GSTAT

Court No. Court I

APL/38/LCK/2026

M/S JAI ENTERPRISES ....**Appellant**

Versus

PANKAJ GANDHI, ADDITIONAL COMMISSIONER GR-2 APPEAL IV, STATE TAX KANPUR & ORS. ....**Respondent**

Counsel for Appellant
MR. ALEKH AGRAWAL, ADVOCATE

Counsel for Respondent
MR. MAHENDRA PRATAP SINGH, ASSISTANT COMMISSIONER, SGST

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

ORDER

This appeal has been filed under Section 112 of the Central Goods and Services Tax Act, 2017, read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017, against the order dated 11.10.2023 passed under Section 129(3) of the CGST/UPGST Act, 2017, and the consequential order passed by the First Appellate Authority in Appeal No. KNP/04/0040/2022.

BRIEF FACTS OF THE CASE:

The goods were being transported by vehicle No. UP-71-B-9301 from M/s. Jai Enterprises, Nayaganj, Kanpur, to Fatehpur. The goods were accompanied by Invoice Nos. 14259 and 14260 dated 01.03.2022, as well as E-Way Bill Nos. 431234391202 and 481234390936 dated 01.03.2022. During transportation, the SGST Officer, Mobile Squad Unit No. 3, Kanpur, checked the vehicle at 01:27 p.m. at Jhakarkatti, Kanpur, and also scanned the E-Way Bills through the E-Way Bill Scan App. After about 08.30 hours, at 09:52 p.m., the Mobile Squad again checked the vehicle at Jhakarkatti. On this ground, the officer of the Mobile Squad drew the inference that the papers were being reused for another transaction to evade tax.

On the basis of the above discrepancy, the Mobile Squad Officer intercepted the vehicle and issued a notice under Section 129. After rejecting the reply of the owner of the goods and fixing the valuation at Rs. 2,65,650.00, a total demand of Rs. 6,06,844.00 was created (Penalty of Rs. 74,382.00 and Cess penalty of Rs. 4,58,080.00). Being aggrieved by the said order, the appellant preferred an appeal before the Appellate Authority, i.e., Additional Commissioner, Grade-II (Appeal), 4th, State Tax, Kanpur, dated 11.10.2023. The First Appellate Authority rejected the appeal and confirmed the order passed by the Assistant Commissioner, Mobile Squad, State Tax, 10th Unit, Kanpur.

The First Appellate Authority mentioned in his observation that, in the present case, the appellant was reusing the documents to evade tax because the vehicle had already been checked by the Commercial Tax Officer, Vehicle Squad-II, Unit Kanpur, on 01.03.2022 at 01:27 p.m., and, assuming that the vehicle was once again found between Jhakarkatti Godown and the place of Babupurwa, Police Station Cooperganj, the vehicle was intercepted on the same day at 09:52 p.m. It shows that, to evade tax, the appellant was reusing the documents relating to the goods-loaded vehicle. After detention of the goods, the appellant had taken the imaginary excuse of a vehicle breakdown. It was merely an afterthought and nothing else. The appellant was transporting the goods more than once on the same documents merely to evade tax.

The First Appellate Authority, on the above facts, rejected the appeal.

Thus, mentioning the above facts, the First Appellate Authority rejected the appeal. Being aggrieved, the party preferred an appeal before the Tribunal. In his appeal memo, the party put forth his stand as below:

1. That the E-Way Bills of the above goods were generated on 01.03.2022 at 06:17 a.m. and 06:19 a.m. and were valid up to 02.03.2022. The goods were on their way to the destination within the period of validity of the E-Way Bills.

2. That when the goods were on their way to the destination, the same were detained by the officer of the Mobile Squad and a show cause notice was issued on the ground that the goods were being re-transported on the same documents. It has been alleged that the documents were earlier verified and, again, on the same documents, the goods were being transported, which is in contravention of the provisions of the GST Act.

3. That in response to the show cause notice, the appellant appeared before the officer of the Mobile Squad and submitted that the transportation of the goods was being done within the provisions of the UPGST Act and no provisions had been contravened. The allegations to the contrary were denied.

