GSTAT

Court No. Court I

APL/33/LCK/2026

M/S NEPTUNE SALES CORPORATION ....**Appellant**

Versus

ADDITIONAL COMMISSIONER GR-2 APPEAL- IV LUCKNOW, ADDL. COMMR., LUCKNOW & ORS. ....**Respondent**

Counsel for Appellant
MR. ALEKH AGARWAL, ADVOCATE

Counsel for Respondent
MR. ASHUTOSH MISHRA, ASSISTANT COMMISSIONER, SGST

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

ORDER

1. This appeal has been filed by M/s Neptune Sales Corporation GSTN: 09AGJPA9427E1ZF against the appellate order bearing Reference/Acknowledgment No. ZD091024411876C dated 30.10.2024, whereby the learned Additional Commissioner Grade-II (Appeal) dismissed GST Appeal No. 90/2024 for the year 2023-24 and affirmed the original order bearing No. ZD090124161522N dated 19.01.2024, passed under Section 129 of the CGST/UPGST Act, 2017.

1.1 The dispute relates to detention of goods and imposition of penalty amounting to Rs. 2,51,196/-, in respect of goods covered by invoice, e-invoice and valid e-way bill.

1.2 The appellant is a registered proprietorship concern engaged in manufacturing business. The goods in question were being transported from the appellant's business premises at Arazi No. 1071, Mubarakpur, Akabarpur, Kanpur Dehat to the declared destination under a valid tax invoice, e-invoice and e-way bill.

1.3 The goods were intercepted on 14.01.2024. The department relied upon an earlier verification of the e-way bill at Banthara Bazaar, Kanpur Road, at about 04:15 A.M., and the subsequent location of the vehicle at Haj House, Lucknow, at about 12:45 P.M. on the same day, therefore, presumed that the goods were being re-transported on previously used documents.

QUESTION OF LAW:

2, Whether the goods being transported by the appellant first time or second time using same E-way bill?

3. Shri Alekh Kumar Aggarwal, Learned Counsel for the appellant, appeared and argued. He reiterated the submission made in the grounds of appeal and submissions.

3.1 That the appellant submitted that the goods were being transported with the valid Invoice of the goods, E-invoice of the goods and corresponding 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 and is liable to be knocked off.

3.2 That the appellant submitted that there is no mens rea on the part of the appellant. The tax has been charged in the bills as such there is no malafide on the part of the appellant, E-invoice as well as e-way bill as stated in the facts of the case were downloaded at the time of transportation of the goods, before detention and seizure. The transaction was within the period of validity.

3.3 The appellant submitted that the show cause notice cannot be issued on the mere base of suspicion, there should be a prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be seized under Section 129 of the GST Act, therefore, the show cause notice should be quashed and set aside.

3.4 Further the appellant submitted that the goods were detained on flimsy ground, on the basis of presumptions and surmises. The detention and entire proceedings are bad in law, therefore, penalty order is liable to be set aside.

3.5 The appellant has relied upon several judicial precedents of the Hon'ble Supreme Court of India and the Hon'ble High courts, which are as below-

i. In the case of M/s. Satyam Shivam papers Pvt. Ltd. Vs Asstt Com ST & Others [2020 UPTC (108) –Telangana.
ii. SLP No. 21132/2021 was filed by the department before the Hon'ble Supreme Court and the Hon'ble Supreme Court confirmed the above decision of Telangana High Court vide its order dated 12.01.2022.
iii. In the case of Ashok Kumar Sureka Vs. Asstt Com W.B. [2022 UPTC (110)-569] [W.B.].
iv. In the case of Shir Anant Jignesh Shah vs Union of India [2021 NTN (76) –86] Gujarat.
v. The Hon'ble High Court of Allahabad in writ tax no. – 1142/2021 M/s. Shri Surya Traders Vs Union of India decided on 06.01.2022.
vi. In the case of Umacharan Shaw & Bros. Vs. CIT (1959) 37 ITR 271 (SC).
vii. In the case of State of Kerala vs M.M. Mathew reported in 1978 STC (42) 848
viii. In the case of Kumar Electric Works vs CST [1984 UPTC 1272]
ix. In the case of Shubham Fertilizer and Chemicals vs State of U.P. 2015 NTN (67)-15
x. In the case of CT VS Sarshadi Lal Enterprises Ltd [VSTI 2014 (19) B- 118]
xi. In the case of M/s Shri Surya Traders Union of India decided on 06.01.2022
xii. In the case of M/s. Anandeshwar traders Vs. State of U.P. [2021 U.P.T.C. (Vol-197) –421]
xiii. In the case of Shri Anant Jignesh Shah vs Union of India [2021 NTN (76) – 86] Gujarat.
xiv. In the case of B.L. Agro. Oils Ltd. Barielly, (Writ C No. 31593 of 2019, decided on January 31, 2023).

