GSTAT

State Bench Varanasi

Division Bench Court No. Court I

APL/16/VRN/2026

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

Versus

SHARAD KUMAR SHUKLA, ADDITIONAL COMMISSIONER GRADE-II (APPEALS) STATE TAX JUDICIAL DIVISION, OFFICE OF THE ADDITIONAL COMMISSIONER GRADE-II (APPEALS) STATE TAX JUDICIAL DIVISION MIRZAPUR UTTAR PRADESH- 231001 & ORS. **.....Respondent**

Quorum

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

Counsel for Appellant	**Counsel for Respondent**
INPERSON VISHNU PRASAD, ADVOCATE INPERSON VISHNU PRASAD, ADVOCATE	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. : ZN090380926000078H **Date of order :** 29/09/2026

1.	GSTIN/Temporary ID/UIN - 09ABBPU3161C1ZU

2.	Appeal Case Reference no. - APL/16/VRN/2026	Date - 01/04/2026
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 , 7235001711	
5.	Order appealed against - AD090224003204P	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD0909242127247	Date - 21/09/2024
6.	Personal Hearing - 29/09/2026 10/09/2026 08/09/2026 05/08/2026	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The appeal is dismissed and impugned orders dated 05.11.2023 and 21.09.2024 passed by learned 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	The Appellate Authority has confirmed the findings without addressing the specific factual submissions made by the appellant. It has not examined that immediately upon verification, the appellant issued a corrected invoice reflecting the actual nature of goods and higher taxable value, which is part of the	The appeal is dismissed and impugned orders dated 05.11.2023 and 21.09.2024 passed by learned Adjudicating Authority and First Appellate Authority respectively are hereby affirmed. The parties

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	record. The reconciliation of quantity (1225 kg) and absence of any excess stock has not been disputed, yet no finding has been given on this crucial aspect. The appellate order does not deal with the explanation regarding inclusion of packing material in weighment, nor does it consider that no discrepancy exists in terms of physical stock. The confirmation of penalty appears to be based on initial presumption rather than complete evaluation of subsequent correction and factual reconciliation. The order thus lacks independent reasoning and fails to consider material facts which directly impact the nature of the case.	shall bear their own respective costs.

Place :VARANASI Signature

Date : 29.09.2026 VARANASI Anshuman Pandey

Designation : Stenographer/Law researcher

Jurisdiction :Varanasi

ORDER

Per: Narendra Bahadur Yadav, Judicial Member

Mobile Unit-I, Mirzapur of State Tax Department intercepted the vehicle no. UP 66 T 1869 in Madhosingh, Bhadohi, Uttar Pradesh, on 05.11.2023 at 09:41 AM. During course of inspection and search, 980 kg copper waste and scrap in various bags covered with 280 kg loose aluminium waste and scrap loaded in vehicle got searched by State Tax Authorities contrary to description of goods as mentioned in invoice no. 66 dated 04.11.2023 and E-way Bill No. 471384578674 prepared / generated by appellant. As per invoice number 66 dated 04.11.2023, only 1225 kg of aluminium waste and scraps having value of Rs. 161700/- had to be supplied from Mirzapur to Jaunpur. The goods and vehicle were taken into custody to initiate the proceeding of seizure and imposing tax and penalty under section 129 of GST Act.

2. The Show Cause Notice was issued to taxpayer / appellant. The taxpayer /

appellant submitted written reply stating the facts that the copper scraps had been loaded by labourers due to bonafide mistake regarding description of goods. Along with reply the fresh Tax Invoice no. 67 dated 05.11.2023 and E-way Bill no. 481384702784, generated on 05.11.2023 at 01:29 PM, was submitted by appellant before Proper Officer / Adjudicating Authority. The appellant expressed willingness to deposit required tax and penalty at the very moment. The Adjudicating Authority imposed total Rs. 225692/- as tax and penalty passing order on 05.11.2023. The adjudicating authority observed that the copper scrap in bags had been transported in vehicle covering with loose aluminium scrap to evade the tax. He further observed that it was quite probable that the supplier would have supplied the goods of same nature on more than one occasion using such invoice and E-way Bill; since distance of destination had been narrated as 75 km from place of supply, which might be covered by vehicle concerned only within 02 hours.

3. Being aggrieved vide order passed by adjudicating authority, the appeal was preferred under section 107 of GST Act. The appeal filed under section 107 had been dismissed vide order dated 21.09.2024 confirming the order passed by proper officer / adjudicating authority.

4. The order dated 05.11.2023 passed by adjudicating authority and order dated 21.09.2024 passed by first appellate authority are under challenge before this Tribunal in the present appeal. The appellant has assailed the impugned orders mainly on the grounds that the loading of copper scrap in bags covering with loose aluminium was result of the creation of confusion in the mind of labourers regarding description of goods and appellant had no intention to evade the tax.

