GSTAT

State Bench Prayagraj

Division Bench Court No. I

APL/2/ALB/2026

G P MOTORS PRIVATE LIMITED **.....Appellant**

Versus

COMMISSIONER, COMMISSIONER STATE TAX,
COMMISSIONER STATE TAX LUCKNOW & ORS. **.....Respondent**

Quorum

Hon'ble Mahtab Ahmad, Member (Judicial)
Hon'ble Ashish Varma, Member (Technical)

Counsel for Appellant
AJAY KUMAR YADAV
SUSHIL AGARWAL

Counsel for Respondent
SMT. VIBHA MISHRA, DC/SR
SHRI SUNIL KR NIRMAL, AC/ASR

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. : ZA090411026000064H **Date of order :** 16/10/2026

1.	GSTIN/Temporary ID/UIN - 09AADCG3414A2Z6	
2.	Appeal Case Reference no. - APL/2/ALB/2026	Date - 20/04/2026
3.	Name of the appellant - G P MOTORS PRIVATE LIMITED, GP.MOTORS@HOTMAIL.COM, 8874204114	
4.	Name of the respondent - 1. Shri Prakash Yadav Joint Commissioner (IT) State Tax Headquarters Lucknow,	

	ctithqlu-up@nic.in , 7235002314 2. COMMISSIONER, STATE TAX LUCKNOW.	
5.	Order appealed against - AD090525081404Z	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD090725239105A	Date - 24/07/2025
6.	**Personal Hearing -** 16/10/2026, 13/10/2026, 24/09/2026, 25/08/2026, 12/08/2026, 23/07/2026	
7.	**Status of Order under Appeal** - Reject - Order under Appeal is annulled	
8.	**Order in brief** - The appeal is allowed with terms. The impugned orders dated 05.05.2025 and 24.07.2025 are set aside. The penalty of ₹1,96,000 is quashed. The appellant is entitled to a refund of any amount deposited, along with applicable interest in accordance with law.	
	Summary of Order	
9.	If demand order then whether demand quantified: No	

Place: PRAYAGRAJ

Date: 16.10.2026

Shri Pankaj Yadav
Designation : Stenographer/Legal Assistant
Jurisdiction :Prayagraj

Per Hon'ble Ashish Varma, Technical Member

JUDGEMENT

1. QUESTIONS OF LAW INVOLVED

1.1. This appeal is filed against Order-in-Appeal No. ZD090725239105A dated 24.07.2025 passed by the Additional Commissioner, Grade-II (Appeal)-III, State Tax, Prayagraj, which upheld the penalty order dated 05.05.2025 passed by the Assistant Commissioner, State Tax, Mobile Squad, Unit-4, Prayagraj.

1.2. The questions for determination are:

a) Whether the First Appellate Authority was right in confirming the penalty under Section 129 of the Central Goods and Services Tax Act, 2017 / Uttar Pradesh Goods and Services Tax Act, 2017 ("CGST/UPGST Act, 2017") on a registered person for transporting goods without an e-way bill, when the goods were being moved as a stock transfer; and

b) Whether, in these circumstances, a charge of deliberate intent to evade tax by clandestine removal, and the imposition of a rigorous penalty under **Section 129** of the CGST/UPGST Act, 2017, is warranted.

2. FACTS OF THE CASE

2.1. The appellant, M/s G P Motors Private Limited, is an authorised dealer of M/s Honda Motorcycle & Scooter India Pvt. Ltd. In the regular course of

business, it transfers vehicles from its godown at Naini to its showroom at Civil Lines, Prayagraj, a distance of approximately 14 km.

2.2 On 30.04.2025 at 17:40 hrs, the appellant's self-owned loader (Vehicle No. UP70JT2581), carrying five two-wheelers, was intercepted at Mama Bhanja, Naini, by the Assistant Commissioner, State Tax, Mobile Squad, Unit-IV, Prayagraj.

2.3 At the time of interception, driver Sawan Kumar Nishad recorded a contemporaneous handwritten statement in Hindi on Form GST MOV-01, and affirmed the same under oath.

