GSTAT

State Bench Lucknow

Court No. Court I

APL/200/LCK/2026

SHYAM VIR SINGH **.....Appellant**

Versus

PARTNERSHIP, 350/1 NANDA KHEDA TAAL KATORA ROAD LUCKNOW AVAS VIKAS COLONY UPLUC 226017 **.....Respondent**

Quorum

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

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

Counsel for Respondent
MR. SAMEER GUPTA, ADVOCATE

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. : ZA090371026000464H **Date of order :** 24/10/2026

1.	GSTIN/Temporary ID/UIN - 09ABCFP5959J1ZM	
2.	Appeal Case Reference no. - APL/200/LCK/2026	Date - 28/04/2026
3.	Name of the appellant - SHYAM VIR SINGH , shyam.19111977@gov.in , 8954293717	
4.	Name of the respondant - 1. , pritambaraenterprises@gmail.com , 9250215553	
5.	Order appealed against - AD0912230660748	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD090324280030S	Date - 28/03/2024
6.	Personal Hearing - 24/10/2026 25/09/2026 23/09/2026 16/09/2026 10/09/2026	

7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The Department filed an appeal against the order setting aside the penalty of Rs.2,12,400 imposed on M/s Pitambara Enterprises under Section 129(3) of the CGST/UPGST Act, 2017. The penalty was imposed on the allegation that iron scrap was transported from an undeclared warehouse. The Tribunal observed that the goods were accompanied by valid tax invoices and an e-way bill, and physical verification revealed no discrepancy in the description, quantity, weight, or value of the goods. The Department also failed to substantiate its allegations through independent evidence, relying primarily on the driver's statement.

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	106200	0	106200	0	0		0	0	212400	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 ANNEXURE ATTACHED	Appeal filed by the Appellant is dismissed.

Place :LUCKNOW

Signature

Date : 26.10.2026

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

ORDER

The present appeal has been preferred by the Department (hereinafter referred as Appellant) under Section 112(3) of the CGST/UPGST Act, 2017, against Order-in-Appeal No. 01 dated 28.03.2024, passed by the Additional Commissioner, Grade-II (Appeal)-Second, State Tax, Lucknow, whereby the First Appellate Authority allowed the appeal filed by M/s Pitambara Enterprises (hereinafter referred as Respondent) and set aside the penalty order No. ZD091123064684A dated 05.11.2023, imposing a penalty of Rs.2,12,400/- under Section 129(3) of the CGST/UPGST Act, 2017.

1. Brief Facts of the Case

1.1. M/s Pitambara Enterprises is a duly registered dealer under the UPGST/CGST Act. 2017, bearing GSTIN 09ABCFP5959JlZM, engaged in the business of trading in iron and iron scrap.

1.2. Vehicle bearing registration No. UP78CT8115, carrying iron scrap, was intercepted by the Mobile Squad Unit-5, Lucknow, near Bhithauli, Sitapur Road, Lucknow on 31.10.2023, at approximately 03:35 AM. At the time of interception, the driver produced the tax invoice, e-way bill and weighbridge slip relating to the consignment. As per the accompanying documents, the goods were being transported from Talkatora Road, Lucknow, to Muzaffarnagar, Uttar Pradesh.

1.3. During verification of the documents accompanying the goods, it was noticed that the place of dispatch had been declared as 350/223, 10GA, Talkatora Road, Lucknow – 226004, whereas the driver, in his statement recorded in Form GST MOV-01, stated that the goods had actually been loaded from a warehouse situated at Puraniya, Lucknow. The driver further stated

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that the relevant transportation documents had been handed over to him at the loading point itself.

1.4. On verification of the GST registration particulars of M/s Pitambara Enterprises, the Proper Officer found that the place situated at Puraniya, Lucknow, had not been declared as an additional place of business or warehouse of the supplier. The Department consequently formed the view that the goods were being transported from an undeclared place of business, which was inconsistent with the place of dispatch mentioned in the tax invoice and e-way bill.