5. The appellant has uploaded the copies of impugned orders, show cause notice, invoices and E-way Bills prepared before and after interception of the vehicle, etc.

6. Learned counsel of appellant Shri Vishnu Prasad, Advocate, appeared through virtual mode on behalf of appellant and Shri Manav Kumar Vikas, Deputy Commissioner, appeared in person for respondent State to advance their respective oral arguments.

7. Heard the learned counsel of appellant through virtual mode and learned representative of State respondent in person at length. We also perused the documents available on portal. The appellant has submitted written argument too. The reliance has also been placed on behalf of appellant upon various rulings, which will be quoted in succeeding paragraphs at relevant place / places.

8. Considering the facts of the case, grounds of appeal and submissions made during course of argument, following points come into existence for determination:

(i). Whether appellant transported 980 kg copper waste and scraps placing in various bags covering with loose aluminium scrap of 280 kg; contrary to description mentioned in the invoice and E-way Bill dated 04.11.2023, with intention to evade the tax.

(ii). Whether preparation of fresh invoice and generation of E-way Bill in such pursuance on 05.11.2023 at 01:29 PM after interception of the vehicle converted the illegality caused by appellant into legality.

9. (i). The appellant has stated that the copper scrap in bags had been loaded by labourers due to bonafide mistake and just after noticing such facts a fresh invoice and E-way Bill got generated. The learned representative of respondent Shri Manav Kumar Vikas contended that the appellant is habitual tax evader. He referred the facts of APL/15/VRN/2026 pending before this Tribunal and fixed for final order today. In such referred appeal, the vehicle carrying the goods of appellant V.K. Brothers lacked invoice and E-way Bill at the time of interception

but appellant generated invoice and E-way Bill to show the bonafide at later stage. Thus, the record reveals that the appellant has been indulged to supply the goods either without documents or with mismatched documents. Such act of appellant invites probabilities regarding his malafide intention to evade the tax. Repetition of wrong by appellant yields sufficient basis to believe that the underway supply in question had been done with intention to evade the tax. The matters involved in present appeal and Appeal No. APL/15/VRN/2026 show the situation that the appellant use to supply the goods illegally and after interception, he prepares the documents at later stage to show the bonafide.

(ii). The appellant has relied upon the decisions of *M/s. A.N. Enterprises vs. Additional Commissioner and 2 others, Writ Tax No. 366 of 2021, decided on 19.11.2024 (Allahabad High Court); M/s Tirupati Agro Commodities vs. State of Uttar Pradesh and 2 others, Writ Tax No. 2596 of 2025, decided on 10.07.2025 (Allahabad High Court); and Rimjhim Ispat Limited vs. State of Uttar Pradesh and 2 others, Writ Tax No. 1479 of 2024, decided on 12.09.2024 (Allahabad High Court).*

(iii). In *M/s A.M. Enterprises (supra)*, Hon'ble Court held that the penalty should not be imposed under section 129 where no difference is found in HSN code and rate of tax. In such case there was no dispute regarding relevancy of documents like invoice and E-way Bill. There was also no mismatch in the description of goods with the documents.

(iv). In *M/s Tirupati Agro Commodities (supra)*, it was held that the penalty under section 129 of UP GST Act can not be imposed on mere speculation of misclassification of goods where goods were accompanied by relevant documents such as invoice and E-way Bill, etc. and there is no dispute with regard to the value of the goods but dispute was only with classification.

(v). In *M/s Rimjhim Ispat Limited (supra)*, Hon'ble Allahabad High Court ruled that the minor typographical errors in an E-way Bill without any intent to evade the tax do not justify a penalty under section 129 (3) of GST Act.

(vi). The law laid in above cited cases by appellant have no application in regard with present appeal due to reason that the question of classification of goods or typographical error is not involved herein. Admittedly, the copper scrap having much higher quantity and value had been kept in bags and same had been concealed in the vehicle covering with loose aluminium scrap having lesser quantity and value. Both goods were separately identifiable and no question of classification was involved. In the garb of invoice and E-way Bill prepared / generated regarding transportation of only aluminium scrap, the appellant efforted to transport copper scrap having much higher value in huge quantity which clearly establishes intention of appellant to evade the tax.

(vii). In *M/s Shrimali Industries Private Limited vs. State of Rajasthan, 2022 Live Law (Raj) 224 (DB)*, the authorities intercepted and detained the petitioner's vehicle carrying goods declared as aluminium scrap but physical inspection revealed that brand new aluminium sections were wrapped in protective plastic packaging rather than scrap. The E-way Bill valued the goods as scrap at Rs. 642600/- whereas the actual value of the brand-new aluminium sections (weighing 6300 kg) was estimated at Rs. 1102500/-. The Hon'ble Court held that an inspecting authority was fully justified in detaining goods when the misdescription in transport papers permits to an entirely different and higher value commodity. It was also observed by Hon'ble Court that portraying of higher value goods in the garb of lesser value goods mentioning in transit documents reflects a blatant attempt to evade GST.

