GSTAT

Court No. Court I

APL/98/LCK/2026

VLM NULL GRUOUP .....**Appellant**

Versus

THE ADDITIONAL COMMISSIONER, GRADE II, THIRD & ORS. .....**Respondent**

Counsel for Appellant
SHRI. HARI OM PORWAL. ADVOCATE
MR. ANIL KESWANI
MS. KIRTI KESWANI

Counsel for Respondent
MR. MAHENDRA PRATAP SINGH,
ASSISTANT COMMISSIONER, SGST

Hon'ble Santosh Kumar Srivastava, Member(Judicial)
Hon'ble Arvind 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. : ZA270370926000557H **Date of order :** 28/09/2026

1.	GSTIN/Temporary ID/UIN - 09240003745 8TMP	
2.	Appeal Case Reference no. - APL/98/LCK/2026	Date - 30/03/2026
3.	Name of the appellant - VLM null GRUOUP , laxmanahuja30@gmail.com , 9833395041	
4.	Name of the respondant - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. THE ADDITIONAL COMMISSIONER	
5.	Order appealed against - AD0911241193582	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD090425101024X	Date - 15/04/2025
6.	Personal Hearing - 28/09/2026 09/09/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	

8.	Order in brief - M/s VLM Group was penalized Rs.63.72 lakh under Section 129 for transporting goods without generating the mandatory e-invoice before movement. Although the e-invoice was generated later, the tax invoice, E-Way Bill and LR were available and no discrepancy or tax evasion was established. Relying on relevant High Court and Supreme Court judgments, the appellate authority set aside the penalty and allowed the appeal, subject to statutory verification of the amount already paid.

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	0		0		0		0		0	0
(b) Interest	0		0		0		0		0	0
(c) Penalty	0		0		6372000	0	0		6372000	0
(d) Fees	0		0		0		0		0	0
(e) Others										0
(f) Refund										0

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	AS PER ORDER	Appeal filed by VLM group is allowed.

Place :LUCKNOW

Date : 29.09.2026

Signature

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

ORDER

Brief Facts of the Case.

1.1 The present appeal has been filed against Order-in-Appeal No. ZD090425101024X dated 09.04.2025 passed by thc Additional Commissioner, Grade-II (Appeal)-3rd, State Tax, Kanpur, whereby penalty of ₹63,72,000/- determined by the proper officer Section 129 of the State Goods and Services Tax Act, 2017 was upheld.

1.2 M/s VLM Group (hereinafter referred to as the " appellant ") was engaged in the manufacture and supply of machinery including FFS Machines, BFS Machines, accessories and related services. The appellant is a partnership firm having its GST registration number GSTIN 27ABCFM6789K1ZJ.

1.3 The present matter arises out of the detention of vehicle bearing Registration No. NL-01/AC-2258, which was intercepted by the Mobile Squad Officer at Barajore Toll Plaza on 06.10.2024 at about 08:20 PM for verification of the goods under Section 68(3) of the CGST/UPGST Act, 2017 being transported therein.

1.4 At the time of interception, the driver produced TCI Express Bilty/LR No. 216000889193 dated 03.10.2024, along with Tax Invoice No. 26-24/25 dated 03.10.2024 issued by M/s VLM Group, Maharashtra, Bhumi World Industrial Park, Bhiwandi, Thane, Maharashtra, having GSTIN 27ABCFM6789K1ZJ, and the corresponding E-Way Bill No. 271836772276 dated 03.10.2024, generated at 05:18 PM. The goods were being transported to M/s Jedux Parenteral Pvt. Ltd., Barabanki, having GSTIN 09AAECJ0930B1Z2. Thc consignment consisted of 4 Nos. of FFS Machines and their parts, having a total valuc of ₹2,08,86,000/- including tax.

1.5 During verification of the documents, the Mobile Squad Officer noticed that the tax invoice accompanying the goods did not contain a QR Code/Invoice Reference Number (IRN) contemplated under Rule 46(r), nor did it contain the declaration prescribed under Rule 46(s) and that the driver was also unable to produce an electronically generated tax invoice to be generated in accordance with Rule 48(4) of the CGST/UPGST Rules, 2017 in respect of the transaction. On this ground, the goods and conveyance were detained and FORM GST MOV-06 was issued, followed by FORM GST MOV-07 requiring an explanation from the person concerned.