1.5. It was further observed by the Proper Officer that the driver had produced Weighbridge Slip No. 0044 dated 30.10.2023, issued in the name of M/s Pawan Digital Dharm Kanta, situated near Mill Area Police Chowki, Talkatora Road, Lucknow. According to the Department, upon verification of the said premises, the weighbridge was found closed or non-operational. The Department also alleged that no business activity was found at the declared branch or warehouse of the supplier situated at Talkatora Road, Lucknow.

1.6. On the basis of the aforesaid observations, the Proper Officer concluded that the goods were being transported from a place other than the declared place of business and that the actual place of loading had not been disclosed in the GST registration particulars. The Department treated the said discrepancy as a contravention of Section 31, read with Section 2(85) of the CGST/UPGST Act, 2017, Rule 46 of the CGST/UPGST Rules, 2017, and CBIC Circular No. 61/35/2018-GST.

1.7. Consequently, proceedings under Section 129 of the CGST/UPGST Act, 2017 were initiated. A show cause notice in Form GST MOV-07 bearing No. ZD091123064534H dated 05.11.2023 was issued, followed by the penalty order in Form GST MOV-09 bearing No. ZD091123064684A dated 05.11.2023, whereby a penalty amounting to Rs.2,12,400/- was imposed upon the goods in question.

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1.8. Being aggrieved by the aforesaid penalty order, M/s Pitambara Enterprises preferred First Appeal No. 103/2023 before the Additional Commissioner, Grade-II (Appeal)-Second, State Tax, Lucknow. The taxpayer contended that the goods were accompanied by valid statutory documents, including the tax invoice and e-way bill, and that there was no discrepancy between the description, quantity and other particulars of the goods mentioned in the documents and those found during physical verification.

1.9. The First Appellate Authority, after examining the facts and circumstances of the case, observed that the goods were duly covered by the accompanying tax invoice and e-way bill and that no discrepancy had been detected in the description or quantity of the goods. It was further observed that the allegation regarding loading of goods from Puraniya, Lucknow, was primarily based upon the statement of the driver, without independent and conclusive evidence establishing that the goods had actually been loaded from the said premises.

1.10. The First Appellate Authority also considered the allegations relating to the non-functioning of the weighbridge and absence of business activity at the declared place of business. It was observed that the Proper Officer had not brought sufficient documentary evidence on record to substantiate the said allegations. The First Appellate Authority further found that the Department had failed to establish any discrepancy in the goods or their declared destination and had not produced cogent material demonstrating an intention to evade payment of tax.

1.11. Accordingly, the First Appellate Authority, vide Order-in-Appeal No. 01 dated 28.03.2024, allowed the appeal filed by M/s Pitambara Enterprises and set aside the penalty order dated 05.11.2023. The First Appellate Authority also directed that the amount deposited towards penalty be refunded or adjusted in accordance with the applicable statutory provisions.

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1.12. Aggrieved by the aforesaid order, the Department has preferred the present appeal, contending that the First Appellate Authority failed to appreciate the material facts relating to transportation of goods from an undeclared place of business and the statutory consequences arising therefrom. The Department has accordingly prayed for setting aside the impugned Order-in-Appeal and restoration of the original penalty of Rs.2,12,400/- imposed by the Proper Officer.

2. Grounds of Appeal

2.1. The appellant has challenged the impugned Order-in-Appeal on the ground that the First Appellate Authority failed to appreciate the statutory requirements governing the declaration of places of business under the CGST/UPGST Act, 2017. It has been contended that the supplier was required to disclose the premises from which its business activities were being carried out and that transportation of goods from an undeclared warehouse constituted a contravention of the applicable statutory provisions.