(viii). In *M/s Bright Road Logistics vs State of Haryana and Others, CWP – 2490 – 2019 (O&M) (Punjab and Haryana High Court), decided on 09.08.2023,*

Hon'ble Division Bench held that detention and seizure of goods with vehicle was justified where mixed scrap had been transported without valid documents; ie, invoices and E-way Bill, etc.

(ix). In *Gulab Chand vs. Kudilal, AIR 1966 SC 1734 (5 Judges Bench),* Hon'ble Supreme Court observed that the definition of 'proved' in Section 3 of the Evidence Act applies to 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 also observed that it is wrong to insist that such charges must be proved beyond reasonable doubt and the cases of civil nature are to be decided on the basis of preponderance of probabilities.

(x). Thus, on the basis of law laid in *M/s Shrimali Industries Private Limited (supra) and M/s Bright Road Logistics (supra),* the tax authorities rightly held the appellant liable to pay tax and penalty for transportation of higher valued copper scrap, using fraudulent invoice and E-way Bill, in the garb of lesser valued aluminium scrap with intent to evade the tax. Repetition of such type of conduct in the present matter akin to facts involved in Appeal No. APL/15/VRN/2026 enhances the degree of probability to believe regarding dishonest and fraudulent intention of appellant to evade the tax.

10. The second point relates with legality of the preparation of fresh invoice and E-way Bill after interception of vehicle, used by appellant to transport the goods in contravention of GST Act and Rules. Under the GST law, an illegal act can not be validated at a subsequent stage. Generating documents after interception or detention is a post detection remedy that can not cure earlier non-compliance. Thus, in absence of statutory provision, the appellant's subsequent act regarding preparation of documents to convert illegality into legality is impermissible. The wrongdoer should not be allowed to plead mercy when attempt could have been

made to erode public interest. The evasion of tax affects the civilized nation; since nation's strength rests upon the shoulder of prosperity. In the words of C.E.M. Joad, a great philosopher, "Every paisa, that is saved today for defence and development of the country, will yield a rupee tomorrow, when country will become strong and prosperous." In the interest of nation the wrongdoer like appellant, indulged in repeating the illegal act with intention to evade the tax, cannot be granted exemption from his liabilities to pay tax and penalty under statutory law. According to legal mandate the goods must be supplied only with valid invoice and E-way Bill if amount exceeds Rs. 50000/- but appellant invaded such mandate to satisfy his lust for wealth attempting to escape from payment of tax. The version of appellant regarding creation of confusion in the mind of labourers appears as illusory.

11. In *M/s Jhansi Enterprises vs. State of UP (Writ Tax No. 10181 of 2019), 2024 AHC 37625,* the petitioner had sold a consignment of TMT Bars (sariya) on March 19, 2019, to a trader of Orai vide Tax Invoice No. 167 and vehicle no. MP 16 H 1584 had been mentioned in the tax invoice to transport the goods. On the same day at 01:11 PM, the tax authorities of state of Uttar Pradesh intercepted the vehicle and subsequently at 03:59 PM issued an order for physical verification/inspection of the goods and documents u/s 68 (3) of GST Act on the ground that neither E-way Bill nor any other documents such as tax invoice etc. were produced before him at the time of inspection. Thereafter, the documents were produced preparing/generating after the time of inspection. Issuing Show Cause Notice and considering reply of petitioner order was passed imposing tax and penalty. The appeal filed u/s 107 was dismissed. Such orders were challenged before Hon'ble High Court of Allahabad. The petition was dismissed

by Hon'ble High Court. It would be relevant to quote observations of Hon'ble High Court from paragraphs 7 to 15. In such paragraphs Hon'ble Court observed,

"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 the

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."

12. Thus, the appellant has rightly been held liable by the tax authorities invoking provisions of section 129 vide impugned orders imposing tax and penalty. The law must deal such type of tax evaders with tight hands; so as to cause deter in the mind of wrongdoers involved in the tax evasion.

13. In the light of observations made above, the impugned orders appear as lawful and justified; since appellant has been indulged in repeating the wrongs with intent to evade the tax and subsequent documentation can not convert previous / earlier illegality into legality; since the statute does not permit such rectification and appellant also failed to rebut the presumption of tax evasion. Accordingly, the appeal is liable to be dismissed being devoid of merit.

14. The appeal is dismissed and impugned orders dated 05.11.2023 and 21.09.2024 passed by learned 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