GSTAT

State Bench Lucknow

Division Bench Court No. Court I

APL/188/LCK/2026

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

Versus

A.A ENTERPRISES, PROPRIETOR, 538KA/13 SITAPUR ROAD LUCKNOW TRIVENI NAGAR 3 UPLUC 226020 BADA DURGA MANDIR **.....Respondent**

Quorum

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

Counsel for Appellant
MR. ASHUTOSH MISHRA, ASSISTATN COMMISSIONER, SGST

Counsel for Respondent
MR. SADEEP 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. : ZA090371026000632H **Date of order :** 28/10/2026

1.	GSTIN/Temporary ID/UIN - 09BTYPA1965J1Z2	
2.	Appeal Case Reference no. - APL/188/LCK/2026	Date - 24/04/2026
3.	Name of the appellant - SHYAM VIR SINGH , shyam.19111977@gov.in , 8954293717	
4.	Name of the respondant - 1. A.A Enterprises , a.aenterprisesvk18@gmail.com , 9838098278	
5.	Order appealed against - AD090524174761T	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD090724033141O	Date - 04/07/2024
6.	Personal Hearing - 28/10/2026 30/09/2026 18/09/2026 10/09/2026 03/09/2026 01/09/2026	

7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The present second appeal was filed by the State Tax Department under Section 112 of the UPGST/CGST Act, challenging the First Appellate Order dated 04.07.2024, whereby the penalty of Rs.2,27,160/- imposed under Section 129(3) was set aside. The case arose when a vehicle carrying 16,170 kg of iron scrap was intercepted on 17.05.2024. Although the driver produced a tax invoice, e-way bill and bilty, he stated that the goods had been loaded from an alleged undeclared warehouse at Chinhat, Lucknow, instead of the respondent's registered place of business. On this basis, the department imposed a penalty of Rs.2,27,160/-. The First Appellate Authority set aside the penalty, observing that the goods matched the accompanying documents in description, quantity and value, and that the department had failed to corroborate the driver's statement through independent investigation or evidence. The Department challenged this decision, contending that dispatch from an undeclared place of business violated the statutory provisions. Upon examining the records and submissions, the Tribunal held that the penalty could not be sustained solely on the basis of an uncorroborated driver's statement, particularly when no discrepancy in the goods or supporting documents was established. The alleged undeclared loading point was also not independently verified by the department.

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	0	0	0	0
(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	113580	0	113580	0	0	0	0	0	227160	0
(d) Fees	0	0	0	0	0	0	0	0	0	0
(e) Others		0		0		0		0		0
(f) Refund		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	AS PER ANNEXURE ATTACHED	The present Appeal filed by the Department is dismissed.

Place :LUCKNOW

Signature

Date : 29.10.2026

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

ORDER

1. The present Second Appeal has been preferred by the State Tax Department (hereinafter referred to as the **"Appellant"**) under Section 112 of the UPGST/CGST Act, against the First Appellate Order No. 172/2024 dated July 4, 2024 (Order No. ZD0907240331410), passed by the Additional Commissioner, Grade-2 (Appeals)-Second, State Tax, Lucknow whereby first appellate authority allowed the appeal filed by **M/s A.A. Enterprises** (hereinafter referred to as the **"Respondent"**), setting aside the penalty order passed under Section 129(3) dated May 18, 2024 (Form GST MOV-09/DRC-07, Order No. ZD0905241947123), which had imposed a penalty of **₹2,27,160/-**.

2. At the outset, we find that the Learned counsel for Respondent contends that the disputed penalty of ₹2,27,160/- falls below the ₹20,00,000/- monetary threshold prescribed for departmental appeals under Circular No. 207/01/2024-GST. However, this objection cannot be sustained in terms of Paragraph 4 of the said Circular 207/01/2024-GST as per the argument of the Department. Paragraph 4 is as under;

> *4.* ***EXCLUSIONS***
>
> *Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:*
>
> iv. *Where the matter is related to - a. Valuation of goods or services; or b. Classification of goods or services; or c. Refunds; or d. Place of Supply; or* ***e. Any other issue, which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/circular/order/instruction etc;*** *or*

The aforesaid para explicitly carves out exceptions where the monetary limits shall not apply, stating that the decision to file an appeal shall be taken on merits, irrespective of the monetary limits, in cases involving an *'issue of a recurring nature*.' The central dispute here involves a legal question

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of a recurring nature affecting the mobile squad's enforcement jurisdiction. Since this legal issue arises repeatedly in transportation checks, it falls within the explicit exclusions of the litigation policy. Accordingly, the preliminary objection is overruled, and the appeal is held to be maintainable.

