

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 635 of 2024

Jageswar Saw

V/s.

Deputy Commissioner of Revenue & Ors.

For the Petitioner:	Adv. Boudhayan Bhattacharyya Adv. Stuti Bansal Adv. Keya Kundu Adv. Chayna Kumary Adv. Aradhana Jha Adv. Shilpi Mukherjee
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For the State:	Adv. Pritom Das Adv. Rima Sarkar,
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Heard on: 30th June, 2025

Date: 4th July, 2025

SUVRA GHOSH, J. :-

1. The petitioner has assailed the order passed by the Joint Commissioner, State Tax Authority/Joint Commissioner, Commercial Taxes, Siliguri Circle on 29th February, 2024 in the appeal preferred by him against the order passed by the adjudicating officer/Deputy Commissioner, Bureau of Investigation, North Bengal, Alipurduar Zone on 6th December, 2023.
2. The fact of the case, in a nutshell, is that one JCB 15 LC hydraulic excavator machine was being transported on a conveyance bearing

registration no. JH02AL6591 from Jharkhand to Shillong, Meghalaya. It was intercepted by the officials of Bureau of Investigation, North Bengal, Alipurduar Zone on 25th November, 2023 during regular checking. On demand, the driver of the vehicle produced a copy of delivery challan issued by N.S. Construction, Barhi, Hazaribagh, Jharkhand, one copy of e-way bill dated 22nd November, 2023 generated by URP (unregistered person), N.S. Construction, copy of one consignment note of the same date issued by Jharkhand Trailor Service and photocopy of tax invoice issued by Premsons Motor Udyog Private Limited, Ranchi, Jharkhand wherein the recipient is mentioned as N.S. Construction, proprietor of Jageshwar Saw having GSTIN number. The consignment was physically verified upon notice to the driver/person in-charge of the vehicle and in his presence. Upon verification, it was found that the petitioner, despite being a registered person, depicted himself in the e-way bill as unregistered person falsely with the intention to evade tax. The driver of the conveyance was not in possession of a proper invoice or delivery challan as the same was signed by the driver and not the authorized signatory. The goods and conveyance were detained due to contravention of section 129 of The West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the Act of 2017) and demand raised upon the petitioner by an order passed on 6th December, 2023. The petitioner assailed the said order before the appellate authority who, by the order impugned, rejected the appeal.

3. At the outset, learned counsel for the petitioner has submitted that since the goods were being transported from Jharkhand to Meghalaya and the state of West Bengal was only being used as a corridor between the two states, the state authority had no jurisdiction to detain the consignment or impose penalty. The respondents have admitted production of the e-way bill, delivery challan, consignment note and purchase invoice by the driver and imposed penalty only because the e-way bill mistakenly showed the petitioner as an unregistered person instead of a registered person. The driver, being the agent of the petitioner, was authorized to sign the delivery challan which has also been accepted by the respondents in issuing physical verification notice, detention order, show cause notice and also the notice imposing penalty upon the driver. The respondents having, therefore, accepted the driver of the vehicle as the authorised representative of the petitioner, are debarred from raising this issue.
4. The petitioner was referred to as an unregistered person in the inter-State transaction since he had no registration under the Meghalaya G.S.T. laws. The petitioner is a registered taxable person under the JGST, 2017. All the relevant documents were part of the consignment and the petitioner had no intention to evade tax. No sale of goods was involved. The petitioner rented out his machinery to M/s. BCC Buildtech Private Limited having its work site at Meghalaya on the basis of work order placed by the latter. The discrepancy in the document can at best be termed as an irregularity and cannot be said

to be an illegality. There being no violation by the petitioner, the order impugned is required to be set aside.

5. Learned counsel for the petitioner has placed reliance on a judgment of an Hon'ble Division Bench of this Court in M.A.T. 32 of 2023 delivered on 1st December, 2023.
6. Per contra, learned counsel for the respondents has submitted that the petitioner furnished a false declaration in the e-way bill and delivery challan showing him as an unregistered person to evade tax. The invoice and the delivery challan were signed by the driver of the vehicle who was not the authorized signatory, the said documents, therefore, being invalid. Consequences under Section 129 of the Act of 2017 followed and the petitioner was provided an opportunity of hearing. He failed to appear before the authority for a personal hearing on the appointed dated and only sent a mail containing his submission/reply through his chartered accountant. The explanation given by the petitioner not being satisfactory, the demand impugned was raised on him.
7. Learned counsel has placed reliance on the authority Vardan Associates Private Limited v/s. Assistant Commissioner of State Tax Central Section and Others reported in 2023 SCC OnLine SC 1710 and a judgment delivered by an Hon'ble Division Bench of this Court in M.A.T. 108 of 2024 on 22nd January, 2025 in support of her contention.

