GSTAT

Court No. Court I

APL/82/LCK/2026

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

Versus

DR ANUPAMA GOYAL, COMMISSIONER/ASSISTANT COMMISSIONER, STATE TAX KANPUR, STATE TAX KANPUR & ORS. .....**Respondent**

Counsel for Appellant

SHRI 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

The present appeal was filed against the Order-in-Appeal dated 19.12.2019 passed by the Additional Commissioner Grade-2 (Appeals) Second, Commercial Tax Kanpur, whereby a demand of tax and penalty amounting to Rs.6,62,077/- upheld which was imposed vide Order-in-Original No. 2084/MOV-09 dated 22.05.2028 passed by the Assistant Commissioner, Commercial Tax, Mobile Squad, Bhognipur Unit, Kanpur Dehat, under Section 129(3) of the CGST/UPGST Act, 2017, for the period 2018–19, in respect of goods being transported in vehicle No. UP77AN0423.

1. QUESTION OF LAW INVOLVED.

1.1 Whether goods being transported by the appellant first time or second time using same E-way bill. Therefore, we find the matter should be heard in Division Bench.

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2. BRIEF FACTS

2.1 The records reveal that the vehicle was carrying Pan Masala and Tobacco products, declared to be transported from Kanpur to Auraiya. The relevant documents included invoices issued by M/s Jai Enterprises, having GSTIN 09ATQPS3526G1Z7, along with two e-way bills generated on 11.05.2018 at 11:06 A.M. and 11:10 A.M.

2.2 As per the verification by Mobile Squad, Bhognipur Unit, Kanpur Dehat and information obtained from Bara Jod Toll Plaza, the same vehicle, loaded with goods, had crossed the toll plaza at approximately 12:22:05 P.M. on 11.05.2018, travelling from Kanpur towards Etawah. The vehicle was thereafter recorded as travelling back towards Kanpur at approximately 2:56 P.M., apparently in an empty condition. Subsequently, the same vehicle was again found carrying goods and travelling from Kanpur towards Auraiya at approximately 7:19 P.M.

2.3 The department consequently formed the view that the goods covered by the invoices and e-way bills had already been transported during the earlier movement of the vehicle and that the same documents were being re-used for a second transportation of goods. Photographs and movement records obtained from the toll plaza were relied upon to establish that the vehicle was carrying similar goods during the relevant movements.

2.4 Before passing the order under Section 129(3), a show-cause notice was issued to the person accompanying the goods. Despite service of the notice, neither any person appeared nor was any explanation submitted on behalf of the appellant. The proper officer therefore passed the order on the basis of the material available on record.

2.5 The goods and vehicle had earlier been released against a bank guarantee of Rs 6,96,184/-, furnished on 01.06.2018 and submitted on 04.06.2018. The appellant subsequently relied upon proceedings before the Allahabad High Court and stated that a writ petition had been filed and that, pursuant to the High Court's order dated 16.07.2018, the goods and vehicle were also released against an indemnity bond.

2.6 Being aggrieved by the said order-in-original dated 22.05.2018, the appellant preferred an Appeal No. GST/KNP02/109/2018/P dated on 24.12.2018 before First appellate authority. The appellant also filed an application seeking condonation of delay.

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2.7 Thus, the controversy before this Tribunal essentially arises from the Order-in-Original No. 2084 dated 22.05.2018 and the consequential Order-in-Appeal bearing Appeal No. GST/KNP02/109/2018/P dated 19.12.2019.

2.8 The appellant explained the delay by referring to the writ proceedings before the Allahabad High Court and the release of the vehicle and goods pursuant to the High Court proceedings. It was also stated that the original order had been served upon the driver and that an application seeking rehearing of the ex parte proceedings had been filed.

2.9 The department objected to the maintainability of the appeal on the ground that it was barred by limitation. Since the order had been served on 22.05.2018, the department contended that the appeal under Section 107 could have been filed within the prescribed period, including the permissible additional period, but the appeal filed on 24.12.2018 was beyond the statutory period.

2.10 The appellant refuted the department's conclusion regarding the earlier movement of the vehicle. It was contended that the vehicle's movement at approximately 12:22 P.M. related to the transportation of cotton cut pieces/cotton waste to Kalpi, and not the Pan Masala and Tobacco covered by the disputed invoices and e-way bills.