2.4. Physical verification conducted under Form GST MOV-04 confirmed that the 5 seized vehicles matched items 1, 3, 4, 5, and 7 of Delivery Challan No. 718 dated 30.04.2025 with complete reconciliation of engine and chassis numbers.

2.5. On 03.05.2025, a detention order (Form GST MOV-06) was passed, followed by a Show Cause Notice (Form GST MOV-07 / DRC-01) on 05.05.2025 proposing a penalty under Section 129(3).

2.6. On 05.05.2025, the Assistant Commissioner passed an Order-in-Original (Form GST MOV-09 / DRC-07) imposing a penalty of ₹1,96,000 (₹98,000 CGST + ₹98,000 SGST).

2.7. The appellant's First Appeal was dismissed by the Additional Commissioner Grade-II (Appeals), State Tax, Prayagraj, vide Order-in-Appeal

dated 24.07.2025. Aggrieved, the appellant filed the present second appeal before this Tribunal.

3. SUBMISSIONS OF THE APPELLANT

3.1. M/s G.P. Motors Private Limited has challenged the penalty before this Tribunal on several connected factual, legal and procedural grounds, summarised below.

3.2. Stock transfer without tax liability: The authorities erred on facts and in law in invoking Section 129 of the CGST/UPGST Act, 2017 and imposing a penalty on what was only an internal, intra-city stock transfer between the appellant's own premises — from its godown at Naini to its showroom at Civil Lines, Prayagraj. As there was no sale or supply to a third party, no immediate tax liability arose. The five two-wheelers were tax-paid stock purchased directly from the manufacturer, M/s Honda Motorcycle & Scooter India Pvt. Ltd., under valid tax invoices on which the applicable GST had already been fully paid. Since the goods were fully accounted for and traceable, there was no loss to the exchequer and no material on record to establish a wilful act of tax evasion.

3.3. No possibility of sale "out of books": Two-wheelers are not bulk commodities that can be sold secretly or "out of books". Under the Motor Vehicles Act, every purchaser must register and insure the vehicle, for which the dealer's tax invoice, a sale letter in Form 21 and a Euro-VI compliance certificate in Form 22 issued by the manufacturer are required. Each vehicle is uniquely identifiable by its engine and chassis numbers. Any retail sale therefore requires

valid documents, which makes a hidden or off-the-record sale legally and practically impossible.

3.4. Transit documents and conduct of the officer: The consignment was covered by Delivery Challan No. 718, issued from a bound, serially numbered book in accordance with Rule 55 of the CGST/UPGST Rules, 2017, which governs movement of goods for reasons other than supply. The driver produced the challan before the intercepting officer, but the Mobile Squad officer arbitrarily refused to accept it. The officer also took away the driver's mobile phone, which prevented him from contacting the company or producing further documents. This high-handed conduct violated the principles of natural justice and denied the appellant a fair opportunity to show that the movement was lawful.

3.5. Case laws: The officer's reliance on the Supreme Court's decision in ***M/s Guljag Industries v. Commercial Taxes Officer*, (2007) 7 SCC 269** was misplaced, as that judgment arose under Section 78(5) of the Rajasthan Sales Tax Act, 1994, under a fundamentally different sales tax/VAT regime. Under GST, the detention and penalty provisions in Section 129 are meant to curb deliberate tax evasion, not to penalise bona fide transactions involving minor technical or procedural lapses in documentation. The appellant relies on the Supreme Court in ***Assistant Commissioner (ST) v. M/s Satyam Shivam Papers Pvt. Ltd.*, 2022 SCC OnLine SC 115** (SLP (C) No. 21132 of 2021, order dated 12.01.2022); on the Allahabad High Court in ***M/s Shyam Sel & Power Ltd. v. State of U.P.*, (2023) 11 Centax 99 (All.)** (Writ Tax No. 603 of 2023, decided on 05.10.2023), ***M/s Falguni Steels v. State of U.P.*, 2024:AHC:11990** (Writ

