GSTAT

State Bench Lucknow

Court No. Court I

APL/126/LCK/2026

SUNNY **.....Appellant**

Versus

SHRAWAN KUMAR MISHRA, ASSISTANT COMMISSIONER, (MOBILE SQUAD) â€“ 12 STATE TAX KANPUR & ORS. **.....Respondent**

Quorum

Hon'ble Santosh Kumar Srivastava, Member(Judicial)
Hon'ble Arvind Kumar, Member (Technical)

Counsel for Appellant
SHRI DINESH KUMAR SHUKLA, ADVOCATE

Counsel for Respondent
MR. ASHUTOSH MISHRA, ASSISTANT COMMISSIONER, SGST

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. : ZA030371026000390H **Date of order :** 15/10/2026

1.	GSTIN/Temporary ID/UIN - 092400028757TMP	
2.	Appeal Case Reference no. - APL/126/LCK/2026	Date - 09/05/2026
3.	Name of the appellant - SUNNY , sanjeevkum79@yahoo.com , 9700158000	
4.	Name of the respondant - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. SHRAWAN KUMAR MISHRA	
5.	Order appealed against - AD0909240091708	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD091125371008G	Date - 20/11/2025

6.	Personal Hearing - 15/10/2026 22/09/2026 16/09/2026
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - M/s Shri Ashok Kumar Arora Oil Company challenged the penalty of Rs.6,76,694 imposed under Section 129(3) of the CGST/UPGST Act, 2017, on a consignment of refined glycerine intercepted in Kanpur Dehat while destined for Ludhiana, Punjab. The Department alleged that the vehicle's deviation from the declared route and the driver's statement indicated an attempt to deliver goods to an undeclared local buyer. The Appellate Tribunal observed that the department's own DRC-07 recorded Punjab as the place of supply, the goods were accompanied by valid tax invoices and an e-way bill, and route deviation alone did not establish a statutory contravention or intent to evade tax. Accordingly, the penalty order dated 23.08.2024 and the appellate order dated 20.11.2025 were set aside, and refund of the deposited penalty was directed in accordance with law, subject to verification.

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		676694	0	0		676694	0
(d) Fees	0		0		0		0		0	0
(e) Others										0
(f) Refund										0

Section-II

Place of Supply/Name of State/UT	Demand	Tax	Interest	Penalty	Other	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Amount in dispute	0	0	676694	0	676694
	Amount Determined	0	0	0	0	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	The Ld. First Appellate Authority upheld the order passed under Section 129 of the CGST/UPGST Act, 2017 and confirmed penalty amounting to Ã¢Â‚Â¹6,76,694/-. The Appellate Authority held that although the documents reflected transportation of goods from Karnataka to Ludhiana, Punjab, the vehicle was intercepted near Lahariya Oil Company, Kanpur Dehat and the driver, in his statement recorded during interception, admitted that the goods were intended to be unloaded there. On the basis of the driverÃ¢Â€Â™s statement and location of interception, the authority concluded that the actual buyer was a Kanpur based concern and that the transportation was being carried out with intent to evade tax through use of improper documentation. The Appellate Authority rejected the explanation furnished by the appellant regarding temporary halt of the vehicle and held that the defence raised by the appellant was an afterthought not supported by evidence. It was further held that the proceedings initiated under Section 129 were valid and justified and accordingly the penalty imposed through MOV-09 order dated 23.08.2024 was sustained.	The Appeal filed by the Appellant is allowed.

Place :LUCKNOW

Signature

Date : 16.10.2026

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

ORDER

1. BRIEF FACTS OF THE CASE;

1.1. This present appeal has been filed by M/s **Shri Ashok Kumar Arora Oil Company** (hereinafter referred to as the "**Appellant**") under Section 112 of the Central Goods and Services Tax Act, 2017 and the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter collectively referred to as the "Act") against the Order-in-Appeal No. **AD0909240091708** dated **20.11.2025** (hereinafter "Impugned OIA").

1.2. By the said Impugned OIA, the Ld. First Appellate Authority sustained the Order-in-Original in FORM GST **MOV-09** dated 23.08.2024, confirming a penalty of **₹6,76,694/-** under Section 129(3) of the Act.

1.3. The Appellant, M/S Shri Ashok Kumar Arora Oil Company (Proprietor: Sunny Arora), having its principal place of business at Plot No. 231, Back Side Radha Swami Satsang Ghar, Village Umedpur, Sahnewal, Ludhiana, Punjab. The Appellant is registered under the Goods and Services Tax (GST) regime, holding **GSTIN 03AGPPA8827N2ZZ**. In connection with the enforcement proceedings, **Temporary ID 092400028757TMP** was also assigned to the taxpayer.

