**GSTAT**

**Division Bench Court No. Court I**

**APL/6/VRN/2026**

RELIABLE PAINTS **.............Appellant**

**Versus**

PANKAJ KUMAR KHARWAR, ASSISTANT COMMISIONER, JURISDICTION SECTOR 2 (MOBILE SQUADE) BALLIA & ORS. **.............Respondent**

**Counsel for Appellant**
DIVYA GWAL, CHARTERED ACCOUNTANT

**Counsel for Respondent**
SHRI MANAV KUMAR VIKAS, DEPUTY COMMISSIONER, STATE TAX VARANASI
SHRI YOGENDRA KUMAR, ASSISTANT COMMISSIONER, STATE TAX VARANASI

**Hon'ble Narendra Bahadur Yadav, Member(Judicial)**
**Hon'ble Ananjai Kumar Rai, Member (Technical)**

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

**whether remand order :** No

**Order reference no. :** ZN240380926000049H **Date of order :** 21/09/2026

| | | |
|---|---|---|
| **1.** | GSTIN/Temporary ID/UIN - 24AAJFR6040C1ZK | |
| **2.** | Appeal Case Reference no. - APL/6/VRN/2026 | Date - 30/03/2026 |
| **3.** | Name of the appellant - RELIABLE PAINTS , info@reliablepaints.com , 7859988130 | |
| **4.** | Name of the respondant -<br>1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314<br>2. Pankaj Kumar Kharwar<br>3. Jyoti Swarup Shukla | |
| **5.** | Order appealed against - | |
| | **(5.1) Order Type -** Demand Order | |

| | | |
|---|---|---|
| | **(5.2) Ref Number -** ZD090125130440W | Date - 24/12/2024 |
| **6.** | Personal Hearing - 21/09/2026 08/09/2026 01/09/2026 30/07/2026 | |
| **7.** | Status of Order under Appeal - Confirmed – Order under Appeal is confirmed | |
| **8.** | Order in brief - It is concluded that E-way Bill dated 22.08.2024 would have been the result of fraud and deception practised on behalf of the appellant and goods of similar nature as mentioned in original invoice number 1147 were transported from an uncertain place with intention to evade the tax. Hence, the instant appeal lacks the merit and is liable to be dismissed.. Accordingly, the appeal is dismissed and the impugned orders under challenge are hereby affirmed. The parties shall bear their own respective costs. | |
| **Summary of Order** | | |
| **9.** | If demand order then whether demand quantified: Yes | |

**Section-I**

| **Particulars** | Central tax | | State/UT tax | | Integrated tax | | Cess | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Disputed Amount | Determined Amount | Disputed Amount | Determined Amount | Disputed Amount | Determined Amount | Disputed Amount | Determined Amount | Disputed Amount | Determined Amount |
| **1** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| **(a) Tax** | 0 | | 0 | | 0 | | 0 | | 0 | 0 |
| **(b) Interest** | 0 | | 0 | | 0 | | 0 | | 0 | 0 |
| **(c) Penalty** | 0 | | 0 | | 553446 | 553446 | 0 | | 553446 | 553446 |
| **(d) Fees** | 0 | | 0 | | 0 | | 0 | | 0 | 0 |
| **(e) Others** | | | | | | | | | | 0 |
| **(f) Refund** | | | | | | | | | | 0 |

**Section-II**

| Place of Supply/Name of State/UT | Demand | Tax | Interest | Penalty | Other | Total |
|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| | Amount in dispute | 0 | 0 | 553446 | 0 | 553446 |
| | Amount Determined | 0 | 0 | 553446 | 0 | 553446 |

| **10.** | For Other orders and Demand orders which are not quantified: | |
|---|---|---|
| Issues as raised by proper officer | Issues as determined by Appellate/Revisional authority | Order by GST Appellate Tribunal |
| Levy of Penalty | Penalty of Rs. 553446 has been levied wrongly | The appeal is dismissed and the impugned orders under challenge are hereby affirmed. |

Place :VARANASI

Date : 21.09.2026

Signature

VARANASI Anshuman Pandey

Designation : Stenographer/Law researcher

Jurisdiction :Varanasi

## ORDER

**Per: Narendra Bahadur Yadav, Judicial Member**

The impugned orders dated 30.08.2024 and 27.12.2024 passed by the Adjudicating Authority / Assistant Commissioner, Mobile Squad, Unit-2, Ballia and Appellate Authority / Additional Commissioner Grade-II (Appeal) – 3rd, State Tax, Varanasi, respectively, have been assailed by filing the present appeal mainly on the grounds that the penalty of Rs. 553446/- was imposed by the Jurisdictional Officer / Adjudicating Authority in contravention of law and facts, and the learned Appellate Authority also affirmed the same illegally. While passing the impugned orders, neither the Jurisdictional Officer nor the Appellate Authority considered the facts that the generation of the 2nd E-way Bill which was the result of the breakdown of the vehicle on 19.08.2024 in the geographical area of district Orai, Uttar Pradesh, and the receipt of such information by the transporter from the driver only on 22.08.2024. The impugned orders have also been passed without noticing that the appellant had no intention to evade the tax. The alleged so-called lapse may only be treated as technical and procedural, which did not result in any loss of revenue to the Government. The appellant had been deprived of sufficient opportunity of hearing, and such act of the authorities below violates the principle of natural justice.