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1.6 The proper officer referred to the provisions of Rules 46(r), 46(s), 48(4), 48(5) and 48(6) of the CGST/UPGST Rules, 2017, as well as the relevant notifications concerning e-invoicing. The department took the view that, since the supplier was required to generate an e-invoice under Rule 48(4), the document produced during transportation, not having been generated through the prescribed e-invoicing mechanism, could not be treated as a valid tax invoice in terms of Rule 48(5).

1.7 The proper officer further relied upon Rule 138A, relating to the documents required to be carried by the person-in-charge of a conveyance, and Section 31 of the CGST/UPGST Act, concerning issuance of a tax invoice before or at the time of removal of goods where the supply involves movement of goods. On this basis, the proper officer alleged that the goods were being transported without the prescribed e-invoice.

1.8 The proper officer accordingly treated the transportation of the goods as being in contravention of the provisions of the CGST/UPGST Act and the Rules made thereunder. Since the transaction involved an inter-State supply, the department also referred to Section 20 of the IGST Act, 2017.

1.9 The explanation furnished by the appellant was not found satisfactory by the Mobile Squad Officer. Treating the transaction as being in contravention of the provisions of the GST law, the officer proceeded to detain/seize the goods and thereafter passed an order dated 10.10.2024 under Section 129(3) of the CGST/UPGST Act, 2017, demanding IGST penalty of ₹63,72,000/-, calculated at 200% of the IGST involved in the consignment. The said amount was paid by the appellant, whereupon the goods and conveyance were released. The aforesaid amount of ₹63,72,000/- is the amount disputed in the present appeal.

1.10 Aggrieved by the aforesaid adjudication order, the appellant preferred an appeal before the First Appellate Authority.

1.11 During the appellate proceedings, notices for hearing were issued to the appellant fixing the dates of hearing. However, despite service of the notices, neither the appellant nor its authorised representative/advocate appeared on the scheduled dates, and no adjournment application was filed.

1.12 The First Appellate authority referred to the decision of the Madras High Court in Karmaxx Infotech v. Assistant Commissioner, W.P. No. 18311 of 2023, decided on

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20.06.2023, concerning the consequences of failure to respond or participate in the proceedings within the prescribed time.

1.13 The First Appellate Authority observed that the appellant had failed to satisfactorily explain the disputed issue and had not produced the necessary supporting evidence. It was also noted that the appellant or its authorised representative did not appear for personal hearing despite repeated opportunities.

1.14 The First Appellate Authority considered the fact that the vehicle was detained because the goods were being transported against a manual tax invoice, whereas, according to the departmental records, the supplier was required to generate an e-tax invoice/e-invoice under the applicable provisions of Rule 46 read with Rule 48 of the CGST/UPGST Rules, 2017. The authority held that the failure to generate the required e-tax invoice constituted a violation of the statutory provisions applicable to the movement of the goods.

1.15 Accordingly, the First Appellate Authority concluded that the action taken by the Mobile Squad Officer under Section 129 of the GST Act, including detention and imposition of penalty, was proper and legally sustainable. It was stated that no interference with the order passed by the Proper Officer was warranted.

1.16 Consequently, the First Appellate Authority passed an order dated 09.04.2025 by rejecting appellant's appeal on ex-parte basis and upheld the order passed by the Proper Officer under Section 129 of the SGST Act.

2. Grounds of appeal

2.1 The appellant submitted that M/s VLM Group, a partnership firm registered in Maharashtra, was engaged in the manufacture and supply of machinery, including FFS Machines, BFS Machines, accessories and related services. The appellant submitted that they had issued Invoice No. 26-24/25 dated 03.10.2024 for a total value of ₹2,08,86,000/-, including IGST of ₹31,86,000/-, supported by the relevant LR/Bilty and E-Way Bill. The goods, valued at approximately ₹1.77 crore as stated in the submissions, were transported from Bhiwandi, Maharashtra to Barabanki, Uttar Pradesh.

