GOODS AND SERVICES TAX APPELLATE TRIBUNAL
THIRUVANANTHAPURAM BENCH
Division Bench : Court No I

APPEAL NO : APL/28/TVP/2026
(Hearing in Hybrid Mode)

(arising out of the OIA No. GSTA 4/2022 dated 20-9-2022 issued by the Joint Commissioner (Appeals), SGST, Kottayam)

KURIAN ABRAHAM PVT LTD .....Appellant

Vs

THE COMMISSIONER OF KERALAM STATE GST THIRUVANANTHAPURAM .....Respondent

for Appellant
Iype John, Advocate

for Respondent
Mansur MI, AR

CORAM : Hon'ble Shri Subramanya Rayaprol, Vice-President
Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

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FINAL ORDER NO : 17/TVP/KERALAM/2026

Date of Hearing: 25-9-2026
Date of Order: 30-10-2026

Order Per: Subramanya Rayaprol, Vice President

1.0 Mr Iype John, Ld Advocate appeared for the appellant. Mr Mansur MI, Joint Commissioner appeared as AR for the respondents.

2.0 Ld Advocate for the appellants submits that the appellant had received 7560 kgs of rubber latex vide delivery challan no. 01/2021-22 dated 4-1-2022 from their supplier Arun Scaria, but the GSTIN no was wrongly mentioned in the delivery challan. He also submits that their consignor namely Arun Scaria, Koothattukalam Rubber House, Karikayam, Chittar, Kerala, is an agriculturist and preparation of e-way bill is exempted for Rubber Latex, which is an agricultural product, and only delivery challan is sufficient in terms of the Notification No. 3/2018-State Tax dated 14-5-2018 issued by the SGST Department of Kerala State. An inadvertent error occurred in the Delivery Challan, which was prepared by the consignee (appellant)

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on behalf of the consignor, wherein a GSTIN Number of another dealer was mentioned. It is pertinent to note that the Provisional Receipt did not mention any such GST Number. The transport was intercepted on 4-1-2022 and on the ground of non-possession of E-way Bill, Forms GST MOV-02, Forms GST MOV-04, Forms GST MOV-06, Forms GST MOV-07 and Forms GST MOV-09 were issued. As an agriculturist and the goods transported being Rubber Latex, and that the transaction is not one of a dealer to dealer, requirement of e-way bill is exempted as per section 23 (1)(b) of the KGST Act. He submits that the supplier being an agriculturist, is exempted from preparation of e-way bill and that their supplier had already transported the goods, i.e. Rubber Latex directly from their Rubber Estate, directly to the appellant along with a delivery challan. As per the notification no 3/2018-State Tax, for transportation of Rubber Latex, the generation of e-way bill is exempted, subject to the condition that the Rubber Latex, irrespective of the value should be accompanied with a delivery challan issued under KVAT Act or Tax invoice issued under GST Act. In the present case, the Rubber Latex was transported by their supplier under a delivery challan. Therefore, the allegation that there was no e-way bill and consequent detention of goods, and imposition of penalty is illegal and is liable to be set aside. He prays that their appeals be allowed and penalties be set aside.

3.0 Ld AR appearing for the Revenue (State), reiterates the contents of the MOV-07 and MOV-09 and also the facts leading to the detention of the goods i.e. rubber latex. He submits that the appellant was caught unawares without e-way bill on 4-1-2022 and the submissions made by them is only an afterthought. He further made a detailed written submission as below:

3.1 The facts leading to the present appeal, in brief, are as follows. On 04/01/2022, the 1st respondent intercepted vehicle No. KL 38 E 4416 at Pizhaku. On verification, it was found that the vehicle was carrying 36 drums (7,560 kg) of natural rubber latex falling under HSN 40011020, valued at ₹3,85,560/-, consigned to the appellant.

3.2 The only document produced by the person in charge was Delivery Challan No. 001/2021-22, which showed M/s. Anku Rubbers, a dealer registered under the GST Acts, as the consignor. The transaction was thus, on the face of the document, one

between two registered dealers, and the value exceeded ₹50,000/-. No e-way bill had been generated or accompanied the goods, in clear violation of Rule 138 of the CGST/SGST Rules, 2017.