2. Chartered Accountant, Ms. Divya Gwal appeared on behalf of the appellant, and Shri Manav Kumar Vikas, Deputy Commissioner alongwith Shri Yogendra Kumar, Assistant Commissioner, appeared as authorised representatives of the respondent-State before the Bench.
3. The learned Chartered Accountant, Ms. Divya Gwal, and learned representatives of the State, Shri Manav Kumar Vikas along with Shri Devendra Kumar argued their respective version at length.
4. Learned Chartered Accountant, Ms. Divya Gwal supported the grounds of appeal placing reliance upon various case laws and learned representatives of the State also argued their respective version submitting certain case laws. The relevant case laws will find mention in the succeeding paragraphs below at relevant places.
5. Copies of GST registration certificate, tax invoice, 1st E-way Bill, 2nd E-way Bill, transporter receipt, invoice receipt, impugned order, Form GST MOV-01, ledger of recipient, GSTR-1 and 1A, Form GST MOV-04, CBIC Circular No. 64/38/2018, account of toll statements, and Bank statements have been submitted by the appellant.
6. According to version of the appellant, tax invoice got generated on 10 Aug. 2024 for selling the product of Reliable Paints, Manjusar, Vadodara, to Pinax Steel Industries Pvt. Ltd., Vill- Deokuli, Post- Musepur, Bihta, Patna, Bihar. The appellant generated e-way bill dated 10 August 2024 showing validity up to 19 August 2024 mentioning Tax Invoice - RP/24-25/1147 showing 1727 km distance. According to such e-way bill, the paints and allied products in containers had to be transported in vehicle No. GJ27TT8234 from Manjusar G.I.D.C. to Ahmedabad on 10.08.2024 and in vehicle No. GJ19X1960 from Ahmedabad to Bihta, Bihar on 12.08.2024. 2nd e-way bill got generated on 22.08.2024 at 7.54 PM showing validity up to 31.08.2024 mentioning Tax Invoice RP/24-25/01147.

On the basis of 2nd e-way bill dated 22.08.2024, vehicle No. UP 84 AT 8847 had to transport the paints and allied products of the appellant from Kachora Ghat, Etawah, Uttar Pradesh. The supplier and recipient have been shown as the same in both the e-way bills. Uttar Pradesh Tax Authorities of the concerned department intercepted vehicle No. UP 84 AT 8847 within the geographical area of Ballia district in Uttar Pradesh, near the border of Bihar State and imposed penalty after issuing show cause notice to the appellant. The appellant challenged the order passed by the Jurisdictional Officer/Adjudicating Authority before Addl. Commissioner resulting in dismissal of the appeal which paved the way to file the instant appeal before this Tribunal.

7. The main point involved for determination may be narrated as follows: whether vehicle No. UP 84 AT 8847 loaded with paints and allied products in containers had been transported without valid documents with intention to evade the tax and also with mala fide intention at the time of its interception.
8. The penalty as imposed upon the appellant under Section 129 of the GST Act (hereinafter referred to as the Act) requires scrutiny of the facts regarding transportation of goods in a mala fide manner with intention to evade the tax by appellant.
9. The provision of Section 129 of the Act is attracted whenever there is transportation of goods or storage of goods while in transit, in contravention of the provisions of the Act or Rules made thereunder dealing with the manner of its transportation or storage.
10. Rule 138 of CGST/UPGST requires generation of an E-way Bill electronically before the movement of goods begins if the consignment value exceeds Rs. 50000/.
11. Rule 138 (10) of CGST/UPGST provides for extension from generation of an E-way Bill within 8 hours after its expiry. Nowhere has it been provided to generate a fresh E-way Bill on the basis of the same invoice.
12. In the present case, the E-way Bill originally generated has not been extended but ignoring such provision the second E-way Bill has been generated after the lapse of 3 days counting from the date of expiry of the original E-way Bill without authority of law.
13. In Assistant Commissioner (ST) vs Satyam Shivam Papers Pvt. Ltd., 2022 U.P.T.C. (110) 269 (S.C.) and other cases as cited on behalf of the appellant, Hon’ble Supreme Court as well as various Hon’ble High Courts have laid the guiding principle that penalty u/s 129 of the Act may only be imposed if there had been an intention to evade the tax. It has also been observed that the penalty cannot be imposed if goods could not be taken to the destination within time for reasons beyond the control of the taxpayer due to road blockage, breakdown of the vehicle, etc.
14. The respondent relied upon the decision of Hon’ble Allahabad High Court delivered in M/s Lalitpur Power Generation Company Ltd. Vs State of U.P. (Writ Tax No. 595 of 2023, Decision Date: 15.04.2025). The Hon’ble Court upheld the imposition of penalty under Section 129 of the Act for transportation of goods with expired and mismatched E-way Bills, and the taxpayer failed to rebut the presumption of intent to evade the tax.
15. In Maruti Enterprises Vs. State of U.P. and another, (2026) 101 TLC (GST), 132 (2026) 186 taxman.com, Hon’ble Allahabad High Court held that the transit state consists of the power only to inspect and search the goods, lacking power to impose penalty u/s 129 of the Act if the goods would have been transported with valid documents. In such referred case as well as in various cases it has been laid by Hon’ble Courts that clerical or typographical error occurring in any document should not

