GSTAT

Division Bench Court No. Court I

APL/129/LCK/2026

AKATA SINGH ....Appellant

Versus

M/S OM MARKETING, PARTNERSHIP, RAMPUR GARDEN BAREILLY BAREILLY UPBAR 243001

............Respondent

Counsel for Appellant
MR. RUDRA SHEKHAR RAI,
DEPUTY COMMISSIONER SGST

Counsel for Respondent
MR. LUV AGARWAL, ADVOCATE

Hon'ble Santosh Kumar Srivastava, Member(Judicial)

Hon'ble Arvind Kumar, Member (Technical)

ORDER

1. Brief Facts of the Case

1.1 The present departmental appeal has been filed against Order-in-Appeal No. ZD090625035510J dated 20.05.2025 passed by the Additional Commissioner, Grade-II (Appeal), State Tax, Kanpur, whereby the penalty imposed upon the respondent under Section 129 of the CGST/UPGST Act, 2017 was set aside. The Proper Officer had imposed a penalty of Rs.14,11,251/- vide Order in FORM GST MOV-09 dated 15.07.2024.

1.2 M/s OM Marketing (hereinafter referred to as the " respondent ") having it principal place of business at Rampur Garden, Bareilly. The respondent is engaged in the business of purchase and sale of lubricating oil and is registered under GSTIN **09AADFO8472B1Z7**. The respondent had purchased the goods from **M/s Hero MotoCorp Limited, Rajasthan,** which were to be dispatched from the premises of **M/s Savita Oil Technologies Limited, Panki, Kanpur**, for delivery to the respondent at Bareilly.

1.3 On 10.07.2024, vehicle No. UP25T8334, driven by Shri Jabir Hussain, was intercepted at Nawada Toll Plaza and brought to the State Tax Office, Lakhanpur, Kanpur, along with the goods. The driver produced Bilty No. 3269 dated 09.07.2024 issued by M/s Trimurti Carrying

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Corporation, along with tax invoices and e-way bills issued by M/s Hero MotoCorp Limited, Neemrana, Rajasthan, in favour of M/s OM Marketing, Bareilly. Two invoices, Nos. 3N2412067743 and 3N2412067744, were dated 04.07.2024, along with their respective e-way bills. Three other invoices, Nos. 3N2412070477, 3N2412070478 and 3N2412070507, were dated 08.07.2024, along with the corresponding e-way bills.

1.4 During verification, the officer noticed that the driver stated that the goods had been loaded from M/s Savita Oil Technologies Limited, Panki, Kanpur on 09.07.2024, whereas the accompanying invoices were dated 04.07.2024 and 08.07.2024. The officer accordingly suspected that the goods might have been transported earlier and were being re-transported on previously issued documents. It was further noticed that the invoices mentioned Savita Oil Technologies Limited as the dispatch premises without mentioning its GSTIN, and no evidence of Hero MotoCorp's purchase from the said concern was produced at the time of interception.

1.5 The Proper Officer also observed that no corresponding purchase evidence relating to the upstream transaction was produced at the time of interception.

1.6 Consequently, MOV-07 was issued, proposing proceedings under Section 129 for alleged non-compliance with Section 68 read with Rule 138 of the CGST Rules. The person concerned was granted an opportunity to furnish an explanation and appear before the proper officer. However, respondent did not submit any written explanation against the discrepancies. Instead, penalty of ₹14,11,251/- was deposited towards the proposed liability and intimated by an email dated 15.07.2024 to the proper officer. The driver subsequently appeared and sought release of the goods and vehicle, but no written clarification was furnished regarding the discrepancies recorded in MOV-07.

1.7 The proper officer, therefore, treating the discrepancies as unexplained and taking into consideration the deposit of the proposed amount, proceeded to determine the liability under Section 129(1)(a). Reliance was also placed upon the judgment of the Hon'ble Kerala High Court in Carpenters Classics India Pvt. Ltd. v. ASTO, 2019 NTN (Vol. 69) 151, regarding detention and proceedings under Section 129 where the prescribed tax invoice/e-way bill is not duly maintained or produced. Accordingly, the consequential penalty order was passed determining liability of ₹14,11,251/- under Section 129(1)(a) read with Section 129(3) vide FORM GST MOV-09 dated 15.07.2024.