3. Brief Facts of the Case

3.1. The Respondent is a duly registered trader under the UPGST/CGST Act, 2017, bearing GSTIN 09BTYPA1965J1Z2, engaged in the trading of iron scrap having registered PPOB at Khasra No. 216 A,B Raheem Nagar, Sitapur Road, Didauli, Didauli Ward Faizullaganj, Lucknow, Lucknow, Uttar Pradesh, 226020.

3.2. A vehicle bearing registration number **UP78CT-5415**, loaded with **16,170 Kgs of Iron Scrap**, was intercepted and checked by the Mobile Squad Unit-5, Lucknow, near Tata Motors at Deva Road, Lucknow on May 17, 2024, at approximately 01:19 AM.

3.3. At the time of interception, the vehicle driver presented commercial transit documents, including Tax Invoice No. AAE/080 dated May 16, 2024 (invoice value of ₹7,44,143/- inclusive of tax), E-way Bill No. 461441990648, and Bilty No. 15786 issued by M/s Shri Balaji Transport Company, Lucknow.

3.4. On scrutiny of the documents, the Proper Officer observed that the place of dispatch was declared as the Respondent's registered principal place of business at *Khasra No. 216A, B Raheem Nagar, Sitapur Road, Faizullaganj, Lucknow-226020*. However, the driver, in his statement recorded at the spot, stated that the vehicle had been loaded from a warehouse located at Chinhat, Deva Road, Lucknow, on instructions from the transporter.

3.5. On checking the departmental portal, the Proper Officer found that the Respondent had no additional branch or warehouse declared/registered in Chinhat, Lucknow. The Department consequently found that the goods were being transported from an undeclared place of business in direct violation of Section 2(85) and Section 31 of the Act, read with Rule 46 of the GST Rules and CBIC Circular No. 61/35/2018-GST.

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3.6. Based on these observations, detention proceedings were completed, and a Show Cause Notice in Form GST MOV-07 (No. ZD0905241944070) was issued on May 18, 2024. This was followed by a summary adjudication order in Form GST MOV-09/DRC-07 on the same date, imposing a total penalty of **₹2,27,160/-** (comprising CGST of ₹1,13,580/- and SGST of ₹1,13,580/-).

3.7. Aggrieved by the penalty, the Respondent filed First Appeal No. 172/2024. The First Appellate Authority evaluated the case and concluded that the physical properties of the goods fully tallied with the invoice details, that a penalty could not rest solely on a driver's uncorroborated statement, and that there was no tracking mismatch or material trace of tax evasion. Accordingly, the First Appellate Authority set aside the penalty order and directed a refund. Aggrieved by this Order in appeal, the Department has preferred this Appeal before Tribunals.

4. Grounds of Appeal (Submissions by the Appellant-Department)

4.1. The Appellant contends that the First Appellate Authority failed to appreciate the statutory intent of Section 2(85) of the Act. The process of declaration of places of business is a mandatory tracking mechanism, and loading goods from an unregistered, undisclosed location directly break the law.

4.2. The learned representative for department argued that the Tax Invoice and E-way bill lost their legal sanctity under Section 31 and Rule 46 because they carried a false address of dispatch, rendering the entire transit an operation "without valid documents" as established by the Hon'ble Allahabad High Court in *M/s Balji Traders v. State of Uttar Pradesh* (2023).

4.3. The learned representative for Department argues that the statement of the driver, recorded contemporaneously at the time of interception, carries primary evidentiary value and cannot be discarded as an afterthought, particularly when no immediate claim of duress or coercion was raised, relying on *M/s Ansar Scrap Traders v. State of Uttar Pradesh* (2023).

4.4. The Appellant further places reliance on *M/s Patanjali Ayurved Ltd. v. Union of India* (Writ No. 1603 of 2024) to assert that GST penalties are strictly of a **"civil nature"** and that proving *Mens*

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Rea is not an indispensable prerequisite for confirming a penalty if a clear statutory boundary has been breached.