3.3 Accordingly, the goods and conveyance were detained and notice in Form GST MOV-07 was issued. The appellant, without raising any objection whatsoever, came forward on the same day and remitted the proposed penalty, and the goods were released. It is pertinent to note that the plea that the consignor was an agriculturist, and that the GSTIN was printed by mistake, was raised for the first time only at the appellate stage, as an afterthought.

3.4 The appeal does not merit admission under Section 112(2). The amount of penalty involved is only ₹38,556/-, well below the limit of ₹50,000/- prescribed in Section 112(2) of the CGST/SGST Acts. The dispute is purely one of fact, namely the identity of the consignor, and it has been concurrently decided against the appellant by two authorities. No substantial question of law arises for consideration. The Hon'ble Tribunal may therefore be pleased to decline to admit the appeal.

3.5 Effect of payment under Section 129(5). Without prejudice to the other objections urged herein, the respondents submit that the conduct of the appellant at the time of detention is of material significance. Section 129(5) provides that, on payment of the amount referred to in sub-section (1), all proceedings in respect of the notice issued under sub-section (3) shall be deemed to be concluded. Admittedly, the appellant remitted the entire amount of ₹38,556/- on 04/01/2022 itself, vide DC3201220008719, and the order in Form GST MOV-09 specifically records that the owner came forward and paid the amount as proposed. No objection was filed in response to the notice in Form GST MOV-07, and no protest whatsoever was recorded at the time of payment or at any time thereafter, until the appeal was preferred.

3.6 The respondents are conscious that the statutory remedy of appeal is not taken away by Section 129(5). It is, however, most respectfully submitted that a payment made unconditionally, without demur and in terms of the proposal, amounts to an acceptance of the proposal by the appellant. Such acceptance is wholly inconsistent

with the plea, raised for the first time in appeal, that the goods were the agricultural produce of an unregistered agriculturist and exempt from the requirement of an e-way bill. Having availed the benefit of the immediate release of the goods on that footing, the appellant cannot now be permitted to approbate and reprobate. The learned first appellate authority was therefore justified in observing that the tendering of payment by the appellant went to show that the transportation was on its behalf.

3.7 The scope of Notification No. 3/2018-State Tax. Rule 138 of the CGST/SGST Rules, 2017 mandates the generation of an e-way bill for the movement of goods of value exceeding ₹50,000/-, subject to the exceptions provided therein. In exercise of the powers conferred under Rule 138(14)(d) of the Kerala State Goods and Services Tax Rules, 2017 the Commissioner of State Tax, Kerala issued Notification No. 3/2018-State Tax dated 14/05/2018. It exempts from the requirement of an e-way bill the transport, within the State, of rubber latex, rubber sheets and rubber scrap from the premises of an agriculturist to the registered place of business of a taxable person, provided the goods are accompanied by a delivery challan or invoice.

3.8 The object of the notification is evident. A large number of small rubber growers in the State are agriculturists who, by virtue of Section 23(1)(b) of the Act, are not liable to be registered in respect of the supply of produce out of the cultivation of land. The notification relieves such growers of the burden of generating an e-way bill when they carry their own produce to a registered dealer. It is a measure of facilitation for the grower. It is not intended to exempt trade in rubber between registered dealers, which remains fully subject to Rule 138.

3.9 The exemption is therefore available only when all of the following conditions are cumulatively satisfied:

(a) the goods are rubber latex, rubber sheets or rubber scrap;

(b) the movement is within the State;

(c) the movement originates from the premises of an agriculturist, that is, a person who answers the definition in Section 2(7) of the Act, being an individual or Hindu Undivided Family who undertakes cultivation of land by own labour, by the labour of family, or by servants or hired labour under personal supervision;

(d) the movement is to the registered place of business of a taxable person; and

(e) the goods are accompanied by a delivery challan or invoice.

The exemption is conditional, and the burden of establishing that every condition is satisfied lies squarely on the person who claims it. It is settled law, as laid down by the Hon'ble Supreme Court (Constitution Bench) in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co.* (2018) 9 SCC 1, that an exemption notification is to be strictly construed, and that the benefit of any ambiguity must go to the revenue.

3.10 In the instant case, conditions (c) and (e) are not satisfied. The delivery challan that accompanied the goods, admittedly prepared by the appellant itself, did not show any agriculturist as the consignor. Instead, it showed M/s. Anku Rubbers, a registered dealer. Thus, on the very document relied upon to claim the exemption, the movement was not from the premises of an agriculturist. Further, the appellant has produced nothing to establish that Sri. Arun Scaria is an agriculturist within the meaning of Section 2(7), or that the latex was the produce of land cultivated by him. If the exemption were extended merely on a subsequent assertion that the goods came from a grower, it would defeat the very purpose of the notification, and would open the door to large quantities of rubber moving between dealers without e-way bills.