Tax No. 146 of 2023, decided on 25.01.2024), ***M/s Vacmet India Ltd. v. Additional Commissioner Grade-2 (Appeal)*, (2023) 12 Centax 156 (All.)** (Writ Tax No. 687 of 2019, decided on 17.10.2023), ***M/s Anchor Health and Beauty Care Pvt. Ltd. v. State of U.P.*** (Writ Tax No. 78 of 2022, decided on 06.02.2024) and ***M/s Goverdhan Oil Mill v. Additional Commissioner*, (2025) 32 Centax 368 (All.)** (Writ Tax No. 551 of 2024, decided on 10.04.2024); and on the Calcutta High Court in ***Ashok Kumar Sureka v. Assistant Commissioner, State Tax*** (WPA No. 11085 of 2021, decided on 01.03.2022). These decisions consistently hold that a penalty under Section 129 cannot be sustained in genuine stock transfers where the goods are fully traceable and there is no intent to evade tax.

3.6. Procedural defects: The entire proceeding is void ab initio because the Assistant Commissioner did not follow the mandatory procedure and did not issue Forms GST MOV-07 and MOV-09 in the prescribed format. Relying on ***M/s Dharani Sugars & Chemicals Ltd. v. Union of India*, (2019) 5 SCC 480** and on the principles laid down in ***Taylor v. Taylor*, (1875) LR 1 Ch D 426** and ***State of U.P. v. Singhara Singh*, AIR 1964 SC 358 : (1964) 4 SCR 485**, the appellant submits that where a statute confers a power and prescribes the manner of its exercise, the power must be exercised in that manner or not at all. The penalty order is therefore legally invalid.

4. SUBMISSIONS OF REVENUE

4.1. Revenue made detailed submissions in rebuttal at the hearing on 24.09.2026 in defence of the penalty of ₹1,96,000. Its submissions are, in brief, as follows:

a) The movement of commercial goods valued above ₹50,000 must be supported by the prescribed documents under Section 31 of the CGST/UPGST Act, 2017 and by an e-way bill under Rule 138(1) of the CGST/UPGST Rules, 2017, irrespective of the distance involved.

b) The appellant's claims about Delivery Challan No. 718 and the confiscation of the driver's phone are concocted afterthoughts.

c) The 20 km exemption under Rule 138(14)(n) applies only to movement to and from a weighbridge.

d) The lower authorities have recorded concurrent findings of fact that no documents accompanied the goods, and an appellate tribunal should not disturb such findings.

e) Statutory GST penalties do not require proof of mens rea. Revenue relies on ***State of Gujarat v. M/s Arcelor Mittal Nippon Steel India Ltd.*****, (2022) 6 SCC 459** (Civil Appeal Nos. 7710-7714 of 2021, decided on 21.01.2022), in which, according to Revenue, the Supreme Court held that a mandatory penalty cannot be waived on a plea of bona fide belief; and on ***Assistant Commercial Taxes Officer v. M/s Bajaj Electricals Ltd.*****, (2009) 1 SCC 308** and ***State of Rajasthan v. M/s D.P. Metals*****, (2002) 1 SCC 279**, which, according to Revenue, establish that moving goods without documents raises a legal presumption of a motive to mislead.

f) Relying on ***Malloch v. Aberdeen Corporation*****, (1971) 2 AIR 1278** and ***N. Mani v. Sangeetha Theatre*****, (2004) 12 SCC 278**, Revenue contends that defects in the format of Forms MOV-07 and MOV-09 do not invalidate an order unless actual prejudice is shown.

g) Revenue distinguishes M/s Vacmet India Ltd., M/s Goverdhan Oil Mill and ***M/s Cross Wheels Auto (P.) Ltd. v. State of U.P.*** (Writ Tax No. 1030 of 2023, decided on 17.11.2025) as cases involving minor HSN discrepancies or transit delays, and not the total non-generation and complete absence of an e-way bill, as in the present case.

4.2. In its submissions on 13.10.2026, Revenue also referred to unsigned PDI slips of the vehicles that were available with driver at the time of interception.

5. DISCUSSION AND FINDINGS

5.1. We have carefully considered all the written and oral submissions, the records, the evidence and the arguments of both sides.