1.4. The Appellant purchased a consignment of **Refined Glycerine Loose weighing 344.90** QTL from the supplier firm, M/S Netaji Oil Depot Pvt. Ltd., having its business premises at Sector-8, Gandhidham, Kutch, Gujarat (**GSTIN: 24AAFCN1116J1ZS**). The transaction was valued at a total of **₹22,18,052/-** (inclusive of tax). The consignment was moving under cover of **Invoice No. GST/1813/24-25 dated 10.08.2024**, **E-Way Bill No. 671765926953 dated 10.08.2024,** and **Transport Bilty No. 693 dated 10.08.2024 issued by M/S M.S. Transport Company, Jaipur**. The designated place of supply according to the tax documents was Ludhiana, Punjab.

1.5. The transport **vehicle**, a tanker bearing registration number **HR58D6677**, was **intercepted on 18.08.2024 at 08:07 AM** by the proper officer of the Mobile Squad-12 (Sector 5), State Tax, Kanpur, Uttar Pradesh. The vehicle was not found operating on the normal national highway route connecting Gujarat/Karnataka to Punjab. Instead, it was intercepted at the factory gate, inside the service lane, while backing up to enter the premises of M/S Swaroop Agro Products Pvt. Ltd. / Lahariya Oil Industries Pvt. Ltd. at Village Umran, Kanpur Dehat, Uttar Pradesh. The location of interception was found to be significantly diverted, lying approximately 500 kilometres away from the prevailing route toward the declared destination in Punjab.

1.6. Upon stopping the vehicle, the intercepting authority demanded the transit documents from the person-in-charge/driver of the vehicle, **Shri Sabarjeet Singh**. The proper officer conducted a video recording and took a sworn statement from the driver. In his statement, the driver stated under oath that he had loaded the **viscous glycerine** from Mangalore, Karnataka, and was specifically instructed by a **broker named Anil Yadav** to unload the consignment at the Kanpur Lahariya factory gate. The driver certified that the statement was given without any fear, inducement, or external pressure.

1.7. Based on the physical positioning of the vehicle and the driver's statement, the proper officer concluded that the transaction involved an attempt to deliver goods outside the books of accounts to an undeclared local buyer in Kanpur, using shell/dummy firms to evade the tax liability. Accordingly, physical inspection and detention orders were executed. A Show Cause Notice under Form **GST MOV-07** was issued **on 20.08.2024**. The Appellant filed an online reply on 22.08.2024, which was found unsatisfactory by the proper officer. Consequently, a penalty order in **Form GST MOV-09 / DRC-07** (Order No. ZD090824212956Y) was passed on **23.08.2024** under **Section 129(3)** of the CGST/UPGST Act read with Section 20 of the

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IGST Act, creating a demand of **₹6,76,694/-** under the IGST Penalty head. The Appellant deposited the entire penalty on the same date to secure the release of the vehicle and goods.

1.8. Aggrieved by the penalty order, the Appellant filed First Appeal No. **AD0909240091708** online on 05.09.2024 under Section 107 of the Act. The Appellant contended that the proper officer bypassed the principles of natural justice and ignored their written explanation. On merits, the Appellant claimed that the driver had merely stopped near the Lahariya Oil Company to meet other drivers from the same transport company to celebrate the *Raksha Bandhan* festival. They further argued that the driver panicked because an unknown private vehicle was tailing him, causing him to pull up near the factory gate out of fear, and that his statement was recorded under duress. The Appellant placed reliance on several judicial precedents, emphasizing that minor route deviations do not authorize penalty proceedings under Section 129 when the invoice and E-Way bill are otherwise valid and authentic.

1.9. The appeal was heard by the **Additional Commissioner Grade-II (Appeals)-VI, State Tax, Kanpur**. Despite notices being served for personal hearings across multiple dates including 24.03.2025, 13.06.2025, and various dates up to 20.11.2025, neither the appellant nor their authorized representatives appeared for the final hearings after an initial partial attendance.

1.10. The Appellate authority noted that the video evidence safely preserved on file clearly depicted the tanker in the active process of turning into and entering the wrong factory gate rather than merely being parked on a highway. Relying on the legal principles established by the **Hon'ble Allahabad High Court** in ***Yashika Overseas v. Commissioner Commercial Tax UP*** **and** ***M/S Ghata Mehandipur Balaji Grinding Works***, the court held that the statement recorded from the driver at the very first instance carries the highest sanctity and cannot be overridden by subsequent structural defenses, which were deemed a clear "afterthought".