2.2. The appellant has submitted that Section 2(85) of the CGST/UPGST Act, 2017 defines the expression "place of business" to include premises from which business is ordinarily carried on, warehouses, go downs and other places where taxable goods are stored or supplied. According to the Department, the actual loading of goods from Puraniya, Lucknow, which was not declared in the GST registration particulars, established non-compliance with the statutory registration requirements.

2.3. The appellant has further contended that the tax invoice and e-way bill accompanying the goods reflected the place of dispatch as Talkatora Road, Lucknow, whereas the driver admitted that the goods had been loaded from Puraniya, Lucknow. It is therefore alleged that the documents did not correctly disclose the actual place of dispatch and that such incorrect declaration affected the reliability and validity of the transportation documents.

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2.4. The appellant has also submitted that the First Appellate Authority failed to give due evidentiary weight to the statement of the driver recorded at the time of interception. According to the Department, the driver's statement was recorded contemporaneously with the interception and clearly disclosed that the goods had been loaded from an undeclared warehouse. The appellant has therefore contended that the said statement constituted material evidence which ought not to have been disregarded without sufficient justification.

2.5. The appellant has further alleged that verification of the declared premises at Talkatora Road, Lucknow, revealed the absence of business activity. It has also been contended that the weighbridge mentioned in the documents was found non-operational. According to the Department, these circumstances supported the allegation that the actual movement of goods was not in conformity with the particulars declared in the statutory documents.

2.6. The appellant has contended that the transportation of goods from an undeclared place of business constituted a contravention of Section 31 of the CGST/UPGST Act, 2017 and Rule 46 of the CGST/UPGST Rules, 2017. It has further been alleged that the transaction was contrary to the requirements of CBIC Circular No. 61/35/2018-GST, as understood and relied upon by the Department.

2.7. The appellant has also submitted that the First Appellate Authority erred in placing undue emphasis upon the absence of independent proof of intention to evade payment of tax. It has been contended that proceedings under Section 129 of the CGST/UPGST Act, 2017 may be initiated upon the establishment of a statutory contravention and that proof of a separate or independent dishonest intention is not an indispensable requirement in every case.

2.8. The appellant has further alleged that the transportation of goods from an undeclared warehouse, coupled with the incorrect declaration of the place of dispatch, indicated an attempt to conceal the actual supply chain and circumvent the statutory mechanism for monitoring the

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movement of taxable goods. According to the Department, these circumstances were sufficient to justify the imposition of penalty under Section 129(3) of the Act.

2.9. The appellant has relied upon the decision of the Hon'ble Allahabad High Court in M/s Ansar Scrap Traders v. State of Uttar Pradesh & Others, Writ Tax No. 1223 of 2023, contending that a statement made by the driver at the time of interception carries evidentiary significance, particularly where no material is produced to establish that the statement was obtained under coercion or other improper circumstances.

2.10. The appellant has also placed reliance upon M/s Savyasachi Advertising v. State of Uttar Pradesh (2024), M/s Patanjali Ayurved Ltd. v. Union of India, Writ Tax No. 1603 of 2024, and M/s Balji Traders v. State of Uttar Pradesh, Writ Tax No. 784 of 2023, in support of its contention that statutory compliance relating to registration particulars and transportation documents is mandatory and that contravention of the applicable provisions may attract penal consequences.

2.11. The appellant has accordingly submitted that the First Appellate Authority committed an error in setting aside the original penalty order and that the impugned Order-in-Appeal is contrary to the statutory provisions and the judicial principles relied upon by the Department. The appellant has therefore prayed that the impugned order dated 28.03.2024 be set aside and the penalty of Rs. 2,12,400/- imposed by the Proper Officer be restored.

3. Submission of Respondent

3.1. The Respondent denies each and every adverse averment, factual allegation, statutory ground, and legal contention raised by the Appellant within the Memorandum of Second Appeal (Form GST APL-07). The Respondent craves leave of this Honorable Tribunal to rely entirely upon the comprehensive contents of the impugned order-in-appeal and the official record of the proceedings conducted before the subordinate appellate authority.