A. Nature of the movement

5.2. Before turning to the legal issues, we note that Revenue's reference to unsigned internal PDI slips of the vehicles does not appear to prove or disprove anything relevant to the case. The fact remains that the consignment was a **stock transfer**. Delivery Challan No. 718 dated 30.04.2025 is on record, and the driver's statement also shows that the goods were being moved as a stock transfer. Further, at no stage of the proceedings did either party allege that the intercepted movement was a separate sale to a customer. Throughout, both parties have proceeded on the common factual premise that the movement on 30.04.2025 was an internal transfer between the dealer's own premises. Hence Revenue's reference to PDI slips has no relevance to the instant case.

B. Statutory requirement of an e-way bill for stock transfers

5.3. To answer the questions of law, we first examine whether the rules require an e-way bill for a stock transfer.

5.3.1. Under Rule 138(1) of the CGST/UPGST Rules, 2017, every registered person who causes the movement of goods of consignment value exceeding ₹50,000 must generate an e-way bill. This requirement is not limited to supplies; it applies equally to movement for reasons other than supply, and therefore covers an intra-city stock transfer from a godown to a showroom. Where the registered person transports the goods in its own conveyance, Rule 138(2) requires it, as consignor, to generate the e-way bill in FORM GST EWB-01 after furnishing the Part B information. Under Rule 138A(1), the person in charge of the conveyance must carry both the underlying document (such as an invoice, bill of supply or delivery challan) and a physical or electronic copy of the e-way bill.

5.3.2. For the movements that do not involve a supply, such as internal stock transfers, Rule 55(1)(c) allows the consignor to issue a delivery challan instead of a tax invoice. However, a delivery challan does not exempt the movement from the e-way bill requirement. Rule 55(3) expressly provides that where goods are moved on a delivery challan, the movement must still be declared as specified in Rule 138.

5.3.3. On a plain reading of these provisions of the CGST/UPGST Rules, 2017, M/s G.P. Motors Private Limited was required to issue Delivery Challan No. 718, generate an e-way bill in FORM GST EWB-01, and ensure that the driver carried both documents for the stock transfer of five two-wheelers valued at ₹3,50,000. As alleged by Revenue, this was not done. Hence, even if we accept

that the appellant issued Delivery Challan No. 718 (which Revenue disputes), carrying the delivery challan alone without generating an e-way bill is a procedural non-compliance under the strict letter of the statutory framework.

C. Charge of clandestine removal

5.4. Moving on from the bare provisions to the factual and contextual arguments of the appellant, we find considerable merit in the submission of appellants that motor vehicles cannot be sold "out of books". Each vehicle is uniquely identifiable by its **engine and chassis numbers**. Registration with the R.T.O. and insurance under the Motor Vehicles Act require a valid tax invoice, Form 21 and Form 22, which makes a clandestine sale virtually impossible. Because these goods are fully traceable, the charge of clandestine removal for tax evasion is unsustainable both in law and on facts. In reaching this conclusion, we rely on the judgment of the Madurai Bench of the Madras High Court in ***Tvl. R.K. Motors v. State Tax Officer*** **(W.P. (MD) No. 1287 of 2019)**, which held in para 12:

> *"As rightly pointed out by the learned counsel appearing for the writ petitioner, the goods in question are two wheelers. They cannot be sold without proper registration with the Motor Vehicle Authorities. That would require proper documentation. Therefore, in a case of this nature, the writ petitioner could not have evaded his statutory obligations in any manner. This aspect of the matter ought to have been taken note by the respondent."*

D. Sustainability of the penalty under Section 129(1)/129(3) in stock transfers

5.5.1. Having found that the charge of clandestine removal for tax evasion cannot be sustained for these goods, we note that the penalty in this case has been levied under Section 129(1)/129(3) of the CGST/UPGST Act, 2017. The relevant provisions read 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 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;*
>
> *(2)……..*

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

5.5.2. It is clear from the above that the penalty under this section is leviable only with reference to "*the tax payable*" on such goods. We therefore examine what tax was payable on the goods in question.