2.11 The appellant further contended that it was practically impossible for the vehicle to travel from Bara Toll Plaza to Auraiya, unload the goods and return to the toll plaza within approximately two and a half hours, considering the distance involved. A statement/affidavit of the driver was relied upon in support of the explanation.

2.12 The departmental authorities relied principally upon the toll plaza records, photographs and movement data relating to vehicle No. UP77AN0423.

2.13 According to these records, the vehicle was:

1. recorded at 12:22:05 P.M. travelling from Kanpur towards Etawah with goods;
2. recorded at approximately 2:56 P.M. travelling back towards Kanpur in an empty condition; and
3. again, recorded at 7:19:14 P.M. travelling from Kanpur towards Auraiya with goods.

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2.14 The departmental authorities found that the photographs showed the vehicle carrying similar goods during the relevant movements. No independent documentary evidence, such as an invoice, transport document, details of the consignor or consignee, or other valid records, was produced to establish that the earlier movement involved cotton goods.

2.15 The department therefore concluded that the appellant had not established that the earlier transportation was of cotton cut pieces and that the explanation furnished by the driver was unsupported by independent evidence.

2.16 Based on vehicle movement records, toll photographs, invoices and e-way bills, the appellate authority concluded that the goods covered by the disputed documents had already been transported earlier on the same day.

2.17 Accordingly, it was concluded by the appellant authority that the same invoices and e-way bills were used more than once for transportation of goods, thereby violating the applicable provisions relating to movement of goods under the GST law and indicating an attempt at tax evasion.

2.18 The appellate authority held that the appeal filed on 24.12.2018 was beyond the statutory period prescribed under Section 107 of the CGST/UPGST Act, 2017 and that the appellant had failed to establish sufficient grounds for condonation of the delay.

2.19 The authority decided the matter on merits and found that the departmental evidence regarding the repeated movement of the vehicle and alleged re-use of the tax documents was not satisfactorily rebutted by the appellant.

2.20 Consequently, the appellate authority rejected the appellant's appeal on the ground of limitation as well as on merits, and upheld the original order dated 22.05.2018 (MOV-09) imposing tax and penalty.

3. GROUNDS OF APPEAL

3.1 The explanation made by the appellant was not properly considered. Merely because the department had drawn a different inference from the toll plaza records, the explanation of the appellant could not have been discarded without examining the surrounding circumstances.

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3.2 The department relied upon photographs taken at different times and treated the similarity in the appearance of the load as proof that the same goods were being transported again. Similarity of goods is not necessarily proof of identity of goods.

3.3 If the department wanted to rely upon toll plaza data, photographs or other material, the appellant should have been given an effective opportunity to explain and rebut such evidence.

3.4 The order has been passed by drawing an inference of tax evasion without establishing the complete chain of events leading to such conclusion.

3.5 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.

3.6 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.

3.7 The goods were detained on flimsy ground, on the basis of presumptions and surmises. The detention and entire proceedings are bad in law.

4. SUBMISSION OF APPELLANT

4.1 The appellant, M/s Jai Enterprises, has filed written submissions in Appeal No. APL/57/2026 against First Appellate Order No. 532 dated 19.12.2019. The appellant states that it is engaged in the purchase and sale of pan masala and tobacco and that the goods in question were being transported to M/s Krati Agencies, Auraiya, under valid tax invoices and e-way bills dated 11.05.2018, which were valid up to 13.05.2018. The goods were transported in vehicle No. UP-77-AN-0423.

4.2 The detention was based primarily on the department's suspicion that the same goods had already been transported and were being re-transported, on the ground that the vehicle was allegedly seen passing through the Bara Toll Plaza and returning within a short period. The appellant disputes this inference and submits that the conclusion was based merely on

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presumption and suspicion, without any evidence that the goods had previously been delivered to the purchaser or that they were being re-transported.

4.3 The appellant relies upon the driver's affidavit, previous transportation documents, invoices and GSTR-1 records to establish that the vehicle had undertaken another transportation before loading the present consignment. It is further submitted that the distance between the toll plaza and Auraiya was approximately 65–70 km, making the alleged return journey within about 2½ hours practically improbable, particularly considering the prevailing heat, stoppages and other routine requirements of the driver.

4.4 The appellant contends that the goods physically verified at the time of detention were fully covered by the invoices and valid e-way bills, with no discrepancy in quantity, weight, value or description. No evidence was produced by the department to establish prior delivery or re-transportation of the goods. Therefore, detention and seizure merely on the basis of suspicion were contrary to law.

