

Form No.J(2)

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1691 of 2025

**M/s. Assam Supari 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 34510 Kg of Dried Areca Nuts for a transaction value of Rs.90,89,934/- to one M/s. Ansaar Traders

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. Ansaar Traders 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 Maynaguri More, Jalpaiguri, West Bengal on the premise of genuineness of the said goods in transit and the tendered documents.

2. The physical verification in respect of the aforesaid goods was conducted at 14th July 2025 and summons under section 70 was also issued to the driver inter alia, directing him to tender statement and produce documents on the same date. Following the above, on 21st July 2025 a show cause notice was issued 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 supplier's existence as dubious. The petitioner claims to have responded to the show cause whereupon an order under section 129(3) of the said Act was passed. Challenging the aforesaid direction the instant writ petition has been filed.
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 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.

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 and the statements given by the driver are at variance and having regard thereto, the proper officer had rightly concluded that that department has reasonable believe that the documents provided by the consignor do not substantiate the legitimacy of the goods in transit. 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 Maynaguri More, Jalpaiguri, West Bengal by the respondent no.2 on the ground of genuineness of the goods and the tendered documents. 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, I, however, I 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 time of loading of the vehicle and the place of loading. It would also appear from the records that the petitioner could not produce or submit any payment particulars about the mode of transport of goods purchased by the petitioner. I also notice that the proper officer upon considering all aspects has noted that he has reasonable belief that the documents provided by the consignor do not substantiate the legitimacy of the goods in transit. He also notes inconsistencies in quantity disclosure and has noted that the consignee has not been able to establish the lawful procurement and the movement of the goods. 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 provide 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 having regard to the fact that the goods are arecanuts and that they have been procured from a place where the name of the trader was also not present. The time of procurement and loading of the goods also do not match with the E-way bills and that of the statement given by the driver. Mr. Verma, however, intended to rely on the procurement documents to establish ownership and the GPS tracking map alongwith

photograph to substantiate his cause for the first time before the writ Court.

6. Mr. Verma has also 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. The aforesaid case, in my view, 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 biased on no evidence or is perverse. 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 the proper officer has expressed his reasonable believe that the documents provided by the consignor do not substantiate the legitimacy of the transit. 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 sought for.
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