5.5.3. Section 7(1) of the CGST/UPGST Act, 2017 defines "supply" as follows:

"**7. Scope of supply.**

(1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;"

5.5.4. The next question is whether the stock transfer in question amounts to a supply. For a transaction to be a supply under Section 7, it must involve two different persons or entities between whom the sale, transfer, exchange, licence, rental, lease or disposal takes place. In the present case there is only one party,

namely the appellant; there is no second party to the transaction. Nor is any consideration involved in the stock transfer.

5.5.5. We therefore find that:

a) the transaction in question is not a supply as defined in Section 7 of the CGST/UPGST Act, 2017; and

b) since it is not a supply, it is not covered by Section 9 of the CGST/UPGST Act, 2017, and therefore no tax is payable on the goods.

5.5.6. Our view is supported by the decision of the Hon'ble Bombay High Court in ***M/s Fabricship Pvt. Ltd. v. Union of India*, 2024 (90) G.S.T.L. 302 (Bom.) / (2024) 20 Centax 84 (Bom.)**, the relevant extract of which is reproduced below:

> *"11. Section 129(1)(a) of the MGST Act provides for penalty equal to one hundred per cent of the tax payable on goods detained or seized. The phrase "tax payable" would contemplate that the transaction is liable for tax and on which the tax becomes payable. In the instant case, when the machinery is being transported from JNPT to petitioner's factory after Customs clearance, there is no tax payable under the GST Act. Section 9 of the MGST Act levies tax on all intra-State supplies of goods or services or both and such a tax shall be paid by the taxable person. Section 7(1)(a) of the MGST Act defines "supply" to include all forms of supply of good or services or both such as sale, transfer, barter, exchange,*

license, etc made or agreed to be made for a consideration by a person in the course or furtherance or business. Admittedly Sections 7(1)(b) and 7(1)(c) are not applicable and the transaction under consideration also does not fall within Schedule I, II and III to the Act. In the instant case, when petitioner imports machinery and after Customs clearance transports the said machinery to its own factory, it cannot be said that such a transportation would fall within the definition of the term "supply" as defined by Section 7. This is so because for a "supply" to fall under Section 7 there has to be more than one person or entity between whom the transaction of supply should take place. The illustrations given in Section 7(1)(a) namely sale, transfer, barter, exchange, etc fortifies the requirement of existence of more than one person to fall within the expression "supply", which is not satisfied in the present case since machinery is being transported by petitioner to its own factory. Secondly, the supply has to be for a "consideration". Section 2(31) of the MGST Act defines "consideration" to include any payment made or to be made or the monetary value of any act or forbearance. In the instant case, when petitioner transports his machinery to its own factory there cannot be any consideration as defined in section 2(31).

12. Therefore, in our view, the activity of transport of machinery from JNPT to petitioner's own factory would not

fall within Section 7 which deals with scope of supply and consequently in the absence of any supply, and absence of consideration the charging Section 9 also would not get attracted so as to make petitioner liable to pay any tax."

5.5.7. Once it is found that no tax is payable on the goods, it follows that the penalty under Section 129(1)/129(3) of the CGST/UPGST Act, 2017, which is to be determined with reference to such tax, is not leviable.

E. Intent to evade tax and penalty under Section 129 for want of an e-way bill in stock transfers

5.6.1. The records confirm that the five vehicles were purchased from the manufacturer against valid tax invoices on which GST was duly paid. The taxable event was thus completed at the manufacturer's stage, and the goods were no longer "taxable" until the next taxable event. The movement in question was an internal stock transfer between two places of business of the same dealer. As there was no supply to a third party, no new taxable event arose. The appellant admittedly followed the practice of not generating e-way bills for all such stock transfers as part of its normal business, which indicates the absence of any mala fide intent. Where the tax has already reached the State exchequer, the motive to evade tax is clearly absent.