1.11. Furthermore, The First Appellate Authority citing the ***The Hon'ble High Court, Allahabad, in the case of M/s Gurunanak Aircon Trust vs. Commercial Tax and Others, Writ Tax No. 1177/2022, judgment dated 05/03/2025***, concluded that the absence of an E-Way bill during the transportation of goods indicates the trader's intention of tax evasion. Additionally, the Hon'ble Court also concluded that generating an E-Way bill after the transportation of goods will not be considered free from fault under the provisions of the Uttar Pradesh Goods and Services Tax Act." Finding the explicit intent to evade tax fully substantiated by the 500-kilometer route deviation and circumstantial tracking, the Appellate Authority dismissed the appeal via its order dated **20.11.2025**, thereby upholding the original penalty order of ₹6,76,694/-.

2. GROUNDS OF APPEAL;

2.1. The Impugned **Order-in-Appeal dated 20.11.2025** are completely illegal, arbitrary, and without jurisdiction and liable to be set aside on the following grounds:

2.2. **Ground 1: The Department's own order negates the allegation of "Different Place of Supply"**

- The Summary of Order / FORM GST DRC-07 (No. ZD090824212956Y dated 23.08.2024) issued with the MOV-09 records "Issues involved: DIFFERENT PLACE OF SUPPLY"; yet in the demand table of the very same DRC-07, the Proper Officer has himself entered Act: IGST and Place of Supply (POS) : Punjab.

- Under Section 10(1)(a) of the IGST Act, 2017, where the supply involves movement of goods, the place of supply is the location of the goods at the time "at which the movement of goods terminates for delivery to the recipient". The recording of POS as "Punjab" therefore legally signifies that the movement was to terminate in Punjab (Ludhiana) for delivery to the Appellant — exactly as declared in the invoice and e-

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way bill. Had the Department concluded that the goods were to be unloaded at Kanpur Dehat, the POS would have been "Uttar Pradesh".

- Thus there is no "different" Place of Supply on record at all. The sole issue shown in the DRC-07 is contradicted by the table of the same order. The very foundation of the penalty stands negated by the Department's own order, and the demand deserves to be set aside on this ground alone.

- Further, the penalty has been levied under Section 129(1)(a) (column 15 of the DRC-07), which applies only where "the owner of the goods" comes forward for payment. The Department has thus accepted the Appellant as the owner of the goods. Circular No. 76/50/2018-GST dated 31.12.2018 also clarifies that where the invoice accompanies the goods, the consignor or the consignee is to be treated as the owner — here, the consignee is the Appellant at Ludhiana.

2.3. Ground 2: The transaction stands confirmed by the GST system itself — supplier's GSTR-1, Appellant's acceptance and ITC, no objection by the jurisdictional officer

- The supplier, M/s Netaji Oil Depot Pvt. Ltd. (GSTIN 24AAFCN1116J1ZS), has declared the supply under Invoice No. GST/1813/24-25 dated 10.08.2024 in its GSTR-1 as a supply made to the Appellant (GSTIN 03AGPPA8827N2ZZ, Punjab). The IGST liability of ₹3,38,346.90 on this supply thus stands admitted by the supplier in the GST system.

- The Appellant has accepted the said supply and availed Input Tax Credit thereon in its return. Under Section 16(2)(b), ITC is admissible only upon receipt of the goods — the Appellant, registered in Punjab, has thus declared receipt of the goods in its statutory return.

- The Appellant's jurisdictional officer has, till date, raised no objection or initiated any proceeding in respect of this supply, receipt of goods or ITC.

- The entire chain of the transaction the supplier's declaration, the recipient's acceptance and ITC, and the POS "Punjab" in the DRC-07 is recorded in the GST system and remains undisputed. Had the goods been meant to be sold "outside the books" at Kanpur Dehat, as surmised in the MOV-09 and the first appellate order, the transaction would not have been completed in the Appellant's records in Punjab. The surmise of "use of dummy firms" and of a "real buyer at Kanpur Dehat" is falsified by these statutory records, which fully corroborate the Department's own recording of POS as Punjab (Point 1).

