GSTAT

State Bench Varanasi

Division Bench Court No. Court I

APL/15/VRN/2026

M/S V.K. BROTHERS **.....Appellant**

Versus

SHARAD KUMAR SHUKLA, ADDITIONAL COMMISSIONER GRADE-2 (APPEAL) STATE TAX, OFFICE OF ADDITIONAL COMMISSIONER (APPEAL) GRADE-II STATE TAX DEPARTMENT MIRZAPUR-VARANASI ZONE UTTAR PRADESH & ORS. **.....Respondent**

Quorum

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

Counsel for Appellant
VISHNU PRASAD, ADVOCATE
INPERSON
VISHNU PRASAD, ADVOCATE
INPERSON

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

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. : ZN090380926000076H **Date of order :** 29/09/2026

1.	GSTIN/Temporary ID/UIN - 09ABBPU3161C1ZU	
2.	Appeal Case Reference no. - APL/15/VRN/2026	Date - 30/03/2026
3.	Name of the appellant - M/S V.K. BROTHERS , vishnumzp@gmail.com , 9335013102	
4.	Name of the respondant - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. SHARAD KUMAR SHUKLA , 0723500171	
5.	Order appealed against - AD090323039889J	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD091024222147Q	Date - 17/10/2024
6.	Personal Hearing - 29/09/2026 10/09/2026 08/09/2026 04/08/2026	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The appeal is dismissed and the impugned orders dated 29.12.2022 and 17.10.2024 passed by Adjudicating Authority and First Appellate Authority respectively are hereby affirmed. The parties shall bear their own respective costs.	

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	Not Applicable	

Place :VARANASI

Date : 29.09.2026

ORDER

Per: Ananjai Kumar Rai, Technical Member (State)

1. The present appeal has been filed against the order passed by the Additional Commissioner Grade-2 (Appeal), Mirzapur (Order-in-Appeal No. ZD091024222147Q dated 17.10.2024) under Section 107(11) of the UPGST/CGST Act, 2017. Being aggrieved by the said order, the appellant has preferred this appeal with a prayer to quash the order passed by the first Appellate Authority and the penalty order passed under Section 129(3) of the Act by Assistant Commissioner, State Tax, Mobile Squad, Unit II, Mirzapur dated 29.12.2022.

2. The brief facts of the case are that the Assistant Commissioner, State Tax, Mirzapur, Mobile Squad, Unit-II, on the basis of specific information, started road checking on 28.12.2022 near Purjagir in Mirzapur District. During the course of checking, a vehicle bearing No. UP 66 T 1869 was stopped and it was inspected by the Mobile Squad Officer on 28.12.2022 at 12:05 Hours (12:05 PM). Upon inspection, the officer found that the said vehicle was loaded with taxable goods - copper scrap. When the driver / person-in-charge of the vehicle was asked for the documents regarding the goods loaded in his vehicle, the driver Mr. Naushad Alam told that he is not in possession of any documents viz. Bill, Bilty, EWB etc. The driver Mr. Naushad Alam told the officer that the goods were loaded from a place near City Kotwali and he was asked to transport the goods up to Ghosia, Aurai in District Bhadohi. Thereafter, he will be directed about the exact place of unloading the said goods. The Mobile Squad Officer intercepted the vehicle and directed the driver to park the said vehicle in his office campus in Mirzapur. After physical verification on 28.12.2022, it was ascertained by the M.S. Officer that 978 Kg of copper scrap is loaded in the vehicle. After physical verification, an order of detention under Section 129(1) of the UPGST Act / CGST Act dated 29.12.2022 was issued in