5.6.2. The failure to generate an e-way bill must be assessed in light of the distance-based exemptions under the rules. Rule 138(14)(n) grants an exemption only for movement to and from a weighbridge for weighment within 20 km; it does not apply to a 14 km commercial transfer to a showroom. Similarly, the

provisos to Rule 138(3) and Rule 138(5) allow Part B (conveyance details) not to be updated for movement within 50 km inside the State, but they do not dispense with the mandatory obligation to generate the e-way bill itself under Rule 138(1). Importantly, the appellant did not challenge the validity or scope of these distance-based rules; it cited them to show that it acted under an honest, bona fide misunderstanding. By showing that the failure to generate the e-way bill arose from an innocent misreading of the Part B and weighbridge rules, and not from an attempt to evade the law, the appellant has established the absence of mens rea or deliberate intent to evade tax, which disproves any charge of clandestine removal.

5.6.3. Thus, although there was a technical and procedural breach of Rules 138 and 138A, as no e-way bill accompanied the goods in transit, there was no mens rea or deliberate intent to evade tax. The appellant's reliance on the 20 km and 50 km exemptions arose from a bona fide belief and misunderstanding, and not from any challenge to the statutory provisions.

F. Whether mens rea is a necessary ingredient — analysis of the case laws

5.7.1. Revenue contends that statutory GST penalties require no proof of mens rea; the appellant contends the opposite. The question is whether an intent to evade tax is a necessary ingredient for a penalty under Section 129 of the CGST/UPGST Act, 2017 on the present facts: an intra-city stock transfer of tax-paid two-wheelers between the appellant's own godown and showroom, about 14 km apart and under the same GSTIN, covered by a delivery challan under Rule 55 which the officer allegedly declined to acknowledge, but admittedly

without an e-way bill. We answer it by applying the ratio of each decision to these facts.

Authorities relied on by the appellant

5.7.2. In ***Satyam Shivam Papers*** **(supra)**, a ruling directly under Section 129 (of the Telangana GST Act, 2017), the Supreme Court held that tax evasion cannot be inferred from a mere technical lapse — there, the expiry of an e-way bill — without material showing deliberate intent, and even enhanced the costs imposed for drawing such a baseless inference. This sets an evidentiary threshold that does not depend on any particular version of Section 129. The Calcutta High Court in ***Ashok Kumar Sureka*** **(supra)** applied the same reasoning to an e-way bill lapse caused by a vehicle breakdown; it is persuasive, though not binding on us. Closest on facts is ***Vacmet India*** **(supra)** — an intra-State stock transfer between two units of the same dealer, with Part B of the e-way bill left incomplete — where the Allahabad High Court held that, as the stock transfer carried no tax liability, no evasion could be attributed to it and, in the absence of intent, the entire proceedings were vitiated. ***Anchor Health***, ***Goverdhan Oil Mill*** and ***Cross Wheels Auto*** **(supra)** follow the same line.

5.7.3. ***Shyam Sel & Power*** and ***Falguni Steels*** **(supra)** hold that Section 129 must be read with Section 130, which makes intent a sine qua non for penalty. That reasoning rests on Section 129(6) as it stood before 01.01.2022, when it cross-referred to Section 130; the cross-reference had been deleted well before the interception in this case on 30.04.2025. Those decisions cannot, therefore, be transplanted here as such. What does carry forward, independently of the deleted link, is the evidentiary principle in Satyam Shivam Papers and the

findings in Vacmet India that a stock transfer carrying no tax liability cannot, by itself, support an inference of evasion.

Authorities relied on by the Revenue

5.7.4. None of Revenue's authorities interprets Section 129 of the CGST/UPGST Act, 2017. ***Guljag Industries***, ***Bajaj Electricals*** and ***D.P. Metals*** **(supra)** arise under Section 78(5) of the Rajasthan Sales Tax Act, 1994, a separately structured penal provision with no link to an intent-based confiscation provision such as Section 130. Moreover, Guljag Industries is expressly confined to blank or incomplete declaration forms travelling with the goods for repeated reuse, and D.P. Metals limits the presumption of an evasive motive to false or forged documents; neither situation arises here, where a complete and genuine delivery challan was allegedly tendered and refused. ***Arcelor Mittal*** **(supra)** concerns the denial of a purchase-tax exemption and the consequential penalty under Section 45 of the Gujarat Sales Tax Act, 1969, restored on a finding of deliberate violation through a breach of the Form 26 declaration; it says nothing on goods in transit or on intent under Section 129.