- These are statutory records on the Department's own GST portal. The GSTR-1 relating to a supply dated 10.08.2024 could be filed only after the close of that tax period; these records were therefore not in existence when the MOV-09 was passed on 23.08.2024, and the Appellant was prevented by sufficient cause from producing them before the adjudicating authority. They deserve to be taken on record under Rule 112(1)(c) of the CGST Rules, 2017; further, Rule 112(4) empowers this Hon'ble Tribunal to direct the production of any document to enable it to dispose of the appeal. Copies are annexed as Annexure _____.

2.4. Ground 3: The driver's statement rests on a third person, "Anil Yadav", who is neither the owner nor a party to the transaction

- The driver is employed by the transporter, M.S. Transport Company, and not by the Appellant. His statement is not based on personal knowledge; it rests on what he was allegedly told by "Anil Yadav, a broker" — it is thus mere hearsay.

- The name "Anil Yadav" does not appear in the invoice, the e-way bill or the GR. He is neither the supplier, nor the recipient, nor the transporter, and not the owner of the

goods. The Department has itself accepted the Appellant as the owner (Point 1.4). The alleged instruction of an unconnected third person can neither change the ownership nor the declared destination of the goods, nor can liability for such a person's act be fastened on the owner.

- No enquiry whatsoever was made to corroborate the statement — (a) no identity, address, mobile number or statement of "Anil Yadav" is on record; (b) no survey, statement, purchase order, stock or payment evidence of Lahariya Oil / Swaroop Agro Products Pvt. Ltd.; (c) no evidence of any transaction or flow of money between that firm and the Appellant or the supplier; (d) although the driver's address and mobile number are recorded in the Summary of Order, he was neither re-examined nor produced before the Appellant.

- The Hon'ble Allahabad High Court (Lucknow Bench), in State of U.P. v. M/s Maa Vindhyavasini Tobacco Pvt. Ltd., Writ-C No. 20203 of 2019, decided on 20.10.2022, declined to interfere with the appellate finding that there was no material for detention and that "the levy of tax and penalty cannot be based upon the presumption".

2.5. Ground 4: No contravention of Section 68 / Rule 138 — the goods were covered by complete and valid documents

- Section 129 is attracted only where goods are transported "in contravention of the provisions of this Act or the rules made thereunder". The requirements of Rules 138 and 138A were fully met — the e-way bill was generated 8 days before interception (on 10.08.2024) and was valid up to 24.08.2024. The MOV-07 itself records that these documents were produced by the driver. The invoice was an e-Invoice under Rule 48(4) (with IRN/QR code); under Rule 138A(2) and Circular No. 160/16/2021-GST dated 20.09.2021, its production in electronic form is sufficient compliance.

- Neither the MOV-07, the MOV-09, the DRC-07 nor the first appellate order alleges any variation in quantity, description, HSN, value or rate of tax. The DRC-07 itself records the same quantity (344.90) and value (18,79,705) as the invoice. The driver himself stated that about "33 tones" of glycerin was loaded from Karnataka — consistent with the invoice (34,490 kg) and the e-way bill (Dispatch From: Karnataka).

- When the order does not specify which requirement of Section 68 or Rule 138 was unfulfilled at the moment of interception, the finding of contravention is without legal basis.

2.6. Ground 5: Statement and video not supplied to the appellant — violation of natural justice

- Both the MOV-09 and the first appellate order rely upon the video and sworn statement "preserved in the file", but copies were never supplied to the Appellant. The observation in the MOV-09 that "the firm's advocate did not ask for the video evidence" reverses the burden; it is the Department's duty to confront the Appellant with the material it relies upon.

- The Hon'ble Supreme Court in Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II, (2016) 15 SCC 785 (decided on 02.09.2015) held that not allowing cross-examination of the persons whose statements formed the basis of the order is "a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice". Here, the driver's statement is the sole basis of the order.

2.7. Ground 6: No supply or unloading took place — penalty for an imagined future act is illegal

- As per the MOV-09 itself, the vehicle was "in the process of entering the gate" and "had there been even one more minute, the vehicle would have been inside the factory gate".

Thus the vehicle did not enter the premises, the goods were not unloaded, and no supply took place.

- The core reasoning of the first appellate order is that "had the vehicle not been stopped by the Mobile Squad officer ... the goods would have been supplied" — an imagined future event. Section 129 addresses a contravention existing at the time of interception, not a possible or imagined one. The Department itself recorded the POS as Punjab (Point 1).