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3.2. It is admitted as a matter of record that Vehicle No. UP78CT-8115, loaded with Old Iron Scrap weighing 15,815 Kgs, was intercepted on 31.10.2023 at approximately 03:35 hours near Bhithauli, Sitapur Road, Lucknow. However, it is stressed that the vehicle was in transit from Lucknow to Muzaffarnagar under the complete cover of valid statutory documents, specifically Tax Invoice No. 120 dated 30.10.2023 and E-Way Bill No. 481382880743 dated 30.10.2023, which remained valid until the midnight of 03.11.2023.

3.3. The physical verification of the transit cargo conducted by the department at the time of interception, as recorded in Form GST MOV-04, revealed absolutely no discrepancy in the description, quantity, quality, weight, or value of the goods physically found against the disclosures made in the tax invoice and e-way bill. This undisputed factual alignment is fatal to the Revenue's case, as the foundation for invoking Section 129(3) requires a statutory contravention in the movement of goods, which cannot be sustained when the physical cargo tallies completely with the accompanying documents.

3.4. The business premises declared in the Tax Invoice and E-Way Bill, located at 350/223, 10Ga, Talkatora Road, Lucknow, was a duly approved additional place of business of the Respondent at the relevant time, the registration amendment having been applied for via ARN AA090923118638S on 22.09.2023 and formally approved on 24.09.2023, five weeks prior to the interception. The Revenue's bare allegation that the premises was non-operational is completely denied, as the Mobile Squad Officer failed to place any date, time, photograph, spot-verification report, or independent witness statement on record to contradict the department's own official portal records.

3.5. The allegation regarding the weighbridge of M/s Pawan Digital Dharam Kanta being defunct or closed is entirely false and denied. The Respondent had placed on record a valid, subsisting verification and calibration certificate issued by the Controller of Legal Metrology, Government of Uttar Pradesh (Certificate No. 053455 dated 19.09.2023) alongside a

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certification from M/s SGS Front Line Weighing India, proving the machine was operative, whereas the officer produced no concurrent report or evidence to establish its non-functionality.

3.6. No search, seizure, or inspection proceedings under Section 67 or Section 71 of the Act were ever conducted at either of the premises, nor was any formal reference made to the Joint Commissioner, State Intelligence Bureau. The complete absence of such mandatory investigative procedures validates that the department's severe allegations regarding the non-existence of business operations are mere speculative afterthoughts manufactured solely to support the truck driver's isolated statement.

3.7. The Appellant's entire case rests exclusively on the uncorroborated statement of the truck driver, Shri Bhawar Singh, alleging that the cargo was loaded from an undisclosed location in Puraniya, Lucknow. This statement was recorded behind the back of the taxpayer without providing an opportunity for cross-examination, was disputed at the very first instance in the reply to the Show Cause Notice, and was never supplied to the Respondent in the prescribed Form GST MOV-01, confirming it to be an ungrounded narrative frame.

3.8. Under settled law, an uncorroborated oral statement of a driver who is not a party to the commercial contract between the suppliers and recipient, nor competent to depose on complex GST registration statuses carries very little evidentiary value. The Respondent relies on *M/s KY Tobacco Works Pvt. Ltd. v. State of U.P. (Writ Tax No. 574/2019)*, *M/s Anandeshwar Traders v. State of U.P.*, and *M/s Vadilal Enterprises v. State of U.P. (Writ Tax No. 793/2026)* to submit that the burden of proving a transaction fraudulent lies entirely on the department, and penalties cannot rest on mere inferences or missing documentation like Form MOV-01.

3.9. Even if it is assumed, for the sake of argument, that the goods were loaded from an alternative location, such an act amounts to a technical or procedural irregularity rather than a tax evasion plot. Because the quantity and description of the iron scrap matched the documents perfectly, the vehicle was caught on the direct route towards the declared destination, and no

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evidence exists pointing to an undeclared buyer, there is no legal basis to claim an intention to evade tax.