4.5. The Appellant further requested to set aside the order passed by the Additional Commissioner (Appeals) dated 04/07/2024. Restore and uphold the penalty of ₹2,27,160/- imposed by the Assistant Commissioner, Mobile Squad on the grounds mentioned herein above.

5. Submissions of the Respondent (Taxpayer);

5.1. The Respondent denies each and every adverse averment, factual allegation, statutory ground, and legal contention raised by the Appellant within the Memorandum of present Appeal.

5.2. The Respondent argued that the physical verification recorded in Form GST MOV-04 revealed absolutely zero discrepancy in the description, quantity, quality, or value of the iron scrap vis-à-vis the tax invoice and e-way bill. Since the transit cargo completely matched the documentation, Section 129(3) cannot be invoked.

5.3. It is argued that the Department's claim regarding an unregistered dispatch point at Chinhat is a purely speculative construct. The Proper Officer never conducted any search, spot inspection, or physical verification under Section 67/71 at the alleged Chinhat site, nor was a panchnama or photograph produced. No formal intelligence reference was shared with the Joint Commissioner, SIB.

5.4. The Respondent highlights a serious procedural flaw that the Department failed to provide the taxpayer with a copy of the driver's statement in the prescribed Form GST MOV-01 at any stage of the adjudication or subsequent appeals, violating the principles of natural justice and rendering the statement legally uncorroborated.

5.5. The Respondent relies upon the settled legal propositions laid down by the Hon'ble Supreme Court and various High Courts in similar matters. The Respondent places reliance on M/s K Y Tobacco Works Pvt. Ltd. v. State of U.P. (2024) and M/s Anandeshwar Traders, which establish that a penalty under Section 129(3) cannot be founded merely on the statement of a driver. Further, relying on the landmark judgments of the Hon'ble Supreme Court in Assistant Commissioner (ST) v. M/s Satyam Shivam Papers Pvt. Ltd. (2022) and the Hon'ble Delhi High Court in Kamal Envirotech Pvt. Ltd. v.

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Commissioner of GST (2025), it is submitted that a definite intent to evade tax is an indispensable prerequisite for invoking penalty under Section 129. Since the goods fully matched the accompanying valid documents and no discrepancy or intent to evade tax was discovered, the alleged loading from an unregistered place does not attract the rigours of Section 129. Furthermore, as held in State of Kerala v. M.M. Mathew, suspicion cannot take the place of legal proof, hence, the first appellate authority's order setting aside the penalty is perfectly lawful and deserves to be upheld/sustained.

QUESTIONS OF LAW;

- .Whether a penalty under Section 129(3) of the UPGST/CGST Act, 2017 can be sustained solely on the basis of the uncorroborated statement of the driver, in the complete absence of any physical verification, independent inquiry, or corroborative evidence by the department regarding the alleged source of loading?
- Whether loading of goods from an unregistered or undisclosed additional place of business constitutes a statutory violation attracting penalty under Section 129(3) of the Act, when the movement of cargo is fully covered by a valid Tax Invoice, E-way Bill, and Bilty matching perfectly in description, quantity, and value?

6. Discussion and Findings;

6.1. We have meticulously evaluated the submissions, scrutinized the lower records, and examined the statutory matrix alongside the landmark judicial precedents cited by both sides.

6.2. The facts of the case are that on 17.05.2024 at approximately 01:19 AM, a vehicle bearing registration number UP78CT-5415, carrying a consignment of Iron Scrap, was intercepted by the Mobile Squad of the State Tax Department at Deva Road, Lucknow. At the time of interception, the driver produced transit documents including Tax Invoice, E-way Bill and Bilty No. 15786 issued by M/s Shri Balaji Transport Company, Lucknow. However, the Department initiated proceedings under Section 129(3) based on the statement of the driver recorded at the spot, who stated that the cargo had actually been loaded from an undisclosed and unregistered warehouse located at Chinhat, Deva Road, Lucknow, on the instructions of the transporter.

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6.3 It is argued that the Department's claim regarding an unregistered dispatch point at Chinhat is a purely speculative construct. The Proper Officer never conducted any search, spot inspection, or physical verification under Section 67/71 at the alleged Chinhat site, nor was a panchnama or photograph produced. No formal intelligence reference was shared with the Joint Commissioner, SIB.