2.2 The appellant stated that the vehicle was intercepted on 06.10.2024, following which the prescribed detention proceedings were initiated and various documents in FORM GST MOV-01 to MOV-09 were issued. The appellant ultimately deposited ₹63,72,000/-, being

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200% of the IGST of ₹31,86,000/-, on 10.10.2024, pursuant to which the goods and vehicle were released.

2.3 The appellant submitted chronology of events as per records available on GST portal of appellant, as given below:

S. NO	DATE	DOCUMENT PARTICULAR	REMARKS
1	03.10.2024	Tax Invoice No. 26-24/25, Dt. 03.10.2024 E-Way Bill No. 2718 3677 2276 Time 05:18PM Bilty No. 216000889193	
2	06.10.2024	Intercept No. 997721 Time 08:44PM	
3	07.10.2024	MOV-01 No. ZD0910240858271	
4	07.10.2024	MOV-02 No. ZD0910240862l8B	
5	07.10.2024	MOV-04 No. ZD091024086272H	
6	07.10.2024	MOV-06 No. ZD09102491317E Time 16:03:	
7	08.10.2024	e-Invoice generated with following IRN : e5df057ccef3ef9079df802a7 2a990043dbf073304b41212739a1d 89a9672e Ack. No. 122423459045713 Ack. Date: 08.10.2024 Time 18:27:00	IRN generated with e- Invoice details having Quick Response Code within 5 days i.e. within time specified (30days) in Advisory of GST Council : Time limit for reporting Invoices on IRP Portal dtd. 13.09.23 (& modified time to time)
8	10.10.2024	TMP ID No. 092400037458TMP generated	Date Fixed for compliance 11.10.2024
9	10.10.2024	DRC-01 No. ZD091024152358E dtd. 10.10.2024 demanding Penalty of Rs. 6372000 issued / MOV-07 Time 19:54:38	
10	10.10.2024	Challan CPIN 24100900101582 CIN : ICIC24100900101582 for Rs. 63,72,000/- deposited Time 20:10:11	
11	10.10.2024	MOV-05 ZD091024153092R issued	

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2.4 The appellant admitted that the requirements relating to the issuance of a tax invoice under Section 31 of the CGST/UPGST Act, 2017 had otherwise been complied with. It was submitted that the tax invoice, E-Way Bill and LR containing the relevant particulars were accompanying the goods and that the movement of the consignment was duly disclosed through the E-Way Bill.

2.5 The appellant admitted that the E-Invoice was not generated before commencement of transportation. However, an E-Invoice bearing IRN number as detailed at sl.no.2.3 above and with Ack. No. 122423459045713 was subsequently generated on 08.10.2024 at 18:27 hours and produced before the Mobile Squad Officer. The appellant contended that the E-Invoice was generated within the period permitted under the relevant GST Council advisory and was available on the portal before the issuance of the subsequent proceedings.

2.6 **It was therefore contended that the omission in generating the E-Invoice before commencement of movement was merely a procedural/technical lapse and that there was no discrepancy in the description, quantity or value of the goods, nor any loss of revenue or intention to evade tax. The appellant further submitted that the movement of the high-value machinery was traceable through the E-Way Bill and route records and that the goods had travelled through the declared route.**

2.7 In support of the above contention, the appellant relied upon Rules 46, 48 and 138A of the CGST/UPGST Rules, 2017, and submitted that the requisite transport documents were available with the goods. It was further contended that the subsequent generation of the E-Invoice within the period referred to in the GST Council advisory demonstrated that the lapse was one of compliance and did not indicate any attempt to evade payment of tax.

2.8 **The appellant placed reliance upon the judgment of the Hon'ble Allahabad High Court in Nancy Trading Company v. State of U.P., Writ Tax No. 892 of 2023, wherein, according to the appellant, the Court considered a case where the goods were accompanied by the tax invoice, GR and E-Way Bill, but the E-Invoice had not been generated before commencement of transportation. The appellant relied particularly upon the observation that, in the absence of a specific finding regarding mens rea or intention to evade tax, proceedings under Section 129(3) were not justified in the circumstances of that case.**

2.9 The appellant accordingly contended that the present case also involved a bona fide procedural lapse, particularly when the tax invoice and E-Way Bill were available and the E-

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Invoice was subsequently generated and produced before the authorities. On this basis, the appellant disputed the imposition of penalty under Section 129 and sought consequential relief.