4. That in the notice, it has been mentioned that the E-Way Bills were verified on 01.03.2022 at Jhakarkatti, Kanpur, and on the same day at 09:52 p.m., the vehicle was checked at Cooperganj, Kanpur, and on that basis, it was presumed that earlier the goods had been delivered and the present goods were being re-transported on the basis of the documents relating to the goods which had already been delivered.

5. That in this connection, it was submitted in the reply to the officer of the Mobile Squad that when the vehicle moved from Jhakarkatti to Cooperganj over the bridge, the vehicle got damaged and could not move, and after the vehicle was repaired, the driver started for the destination and the same was detained at 9:52 p.m. while it was proceeding towards the destination.

6. That as the goods were checked at Jhakarkatti earlier and the E-Way Bill was verified, and the same vehicle was checked again at Cooperganj, it was detained on the allegation that the goods were being re-transported, which was nothing but a presumption. The repairing bill of the vehicle was enclosed in support, along with the reply submitted before the officer of the MS, but no cognizance thereof was taken, though it formed part of the reply of the appellant before him.

7. That, as such, the allegation of re-transportation with the same documents was a wrong fact, based on presumption only. The applicant had also submitted an affidavit of the driver in support before the officer of

the Mobile Squad, which was also not taken into consideration, and only on the basis that the E-Way Bill was earlier verified, the amount of penalty was demanded, while the goods were being transported for the first time and the allegation of re-transportation was denied.

8. That, on verification, the goods were found as per the bill and the value taken for the demand of the penalty was the same as mentioned in the bills, which goes to prove that the goods were according to the tax invoice, e-invoice and E-Way Bill, which were produced voluntarily on demand at the time of checking of the vehicle.

9. That so far as the E-Way Bill is concerned, the same was valid up to the night of 02.03.2022, and the goods were detained on 01.03.2022 at 9:52 p.m., as mentioned in the notice, which goes to prove that the goods were being transported within the provisions of the Act and the applicant had not contravened any provision of the Act.

10. That the transportation of the goods was in strict compliance with the provisions of the GST Act and the goods were detained on assumption and presumption. The E-Way Bills were downloaded at 06:17 a.m. and 06:19 a.m. and were alleged to have been verified by Unit 3 at Jhakarkatti, Kanpur.

11. That it was also requested in the reply that the applicant might kindly be informed of the location of the officer who had alleged to have verified the above E-Way Bills at Jhakarkatti, Kanpur, which was neither informed nor mentioned in the order under dispute.

12. That the Hon'ble High Court of Allahabad in Writ Tax No. 1146/2021, M/s Shri Surya Traders vs. Union of India, decided on 06.01.2022, has held that if the movement of goods is in compliance with the provisions of the GST Act, the same cannot be detained on the basis of presumptions and assumptions.

13. That, as such, the detention of goods was against the settled law, and the assessee had not contravened any provision of the Act.

14. That, as such, there was no mens rea, mala fide or irregularity in the transportation of the goods, which was under a regular tax invoice as well as an e-invoice, and the same were being transported in strict compliance with the provisions of the GST Act, and it was requested to the officer of the MS that, in view of the above, the goods might kindly be ordered to be released without any security deposit, for which the applicant would feel obliged.

15. That the bill found with the goods, which had been issued in the regular course of business, had not been doubted. The E-Way Bill was within the period of validity. There was no iota of evidence that the applicant had contravened any provision of the Act.

16. That the only ground of re-transportation was based on presumption, and ignoring the evidence submitted, there was no mala fide on the part of the appellant, and the goods were sold in the regular course of business.

17. That the officer of the Mobile Squad did not agree with the above submission, and the goods were seized with the vehicle, and the applicant was asked to deposit the sum of Rs. 6,06,844.00 as penalty on the sale value of the bill. As the goods were perishable in nature, the same were got released by depositing the amount of penalty demanded, and the same is the matter of dispute in the present appeal.