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1.8 Aggrieved by the said order, the respondent preferred an appeal before the First Appellate Authority. The First Appellate Authority, vide Order-in-Appeal dated 20.05.2025, set aside the penalty, holding, inter alia, that the transaction was a genuine Bill-To-Ship-To transaction, the quantity and description of goods matched, the e-way bills had been extended up to 10.07.2024 and the omission of the GSTIN of the dispatching entity was only a technical lapse.

2. Grounds of Appeal

2.1 The appellant has challenged the impugned Order-in-Appeal primarily on the ground that the First Appellate Authority erred in holding that there was no intention to evade tax. The Appellate Authority, even accepting the extension of the E-way bills from 04/07/2024 to 10/07/2024 at face value, completely ignored the geographical reality and the driver's own admission.

2.2 It has been contended that the e-way bills dated 04.07.2024 and 08.07.2024 were being used for a movement which, according to the driver's own statement, commenced only on 09.07.2024. The respondent has submitted that the short normal transit time between Kanpur and Bareilly, coupled with the dates of the documents, indicated reuse of the documents for subsequent movement.

2.3 The fallacy in the Appellate Authority's reasoning lies in treating the mere systemic extension of an E-way bill as absolute proof of bona fides. In reality, the extension was utilized as a mechanism to reuse the same documents for multiple unrecorded trips, a common modus operandi for tax evasion which constitutes a direct violation of Section 68 read with Rule 138 of the CGST/UPGST Act.

2.4 Rule 46 of the CGST Rules requires certain details to be correctly mentioned on a tax invoice so that the transaction can be properly verified. In this case, the goods were shown as "Supplied From" a third-party premises without mentioning the relevant GSTIN, making it difficult to trace the transaction. The Appellate Authority, by overlooking this requirement, failed to give due importance to the statutory provisions.

2.5 The appellant has further challenged the finding of the First Appellate Authority that non-mentioning of the GSTIN of M/s Savita Oil Technologies Limited was merely a technical breach. According to the appellant, the omission assumed significance because the very transaction trail and source of dispatch were under question.

2.6 The First Appellate Authority erred in relying on judgments such as *Synergy Fertichem* to treat the present case as involving only an insignificant technical error. The said judgments concern minor procedural or clerical errors having no revenue implications, whereas the present case involves the alleged transportation of goods on the basis of stale or reused E-way bills, which constitutes a substantive contravention affecting the genuineness and traceability of the movement of goods. Such conduct cannot be equated with a mere technical lapse, particularly where the documents were used to facilitate unaccounted transactions and potential evasion of government revenue.

2.7 The Appellate Authority erred in placing undue reliance on documents, including back-to-back purchase invoices from M/s Savita Oil, which were not produced at the time of interception. The legality of the transportation under Section 129 is required to be examined with reference to the documents accompanying the goods at the time of interception. Therefore, the subsequent production of invoices or the fact that the physical quantity of goods matched the invoices cannot, by itself, establish the genuineness of the movement or disprove the allegation of reuse of documents.

3. Submission of the Respondent

3.1 The learned counsel for the respondent opposed the departmental appeal and supported the impugned Order-in-Appeal. It was submitted that the respondent had purchased the goods from M/s Hero MotoCorp Limited, Rajasthan, and the goods were to be dispatched from the premises of M/s Savita Oil Technologies Limited, Kanpur, to Bareilly. vide the following invoices:

Sl. No.	Invoice No.	Date
1	2409700824	08.07.2024
2	2409700823	08.07.2024
3	2409700822	08.07.2024
4	2409700806	04.07.2024
5	2409700805	04.07.2024