2.10 The appellant further contended that the impugned ex-parte appellate order was contrary to the facts and material available on record, as the submissions, documentary evidence and judicial precedents relied upon by the appellant were allegedly not duly considered. It was therefore submitted that the findings recorded in the impugned order were unsustainable and that the penalty proceedings deserved to be set aside.

3. Submission of Respondent

3.1 The Department submitted that the appellant was covered by the mandatory e-invoicing provisions under Rule 48(4) of the CGST Rules, 2017. However, at the time of interception on 06.10.2024, the goods were accompanied only by a manual tax invoice, E-Way Bill and LR, and the tax invoice did not contain the prescribed IRN/QR Code.

3.2 It was contended that generation of an e-invoice was a mandatory statutory requirement and that the ordinary tax invoice could not be treated as a substitute for an e-invoice where Rule 48(4) was applicable. Consequently, transportation of the goods without the prescribed e-invoice constituted a contravention of the GST provisions.

3.3 The Department submitted that the e-invoice was generated only on 08.10.2024, i.e. after interception of the vehicle on 06.10.2024. Such subsequent generation could not retrospectively validate the transportation which had already commenced without the prescribed e-invoice.

3.4 The explanation of the appellant that the e-invoice could not be generated due to non-availability of accounts staff was submitted to be an internal administrative lapse and could not absolve the appellant from compliance with the mandatory statutory requirement.

3.5 The Department further submitted that availability of an E-Way Bill and physical tax invoice did not dispense with the independent requirement of e-invoicing under Rule 48(4). The absence of discrepancy in the goods or tax value was also not sufficient to establish compliance with the e-invoicing requirement.

3.6 Regarding the judgments relied upon by the appellant, the Department submitted that Nancy Trading Company and M/s Kumar Cargo Solution were decided on their respective factual circumstances and could not be construed as laying down that non-generation of an e-

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invoice can never attract proceedings under Section 129. The Department maintained that the mandatory statutory requirement had admittedly not been complied with at the relevant time.

3.7 The Department further submitted that the appellant had been given opportunities of hearing before the First Appellate Authority but failed to appear. The ex-parte disposal was therefore made on the basis of the material available on record.

3.8 Accordingly, the Department submitted that the Proper Officer had rightly initiated proceedings under Section 129(3) for transportation of goods without the prescribed e-invoice and that the subsequent generation of the e-invoice could not retrospectively cure the contravention. The Department therefore supported the order passed by the First Appellate Authority.

4. Findings and Discussion

4.1 We have carefully examined the impugned Order-in-Appeal No. ZD090425101024X dated 09.04.2025, the order passed by the Proper Officer dated 10.10.2024 under Section 129(3) of the CGST/UPGST Act, 2017, the grounds of appeal, the submissions made by the appellant, the documents available on record and the relevant statutory provisions.

4.2 The dispute essentially arises from detention of the goods on the ground that, although a tax invoice and E-Way Bill were available during transportation, the tax invoice did not bear the QR Code/IRN and the e-invoice had not been generated before commencement of movement as contemplated under Rule 48(4) of the CGST/UPGST Rules, 2017.

4.3 Section 31 of the GST Act, 2017 requires a registered person supplying taxable goods involving movement of goods to issue a tax invoice before or at the time of removal of the goods for supply to the recipient. Rule 46 of the GST Rules prescribes the particulars which are required to be contained in such tax invoice.

4.4 In the present case, we find that it is not disputed that **Tax Invoice No. 26-24/25 dated 03.10.2024** had been issued by the appellant. The invoice identified the supplier, the recipient, description of goods, value and tax liability. The goods were also accompanied by the corresponding **E-Way Bill No. 271836772276 dated 03.10.2024** and **TCI Express Bilty/LR No. 216000889193 dated 03.10.2024.**

4.5 Rule 48(4) of the GST Rules prescribes the manner in which an invoice is required to be prepared by a notified class of registered persons by obtaining an Invoice Reference Number

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by uploading the information contained in the invoice in FORM GST INV-01 on the Invoice Registration Portal. The relevant provisions also contemplate generation of the QR Code and authentication of the invoice in the prescribed manner.