Form MOV-06 on 28.12.2022. On 29.12.2022, an authorized person named Mr. Rakesh Kumar Gupta of M/s V.K. Brothers (GSTIN - 09ABBPU3161C1ZU) presented a Tax Invoice No. 102/28.12.2022 and EWB No. 4213 0251 1267 dated 28.12.2022. In the above said Tax Invoice, the recipient was mentioned as M/s Hari Manu Metals, Bhavani Nagar, Kanpur (GSTIN - 09CEUPG5772F1ZY) and the EWB was generated on 28.12.2022 at 7:26 PM. A detailed show cause notice was issued to M/s V.K. Brothers on 29.12.2022. After that, the appellant has deposited Rs. 2,13,010/- (Rs. 1,06,505/- SGST & Rs. 1,06,505/- CGST) as penalty under Section 129(3). (Order under Section 129(3) was passed on 29.12.2022, by which a demand of penalty of Rs. 2,13,010/- was raised.) The Vehicle No. UP 66 T 1869 with goods (978 Kg copper scrap) was released on 29.12.2022 at 14:21 hours. The appeal under section 107 was filed by the said dealer before the First Appellate Authority, Additional Commissioner Gr. II (Appeal), Mirzapur. The appeal filed under section 107 has been dismissed vide order dated 17.10.2024 confirming the order passed by Proper Officer/ MS Officer. The order dated 29.12.2022 passed by Mobile squad officer and order dated 17.10.2024 passed by First Appellate Authority are under challenge before this tribunal in the present appeal.

3. In the appeal, the appellant has assailed the order dated 17.10.2024 on the following grounds which are being reproduced verbatim:

a) Grounds of Appeal:

The impugned order dated 29.12.2022 passed under Section 129 is arbitrary and unsustainable in law. The goods (978 KGS copper scrap) were duly accounted and no discrepancy in quantity, ownership or nature was found. The only allegation is non-availability of documents at the time of interception on 28.12.2022 at 12:05 PM, which is a procedural lapse. The transaction is genuine as the invoice and e-way bill (No. 421302311267, generated on 28.12.2022 at 07:26 PM) pertain to the same date, clearly establishing absence of any intent to evade tax. The detention was solely on account of

timing mismatch and not due to any suppression or evasion. The appellant deposited Rs.2,13,010/- on 29.12.2022 vide CPIN 22120900516915 and CIN SBIN22120900516915, reflected in liability ledger (Ref. No. DC0912220390665) against Demand ID ZD091222095035I, under compulsion for release of goods. It is settled law that penalty cannot be imposed mechanically. In Hindustan Steel Ltd. and Satyam Shivam Papers Pvt. Ltd., the Hon'ble Supreme Court held that procedural lapses without intent to evade tax do not justify penalty. Hence, the impugned order is liable to be set aside and penalty refunded. The outward supplies declared in GSTR-1 are fully reconciled with GSTR-3B, and the applicable tax has been duly paid. Hence, there is no discrepancy or suppression of turnover.

b) Prayer:

It is respectfully prayed that the impugned order dated 29.12.2022 be set aside and it be held that the lapse was purely procedural, as the vehicle was temporarily parked due to movement restrictions (no entry before 9:00 PM) and documents were in the process of being arranged. The transaction being genuine and no tax evasion involved, the penalty is unsustainable. The amount of Rs.2,13,010/- deposited on 29.12.2022 be refunded to the appellant along with any other relief deemed fit in the interest of justice.

4. The appeal was heard on the fixed date and the learned counsel Mr. Vishnu Prasad was heard at length. Mainly, the argument was confined to the written submission, wherein in the grounds already mentioned in the appeal, he made the following written submissions, which are being reproduced as hereunder:

(i). It is most respectfully submitted on behalf of the appellant that the present appeal relates to 978 kg Copper Scrap loaded in vehicle no. UP 66 T 1869. The vehicle was intercepted for verification on 28.12.2022 at about 12:05 PM near Purjagir, Mirzapur. At that time, the driver Naushad Alam was not immediately having the invoice / e-way

bill relating to the goods. The same allegation has also been taken in the departmental notice.

(ii). The appellant does not conceal the fact that at the time of checking, the documents were not immediately available with the driver. However, it is respectfully submitted that the said situation did not arise due to any intention of tax evasion or concealment of goods. On 28.12.2022, there was a family function / birthday programme at the appellant's residence, due to which the proprietor and the office / accounts arrangement were not normally available. The vehicle was standing outside the no-entry / movement restriction area and due to the said circumstances, the documents could not reach the driver in time.