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3.2 It was submitted that five invoices were issued by M/s Hero MotoCorp Limited, out of which two were dated 04.07.2024 and three were dated 08.07.2024. The corresponding e-way bills were duly generated and the validity of the e-way bills dated 04.07.2024 was extended up to 10.07.2024. The respondent contended that consignments were accompanied with all the requisite documents as envisaged under Rule 138A such as tax invoice, valid e-way bills and G.R as well, as tabulated below:

Sl. No.	Invoice No.	Date	E-way Bill No.	Date
1	3N2412067743	04.07.2024	781440753243	04.07.2024
2	3N2412067744	04.07.2024	751440753244	04.07.2024
3	3N2412070477	08.07.2024	791441661315	08.07.2024
4	3N2412070478	08.07.2024	731441661304	08.07.2024
5	3N2412070507	08.07.2024	791441657174	08.07.2024

3.3 The respondent submitted that the driver's statement regarding loading of the goods on 09.07.2024 did not constitute any admission of illegality. It was contended that the e-way bills themselves disclosed Kanpur as the place of dispatch and the vehicle details were updated in Part-B on 09.07.2024.

3.4 It was further submitted that the Department had not produced any evidence of an earlier movement, prior delivery, unloading, second transportation or any other circumstance establishing that the e-way bills had actually been reused. According to the respondent, the Department's allegation was based merely upon presumption arising from the geographical distance between Kanpur and Bareilly.

3.5 The respondent also contended that the GSTIN of the supplier and recipient was duly mentioned on the invoices and that there was no statutory requirement to mention the GSTIN of the entity from whose premises the goods were dispatched merely because such premises belonged to another person.

3.6 Reliance was placed upon judicial precedents, including the decision in **B.L. Agro Oils Ltd. v. State of U.P.**, to contend that the burden was upon the Department to establish reuse of the e-way bill by tangible and corroborative evidence. The respondent accordingly prayed for dismissal of the departmental appeal and confirmation of the Order-in-Appeal.

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4. Discussion and Findings

4.1 We have carefully considered the rival submissions, the grounds of appeal, the material available on record and the impugned Order-in-Appeal. The short question which arises for our consideration is whether, in the facts and circumstances of the present case, the First Appellate Authority was justified in setting aside the penalty imposed under Section 129 of the Act.

4.2 We find that the First Appellate Authority placed substantial reliance upon the subsequent extension of the e-way bills. After examination we find not any discrepancy.

4.3 We find that the goods were indeed purchased by M/s Hero Motocorp Limited (GSTIN 08AACH0812J1ZW) from M/s Savita Oil Technologies Pvt. Ltd. vide the following invoices:

Sl. No.	Invoice No.	Date
1	2409700824	08.07.2024
2	2409700823	08.07.2024
3	2409700822	08.07.2024
4	2409700806	04.07.2024
5	2409700805	04.07.2024

4.4 We find that the goods were found to be accompanied by valid e-way bills and tax invoices. The relevant e-way bills, bearing Nos. 781440753243 and 751440753244 dated 04.07.2024, had been extended up to 10.07.2024, the detailed of invoices & e-way are tabulated below:

Sl. No.	Invoice No.	Date	E-way Bill No.	Date
1	3N2412067743	04.07.2024	781440753243	04.07.2024
2	3N2412067744	04.07.2024	751440753244	04.07.2024
3	3N2412070477	08.07.2024	791441661315	08.07.2024
4	3N2412070478	08.07.2024	731441661304	08.07.2024
5	3N2412070507	08.07.2024	791441657174	08.07.2024

4.5 In the present case, we find that the appellant has relied substantially upon the driver's statement that the goods were loaded on 09.07.2024, whereas certain invoices were dated earlier. However, no independent evidence of an earlier movement of the same goods have been brought on record. In particular, there is no material establishing any previous delivery, unloading, return of goods, second loading or prior transportation of the same consignment.

