Goods and Services Tax Appellate Tribunal
Thiruvananthapuram
Division Bench Court No. I

Appeal No. APL/25/TVP/2026

Excel Steel ..... **Appellant**

Versus

The Commissioner of State Tax
Keralam State, Thiruvananthapuram ..... **Respondent**

Counsel for Appellant
Sreejith R, Advocate

Counsel for Respondent
Mansoor M I, AR

CORAM:
Hon'ble Shri Subramanya Rayaprol, Vice-President
Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

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FINAL ORDER NO. 06/TVP/KERALAM/2026

Date of Hearing: 14-8-2026

Date of Order: 17-9-2026

Order per: Shri Ramamoorthi Sriram, Member (Technical)

The present appeals are directed against the Order-in-Appeal No. GSTA(ALPY) 44/2020 dated 5/10/2021 passed by the Joint Commissioner (Appeals), Keralam SGST, Kollam.

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1. Brief Facts of the Case

1.1 The Appellant, M/s. Excel Steels, Chengannur (GSTIN 32AABFE5306L1ZQ) is a proprietorship concern engaged in trading in iron and

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steel TMT rods and pipes. On 23-12-2019 the State Tax Officer, Sqaud no; 111, State Goods and Service Tax Department, Neyattinkara, intercepted the goods and vehicle transporting iron and steel from M/s Sumangala Steel Private Limited, Pondicherry to the Registered Office of the appellant (at Chengannur) on the charge of change of destination of delivery. An order in form GST MOV-09 dated 23/12/19 was issued levying IGST and penalty under section 129 of the KGST / CGST Act. The goods and vehicle were released after remitting IGST and penalty equal to tax. The Appellant filed an appeal against the said order before the Joint Commissioner (Appeals), State GST department, Kollam (Appellate Authority) who rejected the appeal. The present appeal has been filed against this order.

2. Submission of the Appellant

2.1 The alleged statements recorded from the driver and manager of the shop stated in the original order is not served to the appellant nor included in the order under dispute. The objection of the appellant against this statement is rejected by the first appellate authority on the ground that the appellant had not objected at the time of interception. The objection raised at the time of interception was ignored and the proceedings were completed.

2.2 As the statements recorded were not part of the proceedings, the order is bad in law. The absence of objections at the time of interception is not a reason to confirm the proceedings.

2.3 The change of route to the destination cannot be a reason for suspecting evasion of tax or suppression of turn over. The finding of the appellate authority is that the route taken is not the shortest route to Chengannur. The

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transporting route was preferred by the transporting agency and they have a freedom to prefer the best route to the destination. This cannot be a ground for suspected evasion of tax.

2.4 The order in original is a non- speaking order and has not properly established the offence committed by the appellant with supporting documents.

2.5 The first appellate authority has erred in not appreciating the fact that the entire goods was supported with valid documents as prescribed by the statute.

2.6 Shri Sreejith R, learned counsel for the Appellant appeared for the personal hearing and reiterated the above submissions and prayed that the OIA may be set aside.

3. Submissions of the Respondent

Shri Mansoor MI, Learned AR appeared for the Respondent/ Revenue and put forth the following submissions:

a. Mere accompaniment of a tax invoice and e-way bill does not, by itself, validate a transport when the goods are actually found to be moving to, and being unloaded at, a destination different from the one declared in those very documents. Here, the vehicle was intercepted at Cheriyakolla while the goods were being physically unloaded at the premises of M/s Michael Steels, Cheriyakolla, a destination that does not correspond to the consignee, M/s Excel Steels, Chengannur, shown in the invoice and e-way bill. The proper officer therefore rightly invoked Section 129, as the physical fact of unloading contradicted the documentary declaration of destination.

b. The statements of the driver (Vijayakumar) and the manager (Sarath S.) were recorded contemporaneously, at the spot, on the same day as interception, and were relied upon only to corroborate what the officer had independently observed. These were not the sole basis of the finding; they buttressed direct physical observation by the departmental officer. Further, as recorded by the first appellate authority, no objection to the recording or content of these statements was raised at the time of interception, when the appellant's driver and the shop manager were both present and had every opportunity was available to protest if the statements did not reflect the truth. The belated objection, raised for the first time in appeal, is an afterthought and cannot invalidate contemporaneous evidence.

c. Any suggestion, express or implied, that these statements were engineered, coordinated, or unreliable is answered by the simple fact that the departmental officer, the driver, and the shop manager share no relationship, no common motive, and indeed have interests running in different directions. The absence of any common thread linking these three sources is not a ground for suspicion — it is the very reason their evidence is entitled to be accepted.

d. The first appellate authority correctly appreciated that silence at the time of interception, when the appellant's own agent (the driver) and the third party (the manager) were present and statements were being recorded in their presence, is a relevant circumstance going to the credibility of the belated challenge. This is not a case where an objection was raised at interception and thereafter ignored — no contemporaneous written protest or endorsement to that effect appears on the MOV records or the interception report. The First