18. That the version of the officer of the Mobile Squad was based on imagination, presumption and surmises. The Hon'ble Supreme Court and Hon'ble High Court, in the following cases, besides others, have held that suspicion, however strong it may be, cannot take the place of evidence on record.

18.1. **In the case of Umacharan Shaw & Bros. vs. CIT (1959) 37 ITR 271 (SC), it was held that** it is settled law that suspicion, however strong, cannot take the place of legal proof.

18.2. That it has been held by the Hon'ble Supreme Court in the case of *State of Kerala vs. M. M. Mathew* , reported in 1978 STC (42) 848, that presumption cannot take the place of evidence.

It has been held by the Hon'ble Supreme Court that strong suspicion, strange coincidences and grave doubt cannot take the place of legal proof.

18.3. In the case of *Kumar Electric Works vs. CST* [1984 UPTC 1272], it was held that circumstances merely raising suspicion cannot take the place of positive proof.

19. That all the above citations mentioned in the facts of the case, though under the erstwhile U.P.T.T. Act/VAT Act, are applicable in the case of the appellant, and the order under dispute is based on presumptions and surmises and is bad in law and on facts and is liable to be quashed, as it has been passed in contravention of the **settled law**.

20. That the basis taken for imposition of the penalty and demand of the security amount is bad in law. The goods were being transported with a valid bill and E-Way Bill. There is no evidence with the department that the goods were being transported in contravention of the law. As such, the detention, seizure and demand of penalty, being based on presumption, are liable to be set aside.

21. That the appellant had sold the goods in the regular course of business and his liability to tax was within the framework of law, as such there was no mens rea on the part of the appellant. The tax had been charged in the bills, as such there was no mala fide on the part of the applicant. The E-Way Bill, as stated in the facts of the case, was downloaded at the time of transportation of the goods and before detention and seizure, and was within the period of validity. As such, the seizure and other proceedings, being based on presumptions and surmises and wrong facts, were bad in law and were liable to be set aside and might kindly be set aside.

22. That in the case of *Shubham Fertilizers and Chemicals vs. State of U.P.*, 2015 NTN (67)-15—

"The Court held that after perusal of relevant documents, namely, invoice, goods receipt, E-Way Bills, etc., which are enclosed as Annexures to the writ petition, and found that the E-Way Bill under the UPGST had been downloaded by the petitioner much before the detention and seizure of the goods and the vehicle, disclosing the necessary information. In view of the aforesaid facts, the Court found no irregularity in the present transaction and, therefore, the seizure order as well as penalty notice issued under Sections 129(1) and 129(3) of the Act, as well as the consequential proceedings, were set aside. The goods were released forthwith in favour of the petitioner."

23. That in the case of the appellant, the E-Way Bill had been downloaded before the time of movement of the goods and before inspection/detention of the vehicle, and there was no evidence of misuse. The same was valid at the time of detention, and the goods were according to the bill. As such, the penalty imposed was liable to be set aside.

24. That in the case of the applicant, the goods were according to the bill and had been sent by the appellant on the proper bill. As such, the detention and deposit of security/penalty amount in the shape of an indemnity bond were bad in law and on facts and were liable to be set aside.

25. That the allegations made in the show cause notice and in the order passed were based on presumptions and surmises. There was no evidence on record that the E-Way Bill had been re-used. Simply on the alleged presumption of the officer of the MS that the goods had already been delivered, he assumed that the goods were being re-transported. No survey had been made of the premises of either the seller or the purchaser. The law requires evidence and not hearsay. Presumption, however strong it may be, cannot take the place of evidence.

26. That in the case of *CT vs. Sarshadilal Enterprises Ltd.*, [VSTI 2014 (19) B-118], it was held that for imposition of penalty under Section 48[5], intention to evade tax is a must and the goods must be omitted from being shown in the account books, coupled with an intention to evade the payment of tax on the part of the dealer.

27. That the citations mentioned in the Memo of Appeal, though under the erstwhile U.P.T.T. Act/VAT Act, are applicable in the case of the appellant, and the order under dispute is based on presumptions and surmises and is bad in law and on facts and is liable to be quashed, as it has been passed in contravention of the **settled law**.