4.6 The allegation of reuse of e-way bills is therefore required to be distinguished from a mere discrepancy in the dates of invoice, loading and movement. For sustaining the allegation of reuse, some corroborative material connecting the documents with an earlier movement of the same goods would ordinarily be relevant. We find that such independent corroboration has not been demonstrated.

4.7 The objection relating to non-mentioning of the GSTIN of M/s Savita Oil Technologies Ltd. in the dispatch-from particulars has also been considered. We find that the invoices identified M/s Hero MotoCorp Ltd. as the supplier and M/s OM Marketing as the recipient, while the premises of M/s Savita Oil Technologies Ltd. were shown as the place from which the goods were dispatched. The respondent subsequently produced supporting purchase documents relating to the said premises. Thus, the omission, does not establish that the goods were unaccounted or that the transaction itself was fictitious.

4.8 It is further significant that the physical verification did not disclose any discrepancy in the quantity or description of the goods. The goods found in the vehicle corresponded with the accompanying invoices. Therefore, we find that there was no physical excess, shortage or mismatch which could independently corroborate the allegation that the documents were being used for a different or unaccounted consignment.

4.9 We find that the Departmental Appeal proceeds on the premise that the extension of the e-way bills was used as a mechanism for reusing documents. However, such conclusion cannot be sustained merely from the fact of extension. There must be some evidence connecting the extended e-way bills with an earlier completed movement of the same goods. On the facts placed on record, such evidence has not been specifically established.

4.10 We rely upon the decision of Hon'ble Allahabad High Court in the case of M/S. Hindustan Herbal Cosmetics vs. State of U.P. And 2 Others [WRIT TAX No. - 1400 of 2019] wherein court held that *"without any other material establishing an intention to evade tax will not attract a penalty under Section 129 of the Goods and Service Tax Act, 2017. The Court observed that, "law is not to remain in a vacuum and has to be applied equitably in appropriate cases."* The Court held that *intention to evade tax is a sine qua non for imposition of penalty.*

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4.11 We rely upon the decision of Hon'ble Allahabad High Court in the case of Shyam Sel and Power Limited vs. State of U.P. [Writ Tax No. 603 of 2023] reiterated the significance of establishing " *For invoking the proceeding under section 129(3) of the CGST Act, section 130 of the CGST Act was required to be read together, where the intent to evade payment of tax is mandatory, but while issuing notice or while passing the order of detention, seizure or demand of penalty, tax, no such intent of the petitioner was observed. Once the dealer has intimated the attending and mediating circumstances under which e-way bill of the purchasing dealer was cancelled, it was a minor breach. The authority could have initiated proceedings under section 122 of the CGST Act instead of proceedings under section 129 of the CGST Act. Section 129 of the CGST Act must be read with section 130 of the said Act, which mandate the intention to evade payment of tax. Once the authorities have not observed that there was intent to evade payment of tax, proceedings under section 129 of the CGST Act ought not to have been initiated, but it could be done under section 122 of the CGST Act in the facts & circumstances of the present case. It is also not in dispute that after release of the goods, the same were sold to P.L. Trading Company.Section 129of the CGST Act deals with detention, seizure and release of goods in case violation of the provisions of the CGST Act is found. Section 130 deals with confiscation of goods or conveyance and levy of penalty. Both the sections revolve around a similar issue and provide for the proceedings available at the hands of the proper Officer upon him having found the goods in violation of the provisions of the Act, Rule 138 of the Rules framed under the CGST Act being one of them. Upon a purposive reading of the sections, it would suffice to state that the legislation makes intent to evade tax a sine qua non for initiation of the proceedings under sections 129 and 130 of the CGST Act.*

4.12 We rely upon the decision of Hon'ble Allahabad High Court in the case of State of U.P. Versus M/S Maa Vindhyavasini Tobacco Pvt Ltd WRIT C No. 20203 of 2019; 20.10.2022 wherein court has held that: *"The demand for tax and penalty cannot be imposed on the basis of conjecture and surmise, especially in cases where the goods were accompanied by a tax invoice and E-way bill."*