4.6 Rule 138A of the GST Rules deals with the documents and devices to be carried by the person-in-charge of a conveyance during movement of goods. The provision requires the prescribed invoice/bill of supply/delivery challan, as applicable, and the E-Way Bill or E-Way Bill number to be carried in the prescribed manner.

4.7 Significantly, We find that the record establishes that the driver had produced the **tax invoice, E-Way Bill and LR/Bilty** at the time of interception. Thus, the movement was not undocumented. The identity of the supplier and recipient, description and value of the goods and the transportation details were ascertainable from the documents available with the conveyance.

4.8 This distinction assumes particular significance in the present case because the department has not alleged that the physical tax invoice was fabricated, that the E-Way Bill was fake, that the goods were different from those described in the documents, or that the consignor/consignee was fictitious.

4.9 The chronology available on record is important. We find that the tax invoice, E-Way Bill and LR were generated on **03.10.2024**; the vehicle was intercepted on **06.10.2024;** the e-invoice was generated on **08.10.2024 at 18:27 hours**; and the demand/penalty proceedings culminated on **10.10.2024**, when the appellant deposited ₹63,72,000/-.

4.10 Thus, we find that the e-invoice was generated after interception but before the final payment and completion of the detention proceedings. The appellant has also produced the IRN and acknowledgement particulars, thereby enabling verification of the subsequent electronic record.

4.11 The department has not brought on record any material to demonstrate that the e-invoice generated on 08.10.2024 related to a different transaction, different goods, different recipient or different value. Nor has the department alleged that the invoice particulars subsequently uploaded were manipulated so as to create a false trail.

4.12 The subsequent generation of the e-invoice, therefore, cannot be treated as obliterating the initial statutory lapse, but it is certainly relevant for deciding whether the case involves

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deliberate suppression of the transaction or merely failure to comply with the prescribed electronic procedure at the time of commencement of movement.

4.13 Section 129 is an enforcement provision concerning goods and conveyances while in transit where the statutory conditions specified therein are attracted. The mere establishment of a procedural irregularity does not dispense with the requirement of determining whether the particular facts justify the consequence imposed under Section 129.

4.14 In the present case, the department has established that the e-invoice was not available at the commencement of transportation. However, the following circumstances are equally established from the record:

(a) a tax invoice dated 03.10.2024 existed;
(b) the E-Way Bill was generated on 03.10.2024 at 05:18 PM;
(c) the LR/Bilty was available;
(d) the goods were identifiable as 4 FFS Machines and parts;
(e) the consignee was identifiable as M/s Jedux Parenteral Pvt. Ltd., Barabanki;
(f) the taxable value and IGST liability were disclosed;
(g) the e-invoice was subsequently generated with a specific IRN and acknowledgement number; and
(h) no discrepancy in the description, quantity or value of the goods has been brought on record.

4.15 We rely upon the judgment of the Hon'ble Allahabad High Court in **Nancy Trading Company v. State of U.P., Writ Tax No. 892 of 2023, decided on 15.07.2024**, wherein, court held that ". *....in absence of any specific finding with regard to mens rea for evasion of tax, the proceeding under section 129 (3) of the Act should not have been initiated*".

4.16 The principle emerging from the said decision is not that Rule 48(4) can be disregarded. Rather, it demonstrates that where the underlying transaction is supported by the prescribed transport documents and the department does not establish circumstances indicating evasion.

4.17 The facts of the present case are materially comparable in as much as the tax invoice, E-Way Bill and LR were available, the transaction was identifiable and the subsequent e-invoice was generated and brought on record. No finding has been recorded that the appellant attempted to conceal the supply, misdescribe the goods, suppress the value or avoid payment of the IGST otherwise payable.