(iii). On the same day, i.e. 28.12.2022, Invoice No. 102 was prepared and E-way Bill No. 421302311267 relating to the same transaction was generated at 07:26 PM. On the next day, i.e. 29.12.2022, Shri Rakesh Kumar Gupta appeared before the departmental office on behalf of the firm and submitted the invoice, e-way bill, registration certificate, PAN/Aadhaar and written explanation.

***Special Submission**:*

(i). In the present matter, even though the e-way bill was generated after the vehicle was intercepted, it had already come on the departmental record before the penalty order / DRC-07 order under Section 129(3). Penalty Order No. ZD091222095035I was passed on 29.12.2022, whereas the e-way bill had been generated on 28.12.2022 at 07:26 PM and was submitted before the department on the next day before passing of the order. Therefore, as per the line of judgments in Modern Traders / Falguni Steels, the correct documents available before the final penalty order could not have been ignored and the penalty should not be sustained merely on the ground of delay.

(ii). If the appellant had any intention to conceal the goods or evade tax, the appellant would not have generated the e-way bill on the same day and would not have voluntarily submitted the documents and written explanation before the department through his representative on the very next day. This conduct shows immediate compliance after delay, and not tax evasion.

(iii). It is also clear from the departmental record that during verification, 978 kg Copper Scrap was found and the notice itself records that the goods found were as per the invoice produced. Therefore, the goods were not different, there was no shortage or excess in quantity, and no hidden / extra goods were found.

(iv). In the DRC-07 / order, the issue is mentioned only as "Bill and e-way bill present after vehicle detained". In the goods details, HSN 7404, Copper Scrap, quantity 978 kg, value ₹5,91,690 is recorded. On this basis, penalty of ₹2,13,010/- has been imposed.

Legal Submission / Judicial Decisions:

(i). It is respectfully submitted by the appellant that while imposing penalty under Section 129, only the delay in documents should not be seen; rather, the entire factual conduct must be considered. If the invoice / e-way bill comes before the authority before the final order, there is no real difference in the goods, and there is no concrete basis of tax evasion, then the penalty should not be mechanically sustained.

(ii). The Hon'ble Allahabad High Court in M/s Modern Traders v. State of U.P. considered a situation where the e-way bill was produced after interception but before the seizure / penalty order. In such facts, the Court granted relief to the taxpayer and held that correct documents available before the final order cannot be ignored.

(iii). The Hon'ble Allahabad High Court in M/s Falguni Steels v. State of U.P. also reiterated the principle that if the e-way bill is generated and produced before the order under Section 129(3), and the other documents establish the genuineness of tax payment

/ transaction, then detention and penalty should not be sustained merely on the basis of documentary lapse.

(iv). Similarly, in M/s OSR Creation v. State of U.P., the Court considered that the e-way bill was produced along with the reply to the show cause notice before the seizure order and no discrepancy was found therein. In such facts, ignoring the subsequently produced e-way bill and imposing penalty was not held to be proper.

(v). In M/s Bans Steel through its Proprietor v. State of U.P., it was also accepted that where the e-way bill was produced after the show cause notice and before the seizure order, and no discrepancy was found therein, the proceeding should not be sustained merely on a technical basis.

(vi). The appellant also respectfully clarifies that in M/s Jhansi Enterprises v. State of U.P., the Court held that mere subsequent production of documents is not by itself sufficient; the taxpayer is required to give a proper and believable explanation. In the present matter, the appellant is giving the said explanation, namely, family programme, non-availability of office/accounts arrangement, same-day e-way bill, voluntary presentation on the next day, and matching of goods with invoice during physical verification.

(vii). Therefore, the present matter should not be viewed merely on the ground that the documents were not with the driver at the time of checking. From the entire record, it is clear that the goods were genuine, the same goods were found, the quantity was the same, the e-way bill was generated on the same day, and the same was produced before the department on the next day. Therefore, this is not a case of tax evasion, but a case of documentary delay arising due to circumstances.

