GSTAT

Court No. Court I

APL/87/LCK/2026

SANTOSH MANI MISHRA ....Appellant

Versus

PROP, 0 TALPURA TALPURA BAHERI UPBAR 243201 , ISLAM TRADING CO ....Respondent

Counsel for Appellant
SHRI MAHENDRA PRATAP SINGH, ASSISTANT COMMISSIONER, SGST

Counsel for Respondent
NONE APPEARED

Hon'ble Santosh Kumar Srivastava, Member(Judicial)
Hon'ble Arvind Kumar, Member (Technical)

ORDER

Summary of the order by the GST Appellate Tribunal, Lucknow Bench.

1.	GSTN/Temporary ID/UN -	09ACBPU8577H1ZW
2.	Appeal Case Reference No.	APL/24/2018
3.	Name of the Appellant:	SANTOSH MANI MISHRA
4.	Name of the Respondent:	NONE APPEARED
5.	Order Appealed Against:	APL/24/2018 dt.
	(5.1) Order Type:	Enforcement Order

6.	Personal Hearing -	17.07.2026, 05.08.2026 & 13.08.2026
7.	Status of Order under Appeal	Appeal is ALLOWED

FINAL ORDER

1.This appeal has been filed by the Appellant (Revenue) under the relevant provisions of the GST Act (Under Section 112) against the first appellate authority order vide appeal no. APL/24/2018, dated 24.09.2021 under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty was set aside.

1.1 Since the goods (Scrap) were being transported without E-way Bill, which is a mandatory under Rule 138(A). Therefore, we find the matter should be heard in Division Bench.

The present second appeal arises from proceedings under Section 129(3) of the U.P. GST Act, 2017 regarding detention of goods for non-availability of the E-Way Bill at the time of interception.

1.2 The appellant, M/s Islam Trading Company, Baheri, Bareilly, was transporting 132.90 cubic feet of iron goods under Tax Invoice No. 29 dated 26.03.2018. On 27.03.2018, the vehicle was intercepted by the Mobile Squad, Bareilly. As the E-Way Bill was not available with the driver at that time, tax of Rs. 47,844/- and an equal penalty of Rs. 47,844/- were imposed under Section 129(3).

2. The Appellate Authority erred in setting aside the tax and penalty despite the clear violation of Rule 138 of the GST Rules, as the goods were transported without a valid E-Way Bill.

2.1 The subsequent production of the tax invoice, books of account, GST returns and proof of payment of tax cannot retrospectively cure the violation committed at the time of transportation.

2.2 The Appellate Authority failed to consider that the vehicle was intercepted during transportation and that, but for such interception, the movement of goods without an E-Way Bill would have gone undetected, indicating an intention to evade tax.

2.3 The judgments relied upon by the Hon'ble Appellate Authority are distinguishable on facts and are not applicable to the present case involving violation of Rule 138 and circumstances indicating tax evasion.

2.4 The Appellate Authority failed to decide the material question of law as to whether taxable goods can legally be transported without the mandatory E-Way Bill.

3. Shri Mahendra Pratap Singh, learned Assistant Commissioner of SGST, authorized representative appeared for department and argued. He reiterated the submission made in grounds of appeal and facts.

3.1 The E way bill generation is an online process, whereas the tax-invoice is issued manually by the taxpayer. If the trader generated the E-way bill online, it would have appeared in his outward supply records preventing him from manipulating his books of accounts at his convenience. This fact established the trader's intention to evade tax.

3.2 The loading of goods is shown at Baheri, Barielly (Uttar Pradesh) and the delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand, the distance from Baheri to Kichha is approximately 25 km. Since the Transportation of sensitive goods such as iron scrap without E-way bill, further highlights the trader's intent to evade tax.

3.3 The impugned order fails to consider the cumulative effect of the absence of the E-Way Bill, interception of the vehicle, nature of the goods, intension to evade tax and subsequent production of documents, and is therefore liable to be set aside.

4. None appeared on behalf of the Respondent.

4.1. The respondent, despite being afforded adequate opportunity before this court, neither appeared nor filed any written submissions to contradict the grounds urged by the Department. Consequently, there is no material before the Authority to dislodge the findings recorded herein.

5. The issue for determination is whether the goods in question were genuinely being transported and, despite the availability of all relevant documents, the alleged intention to evade tax is merely a presumption, or whether the facts and circumstances establish such intention, particularly when the goods were transported without an E-Way Bill.

5.1 The First Appellate Authority has relied upon various judicial precedents of the Hon'ble High Courts while passing the impugned order, considering them to be applicable to the present case. The issue before us is whether the said judicial precedents are, in fact, applicable to the facts and circumstances of the present case.

