GSTAT

Court No. Court I

APL/17/AGR/2026

M/S ANAND ENTERPRISES **.....Appellant**

Versus

RUBY SINGH, ADDITIONAL COMMISSIONER, GRADE-II APPEALS STATE TAX AGRA & ORS. **.....Respondent**

Counsel for Appellant
RAJESH MALHOTRA

Counsel for Respondent
MUKESH KUMAR, D.C./ SR

Hon'ble Ajeet Singh, Member(Judicial)
Hon'ble Vivek Kumar, 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. : ZN090400926000212H **Date of order :** 25/09/2026

1.	GSTIN/Temporary ID/UIN - 09ACBPB5039R1ZB	
2.	Appeal Case Reference no. - APL/17/AGR/2026	Date - 31/03/2026
3.	Name of the appellant - M/S ANAND ENTERPRISES , anand.indermohan@gmail.com , 9319123040	
4.	Name of the respondant - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. RUBY SINGH	
5.	Order appealed against - AD0910220342988	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD091123270484E	Date - 23/11/2023
6.	Personal Hearing - 25/09/2026 15/09/2026 25/08/2026 23/07/2026	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	

8.	Order in brief - The second appeal filed by the Appellant/Taxpayer has no substance and accordingly dismissed.
Summary of Order	
9.	If demand order then whether demand quantified: No

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	350382	

Place :AGRA

Date : 25.09.2026

Signature

AGRA Sandeep Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Agra

ORDER

Per. Ajeet Singh (Judicial Member)

M/s Anand Enterprises

Vs

Commissioner , State Tax, U.P & others

APL/17/AGR/2026

(Passed on 25th day of September 2026)

1. Under section 112(1) of CGST/UPGST, Act, this second appeal has been preferred by taxpayer/appellant herein, against order dated 07.11.2023, passed by first appellate authority in appeal no. 707/2022, vide which first appeal was dismissed and order passed by adjudicating officer by imposing penalty has been upheld.
2. Facts giving rise to this second appeal are in brief that, Mobile squad Unit III , Agra headed by Assistant Commissioner, on 03.08.2022 had stopped and intercepted vehicle no. HR47 D- 7835. On verification of goods carrying in the vehicle and relevant documents it was found that electric equipments were found to be loaded in the vehicle which were dispatched form M/s Havells India Ltd, Alwar (Raj.), GSTIN 08AAACH0351E125, to M/s Anand Enterprises, GSTIN 09ACBPB5039R1ZB, Agra (U.P), covered with tax invoice no. 5845101022 dated 30.07.2022. As per invoice, value of goods was Rs. 11,48,469/- e-way bill no. 721274798243 dated- 31.07.2022, was also produced by the driver which was found to be expired on the date of interception i.e. 03.08.2022 and was issued for vehicle no. RJ 02 GA 6429. Learned proper officer has reached to the conclusion that expired e-way bill would be tantamount of no e-way bill and accordingly issued SCN which was not responded by the appellant followed by imposition of penalty on appellant. Appellant has paid the penalty and got released the goods and thereafter filed the first appeal before first appellate authority on the ground that all supported documents such as tax invoice, bilty and e-way bill were duly accompanied with the goods in transit. He also raised that non mentioning of e-way bills details is a technical mistake which can be proved form other documents too. He had also taken additional ground before first appellate authority that vehicle no. was to be updated by the transporter when change in vehicle takes place but due to oversight or inadvertently the transporter could not change vehicle details in e-way bill.

3. On hearing learned authorized representative of respective parties learned first appellate authority has dismissed first appeal by holding that appellant was legally required to carry all relevant documents including e-way bill accompanied with the goods in transit and from the facts he was found to be on willful intention for not carrying the valid e-way bill. Being aggrieved by the findings recorded by first appellate authority appellant has hammered first appellate authorities order before this tribunal by way of second appeal.
4. Learned authorized representative appearing for appellant has submitted that first appellate authority has disposed off the first appeal in a mechanical manner by passing non speaking order. He further submits that alleged contravention, namely non up dation of vehicle details in part B of e-way bill or expiry of e-way bill is mere a procedural and technical lapse which does not affects the taxability of the transaction nor results in any revenue implication. He further submits that department has completely failed to show that expiry of e-way bill in transit was with the intention to evade tax of appellant an in lacking thereof, launching proceedings u/s 129 of CGST/UPGST, act would not sustainable in law.
5. On the other hand, learned departmental representative has supported the findings recorded by first appellate authority as well as by adjudicating officer.
6. We have heard both the authorized representatives of respective parties and perused the record carefully. The sole question for determination may be stated thus- i) Whether concurrent findings recorded by both the authorities below are deserved to be interfere with?

FINDINGS WITH REASON

7. Learned counsel appearing for appellant has drawn our attention towards principle laid down by Hon'ble Allahabad High Court in cases of - **M/s S Alloys, M/s Ramdev Trading company and others Vs State of U.P and three others M/s Aakash traders vs State of Up, M/s Puneet Automobile Ltd and IRC India ltd. Vs State of U.P and three others.**
8. As per department's version which has not been countered by the appellant, e-way bill was issued on 31.07.2022, by the supplier firm running business at Alwar, Rajasthan to recipient firm/appellant having business place at Agra. Distance between business places of both the respective firms is shown in e-way bill 167 Kms and in such route of 167 Km Delhi or Gurugram do not fall in between the place of origin to place of destination. As per, appellant's further version the transporter carrying the goods taken the vehicle to Gurgaon for transshipment to another vehicle but we are unable to understand that why the goods were first brought to Gurgaon which itself is around 250 kms away from destination place Agra. As per e-way bill itself which was later found to be expired at the time of interception, shipment was to be delivered in Agra and for distance of 167 km two days was more than sufficient but vehicle was on the way on 03.08.2022 when it was intercepted.
9. After detaining the goods in transit, learned proper officer had issued SCN to appellant or its authorized representative but no reply within the stipulated time was given by appellant. Apart form that, within such a stipulated period no relevant document has been submitted to show his bonafide intention regarding expiry of e-way bill. Further, vehicle no. even in the expired e-way bill is RJ-02 GA-6429, which is entirely different form the vehicle no. HR 47 E- 3811, in which goods were found to be transported. Therefore, facts in cases cited by learned counsel for appellant are entirely different

form present one. Not even facts are different but question for determination may also be distinguished with.

