

07.07.2025
Item No.15
Court No.01
S.Bag(AR(CR))

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

**FMA/19/2024
THE ASSISTANT COMMISSIONER OF STATE
GST, BOI NORTH BENGAL
VS
ASHOK AND SONS (HUF) AND ORS**

**In
WPA/190/2023
ASHOK AND SONS (HUF)
VS
JOINT COMMISSIONER, STATE TAX, OFFICE OF
THE SENIOR JOINT COMMISSIONER, SILIGURI
CIRCLE AND ORS**

Mr. Subir Kumar Saha, AGP
Ms.Rima Sarkar, Adv.
...for the appellant

Mr. Jagriti Mishra, Adv.
Ms. Ananya Bhattacharya, Adv.
Ms. Mrinmayee Das, Adv.
...for the respondents

This is an appeal directed against an order dated 12th March, 2024 whereby the writ petition had been allowed at the threshold without giving the respondent authorities an opportunity of hearing.

Briefly, the grievance of the writ petitioner is directed against an order dated 23rd August, 2022 passed by the respondent no. 1 in rejecting an appeal preferred against the Adjudicating Order dated 14th March, 2022.

The case of the writ petitioner pertained to an order passed under Section 129 of the West Bengal Goods and Services Tax Act, 2017

whereby the writ petitioner was held liable for illegally transporting goods on the basis of an e-way bill which had admittedly expired.

On behalf of the writ petitioner, it is contended that during the course of transportation, the truck suffered a brake down and was parked at a garage within the jurisdiction of Jalpaiguri. On this ground, the Trial Court had proceeded as if the fact of the vehicle having been broken down and stationed in a motor vehicle garage was admitted by the parties.

No opportunity was granted to the respondent Revenue Authorities to file an affidavit to deal with such disputed facts and the Trial Court proceeded on considering the same as being admitted.

On behalf of the respondent authorities, it is contended that the entire story of the vehicle having broken down and lying at a motor vehicle garage is false, fabricated and pure myth.

On the contrary, it would be evident from the documents relied on by the respondents before this Court that the vehicle had been intercepted on 12th March, 2022 at 9:13 a.m. at Kathua, Jalpaiguri and the veracity and the genuineness of the garage bill is doubtful.

In this background, the impugned order is unsustainable inasmuch as it goes into the factual details of a one sided version of the facts. This is also in violation of the principle of natural justice since no opportunity was granted to the respondent authorities to controvert the facts which had been brought on record by the writ petitioner.

In such circumstances, the impugned order dated 12 March 2024 is set aside.

The respondents are granted liberty to file an Affidavit-in-Opposition. By consent of the parties, the Affidavit-in-Opposition be filed by 4 August, 2025. Reply thereto be filed by 18 August, 2025.

Let this matter appear before the next available Circuit Bench after completion of all pleadings.

It is made clear that all questions are left open insofar as the merits of the case are concerned.

To the above extent, FMA 19 of 2024 stands allowed.

(RAVI KRISHAN KAPUR, J.)

(MD. SHABBAR RASHIDI, J.)