be treated as intention to evade the tax by the taxpayer.

16. The facts of the present case differ from the case of Maruti Enterprises (supra), since the goods have been loaded from Kachora Ghat, Etawah, Uttar Pradesh, instead of Ahmedabad (Gujrat) in the intercepted vehicle and serious scrutiny is required to draw a conclusion regarding bona fide act of the appellant.
17. According to the appellant, the first E-way Bill got generated on 10.08.2024 to transport the goods from Manjusar, Gujrat, to Bihta, Bihar, having its validity till 19.08.2024. The second E-way Bill was generated on 22.08.2024 showing its validity up to 31.08.2024 for transportation of goods from Kachora Ghat, Etawah, to the destination place. Vehicle No. UP 84 AT 8847 was intercepted in Ballia district about more than 500 km away from Kachora Ghat, Etawah, which shows that the vehicle concerned had been driven more than 500 km distance within about 24 hours. Rule 138 requires covering the minimum distance of 200 km within 24 hours. From Manjusar (Gujrat) via Ahmedabad, the vehicle loaded with paints and allied products had to cover 1727 km distance by or before 19.08.2024 as mentioned in the E-way Bill but according to the appellant it could cover only about 950 km distance which may be pointed out at Orai (Uttar Pradesh) on the date of expiry of E-way Bill, i.e., 19.08.2024.
18. Covering of about 500 km distance from Kachora Ghat, Etawah, to Ballia within a short time of about 24 hours by truck/vehicle No. UP 84 AT 8847 clearly establishes that 4 days' time was sufficient to carry the goods from Manjusar via Ahmedabad to Bihta, Bihar, but the same could not be done within more than 09 days commencing from 10.08.2024 till 19.08.2024.
19. As per the requirement of Rule 138, the original E-way Bill did not find the shape of renewal within the prescribed 8 hours after its expiry. The appellant generated the second E-way Bill without authority of law after a lapse of 03 days on 22.08.2024 to transport the goods from Kachora Ghat, Etawah, to Bihta, Bihar, mentioning its validity till 31.08.2024.
20. The appellant neither stated before the Authorities below nor before this Tribunal that any kind of breakdown/interruption would have taken place during the course of transportation of goods from Manjusar via Ahmedabad to Orai, Uttar Pradesh. It has not been explained as to how and why the vehicle covered only about 950 km distance within a time of more than 09 days.
21. No reliable proof is available on record to believe that the breakdown of the vehicle actually occurred within the geographical area of Orai (U.P.) on 19.08.2024. The affidavit filed by one Dinesh Kumar on 13.12.2024 before Addl. Commissioner (Appeal), Ballia Sector-I, Azamgarh, Varanasi Zone lacks the traceable address and identity of the deponent. In such affidavit nothing has been mentioned to justify the reason for covering only about 950 Km. distance by the vehicle concerned within a period of more than 09 days from Manjusar to Orai on the basis of e-way bill generated on 10.08.2024 having validity up to 19.08.2024. Except such affidavit neither the statement of the driver nor proof of getting the vehicle repaired has been filed by the appellant.
22. The actual place of breakdown in Orai has also not been stated by the appellant. The appellant also failed to establish as to how the goods were transported from the geographical area of Orai to Kachora Ghat, Etawah, which exists at the border of Etawah and Agra. Thus, lack of proof regarding breakdown of the vehicle in Orai district and transportation of goods from Kachora Ghat, Etawah, creates a highly suspicious situation regarding the validity of the 2nd e-way Bill generated on 22.08.2024.