8. I have considered the rival contention of the parties and material on record.
9. At the outset, the jurisdiction of the respondents in dealing with the issue and imposing penalty upon the petitioner is required to be dealt with. It is not in dispute that the consignment was being sent from Jharkhand to Meghalaya through West Bengal. The consignment was detained by the West Bengal revenue in transit.
10. Learned counsel for the respondents has placed notifications no. 24/WBGST/PRO/17-18 dated 14th December, 2017 and No. 09/WBGST/PRO/2019 dated 20th November, 2019 issued by the Commissioner, State Tax, West Bengal whereby the State Authorities have been empowered to exercise jurisdiction for carrying out enforcement activity in respect of transportation or movement of goods into, within, out of, or through the State of West Bengal provided the vehicle is intercepted within the territorial jurisdiction of the headquarters or zone of a unit of Bureau of Investigation in which the authority is posted. In other words, the respondents have been bestowed with the jurisdiction with regard to the goods and conveyance in transit. Therefore they were well within their authority in intercepting the consignment and such interception/detention cannot be said to be illegal for lack of jurisdiction.
11. On merits, the petitioner received work order from BCC Buildtech Private Limited on 19th November, 2023 for supply of excavator

machine with hydraulic breaker on rent pursuant to which he purchased the machine on 22nd November, 2023. The tax invoice of the machine discloses the GSTIN no. of the petitioner's company M/s. N.S. Constructions. The consignment note issued on 22nd November, 2023 indicates that the excavator was being transported from Jharkhand to Meghalaya. The e-way bill and delivery challan, however, show that the petitioner is an unregistered person despite the fact that he is a registered taxable person possessing a GSTIN number.

12. Learned counsel for the petitioner has submitted that since the petitioner is not registered under the GST laws in Meghalaya, he has been referred to as URP in the said documents. Such explanation given by the petitioner does not hold water. Both the e-way bill and delivery challan were issued from the petitioner's end in Jharkhand and refers to the GSTIN of the supplier. Since the petitioner was the supplier of the machinery, it was incumbent upon him to provide his GSTIN no. and not pose as an unregistered person. The petitioner not being registered under the GST laws at the consignee's end is irrelevant. Such suppression cannot be termed as an inadvertent error but may be a device to conceal the identity of the petitioner who is in fact a registered person and thereby evade payment of tax on supply of the goods.
13. The opposite parties have contended that the delivery challan produced by the driver of the vehicle was not issued in accordance

with Rule 55 of the WBGST Rules since it was signed by the driver of the vehicle and not by the consignor or his authorized representative. It is a fact that the delivery challan was signed by the driver of the vehicle and not by the petitioner or his authorized representative. Nowhere has the driver been named as the authorized representative of the petitioner. In fact, one Anand Kumar Saw has been named as the sales executive in the tax invoice of the machine. The petitioner has tried to impress upon the Court that the respondents have accepted the driver Umesh Kumar Yadav to be his authorized representative and has issued physical verification notice, detention order, show cause notice and the notice imposing penalty upon him.

14. In my considered view, since the consignment was intercepted from the driver who was in charge of the goods and produced the relevant documents before the authority, the notices were issued upon him and the physical verification done in his presence. Umesh Kumar Yadav has been referred to as the driver of the vehicle in all the documents issued by the respondents. The petitioner responded to the show cause notice through his chartered accountant by mail but did not physically appear before the authority to defend his cause. It was found upon verification of the registration details of the company that the petitioner was the only declared authorized signatory of the concern. The contention of the petitioner disclosed through mail was considered by the adjudicating authority as well as the appellate authority before raising the demand. The driver of the vehicle can,

therefore, under no stretch of imagination be said to be the authorized signatory of the petitioner's company.

15. It is evident from the record that the petitioner wrote to the authority on 21st December, 2023 requesting update/change of the name of the driver to his name in order to enable him to deposit the requisite amount for preferring appeal. In the said letter, it is clearly stated that Umesh Kumar Yadav was only the driver of the vehicle and the machine belonged to the petitioner. Nowhere in the letter has the driver been referred to as the authorized signatory/representative of the petitioner. It is said that the driver was only carrying the machine on his behalf and was in no way responsible for the same. Therefore, the authority has rightly held that the consignment was not accompanied by valid documents.
16. The petitioner was granted reasonable opportunity of hearing by both the authorities. He chose to place his contention before the adjudicating authority through mail and was represented by his learned advocate before the appellate authority. The orders impugned were passed upon consideration of the submission made on behalf of the petitioner. The appellate authority, in affirming the order of the adjudicating authority, has dealt with entire issue elaborately and has passed a reasoned order which, in my opinion, does not call for interference. With regard to the issue of mensrea, it is not in dispute that in a case of wilful or deliberate violation of the law in order to evade tax, there is no liability to establish mensrea.

17. Before parting with the record, this Court is inclined to deal with the judgments relied upon by the parties. In the judgment in MAT 32 of 2023, the Hon'ble Division Bench has observed that there cannot be an automatic imposition of penalty under the scheme of Section 129 of the Act of 2017 without granting opportunity to the delinquent to defend his cause.
18. Such situation has not arisen in the present case since reasonable opportunity of hearing was granted to the petitioner prior to adjudication and the petitioner was adequately represented before both the authorities.
19. In the authority in Vardan Associates Private Limited (supra), the issue which fell for consideration before the Hon'ble Supreme Court was transportation of the consignment after expiry of valid e-way bill. The ratio decidendi of the said judgment is not applicable in the fact situation of the present case. The judgment in MAT 108 of 2024 is squarely applicable herein.
20. In the backdrop of the discussion made hereinabove, this Court is of the view that the writ petition is devoid of any merit and is liable to be dismissed.
21. The order impugned dated 29th February, 2024 passed by the Joint Commissioner, State Tax Authority/Joint Commissioner, Commercial Taxes, Siliguri Circle in the appeal preferred by the petitioner, affirming the order passed by the adjudicating officer/Deputy

Commissioner, Bureau of Investigation, North Bengal, Alipurduar Zone on 6th December, 2023 is affirmed.

22. Accordingly, WPA 635 of 2024 is dismissed.
23. There shall however be no order as to costs.
24. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)