4.13 We rely upon the decision of Hon'ble Supreme Court of India in the case of Hindustan Steel Ltd. v. State of Odisha, wherein court held that *"The discretion to impose penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law, but not in case where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is* *not liable under the Act. An order imposing penalty for failure to carry out a statutory obligation is the result of quasi-judicial proceeding. Penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will not be imposed merely because it is lawful to do so. Even if a minimum penalty is prescribed, the authority will be justified in refusing to impose penalty, when there is a technical or venial breach of the act or where breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

4.14 We rely upon the decision of Hon'ble Allahabad High Court In the case of M/s Ashoka P.U. Foam (India) Pvt. Ltd. v. State of U.P. & Others, Writ Tax No. 228 of 2020, decided on 24.01.2024, wherein Court held that *imposition of penalties within the realm of tax laws should not be based solely on insignificant the commitment errors devoid of any financial consequences. The foundational principle guiding this approach is of penalties corresponds to maintain a tax system that is characterized by fairness and justice, where the severity ensuring compliance with to the gravity of the offense committed. While penalties serve a pivotal role in to evade taxes as a prerequisite tax law, legal frameworks stress the importance of establishing the actual intent differentiate between for their just imposition. This emphasis underscores the critical need to inadvertent technical errors and purposeful attempts to circumvent tax obligations. points Penalties, to a according deliberate to and this principle, should be reserved exclusively for cases where concrete evidence involving unintentional mistakes. fraudulent act against the tax system, rather than being applied to situations The legal rationale supporting this principle recognizes that the primary purpose of taxation statutes is not to penalize inadvertent errors but rather to address intentional acts of noncompliance. Consequently, the burden of proof falls squarely on tax authorities to demonstrate the genuine intent to evade tax before penalizing taxpayers. This safeguard is indispensable to shield individuals and entities from punitive measures arising from honest mistakes, administrative errors, or technical discrepancies that lack any malicious intent. The fundamental principle requiring an intent to evade tax for the imposition of penalties is crucial for preserving the fairness and integrity of taxation systems. In order to uphold a balanced and equitable approach to tax enforcement, it is imperative to recognize and the distinction between technical errors and intentional evasion. "*

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4.15 We rely upon the decision of Hon'ble Gujarat High Court In the case of Synergy Fertichem Pvt. Ltd. v. State of Gujarat, wherein *examined the scope of Sections 129 and 130 of the CGST Act in the context of detention of goods for e-way bill/documentation deficiencies. The principal conclusion was that Section 129 is intended to address substantial contraventions involving tax evasion, and a mere technical or minor documentary discrepancy, where the taxpayer establishes that there was no possibility or intention of evading tax, should not automatically result in the harsh consequences of Section 129. "*

4.16 We rely upon the decision of Hon'ble Allahabad High Court in *M/s B.L. Agro Oils Ltd. v. State of U.P.*, Writ-C No. 31593 of 2019, decided on 31.01.2023, wherein *court held that it is for seizing authority to establish by the evidence that the e-way bill was being reused. In the present case there is no evidence produced by the seizing authority that there is reuse of e-way bill by the petitioner."*

4.17 The supplier's transaction was found to have been reflected in GSTR-1 and correspondingly in the appellant's GSTR-2B. We find that the Appellate Authority treated this as supporting the genuineness of the underlying transaction.

4.18 In view of the aforesaid judicial pronouncements, we rely upon the settled principle that an allegation of reuse of an e-way bill must be established by cogent and positive evidence and cannot be sustained merely on the basis of presumption or inference.

ORDER

5.0 In view of the foregoing discussion, the grounds raised by the department do not establish any legal or factual infirmity in the Order-in-Appeal. No. ZD090625035510J dt. 20.05.2025.

5.1 Accordingly, the departmental appeal is dismissed and the impugned Order-in-Appeal is upheld.

22/9/26
(Arvind Kumar)

23.09.26
(Santosh Kumar Srivastava)

Date: 22.09.2026