6.4. We find that the absolute centre 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.*

6.5. 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 vehicle driver is merely an agent of transportation; he is not party to the business agreements between the traders. Consequently, an oral statement recorded behind the back of a taxpayer without granting them a fair opportunity for cross-examination cannot be legally sustained. 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***

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violation of principles of natural justice because of which the assessee was adversely affected.

……,

6.6. We find that the Revenue has argued that the transaction violates the provisions of CBIC Circular No. 61/35/2018-GST. Under the said Circular, if goods are being dispatched from a different location, it is mandatory to register and record that location as an 'Additional Place of Business' on the tax invoice. However, a plain reading of the said circular reveals that its mandate is triggered only when the existence of an operational, undeclared dispatch facility or delivery warehouse is independently established by the proper officer through concrete field verification or search operations. The circular cannot be applied mechanically based on a driver's uncorroborated statement recorded during a roadside intercept. Since the Proper Officer did not conduct any inquiry to verify the status or ownership of the alleged warehouse at Chinhat, the circular has no application to the facts of the present case.

6.7. The Appellant reliance on *M/s Ansar Scrap Traders* to assert that the driver's statement holds absolute primary value must be notable. In *Ansar Scrap Traders*, the dealer failed to offer any dynamic rebuttal or evidence to counter the driver's admissions during the adjudication. In contrast, the Respondent herein has consistently disputed the statement and conclusively established that all physical properties of the cargo (weight, quantity, description) match the genuine invoices perfectly. A driver's statement under Section 129 can serve as a starting point for an investigation, but it cannot become the sole substitute for adjudication, nor can it override perfectly tallying commercial tax invoices and live e-way bills.

6.8. 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

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any presumption of revenue loss. A mismatch in the loading point cannot be stretched to deem an active intent to evade tax, which remains the foundational trigger for Section 129 of Act.

6.9. 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*****……,**

6.10. Since the transaction was fully declared within the tax matrix of a registered dealer, the vehicle was on its direct designated route, and no secret parallel stock was unearthed, any presumption of financial loss to the state is completely negated. In terms of the apex jurisprudence laid down in ***Hindustan Steel Ltd. v. State of Odisha***, administrative discretion to penalize must be exercised judicially and reserved only for cases involving deliberate defiance of the law.

6.11. We concur with the core legal finding of the lower appellate authority that an administrative liability cannot survive on mere presumptions or administrative doubts. It is a well-settled principle, as reiterated in *M/s Welmark Automotives Ltd. v. Commissioner (2008)*, that no matter how strong, grave, or prominent a suspicion may appear to be, it can never transition into or take the place of absolute legal proof. This baseline protection is firmly rooted in the landmark jurisprudence of the Hon'ble Supreme Court of India in the case of *State of Kerala v. M.M. Mathew (42 STC 348),* wherein the Apex Court categorically held: *'That the presumption may be very strong but it cannot take the place of evidence. That strong suspicion, strange coincidences, and grave doubts cannot take the place of legal proof.'* Concluding a case of tax evasion strictly based on a driver's oral statement during transit, while ignoring perfectly matching commercial invoices and live e-way bills, directly offends this settled legal metric.

6.12. Furthermore, the First Appellate Authority correctly placed reliance on identical precedents where similar penal actions founded exclusively on a driver's statement were struck down by the Hon'ble Jurisdictional *High Court. In State of U.P. v. M/s Maa Vindhyavasini Tobacco Products Pvt. Ltd. (2020),* the departmental action was rejected precisely because the penalty rested solely on the

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roadside version of the person-in-charge without independent evidence. Similarly, in *M/s Chem Tec Industries v. CCT (2012),* where the driver alleged a dispatch point different from the transport documents, the Hon'ble High Court set aside the penalty on the ground that an uncorroborated oral admission cannot override a transaction fully covered by valid invoices and regular transit permits. The facts of the present matter are squarely covered by these binding precedents, and the Revenue has failed to bring any fresh material to distinguish them.

6.13. 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.

ORDER

In view of the detailed findings recorded above, **Order-in-Appeal No. 172/2024 dated July 4, 2024**, passed by the First Appellate Authority is hereby **upheld**. The **present Appeal** filed by the Department is **dismissed**. The original penalty order dated May 18, 2024, stands set aside.

(Santosh Kumar Srivastava)

(Arvind Kumar) 28/10/26

Dated: 28.10.2026

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