3.6 The appellant prayed for the rejection of the penalty imposed on the appellant to be set aside and relief claimed may be granted as deemed fit under the circumstances of the case to be granted.

4. Shri Ashutosh Mishra, learned Assistant Commissioner of SGST, authorized representative appeared on behalf of the department and contested the grounds of appeal and submissions made by the appellant.

4.1 Learned Assistant Commissioner, emphasized the order passed by the adjudicating authority as well as the order passed by the first appellate authority.

4.2 Learned Assistant Commissioner submitted that the Order in Original and Order in Appeal, were legal and proper and called for no interference.

5. Findings-

5.1 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.

5.2 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.

5.3 The finding that the goods were being "re-transported" is based principally on 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, had been delivered.

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

6.1 The judgment of the Hon'ble Supreme Court in 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 of the provisions of GST Act, the same can't 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 that the presumption can not take place of evidence – *It has been held by the Hon'ble Supreme Court that Strong suspicion, strange coincidences and grave doubt cannot take place of legal proof.*

In the case of M/s. Anandeshwar traders Vs. State of U.P. [2021 U.P.T.C. (Vol-197) –421]

Tax and Penalty was imposed on the petitioner on the allegation of reuse of E-way Bill- In appeal filed by the assess, the appeal authority admitted additional evidence at the behest of the revenue and dismissed appeal against which this petition- 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 has 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]

6.7 **The Hon'ble Allahabad High Court in case of M/s B.L. Agro. Oils Ltd. Barielly, (Writ C No. 31593 of 2019, decided on January 31, 2023)** held that at para no. 5 that *"It is for seizing authority to establish by evidence that e-way bill as 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."*

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

7.1 In the present case, we have examined the facts placed on record, we 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 as well as reusing of E-way bill.

7.2 Therefore, the conclusion of the first appellate authority that "intention to evade tax is automatically proved" is legally/factually unsustainable. Intention cannot be presumed merely from suspicion, and a presumption of tax evasion cannot take the place of proof.

7.3 The present case stands on an even more fundamental footing: here, the department has not established any cogent material such as crossing of toll plaza during the course of transaction of goods in same day, that the goods actually underwent an earlier used E-way bill.

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

We observed that judgment in which the Hon'ble High Court also has given the findings that the department has to prove intention to evade tax, but in this matter, department has failed to prove intention to evade tax. Hence, this ruling is not supporting the view taken by the first appellate authority.

<u>ORDER</u>

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(i) The present appeal filed by M/s Neptune Sales Corporation, GSTIN 09AGJPA9427E1ZF, is ALLOWED.

(ii) The appellate order bearing Reference No. ZD091024411876C dated 30.10.2024 passed by the Additional Commissioner Grade-II (Appeal-IV), Lucknow, is hereby SET ASIDE.

(iii) The original order bearing No. ZD090124161522N dated 19.01.2024, passed under Section 129 of the CGST/UPGST Act, is also hereby SET ASIDE.

(v) The amount of Rs. 2,51,196/- (Rupees Two Lakh Fifty-One Thousand One Hundred Ninety-Six only) deposited by the appellant pursuant to the impugned detention/penalty proceedings shall be refunded to the appellant in accordance with law.

GST APPELLATE TRIBUNAL
जीएसटी अपीलीय अधिकरण

(Santosh Kumar Srivastava)

25/8/26
(Arvind Kumar)

Dated: 25.08.2026