3.10. There is no violation of Section 2(85) of the Act since the Talkatora premises was an approved place of business. Furthermore, Section 2(85) is merely a definition clause defining what a "place of business" encompasses, and any alleged procedural deviation from a definition clause cannot automatically attract the heavy penal consequences of Section 129(3) without an independent finding of *mens rea*.

3.11. The tax invoice in question contained every single mandatory detail required under Rule 46 of the CGST/UPGST Rules, 2017, and was accurately reflected in the taxpayer's regular returns. A mere administrative allegation that goods were physically loaded from a spot different from the printed billing address does not invalidate or render an otherwise legally compliant commercial tax invoice "void" in the eyes of law.

3.12. Section 129(3) does not operate as a residuary, catch-all penal mechanism that allows tax officers to levy huge fines for minor procedural or clerical mistakes. The confirmation of a penalty under Section 129(3) requires a reasoned, speaking order backed by positive, independent evidence showing that the movement of goods occurred in conscious contravention of the law to escape tax liabilities.

3.13. It is denied that loading from an unlisted location, by itself, establishes a bad-faith intention to evade tax. A long line of settled judicial precedents has firmly established that *mens rea*, or a clear intent to defraud the revenue, is a mandatory *sine qua non* (indispensable condition) for the imposition of transit penalties under Section 129.

3.14. The department's reliance on CBIC Circular No. 61/35/2018-GST is entirely misplaced. Administrative circulars cannot create a free-standing ground for confirming substantial

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monetary penalties if the primary fact-finding exercises fail to establish any real leakage of tax or parallel unaccounted transactions.

3.15 The Revenue's argument that the inclusion of tax-exempt goods under Section 129(1) implies the legislature intended to eliminate the requirement of *mens rea* generally under Section 129 is legally flawed. The provisions under Section 129(1)(a) and (b) merely provide an emergency mechanism for the conditional release of detained trucks, whereas final adjudication orders under Section 129(3) continue to demand an independent determination of an active intent to evade tax.

3.16. Regarding the Appellant's reliance on *M/s Balji Traders v. State of Uttar Pradesh (Writ Tax No. 784/2023)*, the department has completely misread the precedent. A plain reading of the judgment reveals that the Hon'ble High Court actually allowed the taxpayer's writ petition and quashed the penalty for want of independent evidence of an intent to evade tax under similar facts, meaning the precedent strongly supports the Respondent's case rather than the Revenue's.

3.17. Regarding the department's reliance on *M/s Patanjali Ayurved Ltd. v. Union of India (Writ Tax No. 1603/2024)*, any general judicial observation classifying tax penalties as "civil in nature" must be restricted to the unique facts of that case. Such observations cannot be extended to completely delete the foundational requirement of proving *mens rea*, a principle consistently protected by the Hon'ble Supreme Court and the Hon'ble Allahabad High Court.

3.18. The decisions in *M/s Ansar Scrap Traders v. State of U.P. (2023)* and *M/s Savyasachi Advertising v. State of U.P. (2024)* turned entirely upon their own peculiar factual backgrounds, where the department had led separate corroborative evidence. These cases cannot override the binding precedents which state that an oral driver's statement, standing completely alone without documentary backup, cannot sustain a penalty under Section 129.

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3.19. The Respondent places strong reliance on a comprehensive body of judicial precedents, including *M/s Jai Enterprises v. Dr. Anupama Goyal (Appeal No. APL/82/LCK/2026)*, which ruled that Section 129 penalties cannot rest on mere departmental presumptions or inferences. Further reliance is placed on *Assistant Commissioner (ST) v. M/s Satyam Shivam Papers Pvt. Ltd. (Supreme Court)*, *M/s Shyam Sel and Power Ltd. v. State of U.P.*, *M/s Bhawani Traders*, *M/s Gobind Tobacco Manufacturing Co.*, *M/s Raghav Metals*, and *Kamal Envirotech Pvt. Ltd.*, which collectively affirm that technical, non-wilful transit defects cannot attract confiscation or penalty in the absence of tax evasion.