5. On behalf of the Respondent / Department, Mr. Manav Kumar Vikas, learned Deputy Commissioner/Authorised Representative & Mr. Yogendra Kumar Learned Assistant

Commissioner/ Authorised Representative, appeared and made their oral submission that the appellant has clearly violated the provisions of UPGST/CGST Act & Rules, Section 31, Rule 46, Rule 138 & 138A.

Arguments of Authorized Representative:

6. Countering the reasons given by appellant, learned Authorised Representative argued that:

(i). Appellant's statements before aforementioned authorities at all stages of proceedings are different, contradictory and misleading.

(ii). Vehicle was intercepted in transit not when it was parked.

(iii). Vehicle was intercepted on 28-12-2022 at 12:05 PM, whereas E-way bill was generated at 7:26 PM and not before interception.

(iv). Had vehicle was not intercepted, goods-in-vehicle would have been transported without any documents causing loss to the State.

(v). The distance of Ghosia, Bhadohi from Mirzapur is 30-35 kms and then to Kanpur it is around 235 kms. Again, it shows that appellant, knowingly with purpose of misleading authorities, put wrong facts.

(vi). Misstatements made by appellant before above-mentioned Authorities clearly prove malafide intentions of appellant to evade tax.

(vii). Summing up, appellant's transaction and intention were never been genuine since beginning. Appellant ended up making a fancy story to cover up appellant's dishonest transaction.

In the last AR concluded his arguments with a submission to dismiss the appeal.

7. We have heard both sides. Perused the appeal memo, written submission submitted by the appellant at the time of hearing and the arguments of the respondent State. We also perused the materials available on the portal.

8. The appellant case is that M/s V.K. Brothers is a proprietorship concern engaged in the trading of the various types of scrap. In the present case, the appellant was transporting copper scrap without any document.

9. In order to understand the scheme of the Act with respect to detention or seizure of consignment and the requirement of Tax invoice/E-Way Bill it would be helpful to refer to Section 31, 129 of the GST Act, Rules 138, 138A and 138B of the GST Rules, 2017.

"Section 31. Tax Invoice":

(1). A registered person supplying taxable goods shall, before or at the time of,-

(a). removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b). delivery of goods for making available thereof to the recipient, in any other case,

Issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed

……."

"Section 129. Detention, seizure and release of goods and conveyances in transit":

(1). Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,

(a). on payment of penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to

two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b). on payment of the penalty equal to the fifty per cent of the value of the goods or two hundred percent of the tax payable on such goods whichever is higher, and in case of exempted goods, on payment of an amount equal to five percent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c). upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(3). The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detention or seizure, specifying penalty payable and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment penalty under clause (a) or clause (b) of sub-section (1).

(4). No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5). On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6). Where the person transporting any goods or the owner of such goods fails to pay the amount penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance show detained or seized shall be liable to sold or disposed of otherwise, in such manner and

within such time as may be prescribed, to recover the penalty payable under sub-section (3);

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less;

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

"Information to be furnished prior to commencement of movement of goods and generation of e-way bill-

138(1). Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods in Part A of FORM GST EWB-01, electronically, on the common portal.

…"

"Documents and devices to be carried by a person-in-charge of a conveyance-

Rule 138A. (1). The person in charge of a conveyance shall carry—

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification

Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

…"

"Verification of documents and conveyances-

Rule 138B. (1) The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movements of goods.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

(iii) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf."

10. Rule 138(1) requires information to be furnished prior to the commencement of movement of goods and generation of E-way Bill. Furthermore, the twin requirements given under Rule 138A (1) do not give an option to the registered person or the transporter to skip carrying a copy of the E-way Bill or the E-way Number, either physically or mapped to a RFID embedded on to the conveyance. The word "and" is conjunctive and thus makes both the conditions prescribed under clause (a) and (b) as mandatory.

11. Rule 138B further strengthens the argument about the mandatory nature of E-Way Bill to be carried along with the conveyance for all inter-state and intra-state movements of goods.