28. That the officer of the MS had not taken cognizance of the evidence enclosed regarding the delay in transportation from Jhakarkatti to Cooperganj. The bill for repairing the vehicle had not been doubted, and the affidavit of the driver had not been controverted. As the alleged verification had been done in the morning, the detention, seizure and demand of penalty amounted to denial of natural justice to the appellant and were a glaring example of the high-handedness of the officer of the Mobile Squad.

29. That the officer of the Department was a Mobile Officer and was vested with the powers to verify from the purchaser as well as the seller whether the goods had earlier been delivered or the same had been re-loaded, which had not been done. It showed that, in his view, there was an anomaly in the transportation.

30. That there was no contravention of the provisions of the Act in the present case, but the law was settled that the assessee could not be penalized for the lapses/laziness of the department, as they were supposed to

be vigilant towards their duties.

31. That the seizure of the goods and demand of penalty were bad in law and on facts and were liable to be set aside, and the amount deposited be ordered to be refunded to the appellant/adjusted towards the future liability to tax.

That the **Hon'ble Allahabad High Court, in the case of M/s B.L. Agro. Oils Ltd., Bareilly**, held in paragraph No. 5 that "*It is for the seizing authority to establish by evidence that the e-way bill is being reused. In the present case, there is no evidence produced by the seizing authority that there is a reuse of the e-way bill by the petitioner.*"

The same finding was given by **the Hon'ble Allahabad High Court in the case of M/s Anandeshwar Traders vs. State of U.P. and Others**, wherein it was held that "*if there is no evidence of the use of the E-Way Bill, the penalty cannot be imposed.*" In the case of *M/s Anandeshwar Traders vs. State of U.P. and Others*, reported in 2021 U.P.T.C. [Vol. 107]-421, paragraphs 10 and 11 of the said judgment read as follows:

"10. Even if the dealer does not cancel the e-way bill within 24 hours of its generation, it would remain a matter of inquiry to determine on evidence whether an actual transaction had taken place or not. That would be subject to evidence received by the authority. As such, it was open to the seizing authority to make all factual inquiries and ascertain on that basis whether the goods had or had not been transported pursuant to the e-way bills generated on 24.11.2019. Since the petitioner-assessee had pleaded a negative fact, the initial onus was on the assessing authority to lead positive evidence to establish that the goods had been transported on an earlier occasion. Neither any inquiry appears to have been made at that stage from the purchasing dealer or any toll plaza or other source, nor was the petitioner confronted with any adverse material as may have shifted the onus on the assessee to establish non-transportation of goods on an earlier occasion.

11. The presumption could not be drawn on the basis of the existence of the e-way bills though there did not exist evidence of actual transaction performed and though there is no statutory presumption available. Also, there is no finding of the assessing authority to that effect only. Mere assertion made at the end of the seizure order that it was clearly established that the assessee had made double use of the e-way bills is merely a conclusion drawn bereft of material on record. It is the reason based on facts and evidence found by the assessing authority that has to be examined to test the correctness of the order and not the conclusions, recorded without any material on record."

FINDINGS:

32. We have carefully considered the submissions made by both sides and perused the records. In the present case, the material placed on record does not establish any discrepancy in the description, quantity, value or ownership of the goods. The goods were accompanied by the relevant tax documents, including the invoice/e-invoice and E-Way Bill.

32.1. The First Appellate Authority has observed that the fact that the trader had again transported the goods on the basis of documents already used automatically proved an intention to evade tax.

32.2. The finding that the goods were being "re-transported" is based principally on an inference from the earlier verification/location of the E-Way Bill. No independent and cogent evidence has been produced to establish that the same goods had already completed an earlier journey and had been delivered.

32.3. Both sides have placed reliance on various judicial pronouncements. We find it pertinent to examine the applicability of these judgments to the facts of the present case.