- The e-Invoice (IRN) for the transaction was registered in the GST system on the same day, full IGST of ₹3,38,346.90 is charged, and the payment terms read "100% ADVANCE". Such a recorded transaction cannot be branded "dummy" without any enquiry.

2.8. Ground 7: Route deviation is no contravention under GST law

- The MOV-09 states that the vehicle was "about 500 kilometers away from the usual route". Neither the CGST/UPGST Act nor the Rules impose any obligation to declare the route or to transport goods by any particular route.

- The Hon'ble Allahabad High Court in M/s Om Prakash Kuldeep Kumar v. Additional Commissioner Grade-2 & Anr., Writ Tax No. 277 of 2022 [2023 LiveLaw (AB) 378] held that, unlike the erstwhile VAT Act, there is no specific provision under the GST Act requiring disclosure of the route of transportation. The same principle was reiterated in Exide Industries Ltd. v. Additional Commissioner Grade-II (Appeal)-1, State Tax, Writ Tax No. 173 of 2024 — "Under the GST Act, there is no specific provision which bounds the selling dealer to disclose the route to be taken during transportation of goods..." (para 14) "The power of detention as well as seizure can be exercised only when goods were not accompanying with genuine documents provided under the Act." (para 15)

- The basis of the "500 kilometers" estimate — map, toll/FASTag record or GPS data — finds no mention in the order. The e-way bill was, in any case, within its validity.

2.9. Ground 8: No evidence-based finding of intent to evade tax

- The Hon'ble Allahabad High Court in M/s Shyam Sel and Power Ltd. v. State of U.P., Writ Tax No. 603 of 2023, decided on 11.10.2023 [2023 LiveLaw (AB) 374] held that for invoking proceedings under Section 129(3), Section 130 was required to be read together, "Where the intent to evade payment of tax is mandatory". Following it, in M/s Falguni Steels v. State of U.P., Writ Tax No. 146 of 2023, decided on 25.01.2024 [2024 LiveLaw (AB) 59] (para 15), the Court held —

"If penalty is imposed, in the presence of all the valid documents, even if e-Way Bill has not been generated, and in the absence of any determination to evade tax, it cannot be sustained."

- If a penalty cannot survive in the absence of intent even where no e-way bill was generated, it can a fortiori not survive here — where a valid e-way bill, e-Invoice and GR were all present and the Department itself recorded the POS as Punjab.

- The Hon'ble Supreme Court in Hindustan Steel Ltd. v. State of Orissa, (1970) 1 SCC 753 held that penalty will ordinarily not be imposed unless the party acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest. No such finding exists against the Appellant.

- Any contention that intent became irrelevant after Sections 129 and 130 were delinked w.e.f. 01.01.2022 is untenable. Even in Kamla Machines v. State of U.P., Writ Tax No. 4506 of 2025 — a post-amendment interception of 2025 — the Hon'ble Allahabad High Court held that the burden of proving intention to evade tax lies on the Revenue and that, in the absence of such material, proceedings under Section 129 cannot be

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sustained. In any event, even after the amendment, an actual contravention of the Act/Rules must be proved by evidence, which is absent here (Points 1 to 4).

2.10. Ground 9: The MOV-09 is a mechanical (cyclostyled) order — patent non-application of mind

- While dealing with para 17 of the Appellant's reply, the MOV-09 states that "as per Rule-138 the supplier dealer M/S GOVIND RASHYAN UPAYOG, ROOM NO-4, 2ND FLOOR, 16 INDIA EXCHANGE PLACE, KOLKATA-700001 (GSTIN-19AACFG8048E1ZD) ..." — whereas the supplier in the present case is M/s Netaji Oil Depot Pvt. Ltd., Gandhidham, Gujarat (GSTIN 24AAFCN1116J1ZS). Text from some other case has been reproduced verbatim.

- The High Court judgments cited in paras 22, 23 and 24 of the reply were rejected in a single line — that their facts are "different from the facts of the case" — without indicating how. The first appellate authority did not even consider these errors.

2.11. Ground 10: Errors in the first appellate order

- **The "afterthought" principle is inapplicable:** Relying on Yashika Overseas (State/Trade Tax Revision No. 572/2010) and Ghata Mehandipur Balaji Grinding Works, the first appellate authority treated the driver's first statement as the truth and everything else as an afterthought. That principle applies where new documents or a changed stand are put forward after interception. Here, the invoice, e-Invoice, e-way bill and GR are all contemporaneous documents dated 10.08.2024, produced by the driver himself in the very same statement — no document was produced "later". Moreover, the source of the driver's "first statement" is not the driver himself but Anil Yadav (Point 3). Yashika Overseas, as described in the order itself, pertains to the erstwhile Trade Tax regime. On the same basis, decisions such as Aasar Scrap Traders v. State of U.P. (Allahabad High Court) are distinguishable, where the explanations and

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documents put forward after interception ran contrary to the contemporaneous record; here, the contemporaneous documents, the Department's own POS determination (Punjab) and the subsequent statutory records (GSTR-1 / ITC) all point in one direction.

