

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.611 of 2025

M/S R. G. Group, Having office at Malay Nagar, Bypass Road, Agartala, West Tripura, Pin - 799004. Represented by Proprietor Mr. Rakesh Debnath, S/o- Sri Ranjit Kumar Debnath, Residence of North Banamalipur, B.K. Rpad, Agartala, P.S.-East Agartala, Dist. West Tripura, 799001.

.....Petitioner(s).

Versus

1. Union of India, represented by the Secretary, Ministry of Finance, Government of India, North Block, Raisina Hills, New Delhi-110001
2. The State of Tripura, Represented by Secretary, Finance Department, New Capital Complex, PS-NCC PS, Agartala, West Tripura.
3. Commissioner of Tripura State Taxes, Government of Tripura, PN Complex, Gurkhabasti, Agartala, Tripura
4. Superintendent of State Taxes, Government of Tripura, Enforcement Wing -III, Udaipur, Gomati Tripura.
5. Assistant Commissioner of State Taxes, Enforcement wing-III, Udaipur, Gomati Tripura
6. Inspector of State Taxes, Government of Tripura, Enforcement Wing -III, Udaipur, Gomati Tripura
7. The Assistant Commissioner of Central Taxes, Agartala Central GST Commissioner, Tripura Division I, Agartala Range II, GST Bhavan, Mantri Bari Road, Agartala, Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. Samar Das, Advocate,
Mr. Kaushik Paul, Advocate.

For Respondent(s) : Mr. P. Gautam, Sr. G.A.,
Mr. B. Majumder, Deputy S.G.I,
Mr. S. Choudhury, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

ORDER

05/11/2025

Heard the counsel for the petitioner and the Senior Government Advocate for the respondent nos.02 to 07.

2. The petitioner was transporting a consignment of electrical goods when the same were detained on 09.07.2024 by respondent no.6 at Bagma, Gomati, Tripura.

3. Thereafter, respondent no.6 issued Form GST MOV-01 and MOV-02 on 09.07.2024 to the petitioner stating that the person-in-charge of goods/conveyance tendered documents such as expired E-Waybills and there was a mismatch with vehicle.

4. According to the petitioner, on 10.07.2024, respondent no.6 conducted a physical verification of the goods and issued a report in Form GST MOV-04 (Annexure 7) categorically recording that no discrepancies were found between the physical goods and those described in the accompanying tax E-Invoices and also as mentioned in the E-Way Bill.

5. However, according to the petitioner, notwithstanding the said findings in the verification report, respondent no.4 proceeded to issue a detention order under Section 129 of the CGST Act, 2017 in Form GST MOV-06 on 10.07.2017 (Annexure-8) alleging contravention of the provisions relating to the movement of goods stating that the E-Way Bills had expired and there is a mismatch with the vehicle.

6. Thereafter, on 11.07.2024, the respondent no.4 issued show cause notice in Form MOV-07 (Annexure-9) under Section 129(3) of the CGST Act, 2017 proposing to impose a penalty of Rs.4,96,850/- under Section 129(1) of the CGST Act, 2017 and asking petitioner to show cause why the proposed penalty should not be imposed on it.

7. Petitioner alleges that there was no bifurcation of penalty calculations in the said notice under Section 129(1)(a) and 129(1)(b).

8. Petitioner thereafter submitted a letter on 16.07.2024 in the form of an objection under Section 160(2) of the CGST Act, 2017 to respondent no.4 requesting issuance of copy of EWB 03 Part A and B that was uploaded on the

common portal upon issuance of MOV2 and MOV4 as guided by a circular No.41/15/2018-GST dt.13.04.2018.

9. Petitioner also submitted a detailed reply to the above show-cause notice on 18.07.2024 (Annexure-11) to respondent no.4 along with a copy to respondent no.5, raising certain legal and factual objections including (i) non-uploading on the common portal of the EWB 03 Part A and B, (ii) that GSTR-1 copy of the supplier was produced wherein all such invoices in question were already lodged into the GST system and (iii) in MOV 4 , the final report of Inspection, no mismatch was observed amongst the quantities present in the Invoice as matched with physical verification. Petitioner prayed that the allegation of evasion of Tax should be dropped.

10. Since there was no final order in Form GST MOV-09 passed under Section 129(3) of the CGST Act, 2017 and the goods and vehicle continued to be in detention causing demurrage costs to him, petitioner approached this Court in WP(C) No.495 of 2024 on 22.07.2024 challenging the show cause notice in MOV 01-07 and for releasing goods along with vehicle having no. TR01 AH 1562.

11. On 24.07.2024, the High Court disposed of the said Writ Petition with an observation that it would not interfere mid-proceedings as a hearing was fixed on 30.7.2024, but directed the respondents to conclude the proceedings strictly in accordance with law, after granting to the petitioner an opportunity of hearing. It also observed that in the meantime, if the petitioner furnishes security as required under Section 129 of the CGST Act, 2017, the detained goods and conveyance may be released.