Appellate Authority's finding is a finding of fact based on appreciation of the record and does not call for interference.

e. This is not a case of mere route deviation simpliciter. The route via Cheriyakolla is admittedly not the shortest or ordinary route to Chengannur; it is a route toward the Kerala-Tamil Nadu border. When this circumstance is read together with the fact that the goods were actually found being unloaded — not merely passing through — at a shop on that route (Michael Steels, Cheriyakolla), and that the manager of that very shop confirmed the goods were meant for them, the choice of route ceases to be an innocent commercial preference and becomes a material corroborating circumstance pointing to actual diversion of the consignment, distinct from and additional to any presumption based on route alone.

f. The order in original and the appellate order both record the specific factual basis for the finding — interception while unloading in progress at a different premises, confirmation by the manager of that premises, and the statement of the driver — which together establish the ingredient of attempted evasion required under Section 129. This is not a case of a bald or unreasoned conclusion; the reasoning is spelt out with reference to the specific facts found by the officer on the spot, and the First Appellate Authority has independently verified and affirmed these findings.

g. Section 129 operates independently as a machinery provision for detention, seizure, and release of goods and conveyances in transit found to be in contravention of the Act, and does not require a separate finding under each specific clause of Section 122(1) as a precondition. The contravention here lies in the goods being transported to, and unloaded at, a destination other than the

one declared in the accompanying documents — squarely bringing the movement outside the protection that valid documents would otherwise afford, since the documents did not truthfully reflect the actual movement.

h. The subsequent sale of the goods on 24-12-2019, a day after interception, is a post-facto commercial arrangement that cannot cure or retrospectively legitimize the contravention already established at the time of interception on 23-12-2019. The offence, if any, is complete at the point of interception based on the facts then obtaining; subsequent accounting or invoicing of the goods to a different or the same buyer does not operate to erase that contravention, as rightly held by the First Appellate Authority.

i. The Appellant's claim for Input Tax Credit (ITC) in respect of the payment made under Section 129 on 23-12-2019 stands rejected and is not admissible in law. Section 17(5)(i) of the CGST Act, as it stood at the relevant time in 2019, specifically blocked credit of tax paid under Section 129, and the said unamended provision governs the transaction in question. The subsequent relaxation brought about by Section 119 of the Finance (No. 2) Act, 2024 — which removed the reference to Section 129 from the purview of blocked credits under Section 17(5)(i) — is strictly prospective in operation and came into effect only with effect from 1st November 2024. It has no application, retrospectively or otherwise, to a payment made in December 2019, which continues to be governed by the unamended provision then in force. The Appellant's claim for credit of the IGST so paid is accordingly misconceived and is liable to be rejected in its entirety.

j. The concurrent findings of the adjudicating authority and the First Appellate Authority are based on cogent, contemporaneous material — physical

interception during unloading at an undeclared destination, corroborated by the statements of persons present at the spot — and no ground for interference is made out. The demand as confirmed (Tax Rs. 1,98,060/-, Penalty Rs. 1,98,060/-, Total Rs. 3,96,120/-) is accordingly sustainable, and the Second Appeal is liable to be dismissed.

Discussions and findings

4.1 We have carefully gone through the records of the case and the submissions made by the appellant and respondent. We find that in the instant case penalty has been levied on the appellant under section 129 of the KGST / CGST Act. The said section reads as follows:

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* …….

4.2 It is therefore evident that for penalty to be imposed under the said section, it is imperative that a charge of contravention of the provisions of the Act / Rules should be made and the same also needs to be established by way of evidence. On perusal of the show cause notice, we find that no such specific charge of violation of the Act / Rules is made out against the appellant. In the absence of any specific charge of violation of the Act / Rules, we find that any

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penalty under section 129 is not sustainable. We fail to understand how the appellant is supposed to defend his case, even without knowing the specific section / rule he is supposed to have violated.

4.3 We find support for our conclusion from the decision of the honorable Supreme Court of India in the case of

Commissioner Of Central Excise vs M/S Brindavan Beverages (P) Ltd. And Ors on 15 June, 2007 AIR SCW 7747, 2007 (5) SCC 388, AIR 2007 SC (SUPP) 1212, (2007) 8 SCALE 549 wherein the Court held that:

The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific *and are on the contrary vague,* lack details *and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice.*

4.4 Applying the above principles laid down by the Supreme Court, we find that in this case the SCN is vague , lacks details and does not cite the specific statutory provisions alleged to have been contravened. We find therefore that the proceedings are vitiated by this breach of basic principle of natural justice .