3.20. The Respondent highlights additional precedents followed by the First Appellate Authority, such as *State of U.P. v. M/s Maa Vindhyavasini Tobacco Products Ltd. (Writ Tax No. 20203 of 2019)* and *Shri Anant Jignesh Shah v. Union of India (2021)*, which held that show cause notices and penalty orders founded on conjectures, surmises, or a driver's raw statement are unsustainable. Finally, reliance is placed on the Supreme Court ruling in *State of Kerala v. M.M. Mathew*, which dictates that strong suspicion, strange coincidences, and grave doubts cannot take the place of clear legal proof.

3.21. The Learned First Appellate Authority, after conducting a detailed, exhaustive, and reasoned examination of the lower records and the written submissions, arrived at definitive findings of fact. The authority established that there was zero discrepancy in the physical cargo that the Mobile Squad Officer failed to lead any documentary proof concerning a defunct weighbridge or shop, and that a penalty could not be legally sustained on the driver's statement alone.

3.22. In conclusion, the Respondent prays that this Honorable Tribunal may be pleased to dismiss the present Appeal filed by the Department as being wholly non-maintainable and devoid of merit, uphold the Order-in-Appeal No. 01 dated 28.03.2024.

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QUESTIONS OF LAW

- **Whether** a penalty under Section 129(3) of the CGST/UPGST Act, 2017 can be legally sustained when the physical verification report (Form GST MOV-04) explicitly confirms that the quantity, description, and value of the goods perfectly match the accompanying valid Tax Invoice and E-Way Bill?
- **Whether** the uncorroborated oral statement of a vehicle driver can be treated as conclusive evidence to allege loading from an undisclosed location, particularly when the department fails to supply the statement copy (Form GST MOV-01) to the taxpayer and provides no independent documentary proof to support the claim?

4. Discussion and findings

4.1. We have meticulously evaluated the submissions made by both sides, examined the lower court records, and thoroughly analyzed the statutory framework alongside the binding judicial precedents cited before this Bench.

4.2. We find that a truck (UP78CT8115) carrying iron scrap was intercepted on 31.10.2023 in Lucknow with valid documents showing transit from Talkatora Road to Muzaffarnagar. However, the department imposed a GST penalty of ₹2,12,400/- under Section 129(3), alleging structural breaches. Their claim rested on the driver's statement that the cargo was loaded from an undeclared warehouse in Puraniya, alongside field reports claiming the declared Talkatora warehouse and its issuing weighbridge were non-operational.

4.3. We have heard the Learned Authorised Representative for the Revenue who argued that statutory compliance under **Section 2(85)** is mandatory, that the driver's contemporaneous statement holds primary evidentiary value under the law laid down in *M/S Aasar Scrap Traders v. State of U.P.*, and that independent proof of *mens rea* is not a prerequisite to establish standard statutory contraventions under Section 129. On the other hand, the Learned Counsel

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for the Respondent supported the First Appellate Authority's findings, arguing that the Talkatora Road location was an officially approved Additional Place of Business registered via ARN AA090923118638S on 24.09.2023, and the weighbridge possessed a valid calibration certificate from the Controller of Legal Metrology dated 19.09.2023, and that an uncorroborated statement by a driver cannot displace primary, verified documentary evidence.