32.4. The judgment of the Hon'ble Supreme Court in the case of **Assistant Commissioner (ST) & Ors. v. M/s Satyam Shivam Papers Pvt. Ltd. & Anr., SLP (C) No. 21132/2021, decided on 12.01.2022.**

"*The Hon'ble Supreme Court declined to interfere with the well-reasoned judgment of the Telangana High Court, which had found that no fault or intent to evade tax could be inferred merely from the circumstances relied upon by the revenue.*"

In the case of **M/s Shri Surya Traders vs. Union of India**, decided on 06.01.2022, the Hon'ble High Court of Allahabad held that—

"*if the movement of the goods is in compliance with the provisions of the GST Act, the same cannot be detained on the basis of presumptions and assumptions.*"

In the case of *State of Kerala vs. M.M. Mathew*, reported in 1978 STC (42) 848, it was held that presumption cannot take the place of evidence—*It has been held by the Hon'ble Supreme Court that strong suspicion, strange coincidences and grave doubt cannot take the place of legal proof.*

In the case of M/s Anandeshwar Traders vs. State of U.P. [2021 U.P.T.C. (Vol-107)-421], tax and penalty were imposed on the petitioner on the allegation of reuse of the E-Way Bill. In the appeal filed by the assessee, the appellate authority admitted additional evidence at the behest of the revenue and dismissed the appeal, against which the petition was filed. It was held that—

"*The Revenue had presumed reuse of the e-way bill merely on the reasoning that the goods did not move within 24 hours of generation of E-way bill, which had not been done. No fresh material could be admitted in appeal at the behest of the revenue—Appeal Allowed—Order impugned set aside.*" [VSTI 2021 (2021 (41)-B-1497)]

32.5 **The Hon'ble Allahabad High Court in the case of M/s B.L. Agro. Oils Ltd., Bareilly (Writ-C No. 31593 of 2019, decided on January 31, 2023)** held in paragraph No. 5 that "*It is for the seizing authority to establish by evidence that the e-way bill is being reused. In the present case, there is no evidence produced by the seizing authority that there is a reuse of the e-way bill by the petitioner.*"

32.6 We have carefully examined the aforesaid judicial precedents and find that the facts and circumstances considered therein are similar to the present case.

32.7 In the present case, we have examined the facts placed on record and are of the considered view that the department failed to establish that the goods in question were being transported in contravention of the provisions of the GST Act or the Rules.

32.8 Therefore, the conclusion of the First Appellate Authority that "intention to evade tax is automatically proved" is legally unsustainable. Intention cannot be presumed merely from suspicion, and a presumption of tax evasion cannot take the place of proof of the underlying contravention.

32.9 The present case stands on an even more fundamental footing: here, the department has not established any cogent material, such as crossing of a toll plaza during the course of transportation of the goods on the same day, that the goods actually underwent an earlier completed transportation or that the same goods were being re-transported.

The First Appellate Authority relied upon the judgment delivered by the Hon'ble Allahabad High Court in the case of *M/s Falguni Steels v. State of U.P. and Others*.

33. We have observed that judgment and find that the Hon'ble High Court has also given the finding that the department has to prove the intention to evade tax, but in this matter, the department has failed to prove the intention to evade tax. Hence, this ruling does not support the view taken by the First Appellate Authority.

Therefore, the respondent failed to establish the fact that the bill for repairing of the concerned vehicle is fake/forged.

ORDER

i. The present appeal filed by M/s. Jai Enterprises, GSTIN 09ATQPS3526G1Z7, is **ALLOWED**.
ii. The appellate order bearing Reference No. KNP/04/0040/2022 dated 11.10.2023, passed by the Additional Commissioner, Grade-II (Appeal) 4th, Kanpur, is hereby **SET ASIDE**.
iii. The original order bearing No. AD090322002129I dated 08.03.2022, passed under Section 129 of the CGST/UPGST Act, is also hereby **SET ASIDE**.
iv. The amount of Rs. 6,06,844.00 deposited by the appellant pursuant to the impugned detention/penalty proceedings shall be refunded to the appellant in accordance with law.

(Santosh Kumar Srivastava)

(Arvind Kumar)

Dated: 25.08.2026