5.7.5. Revenue's attempt to distinguish Vacmet India, Goverdhan Oil Mill and Cross Wheels Auto as cases of minor HSN or transit discrepancies, rather than complete non-generation of an e-way bill, also fails. Vacmet India turned not on the extent of the e-way bill defect but on the more basic fact that a stock transfer between units of the same dealer carries no tax liability at that stage, so that no evasion could arise however serious the documentary lapse. That reasoning applies with equal force to the appellant's non-taxable stock transfer.

Conclusion on the case laws

5.7.6. Revenue's authorities thus relate to a different statute, a different provision or a different issue, and relying on them, as the order under appeal does, overlooks these distinctions. The appellant's authorities are either decided directly under Section 129 (Satyam Shivam Papers) or closely comparable on facts (Vacmet India). The appellant's view therefore prevails: mens rea remains a necessary ingredient for a penalty under Section 129. This rests not on the deleted link between Section 129(6) and Section 130, but on the independent principle — reaffirmed in Vacmet India (2023), Anchor Health (2024) and Goverdhan Oil Mill (2025)— that a stock transfer carrying no tax liability discloses no material from which an intent to evade tax can reasonably be inferred.

5.7.7. In this regard, we quote from the judgment dated 17.10.2023 of the Hon'ble Allahabad High Court in ***M/s Vacmet India Ltd. v. Additional Commissioner Grade-2 (Appeal)*, (2023) 12 Centax 156 (All.)**, wherein it was held:

> *"14. Since the goods in question were stock transfer from one Unit to another within the State of Uttar Pradesh (Agra to Mathura) and in absence of any provision being pointed out by the learned ACSC or any authority below that the goods (stock transfer) in transit were liable for payment of tax, no evasion of tax could be attributed to the goods in question. Once there was no intention to evade payment of tax, the entire*

proceedings initiated against the petitioner are vitiated and are liable to be set aside."

5.7.8. Similarly, in its judgment dated 10.04.2024 in ***M/s Goverdhan Oil Mill v. Additional Commissioner*, (2025) 32 Centax 368 (All.)**, the Hon'ble Allahabad High Court held:

"5. Upon perusal of the judgments cited above by the petitioner, I am of the view that in the case of stock transfer, there is no liability of any payment of tax. Accordingly, there can be no intention to evade tax whatsoever. In the present case, the authorities did not dispute the fact that the movement of the goods was in relation to stock transfer. Accordingly, penalty imposed under Section 129(3) of the Act is without any basis in law and is liable to be set aside."

5.7.9. For the foregoing reasons, we find that the impugned orders dated 05.05.2025 and 24.07.2025 are not legal and are liable to be set aside. Hence the same are set aside.

5.8. Having dealt with the main grounds raised by both parties and arrived at a decision, we do not consider it necessary to examine the minor or additional submissions, as they have no bearing on our decision.

G. Conclusion

5.9. As held above, although the law required an e-way bill to be generated, the virtual impossibility of tax evasion in stock transfers of such goods and the

absence of fraudulent intent rule out the severe penal measures meant for tax evasion under Section 129. Hence the penalty imposed under Section 129 is quashed and Order nos - ZD090525032186D dated 05/05/2025 and ZD090725239105A dated 24/07/2025 are set aside.

6. ORDER

6.1. Appeal is allowed. Accordingly, the impugned orders Order-in-Appeal No. ZD090725239105A dated 24.07.2025 and Order-in-Original No. ZD090525032186D dated 05.05.2025 are set aside.

6.2. The penalty of ₹1,96,000 is quashed. The appellant is entitled to a refund of any amount deposited on this count, along with applicable interest in accordance with law.

6.3. No cost.

Place: Prayagraj
Dated: 16.10.2026

(Ashish Varma)
Technical Member

(Mahtab Ahmad)
Judicial Member

The Judgement is signed, dated and pronounced today in open Court.

Dated: 16.10.2026

(Ashish Varma)
Technical Member

(Mahtab Ahmad)
Judicial Member