4.18 The aforesaid principle finds further support from the judgment of the **Division Bench of the Hon'ble Allahabad High Court in M/s Kumar Cargo Solution v. State of U.P. and**

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3 Others, Writ Tax No. 1201 of 2024, decided on 01.08.2024, comprising Hon'ble Mr. Justice Shekhar B. Saraf and Hon'ble Mr. Justice Manjive Shukla. In that case, the petitioner contended that the physical invoice tallied with the e-invoice, which was subsequently brought to the knowledge of the seizing authority. The Court recorded that, *in the absence of any finding as to evasion of tax, the penalty was without authority of law. The Division Bench found that the finding regarding intention to evade tax was not supported by the factual matrix and quashed the order passed under Section 129.*

4.19 The factual principle of the said Division Bench decision is of considerable relevance here. In the present case also, the physical invoice, E-Way Bill and transport document were available and the e-invoice was subsequently generated. There is no material on record showing that the subsequent e-invoice related to a different supply or that the goods were being transported pursuant to a concealed or fictitious transaction.

4.20 Accordingly, the mere existence of the initial e-invoicing lapse cannot, in the peculiar factual circumstances of the present case, be treated as conclusive evidence of an intention to evade tax.

4.21 We find that Section 129 proceedings may legitimately be attracted where non-compliance in transport documents is accompanied by substantive discrepancies, such as mismatch between goods and documents, absence of genuine invoice, incorrect description or quantity, undervaluation, fictitious consignor/consignee, invalid E-Way Bill, or other circumstances establishing an attempt to avoid payment of tax.

4.22 No such substantive discrepancy has been established in the present case. The department has relied principally upon the absence of the IRN/QR Code and the failure to generate the e-invoice before commencement of transportation.

4.23 The appellant deposited **₹63,72,000/-**, being 200% of the IGST involved, for release of the goods and conveyance.

4.24 Such payment was made during the detention proceedings and cannot, without more, be treated as a voluntary admission of fraud or intention to evade tax. The appellant has consistently challenged the penalty and has pursued appellate remedies against the order.

4.25 We find that the First Appellate Authority passed the impugned order ex-parte after recording that the appellant did not appear despite opportunities.

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4.26 We find that the First Appellate Authority principally proceeded on the basis that the goods were accompanied by a manual tax invoice whereas an e-invoice was required. However, the authority was also required to consider the appellant's material concerning the subsequent generation of the e-invoice, the existence of the E-Way Bill and LR, the absence of any discrepancy in the goods and the judicial authorities relied upon by the appellant.

4.27 On cumulative consideration of the record, we find that the department has established an initial violation of the prescribed e-invoicing procedure, inasmuch as the e-invoice was not generated before commencement of transportation.

4.28 At the same time, the department has not established any corresponding substantive defect in the underlying transaction. The goods were accompanied by a tax invoice, E-Way Bill and LR; the consignor and consignee were identifiable; the description and value of goods were available; the E-Way Bill had been generated before transportation; and the e-invoice was subsequently generated with a specific IRN and acknowledgement number.

4.29 No material has been brought on record to establish that the goods were different from those declared, that the invoice was fictitious, that the E-Way Bill was fabricated, that the value was suppressed, that the consignee was non-existent, or that the appellant attempted to conceal the taxable movement.

4.30 Thus, neither the proper officer nor the First Appellate Authority has proved evasion of tax in this order.

4.31 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*

4.32 We find that the factual circumstances of the present case are materially comparable with the principle applied by the Allahabad High Court in **Nancy Trading Company** and, more particularly, with the **Division Bench decision in M/s Kumar Cargo Solution**, where the Court *found that the finding regarding intention to evade tax was not supported by the factual matrix and consequently quashed the Section 129 order.*

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4.33 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."*

Order

i. In view of the foregoing discussion and findings, Order-in-Appeal No. ZD090425101024X dated 09.04.2025 passed by the Additional Commissioner, Grade-II (Appeal)-3rd, State Tax, Kanpur is hereby set aside and the appeal filed by M/s VLM Group is allowed with consequential relief in accordance with law.

ii. If the amount Rs. 63,72,000/- has been deposited by the Appellant, the amount so deposited shall be dealt with in accordance with law, subject to verification of the relevant payment records and compliance with the applicable statutory procedure.

(Santosh Kumar Srivastava)
28.09.21

(Arvind Kumar)
28/9/2021

Dated:28.09.2026

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