12. In the meantime, a letter dt.23.7.2024 was issued by respondent no.4 admitting that copy of the EWB 03 Part A and B was not uploaded on the common portal owing to a technical glitch in the MS E Way bill portal for SSO integration phase.

13. To secure release of the goods and vehicle, the petitioner on 26.07.2024 paid the penalty of Rs.4,96,850/- vide Form DRC-03 instead of giving security for it as directed by the High Court in the order dt.24.7.2024 in WP(C) No.495 of 2024. Thereafter, the goods and the vehicle were released on 26.7.2024 vide Annexure-16.

14. Section 129 (3) however states:

“Section 129:

(1)...

(2)...

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section(1).”

15. By issuing Form GST MOV-7, the *first part* of sub-section (3) of Section 129(3) was no doubt complied by respondent no.4, but the *later part* of the said sub-section i.e., to pass an order justifying the penalty proposed and confirming the penalty, obviously by dealing with petitioner's explanation dt.18.7.2024 and giving reasons why it is not proper, has also to be done by respondent no.4.

16. On 26.7.2024, a letter (Annexure-14) was addressed by the petitioner to the respondent no.4 where the petitioner stated that he was paying

the full penalty amount in dispute and specifically requesting the said officer to pass MOV-09 order (under sub-section (3) of Section 129) within the time frame, so that he can challenge it in appeal before the appellate authority. Thus the payment of penalty was obviously made only to secure release of goods and was under economic duress and the petitioner clearly indicated his wish to challenge the order when passed in appeal.

17. When this case had come up before this Bench on 03.11.2025, this Court had asked the counsel for the respondent nos.02-07 to produce today the copy of the order, if any, passed in MOV-09 under the later part of Sub-Section (3) of Section 129 of the Tripura State Goods and Services Tax Act, 2017.

18. Today, the counsel for the said respondent nos. 2-7 reports that since the petitioner had paid the penalty voluntarily, the goods were released and no order under Section 129(3) of the Tripura State Goods and Services Tax Act, 2017, in MOV-09 was passed or was required to be passed. He also pointed out that similar reply had been given on 14.8.2024 vide Annexure -18 by respondent no.4 to petitioner.

19. Having regard to this stand taken by respondent no.2-7, we are of the view that no useful purpose would be served by asking them to file any counter affidavit.

20. We are shocked to hear the submission on behalf of the counsel for the respondent no.02-07.

21. Thus notwithstanding the statutory mandate under Section 129(3) of the Tripura State Goods and Services Tax Act, 2017, no order was passed by respondent No.4 justifying the imposition of penalty on the petitioner till

date, for more than 16 months. After issuing the letter dt.23.7.2024 (Annexure-13) asking petitioner to appear for a personal hearing on 30.7.2024, nothing further was done by respondent no.4.

22. As pointed out above, the letter dt.26.7.2024 was addressed by the petitioner to the respondent no.4 where the petitioner has specifically stated that he was paying the full penalty amount in dispute and specifically requesting the said officer to pass order confirming penalty in Form MOV-09 within the time frame so that he can challenge it in appeal before the appellate authority.

23. This letter of the petitioner clearly indicates that the payment of the penalty was made by petitioner only to secure the release of the goods and vehicle and was not intended to be an acceptance of the liability to suffer the penalty since the petitioner clearly indicated his intention to challenge the penalty order in appeal before the appellate authority.

24. Such a payment of penalty under economic duress cannot be treated by the respondents as a voluntary payment of penalty exonerating the respondents from passing an order as mandated by the later part of sub-section (3) of Section 129 justifying imposition of penalty on the petitioner.

25. We hold that, in the absence of an order passed by respondent no.4 confirming the penalty proposed on the petitioner (with reasons after considering petitioner's representation dt. 18.7.2024 to the show cause notice dt.11.7.2024 issued to it), the very levy and collection of penalty under Section 129(1) on/from the petitioner by respondents is without authority of law and violates Art.14. Art.19(1) (g), Art.265 and Art.300-A of the Constitution of India.

26. Therefore, the Writ Petition is allowed and the respondents are directed to refund to petitioner within 2 months, the entire amount of penalty paid by the petitioner to them with interest @9% per annum from the date of such payment till the date of refund.

27. The respondent no.4 shall also pay costs of Rs.25,000/- to the petitioner for not passing an order justifying the penalty under Sub-Section (3) of Section 129 of the Tripura State Goods and Services Tax Act, 2017, and compelling it to pay the penalty to secure the release of the goods. The respondent no.2 and 3 shall look into this conduct of the respondent no.4 in not complying with the mandatory provisions of the Tripura State Goods and Services Tax Act, 2017, and if necessary, initiate disciplinary action against him.

28. Pending application(s), if any, shall stand disposed of.

(S. DATTA PURKAYASTHA, J) (M.S. RAMACHANDRA RAO, CJ)