3.11 The proper officer was bound to act on the documents accompanying the goods. Under Section 68(3) read with Rule 138A, the person in charge of the conveyance is bound to produce the prescribed documents at the time of interception. The sole document produced, Delivery Challan No. 001/2021-22, showed M/s. Anku Rubbers, a registered dealer, as the consignor. On the face of that document, the transaction was one between two registered persons, and the value exceeded ₹50,000/-. An e-way bill was therefore mandatory under Rule 138. Explanations put forward subsequently cannot substitute for the document that actually accompanied the goods.

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3.12 The plea of clerical error is an afterthought. The appellant has admitted that the delivery challan was prepared by the appellant itself. A GSTIN is a specific fifteen-character identifier. It cannot be printed on a document by inadvertence unless the person preparing it already had the particulars of that dealer, which only indicates prior dealings between the appellant and M/s. Anku Rubbers. Further, a challan

bearing serial No. 001 in the month of January, the tenth month of the financial year, indicates that the document was prepared only for this occasion. The detecting officer has also noted on the MOV-07 and MOV-09 that the challan number was incorrect.

3.13 The learned first appellate authority has rightly drawn an adverse inference. The consignment of 7,560 kg in a single load is of commercial scale. The appellant asserted that the plantation had been taken on lease by the alleged agriculturist, but failed to produce the lease deed or any document from the Rubber Board, despite being afforded ample opportunity. The finding that no credence could be given to the plea is well founded, and an adverse inference is fully justified where a party withholds documents within its own reach.

3.14 The affidavits are self-serving and of no evidentiary value. The affidavits relied upon by the appellant were obtained after the detection and are self-serving. M/s. Anku Rubbers would naturally deny its involvement in a transport detected without an e-way bill, as rightly observed by the learned first appellate authority. Neither deponent has been offered for cross-examination.

3.15 The appellant has not produced the evidence it ought to have produced. It is pertinent to point out that the appellant has not produced, either before the learned first appellate authority or before this Hon'ble Tribunal, any of the following documents, each of which was within its reach or that of the alleged agriculturist:

(a) the lease deed, land tax receipts or possession certificate establishing that Sri. Arun Scaria holds the plantation;

(b) records of the Rubber Board, such as grower registration, membership in a Rubber Producers' Society, or planting and area records, to show a holding capable of yielding 7,560 kg of latex;

(c) the purchase register or ledger of the appellant showing the purchase from Sri. Arun Scaria on 04/01/2022;

(d) proof of payment to Sri. Arun Scaria, such as a bank transfer or a signed payment voucher with proof of identity;

(e) the DRC test report and weighment slip for the lot, which a genuine purchaser of latex invariably maintains;

(f) details of who engaged vehicle No. KL 38 E 4416; and

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3.16 In the absence of all this evidence, the claim that the goods were the agricultural produce of an unregistered agriculturist remains a bare assertion, unsupported by any material on record.

3.17 Section 126 has no application. Sub-section (6) of Section 126 expressly provides that the section shall not apply where the penalty specified under the Act is a fixed sum or is expressed as a fixed percentage. The penalty under Section 129(1)(a), as amended with effect from 01/01/2022, is two hundred per cent of the tax payable, which is a fixed percentage. The reliance placed by the appellant on Section 126 is therefore wholly misconceived.

3.18 In any event, the breach is not a minor breach. Under the Explanation to Section 126, a breach is to be considered minor only where the amount of tax involved is less than ₹5,000/-. In the instant case, the tax involved is ₹19,278/-.

3.19 The alleged error is not apparent on the face of the record. The record, on its face, shows a supply by a registered dealer. The version now put forward by the appellant can be established, if at all, only through affidavits and further documents. An error that requires extraneous evidence to establish it is, by its very nature, not an error apparent on the face of the record.