12. Therefore, from the reading of the UPGST/ CGST Act, 2017 and the Rules made thereunder, we find that an "E-Way Bill" and “Tax Invoice” are mandatory to be carried along with consignment.

13. Now, coming to the next question qua the correctness of the imposition of penalty under Section 129 of the Act. Section 129 starts with a non-obstante clause, meaning thereby that nothing contained in the Act can override the provisions of Section 129. Section 129(1) makes it abundantly clear, that if any person, while transporting goods, contravenes, any provision of the Act or the Rules made thereunder, such goods shall be liable to detention or seizure. The section incorporates within itself two features, one of detention or seizure and the other of relief in case of such detention or seizure.

14. The appellant, in the instant case prepared the tax invoice and generated the E-way Bill almost after 7 hours from the interception of the vehicle moving towards Ghosia, District-Bhadohi. Thus, in view of the mandatory requirement of Rule 138 of the UPGST Rules, 2017 the consignment could not have been moved without the E-way Bill being generated and since the appellant acted in complete contravention of the provisions of Tax Invoice and E-way Bill, Section 129 of the UPGST/CGST Act 2017 gets triggered at the very moment, the conveyance leaves the sight of M/s. V.K. Brothers with consignment loaded on it.

15. An E-way Bill is an electronic document generated on the E-way Bill Portal evidencing movement of goods. It has two Components-Part A comprising of details of GSTIN of recipient, place of delivery (PIN Code), invoice or challan number and date, value of goods, HSN code, transport document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and reasons for transportation; and Part B comprising of transporter details (Vehicle number). As per Rule 138 of the CGST Rules, 2017, every registered person who causes movement of goods (which may not necessarily be on account of supply) of consignment value more than Rs. 50000/- is required to furnish above

mentioned information in part A of e-way bill. The part B containing transport details helps in generation of e-way bill.

16. The sole reason why the E-way Bill mechanism was introduced under the new GST regime was to ensure that goods being transported comply with the GST Law and that would also serve as an effective tool to track movement of goods and check tax evasion. It is important to note that the compliance is to be done before the goods are moved and not after its interception.

17. It would be apposite to take into account a situation where the vehicle was not intercepted and the conveyance moved forward without being stopped by the proper officer to its destination. In such a situation, there would be no record of such goods being transported from Point A to Point B, thereby, resulting in a situation where the entire transaction would go unchecked. To safeguard against such a situation the Legislature introduced the E-Way Bill mechanism.

18. Admittedly the intercepted vehicle loaded with copper scrap had not been accompanied with tax invoice, E-way Bill and other relevant documents required for transportation at the time of interception. Only one point exists for determination as; whether preparation/generation of invoice and E-way Bill after the interception of vehicle validated the illegal act of the appellant.

19. The appellant relied upon judgments of Hon'ble High Court delivered in *M/s Modern Traders vs. State of UP and 2 others; Writ Tax No. 763/2018, [2018] 95 taxmann.com 7 (Allahabad), M/s Falguni Steels vs. State of UP; (2024: AHC: 11990), M/s OSR Creation vs. State of UP; (2025: AHC: 13336) and Bans Steel vs. State of UP; (2024: AHC:129150).* In

such referred cases Hon'ble High Court was pleased to observe that petitioner/ taxpayer had no any intention to evade the tax.

20. The facts and situation of present case differ from the facts of above referred cases decided by Hon'ble High Court; since it has been noticed by the Bench that the appellant had supplied copper scrap afterward incident in question, and submitted fresh invoice and E-way Bill generating after interception, regarding which Appeal No. APL/16/VRN/2026 is pending before this Bench for delivery of final order/judgement today.