10. As per section 68 of the CGST Act, the driver of a conveyance carrying goods exceeding specified threshold must carry relevant documents. Further explanation (2) to rule 138(3) clearly provides that an e-way bill is not valid for movement of goods until its part- B is duly filled up with correct details of the vehicle. Insofar, CBIC circular no. 64/38/2018-GST applies strictly to "error in one or two digits/ characters of the vehicle number. Thus, this concession covers only minor clerical slips i.e. writing as DL-01-AB-1234 instead of no. DL-01-AB-1243, It cannot be extended to cover a completely substitution of vehicle like DL-01-LA-9876. Substituting an entirely different vehicle without updating part B or mentioning therein entirely different number, then that of vehicle in which goods is being actually transported. Thus, aforesaid CBIC circular can not be extended to the present case because of there is entirely different vehicle no. has been mentioned even in part-B of expired e-way bill while goods were being transported in other vehicle bearing different registration number.

11. Learned departmental representative sh. Mukesh Kumar too, has also cited ratio of Hon'ble Supreme Court of India titled **Union of India vs Dharmendra textile processors (Supra),** in which by answering a reference a three-judge bench of Hon'ble Supreme Court established foundational principles regarding statutory penalty provisions in fiscal legislation. It was held by Hon'ble Apex court that statutory penalties imposed for infractions under Revenue statues (such as section 11AC of Central Excise Act, 1944 or Section 271(1) (c) of Income tax Act, 1961 constitutes civil liability meant to remedy the loss of Revenue. It is further held that *mens rea* is not an essential element for attracting civil penalties under fiscal statues unless specifically incorporated in to the text of the provision. It is also held by Hon'ble Apex court that courts can not supply words or read *mens rea* in to a tax provision where the statue is clear and unambiguous and court must give effect to the plain language of the statues as written by the legislation. Though, the case **Dharmendra (Supra)** had arisen out of the provisions of Central excise Act, 1944 and case in hand has arisen out of the provisions of Central goods and services Act, 2017 and similarly enacted UP Goods and Services Tax. 2017 but in both the fiscal laws the relevant provisions in respect of evasion of tax are *in pari materia* and thus in our considered opinion ratio laid down by Hon'ble Supreme Court in **Dharmendra (Supra)** would directly be applicable to the case at hand.

12. In cases **Jhansi enterprises and B.M Computers (Supra)** it has been held by Allahabad High court that incorrect or incomplete e-way bill justifies the penalty u/s 129 read with rules 138 of CGST, Act and rules 2017 respectively. In M/s B.M Computer (Supra) decided by Hon'ble Allahabad High Court on 10.04.2025 re-affirmed strict procedural compliance regarding the e-way bill mechanism u/s 129 of CGST/UPGST Act, 2017. It is further held by the High Court that movement of goods without fully completed e-way bill specifically where its part-B is omitted prior to transit violates rule 138 of CGST rules, merely generating part-A does not full fill statutory compliance. It is also held in that case that transporting consignments with an incomplete e-way bill creates a rebuttable presumption of and intention to evade tax and thereafter onus shifts entirely to the dealer/consigner to rebutte such presumption with credible positive evidence or by surrounding circumstances of that particular matter.

13. Though, it is true and well-established principle of law that department is required to show an intention to evade tax of taxpayer and in absence thereof penalty can not be imposed in the grab of section 129, CGST, Act read with rule 138 of CGST rules 2017. Intention of a person is a mental state of mind and no positive evidence can be given by the department as it is commonly said that "Not even the devil himself can discern the secret thoughts of man's heart". However, intention of a person

or mens rea may be gathered from the facts and surrounding circumstances of a particular case.

14. From the facts and circumstances narrated above it is clear that because of the questioned invoice and e-way bill were issued on 31.07.2022 and later was valid till 01.08.2022. Distance from Alwar to Agra is shown 167 kms in transporter's consignment note and e-way bill. In such circumstances and accordingly principle laid down in **BM computers (Supra) and Dharmendra (Supra)** the department/state has succeeded to establish a presumption that by mentioning entirely different no. even in expired e-way bill than the vehicle no. in which goods were actually being transported. Respondent taxpayer has violated the relevant provisions section 68 read with section 129 of CGST/UPGST Act read with rule 138 of CGST rules 2017 with intent to evade tax. Though this is a rebuttable presumption and in our considered opinion appellant has completely failed to rebutte the same even from the surrounding circumstances of the case.
15. Thus, in the back drop of above discussion of the facts question formulated in para no. 6 is answered that we do not find any legal or factual error committed by both the lower authorities which entails the interference of this tribunal in findings recorded by authorities below.
16. Consequently, the second appeal filed by the Appellant/Taxpayer has no substance and accordingly dismissed.
17. There is no pending interim application in the appeal.
18. Order is pronounced in open court on this day of 25th of September, 2026.
19. Copy of order be communicated to all concerned, as per rules.

(Ajeet Singh)

(Vivek Kumar)

Dated: 25.09.2026