4.5 The learned authorised representative accordingly submitted that the order has been passed by drawing an inference of tax evasion without establishing the complete chain of events leading to such conclusion.

4.6 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.

4.7 The learned authorised representative appearing on behalf of the appellant submitted that the impugned orders have proceeded on an incorrect appreciation of the facts.

4.8 The appellant also relies upon various judgments of the Hon'ble Supreme Court and Allahabad High Court, emphasizing that strong suspicion, presumption or doubt cannot substitute legal proof. Reliance is also placed on decisions holding that where goods are accompanied by valid documents and the e-way bill is valid, detention/seizure and consequential penalty proceedings cannot be sustained merely on suspicion.

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4.9 The appellant states that tax and penalty amounting to Rs. 6,96,184 were recovered by encashing the bank guarantee, apart from Rs.69,619 (10%) deposited pursuant to the High Court's order dated 16.07.2018. It is therefore prayed that the impugned proceedings and penalty be set aside and appropriate relief be granted, as the transportation was supported by valid statutory documents and there was no established violation or intent to evade tax.

4.10 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 Umacharan Shaw & Bros. v. CIT (1959) 37 ITR 271 (SC)
II. In the case of State of Kerala v. M. M. Mathew (1978) 42 STC 848 (SC)
III. In the case of Kumar Electric Works v. CST [1984] UPTC 1272
IV. In the case of M/s Charu Enterprises Abubkar Nagar v. State of U.P. & 3 Others, 2018 NTN (Vol. 67) 157
V. In the case of M/s IRC (India) Ltd. v. State of U.P. & 3 Others, 2018 NTN (Vol. 67) 184 (Allahabad High Court)
VI. In the case of M/s J.P. Industries v. CCT, 1997 UPTC 1011
VII. In the case of Jagatjit Industries Ltd. v. State of U.P., 2005 (26) NTN 283
VIII. In the case of RBBRL Contractors v. CCT, 2011 (46) NTN 26
IX. In the case of M/s New Indore Delhi Road Line v. CCT, 2012 (49) NTN 19
X. In the case of CCT v. M/s Gautam Pandey, 2012 (48) NTN 194
XI. In the case of CCT v. New Golden Transport Company, 2010 VSTI 1075
XII. In the case of Umacharan Shaw & Bros. v. CIT (1959) 37 ITR 271 (SC)

5. SUBMISSIONS OF THE RESPONDENT

5.1 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.

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

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

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6. FINDINGS

6.1 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.

6.2 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.

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

6.4 The Appellant has placed reliance on various judicial pronouncements. We find it pertinent to examine the applicability of these judgements to the facts of the present case.

In 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]

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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]

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.*"

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

6.6 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.

6.7 The revenue relied upon the photograph taken at the toll plaza, by making an observation by relying that at first instance the same goods were transported does not fit to believe as the proof submitted by the appellant that the driver at first went to deliver the cotton cuttings bound and the bill of the same were produced by the appellant with invoice details. Therefore, the theory of photographic evidence fails to prove that the goods were being re transported.

6.8 The appellant submissions that at first instance the delivery of cotton cuttings bound were delivered by the driver by the same vehicle at Kalpi, which was not verified by the Revenue to enquire whether at actual transaction as stated by the appellant to be found admissible or not?

6.9 Therefore, the conclusion of the first appellate authority that "intention to evade tax is automatically proved" is legally/factually in the light of above quoted citation of the Hon'ble

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Court stands unsustainable. Intention cannot be presumed merely from suspicion, and a presumption of tax evasion cannot take the place of proof.

ORDER

i. In view of the foregoing discussion, the present appeal filed by M/s. Jai Enterprises, GSTIN 09ATQPS3526G1Z7, is Allowed.

ii. The appellate order bearing Reference No. GST/KNP02/109/2018/P, dated 19.12.2019, passed by Additional Commissioner Grade-2 (Appeals) Second, Commercial Tax Kanpur, is hereby Set aside.

iii. If any amount has been deposited by the Appellant pursuant to the impugned detention/Penalty proceedings shall be refunded to the Appellant in accordance with law.

16/9/2026

(Arvind Kumar)

16.09.26

(Santosh Kumar Srivastava)

Date:16.09.2026

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