5.2 The first Appellate Authority on the premise that the E-Way Bill was subsequently produced and there is no discrepancy existed in the accompanying documents. The first Appellate Authority on the premise that the E-Way Bill was subsequently produced and there is no discrepancy existed in the accompanying documents. The first appellate authority has also relied upon various precedents in his order to support his stand as follows-

The Hon'ble Allahabad High Court in case of Sarva Shri Singh Tire v. State of U.P. *has held "the order of Section 129(3) as unreasonable by accepting the writ on the ground that the e-way bill was subsequently downloaded and submitted before the Mobile Dal Unit."*

In the case of Shri KL Industries v. State of U.P. *"the order of Section 129(1) and Section 129(3) was quashed by the Hon'ble High Court. Ultimately, it was requested that the appeal be allowed and that the order passed be quashed and the disputed amount be liquidated."*

The Hon'ble High Court in the case of Sarv Shri Harley Foods Products Pvt Ltd. V. State of U.P. & 3 others (2018) 37 VLI-UP. *"Goods and Services Tax Act, 2017 Section 129(1) and 164 e-way bill 01 not produced at the time of interception of goods along with other documents-Goods Seized-presumption-intention of evade tax all the requisite documents including e-way bill were with the goods intention to evade tax not* *proved-goods directed to be released without security-penalty proceeding quashed."*

The Hon'ble Allahabad High Court in M/s Modern Traders Vs. State of UP and 2 others 2018 NTN(Vol-67)-71 the following opinion has been held: -

"The sole ground of seizure of goods in non-production of e-way Bill, whereas no dispute with regard to Issuance of invoice and charge of Tax by the petitioner."

The Hon'ble Kerala High Court in M/s Rai Prexim India Private Limited Vs. State of Kerala 2019 NTN (Vol.70)-29 *has expressed the following opinion: -*

"If human error which can be seen on the caked eye is detected, such human error cannot be capitalized for penalization"

6. We have carefully considered the grounds raised in the appeal and perused the record and the order passed by the first appellate authority.

6.1 It is an admitted fact that no E-Way Bill accompanied the goods at the time of transportation. The requirement of carrying an E-Way Bill during transportation is mandatory under Rule 138(I) of the GST Rules, the said rule is produced as under-

"(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees-

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of Form GST EWB -01, the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal"

Thus E-Way Bill is an integral part of the statutory mechanism for monitoring movement of taxable goods.

6.2 We have carefully examined the aforesaid judicial precedents and find that the facts and circumstances considered therein are distinguishable from those of the present case. In the present case, the generation of an E-Way Bill is an online process, whereas the tax invoice is issued manually by the taxpayer.

6.3 The non-generation of an E-Way Bill, therefore, leaves scope for subsequent manipulation of the books of accounts at the convenience of the taxpayer. Accordingly, we are of the considered opinion that, in such circumstances, transportation of goods without an E-Way Bill constitutes substantive non-compliance and establishes an intention to evade tax.

6.4 Moreover, in this transaction, the loading of goods is shown at Baheri, Barielly (Uttar Pradesh), and the delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand; the distance from Baheri to

Kichha is approximately 25 km. Its further highlight the trader's intent to evade tax. Thus, in the present case the intention to evade tax in crystal clear.

6.5 This Appellate Tribunal, Lucknow Bench, vide order dated 20.08.2026 in Appeal No. APL/79/LKC/2026, *Om Prakash v. M/s Islam Trading Company*, GSTIN: 09ACBPU8577H1ZW, has considered a case involving the same nature of goods and a similar modus operandi, wherein the goods were being transported to the same location and the E-Way Bill was produced by the respondent only after interception by the Mobile Squad, Bareilly. The Tribunal, in the said case, also took note of the repetition of the same lapse in the present proceedings.

6.6 In view of the aforesaid facts and the repeated adoption of the same procedure, we are of the considered opinion that the conduct of the respondent cannot be treated as a mere procedural or technical lapse. The circumstances, particularly the production of the E-Way Bill only after interception by the Mobile Squad and the repetition of the same lapse, establish a deliberate course of conduct indicative of an intention to evade tax.

6.7 Accordingly, we are of the considered opinion that the First Appellate Authority committed an error in interfering with the order passed under Section 129(3). The original adjudicating authority had rightly invoked the provisions of Section 129.

ORDER

The appeal filed by the Appellant (Revenue) is accordingly allowed.

The first appellate authority order Vide Appeal No. APL/24/2018, dated 24.09.2021 under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty is set aside.

The order dated 09.03.2018 passed by the Proper Officer under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty is restored.

25.8.26
(Santosh Kumar Srivastava)

25/8/26
(Arvind Kumar)

Dated: 25.08.2026