- **Guru Nanak Areca Nut Traders (Writ Tax No. 1177/2022) is inapplicable:** As recorded in the first appellate order itself, that case concerned absence of an e-way bill during transport and its generation afterwards. Here, the e-way bill was generated 8 days before interception and accompanied the goods.

- **Inference from similarity of name:** The finding that "Lahariya Oil Company is also an oil company" is a surmise, not evidence — and runs contrary to the Department's own recording of POS as Punjab.

- **The "voluntary deposit" reasoning is erroneous:** Payment under Section 129(1) is a statutory condition for release of goods and conveyance; it is no admission of liability. The Appellant filed the appeal within 13 days of the order.

- **Burden of proof:** The first appellate order observes that the Appellant attached no evidence, whereas the invoice, e-way bill and GR are recorded and accepted in the Department's own record (MOV-07/MOV-09/DRC-07), and the GSTR-1 / ITC records (Point 2) are available on the GST portal. The burden to prove contravention lies on the Department. Non-appearance on hearing dates does not shift that burden; the authority itself decided the appeal on merits, and the merits are fully open before this Hon'ble Tribunal. Karmaxx Infotech (Madras High Court), concerning failure to reply within time, has no application, since the Appellant filed its reply to the MOV-07 on 22.08.2024, before the stipulated date of 27.08.2024.

2.12. Ground 11: Explanation for the halt

- The explanation for the halt of the vehicle was furnished in the very first reply dated 22.08.2024, merely four days after interception. Non-acceptance of an explanation does not by itself prove the Department's allegation; the burden to establish the contravention by independent evidence lies on the Department, and has not been discharged.

2.13. In view of the facts and grounds stated above, appellant has prayed that this Hon'ble Goods and Services Tax Appellate Tribunal may kindly be pleased to:

- Set aside the first appellate order dated 20.11.2025 (Appeal No. AD0909240091708) and the MOV-09 / DRC-07 order No. ZD090824212956Y dated 23.08.2024;
- Direct refund of the penalty amount of deposited by the Appellant, with interest in accordance with law; and.
- Pass such other order(s) as this Hon'ble Tribunal may deem fit in the interest of justice.

3. SUBMISSIONS OF THE RESPONDENT

3.1. The learned departmental representative, appearing on behalf of the Department, contested the grounds of appeal and the submissions made by the appellant. It was submitted that the impugned order passed by the First Appellate Authority is legal and proper and does not call for any interference.

3.2. The Respondent submits that on **18.08.2024 at 08:07 AM**, the Mobile Squad Unit-12, Kanpur intercepted the Tanker vehicle bearing registration number **HR58D6677**. The vehicle was not merely in transit on a designated highway route towards Punjab, but was caught red-handed **while entering the factory gate of M/s Lahariya Oil Company Pvt. Ltd. / M/s Swaroop Agro Products Pvt. Ltd.** located at Plot/Village Umaran, Kanpur Dehat, Uttar Pradesh. The physical presence of the vehicle deep within the territory of Uttar Pradesh, at the exact threshold of a local oil manufacturing unit, directly contradicts the transport destination declared in the documents.

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3.3. The driver of the vehicle, Shri Sabarjeet Singh, gave a detailed statement under oath, which was recorded both in writing and via visual video recording by the Proper Officer. The driver explicitly stated that the cargo consisted of approximately **33 tonnes of water-like viscous Glycerine** loaded from Mangalore, Karnataka. He categorically admitted that he had come to the factory gate specifically to unload this material at the Kanpur Lahariya Factory on the clear and express instructions of a broker named Anil Yadav.

3.4. He (Driver) further confirmed that the hard copies or digital prints of the documents in his possession (M.S. Transport Company Bilty No. 693 and Netaji Oil Depot Tax Invoice No. GST/1813/24-25) showing destination as Ludhiana, Punjab, were merely received by him on WhatsApp.

