the procedure laid down for seeking of sanction for prosecution has not been followed also. Hence, the criminal prosecution initiated is wholly without jurisdiction and liable to be set aside and quashed.
8. Learned Advocate Mr. Govind Krishna Dixit, appearing for the petitioner further submits that, the prosecution is built upon certain Electronic Toll Data disregarding the documentary and physical evidences to the contrary.
9. In support, learned Advocate for the petitioner has relied upon a decision of the Hon'ble Division Bench, ***In the matter of : Suncraft Energy (P) Ltd. V. Assistant Commissioner, State Tax***, reported at **[2023] 153 taxmann. Com 81 (Calcutta)** dated **August 2, 2023** rendered in **MAT 1218 OF 2023**.

10. Mr. Abhijit Chatterjee, learned Senior Advocate (VC) appearing for the respondent no.4 submits that, addition of his client and bringing it within the purview of the writ petition is unnecessary. According to him, the respondent no.4 is neither a necessary nor a proper party.
11. Mr. Chatterjee, learned Senior Advocate (VC) further submits that, the writ petition in its present form is not maintainable, as the petitioner is seeking to substitute the Writ Court to a Court for criminal prosecution.
12. While distinguishing the judgment ***In the matter of : Suncraft Energy (P) Ltd. (supra)***, Mr. Abhijit Chatterjee learned Senior Advocate (VC) submits that, the judgment was not with regard to any criminal prosecution and it was rendered in a challenge arising out of the provisions of the CGST Act. Hence, the ratio is not applicable.
13. Mr. Ratan Banik, learned Advocate (VC) with Mr. Bishwa Raj Agarwal, learned Advocate (VC) appearing for the CGST authority submits that, since a substantive criminal complaint and the connected criminal proceeding are pending for trial before the jurisdictional criminal Court at Siliguri, this writ petition is not maintainable.
14. Mr. Banik, learned Advocate (VC) further submits that, in view of the provisions laid down under ***sub-Section (2) to Section 157*** of the CGST Act, 2017, the writ petition is not maintainable against the respondent no.3.

15. **In reply**, learned Advocate Mr. Dixit appearing for the petitioner submits that, sanction for prosecution has been granted, though belated by the respondent no.3, in complete violation of the statutory provision. Since the respondent no.3 has acted in an unlawful manner and in violation of the statute, the authority has been impleaded.
16. Learned Advocate for the petitioner further submits that, the relevant **Panchnama**, as provided under the statute, has not been incorporated in the record before the criminal Court where the trial is being prosecuted which exculpates the petitioner. The CCTV footage, according to petitioner is there which would clearly demonstrate that, though the **Panchnama** was in existence and drawn up but was not made part of the record of the criminal proceeding.
17. He further submits that, the CCTV has recorded the arrival of the truck and the delivery of materials, which were received by the petitioner though the allegation against the petitioner is that, goods have not been received and it was allegedly a fictitious transaction.
18. **To rejoin** Mr. Ratan Banik, learned Advocate (VC) appearing for the revenue submits that, the criminal proceeding has been drawn up and initiated in due compliance of the statutory provisions.

Decision :

19. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the complaint filed against the petitioner, **Annexure-P10 at page 189** is the foundation on which the criminal proceeding has been initiated.
20. On a careful and meaningful reading of the complaint, *inter alia*, paragraphs 3.2, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16 and 3.20, this Court finds that, several factual issues have been raised in the complaint on the basis whereof the criminal proceeding has been initiated and is pending for trial.
21. On a reading of the complaint, it further appears to this Court that, unless the factual issues are conclusively decided in a properly constituted trial in the pending criminal proceeding, this Writ Court shall not interfere.
22. Law is settled that, when facts are disputed or several factual issues are required to be gone into, this Constitutional Court in exercise of its high prerogative writ jurisdiction under Article 226 of the Constitution of India, as a self-imposed restriction, shall not interfere with such triable issues by conducting a fact finding inquiry.
23. ***In the matter of : Suncraft Energy (P) Ltd. (supra)*** the judgment was rendered on a issue when the action of the revenue was challenged alleging violation of statutory provision and not related to

any criminal proceeding. Hence, the ratio laid down in the said judgment would not apply in the facts of this case.

24. The petitioner has been arrested and subsequently has been enlarged on bail. In the event, the petitioner succeeds in the criminal trial and the criminal complaint is dismissed, the petitioner would have his remedy in accordance with law to proceed against the initiator of the criminal proceeding.
25. Inasmuch as, the Writ Court should not usurp the jurisdiction of a Criminal Court where the concerned trial is pending, which is otherwise the jurisdictional forum to hold the trial.
26. The points raised by the petitioner in this writ petition can only be raised including the jurisdictional issue during the trial before the jurisdictional criminal Court.
27. In view of the foregoing reasons and discussions this Court is of the considered view and holds that, in the facts and circumstances of this case this Court shall not interfere and entertain this writ petition in exercise of its high prerogative writ jurisdiction.
28. Accordingly, this writ petition, **WPA 2193 of 2025** stands ***dismissed***, without any order as to costs.
29. In view of the above, the connected application, **I.A. No. CAN 1 OF 2025** also stands ***disposed of***.
30. However, it is made clear that, this Court has not expressed any opinion on the merits of the contention of the petitioner or on the

merits of the submissions made on behalf of the respondents and the parties shall be at liberty to urge all their respective points including the legal issues before the jurisdictional criminal Court during the trial.

31. It is expected that the jurisdictional criminal Court shall expedite the trial and come to a logical conclusion in accordance with law as expeditiously as possible.
32. Parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)