5.1 We find that the charge against the appellant is that of unloading the goods, at the premises of M/s.Michel Steels, Chiriyakolla as against the destination mentioned in the e-way bill, which is the registered office of M/s Excel Steels at Chengannur. We also find that this charge is sought to be proved by statements purported to have been recorded from Shri Vijaykumar (the driver of the vehicle) and Shri Sarath, (Manager of M/s Michel Steels – at whose premises the goods were allegedly being unloaded). The appellant has

claimed that "The alleged statements recorded from the driver and manager of the shop stated in the original order is not served to the appellant nor included in the order under dispute". On perusal of the documents pertaining to the case, we find no evidence that these inculpatory statements were made available to the appellants. We find that this contention of the appellant that these statements were not made available to them, is not refuted by the learned AR in his submissions. Therefore, on the basis of the above, we have every reason to believe the contention of the appellant that they were not provided copies of the statements which were being used against them in the proceedings.

5.2 We find that the non-provision of statements which are sought to be used against the appellant is a blatant violation of natural justice and proceedings against the appellant are liable to be set aside on these grounds also.

6.1 We also find as per the show cause notice, (para 8) the appellants were provided the opportunity of personal hearing in connection with proceedings at 11am on 26/12/19. However, we find that the OIO was passed on 24/12/2/2019 itself and para 7 of the OIO which was supposed to record the submissions of the appellant is left blank, thus clearly establishing the fact the order in original was issued without hearing the appellant, thus violating of the fundamental tenet of audi alteram partem – which is a core principle of natural justice. We therefore find that the OIO is liable to be set aside on this ground also.

6.2 On perusal of the OIO, we find that the operative part reads as follows: The vehicle with goods was are intercepted and checked at Cheriyakolla near Karakonam while the goods were being unloaded at the business premises of M/s Michel steel, Cheriyakolla. The documents pertaining to the consignment

clearly show that the goods are for M/s Excel Steels, Chengannur. The in charge official of Michel Steels, Cheriyakolla, Mr Sarath S , has confirmed that the goods are for them. The driver of the vehicle Sri Vijaykumar's statement is also recorded. In the circumstances, tax and penalty is proposed for defective documents.

6.3 We find that the order is very cryptic. It does not specify the defective documents, nor does it specify which provision of the Act / Rules has been violated, / contravened, which is the basic ingredient for imposition of a penalty under section 129.

6.4 We thus find that the OIO also does not make out any case for imposition of penalty under section 129.

7.1 We also find that the appellant had raised a specific plea before the Appellate authority that:

a. The adjudicating officer had not afforded a reasonable opportunity for personal hearing before imposing penalty and demanding tax
b. They were not provided an opportunity to cross examine the informants (persons whose statements were recorded) by the adjudicating authority before concluding the proceedings.

7.2 We find that these allegations which had substantial merit (refer para 5.1 above) were not discussed / analyzed by the Appellate Authority who brushed them aside brusquely with the observation that:

"Even though the appellant now questions the statement made by the driver, the manager of the consignee, there was no dispute raised at the time."

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7.3 In view of our finding of fact that the appellant was not heard before passing of the OIO (refer para 6.1 above) we wonder as to when the appellant could have raised a dispute on the issue.

7.4 We also find that the second statement which has been recorded is not that of the manager of the consignee (as stated in the OIA) but that of M/s Michel Steel (where the goods were allegedly being unloaded) and find that the appellate authority has got her facts mixed up.

7.5 We also find that the OIA further states as follows:

Moreover, the route via Cheriyakolla is not the shortest or easy route to Chengannoor. The goods are subsequently sold raising invoices does not absolve them of the liability of the offence done. Subsequent raising of the invoices does not make the offence already done a non-offence. In the circumstances I do not find any reason to interfere with the decision of the adjudicating authority and the hence the appeal is dismissed.

7.6 We find none of the observations as above also make out a specific case of violation of the Act/Rules which is a sine qua non for imposition of penalty under section 129.

7.7 In view of the above, we find that the order in appeal suffers from the serious vice of non-application of mind and is therefore liable to be set aside.

8. To sum up our findings:

a. <u>At no stage (SCN/OIO/OIA) a case has been made out for imposition of penalty on the appellant under section 129 of the KGST / CGST Act.</u>

b. The order in original was passed without affording a hearing to the appellant and without providing them copies of the alleged inculpatory

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statements and without providing them the opportunity to cross examine the persons from whom these statements were said to have been recorded. The order in original has therefore been passed in complete violation of the principles of natural justice.

c. The order in Appeal did not address the valid contentions raised by the appellant and is cryptic and does not provide valid reasons for upholding the order in original and suffers from non-application of mind.

9. In view of our findings as above, the appeal is allowed and the impugned Order in Appeal is set aside, with consequential relief.

(Order pronounced in open court)

Subramanya Rayaprol
Vice-President

Ramamoorthi Sriram
(Member – Technical)

Dated: 16/9/2026

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