3.5. The Respondent strongly contends that the entire transaction path reflects a classic mechanism of tax evasion through the misuse of dummy/shell firms. While the tax invoice and E-way Bill were strategically generated on paper to show an interstate transit from Karnataka to Punjab to justify the application of IGST, the physical cargo was declinational-routed for consumption within the State of Uttar Pradesh. The actual buyer of the goods is the Kanpur Dehat-based oil concern, for which no separate invoice or E-way bill was ever generated, thus attempting to keep the local supply entirely outside the statutory books of the department.

3.6. The Respondent submits that the movement of goods under the guise of an invoice generated for an entity in Punjab, while physically delivering the goods to an unregistered/undisclosed destination in Uttar Pradesh, constitutes a grave contravention of Section 68 of the CGST Act, 2017 read with Rule 138 of the CGST Rules, 2017. An invoice or E-way bill cannot be deemed "valid" if the physical movement of the cargo does not correspond to the transactional path mentioned therein. Moving goods to a location completely unrecorded in the statutory E-way bill amounts to transporting goods without valid transit documents with an explicit intent to evade tax liability.

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3.7. The First Appellate Authority had granted multiple, extensive opportunities for personal hearing to the Appellant (on 24.03.2025, 13.06.2025, 08.07.2025, 19.09.2025, 25.09.2025, 29.10.2025, 08.10.2025, and 20.11.2025). Despite several notices, the Appellant failed to appear or present any tangible factual or documentary evidence to disprove the driver's immediate admissions or to substantiate their defense. In light of the binding principles laid down by the Hon'ble Madras High Court in ***M/s Karmaxx Infotech v. Assistant Commissioner*** **(W.P. No. 18311 of 2023)**, a taxpayer who completely fails to cooperate during verification or appellate proceedings is not entitled to discretionary relief.

3.8. The Respondent submits that the subsequent stories built up by the Appellant such as a festive halt for Raksha Bandhan or a private vehicle tailing the truck are complete afterthoughts constructed purely to escape the financial penalty. Under the established legal position ruled by the **Hon'ble Allahabad High Court in *Yashika Overseas v. Commissioner Commercial Tax* (TTR No. 572/2010) and *Ghata Mehandipur Balaji Grinding Works***, the primary statement recorded from the driver at the exact moment of interception is the accurate truth, and any subsequent shifting of stands is entirely legally unsustainable.

3.9 The Respondent concludes that after the passing of the detention order, the Appellant voluntarily deposited the total demanded penalty of ₹6,76,694/- (being 200% of the applicable IGST component) without any immediate protest or resistance to secure the release of the vehicle. The proper officer acted entirely within the statutory bounds of Section 129(3) read with Section 20 of the IGST Act, and since the infraction stands completely proved by the vehicle's physical coordinates and the under-oath recorded video statement, the appeal has no merit and deserves an absolute dismissal.

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4. Discussion and findings

4.1. We have carefully examined the impugned Order-in-Appeal No. AD0909240091708 dated 20.11.2025, the grounds raised in the present appeal, the MOV-09 dated 23.08.2024 passed by the Assistant Commissioner, CGST & Central Excise, Division-III, Kanpur, and the judicial precedents relied upon by the appellant and the material available on record.

4.2. We find that the foundational pillar of the Revenue's allegation is completely dismantled by its own statutory entry. The summary of the order in FORM GST DRC-07 (dated 23.08.2024), issued simultaneously with the MOV-09, states under the demand table that the Place of Supply (POS) is "Punjab". Under Section 10(1)(a) of the Integrated Goods and Services Tax (IGST) Act, 2017:

> *"Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;"*

4.3 It is a well-settled principle of tax jurisprudence that statutory forms and final adjudication entries carry distinct legal significance and form the structural basis of any tax demand. By entering the Place of Supply as "Punjab" in the demand table of the DRC-07, the adjudication record reflects that the destination and lawful termination of the movement of the goods was Ludhiana, Punjab which conforms to the details declared in the Appellant's tax invoice and valid E-Way Bill. A clear contradiction exists between the department's allegation and its own final tax order. The department alleges that the vehicle was diverted to unload the goods inside Kanpur Dehat, Uttar Pradesh. However, their own order (DRC-07) formally records the Place of Supply as Punjab. If the department had concluded that the physical delivery was terminating in Uttar Pradesh, the tax rules required the Place of Supply to be entered as "Uttar Pradesh".