4.4. We find that the absolute center of gravity in this case is the undisputed outcome of the physical verification recorded in Form GST MOV-04. The department's own documentation admits that there was absolutely no discrepancy between the description, quantity, quality, weight, or value of the iron scrap physically found in the truck and the details captured inside the tax invoice and e-way bill. Section 129 of the CGST Act 2017 is an anti-evasion provision activated to prevent the illegal transit of goods without backing paperwork. Where a consignment is moving under the absolute protection of a valid tax invoice and a live e-way bill, and the physical properties of the cargo match those documents perfectly, the primary statutory condition for invoking detention under Section 129 is absent. 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:

> *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 are of the view that the driver's statement forms the primary basis of the department's case. However, the record fails to establish any verifiable connection to back this claim. A truck driver is merely an agent of transportation; he is not party to the business agreements between the traders, nor is he qualified to comment on whether the warehouses are registered under GST. Consequently, an oral statement recorded behind the back of a taxpayer without granting them a fair opportunity for cross-examination cannot be legally sustained to

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override valid, certified online registrations. The judgment of the **Hon'ble Supreme Court in the case of M/S Andaman Timber Industries v. Commissioner of Central Excise** wherein the Court categorically held:

> 6. *According to us,* ***not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected.*** *……,*

4.6. We find that the Respondent has already proved before first appellate authority that the declared dispatch site at Talkatora Road was formally approved as an Additional Place of Business on the department's portal on **24.09.2023**, exactly five weeks prior to this interception. It is an irrational position for the Mobile Squad Officer to assert that a registered site is non-operational without placing a single piece of objective evidence on record, such as a contemporaneous spot-verification report, independent witness statements, or photographs. Similarly, the claim that the weighbridge was non-operational is completely disproven by the valid, subsisting calibration certificate issued by the **Controller of Legal Metrology, Government of Uttar Pradesh, dated 19.09.2023**. Once the Respondent produced official, state-certified documentation validating both the registration of the warehouse and the functionality of the weighbridge, **the burden of proof shifted squarely back onto the Revenue** to lead positive, physical evidence to the contrary. The department cannot sit back and rely on a driver's oral statement to fulfill its statutory obligation of discharging the burden of proof. Vague departmental assumptions cannot triumph over certified legislative proofs.

4.7. We find that the presence of an intent to evade tax (mens rea) is a mandatory prerequisite for confirming penalties under Section 129(3). Minor administrative or procedural variances even if assumed for the sake of argument cannot be interpreted as a fraudulent

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attempt to conceal a supply chain when the entire transaction is completely recorded within the tax returns of a registered dealer. The vehicle was intercepted on the designated route towards the declared destination of Muzaffarnagar. There is no trace of evidence indicating that the iron scrap was being diverted to an unregistered marketplace or an unlisted buyer.

4.8. The Appellant's reliance on *M/s Patanjali Ayurved Ltd. v. Union of India* to argue that mens rea is completely irrelevant in statutory contraventions is misplaced and cannot be applied in a mechanical manner. While a tax penalty may be civil in nature, the Hon'ble High Court in the very same line of jurisprudence has consistently held that a penalty under Section 129(3) cannot be imposed in a vacuum for a mere technical infraction when there is absolute identity and zero discrepancy in the weight, quantity, and description of the cargo. In the absence of any parallel unaccounted stock or secret disposal of goods, moving cargo on a route reflecting a registered dealer's returns completely negatives any presumption of revenue loss.

4.9. 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 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*****……,**

4.10. The Learned First Appellate Authority conducted a balanced and legally sound examination of the lower records, arriving at findings of fact. Because those findings represent an accurate appreciation of the evidentiary facts and match the settled legal metrics articulated by the High Courts and the Supreme Court, and call for no interference from this Bench. The Revenue has failed to bring any fresh material to disturb those clean findings of fact.

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ORDER

In view of the findings recorded above, Order-in-Appeal No. 01 dated 28.03.2024 passed by the First Appellate Authority is hereby upheld and the present Appeal filed by the Appellant is dismissed as being completely devoid of merits.

(Santosh Kumar Srivastava)

(Arvind Kumar) 24/10/2026.

Dated: 24.10.2026

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