21. The conduct of the appellant shows that its proprietor repeats the wrong with intention to evade the tax and prepares the document after interception by tax authorities. Considering the difference in the factual matrix between the present case and one which was present in the cases cited by the appellant, it would be apposite to refer the judgments of Hon'ble High Court in *M/s Jhansi Enterprises vs. State of UP (Writ Tax No.- 1081/2019), (2024: AHC:37625),* wherein the documents; i.e, tax invoice, E-way Bill, etc. were produced by the taxpayer preparing/generating only after interception of the vehicle. Hon'ble High Court justified the actions of tax authorities regarding imposition of tax and penalty. Relevant portions of the judgment are as hereunder:

> *"7. It is a well settled position of law that if there is no intention to evade tax on the part of a person then imposition of tax and penalty is not proper and justified. But there must be some reasonable grounds to show that there was actually no intention to evade tax on the part of tax payer.*
>
> *8. In the present case, it is an admitted fact that neither invoice nor e-way bill were accompanying the goods when it was intercepted by the authorities. This contravention of rules can not be treated as a mere common mistake. In this*

situation, burden of proof for establishing that there was no intention to evade tax shifts to the assessee.

9. This court in case of M/s Akhilesh Traders V. State of U.P. and 3 others (Writ Tax no. 1109 of 2019 decided on February 20, 2024) has held that in cases where the goods are not accompanied by the invoice and e-way bill, a presumption may be raised that there is an intention to evade tax. The relevant paragraphs of the aforesaid judgment read as under:

'7. This Court in umpteen cases where penalties were being imposed under Section 129 of the Act though held that an intention to evade tax should be present, however, in the event the goods are not accompanied by the invoice or the e-way bill, a presumption may be raised that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods.

8. In the present case, one comes to an inexorable conclusion that the petitioner has not been able to rebut the presumption of evasion of taxes, as he has not been able to explain the absence of invoice and the E-Way Bill. Production of these documents subsequent to the interception cannot absolve the petitioner from the liability of penalty as the very purpose of imposing penalty is to act as a deterrent to persons who intend to avoid paying taxes owed to the Government. It is clear that if the goods had not been intercepted, the Government would have been out of its pocket with respect to the GST payable on the said goods.'

10. The petitioner, in the present case, could not explain the absence of invoice and e-way bill with a proper and reasonable explanation. Ergo, he has not been able to rebut the presumption of evasion of tax.

11. Mere furnishing of the documents subsequent to the interception cannot be a valid ground to show that there was no intention to evade tax. There must be some reasonable grounds to justify the non-production of documents at the proper time.

12. Furthermore, the judgments upon which the petitioner is relying are prior to April 2018, when there were actually some difficulties with the generation of e-way bill. But after April, 2018 those difficulties have been resolved and now there is no difficulty in generating and downloading the e-way bill.

13. The argument raised by the counsel appearing on behalf of the petitioner that the vehicle was parked at the godown for unloading is not supported by the facts. The interception of the vehicle was in a place away from the godown and this entire argument is obviously an afterthought. Accordingly, the application of Section 129(3) of the Act by the authorities is valid and just in law.

14. In light of the above, I am of the view that the petitioner herein has not complied with the provisions of law, hence the steps taken by the respondent authorities are proper and in accordance with the law and require no interference by this court.

15. Accordingly, the writ petition is dismissed."

22. Thus, the repetition of wrongful act by the proprietor of the appellant-firm, by attempting to evade payment of tax without any reasonable cause, cannot be overlooked. The explanation that the arrangement of a birthday party created an impediment in the preparation of the tax invoice and e-way bill appears to be a novel like story set up by the appellant to justify his illegal act. This provides sufficient grounds to sustain the action of the tax authorities in

imposing the penalty and holding the appellant liable to pay the same, in view of the judgment of the Hon'ble High Court in *M/s Jhansi Enterprises* (supra).

23. In the light of discussion and observations made above the appeal is liable to be dismissed being devoid of merit.

24. Accordingly, the appeal is dismissed and the impugned orders dated 29.12.2022 and 17.10.2024 passed by Adjudicating Authority and First Appellate Authority respectively are hereby affirmed. The parties shall bear their own respective costs.

(Order pronounced in open court on 29.09.2026)

(Narendra Bahadur Yadav)

(Ananjai Kumar Rai)

Dated: 29.09.2026