4.4. The Mobile Squad contests that the tanker was found "500 kilometres away from the usual route." We find this contention legally unsustainable under the GST regime. The judgment of the Hon'ble Allahabad High Court in the case of **M/s Om Prakash Kuldeep Kumar v. Additional Commissioner Grade-2,** wherein the Court explicitly held:

> *10. Another issue raised that the goods along with truck was not on the route of its destination, therefore, there was intention to evade tax.* ***Under the GST Act, there is no specific provision which bounds the selling dealer to disclose the route to be taken during transportation of goods or while goods are in transi****t however there was a provision under VAT Act to disclose the rout during transportation of goods to reach its final destination. Once the legislature itself in its wisdom has chosen to delete the said provision, this Court opined that the authorities were not correct in passing the seizure order even if the vehicle was not on regular route or on different route.*
>
> *11.* ***The power of detention as well as seizure can be exercised only when the goods were not accompanying with the genuine documents provided under the Act. The genuineness of the documents has not been disputed at any stage.***

4.5. We find that the driver's statement, which forms the primary basis of the department's case, refers to instructions from a third person, Mr. Anil Yadav. However, the record does not establish any verifiable connection or transaction history between the Appellant and the said third person. Regarding the vehicle's position near the factory gate, the presence of a vehicle in a service lane, by itself, cannot be conclusively treated as an act of unauthorized unloading or supply when the transit documents are otherwise intact. Under the Act, a penal liability under Section 129(3) requires clear evidence of an existing contravention at the time of interception, rather than a presumption of a future violation.

4.6. we place strong reliance on the landmark judgment of the **Hon'ble Supreme Court of India** in the case of **Hindustan Steel Ltd. v. State of Odisha**, wherein the Apex Court

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established the foundational jurisprudence governing the imposition of penalties by administrative and quasi-judicial authorities. The Hon'ble Supreme Court held as under:

> ***"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."*

The wording of the **MOV-09** itself explicitly records that the vehicle was **"in the process of entering the gate"** and further notes that **"had there been even one more minute, the vehicle would have been inside the factory gate. "**Since the vehicle was intercepted outside the gate, no unloading occurred, and the entire allegation relies on assumption rather than proof of tax evasion or deliberate defiance of the law, the proposed penalty under Section 129 is legally unsustainable.

4.7. We find that the reliance placed by the learned Departmental Representative on the judgments of M/S Yashica Oversea (or Sarvashri Yashika Overseas), 3F-733 Vaishali, Ghaziabad v. The Commissioner Commercial Tax, U.P. Lucknow and M/s Ghata Mehandipur Balaji Grinding Works Pvt. Ltd. (Trade Tax Revision No. 15 of 2014) are misplaced. Those rulings arose out of the erstwhile VAT Tax regime where route declaration was statutory.

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Moreover, the learned Departmental Representative's reliance on the judgment of the Hon'ble Allahabad High Court in M/s Ghata Mehandipur Balaji Grinding Works Pvt. Ltd. (Trade Tax Revision No. 15 of 2014) to assert the absolute sanctity of the driver's statement is also legally misplaced. In those judgements, the vehicle was intercepted without any accompanying transit documents, and the relevant bills were produced after a delay of three days, raising a presumption of fabrication. Under the GST Act, as settled in Om Prakash Kuldeep Kumar (Supra), route deviation is not a statutory breach if accompanied by valid documents.

4.8. In view of the above, we find that;

- The Revenue's DRC-07 order identifies the Place of Supply as Punjab, thereby destroying its own ground of a diversion to Uttar Pradesh.
- The transaction is completely transparent, system-validated, and executed under a fully valid E-Way Bill and e-Invoice.
- Route deviation is not a statutory offence under the Act.
- The driver's statement used as evidence without any supporting proof.

In view of the above, the findings of the First Appellate Authority upholding the penalty cannot be sustained. The impugned order is liable to be set aside, and the appeal deserves to be allowed.

ORDER

In view of the foregoing discussion, appeal filed by M/s **Shri Ashok Kumar Arora Oil Company** (Proprietor: Sunny Arora), is hereby allowed.

The order dated 23.08.2024 passed, by proper Officer under Section 129(3) of the CGST/UPGST Act, 2017, imposing penalty is hereby Set aside. Consequently, the order passed

by the First Appellate Authority in Appeal dated 20.11.2025 whereby the penalty was confirmed is also **Set aside.**

The amount if deposited by the appellant pursuant to the impugned proceedings, shall be refunded to the appellant in accordance with law, subject to verification of the payment and statutory requirements.

(Santosh Kumar Srivastava)

(Arvind Kumar)

Dated: 15.10.2026

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