23. In *Standard Chartered Bank v. Andhra Bank Financial Services Ltd., (2006) 6 SCC 94; Sita Ram Bhau Patil v. Ramchandra Nago Patil, (1977) 2 SCC 49; Arumugham (Dead) by LRs. v. Sundarambal, (1999) 4 SCC 350 : AIR 1999 SC 2216; Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi, AIR 1960 SC 100; Moran Mar Basselios Catholicos v. Thukalan Paulo Avira, AIR 1959 SC 31; and Narayan Govind Gavate v. State of Maharashtra, (1977) 1 SCC 133 : AIR 1977 SC 183.*, the Hon'ble Supreme Court observed that when both the parties lead evidence, the abstract question of the burden of proof loses its primary significance and the courts evaluate the entire body of material on its merits. It is also a settled principle of law that an adverse inference be drawn for withholding the best evidence.

24. The nature of proceedings under section 129 is civil. In *Gulabchand v. Kudilal*, AIR 1966 SC 1734, (5 Judges Bench), Hon'ble Apex Court held that the definition of 'proved' in section 3 of Indian Evidence Act applies the same standard of proof in civil cases and it makes no difference between cases in which charges of fraudulent or criminal characters are made and cases in which such charges are not made. Hon'ble Court further observed that it is wrong to insist that such charges must be proved clearly and beyond reasonable doubt. Civil cases are to be decided on the basis of preponderance of probabilities.

25. In Satish Chandra vs. Satish Kaul, AIR 2023 PC 73; S.P. Chengalvaraya Naidu vs. Jagannath, AIR 1994 SC 853 and a few other cases, it has been observed that fraud remains secret which is interwoven in airtight compartment. It is further observed that fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage.

26. Existence of improbability of reaching the vehicle only up to somewhere in Orai district, Uttar Pradesh, till the date of expiry of e-way bill on 19.08.2024, absence of proof regarding breakdown in Orai on 19.08.2024, situation of uninterrupted passage from Manjusar to Orai, and loading of goods from Kachora Ghat, Etawah, instead of Orai on 22.08.2024, falsify the theory set up on behalf of the appellant that the 2nd e-way Bill got generated in bona fide manner.

27. Generation of 2nd e-way Bill would have become possible only after insertion of "0" prior to "1147" in tax invoice because after generation of e-way Bill mentioning particular invoice number the system does not allow generation of a 2nd e-way Bill.

28. In the case of Satish Chandra (supra) and S.P. Chengalvaraya Naidu (supra) it has been observed by Hon'ble Privy Council and Hon'ble Supreme Court respectively that the t evidence becomes impossible to reveal the truth regarding fraud and the same may be uncovered only on the basis of available circumstances.

29. Improbable theory set up by the appellant regarding breakdown of vehicle on 19.08.2024 in the geographical area of Orai district without disclosing the actual place in such district, admittedly uninterrupted passage from Manjusar to Orai, transportation of goods on 22.08.2024 from Kachora Ghat, Etawah, instead of Orai, and lack of explanation to cover the distance of only about 950 Km. within more than 09 days through passage free from any interruption lead to draw inference that the alleged 2nd e-way Bill would have been the product of fraud and deception practised on behalf of the appellant with intention to evade the tax. The circumstantial evidence as narrated above clearly shows that the goods transported from Manjusar would have reached the place of destination by or much before 19.08.2024, and an effort would have been made to supply goods of similar nature loaded in

the vehicle from a place best known to the appellant forging the invoice number in E-way Bill with malafide intention to evade the tax.

30. Absence of proof to shift the goods from Orai to Kachora Ghat, Etawah, by the appellant creates suspicion regarding the actual place of supply on the basis of 2nd e-way Bill generated on 22.08.2024 inserting ‘0’ prior to invoice number ‘1147’.

31. The fraudulent and deceptive E-way Bill generated on 22.08.2024 should not be placed in the category of a document containing a typographical error, since its generation could not be possible unless ‘0’ had been inserted prior to invoice number ‘1147’.

32. On the basis of the discussion made above, it is concluded that E-way Bill dated 22.08.2024 would have been the result of fraud and deception practised on behalf of the appellant and goods of similar nature as mentioned in original invoice number 1147 were transported from an uncertain place with intention to evade the tax. Hence, the instant appeal lacks the merit and is liable to be dismissed.

33. Accordingly, the appeal is dismissed and the impugned orders under challenge are hereby affirmed. The parties shall bear their own respective costs.

(Order pronounced in the open Court on 21st day of September, 2026.)



(Narendra Bahadur Yadav)

(Ananjai Kumar Rai)

**Dated: 21.09.2026**