3.20 The opportunity was afforded, and the appellant chose not to avail it. The notice in Form GST MOV-07 was duly served on 04/01/2022. It afforded seven days to show cause and fixed a date for personal hearing. Instead of filing any objection, the owner of the goods came forward on the same day and remitted the proposed amount, so as to secure the immediate release of the goods. The statutory Form GST MOV-09 itself contemplates such a situation, and paragraph 7 of the order records that the owner paid as proposed and that the amount is confirmed. As no objection was filed, there was no occasion for a speaking order under paragraph 8.

3.21 No prejudice has been caused to the appellant. It is well settled, as held by the Hon'ble Supreme Court in *State Bank of Patiala v. S.K. Sharma* (1996) 3 SCC 364, that a violation of a procedural safeguard will vitiate an order only where prejudice is

shown. The appellant was fully heard on the very same facts by the learned first appellate authority on 22/04/2022, and is now being heard by this Hon'ble Tribunal. A remand for yet another hearing, on a record the appellant has had nearly four years to complete, would be an empty formality.

3.22 The learned first appellate authority considered the matter in full. The learned first appellate authority extracted every ground urged by the appellant and decided the core issue, namely whether the transport was exempt from the requirement of an e-way bill. In substance, therefore, the appellant's version was considered and found to be unproved.

3.23 The DRC-07 is only the statutory summary of the order. Rule 142(5) of the CGST/SGST Rules requires that a summary of an order passed under Section 129 be uploaded electronically in Form GST DRC-07. Rule 100, on which the appellant relies, governs assessment orders under Sections 62 to 64 and has no application to the present case. The DRC-07 creates no independent liability; it merely reflects the penalty on the common portal.

3.24 The penalty has been correctly computed. Tax at the rate of 5% on the value of ₹3,85,560/- works out to ₹19,278/-. The penalty at two hundred per cent of the tax payable, under Section 129(1)(a) as amended, works out to ₹38,556/-, apportioned equally as CGST of ₹19,278/- and SGST of ₹19,278/-.

3.25 The contention that the payment was made under compulsion is without basis. No protest was recorded either at the time of payment on 04/01/2022 or at any time thereafter until the appeal was filed.

3.26 The appellant has had nearly four years since the date of detection to produce the documents referred to in paragraph 13 above, and has not done so. The respondents therefore submit that the appeal be decided on the record as it stands. Should the appellant seek to produce any such material hereafter, the respondents crave leave to oppose the same under Rule 112, since the documents were specifically called for by the learned first appellate authority and were not produced despite ample opportunity. In any event, any fresh material that may be admitted

ought to be remitted to the proper officer for verification under Rule 112(3), and not accepted at face value. He prays that the appeals may be rejected and the OIA of the JC (Appeals) may be upheld.

4.0 We have heard both sides in detail.

5.0 We find that the only issue in the present case is that the appellant is the recipient of the goods i.e. 7560 KGS of Natural Rubber Latex from their supplier Arun Scaria, Koothattukalam Rubber Estate, Karikayam, Chittar vide delivery challan no. 001/2021-22 dated 4-1-2022. We find that the allegation of the Respondent is that the transaction of supply of Natural Rubber Latex is between two registered dealers and e-way bill is mandatory for goods valued more than Rs 50,000/- and there was no e-way bill.

6.0 We find that the delivery challan shows that the supply of the Natural rubber Latex is from a rubber estate but GSTIN No 32BPDPS8305H1ZX is also mentioned just below the name of the supplier. We find that the said GSTIN belongs to Anku Rubber of Alappuzha, Kerala who is not related in any manner to the present transaction. In their affidavit, M/s. Anku Rubber has categorically denied having supplied any goods to the appellant.

7.0 We also find that the supplier Arun Scaria has filed an affidavit dated 1-2-2022 as below:

> *"I, Arun Scaria, aged 32 Years S/o Scaria Sebastian residing at Vettoor House, Ettumanoor – 686 631, hereby solemnly affirm and state as follows:*
>
> *I am an agriculturist engaged in cultivation of rubber and extraction of latex from about 51.13 acres of Rubber Plantation taken on lease from Velimalai Rubber Co Ltd in Sy No 939/1 in Chittar Village, Konny Taluk, Pathanamthitta Dist. Being an agriculturist, I have no registration under the GST Act.*
>
> *The latex collected from the said agricultural operation is transported to M/s. Kurian Abraham Pvt Ltd, Pannimattom with delivery challan for the purpose of sale who will*

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fix the ruling market price after determining the actual weight and dry rubber content and also analysing, testing the quality of latex.

Being an agriculturist, I do not have the facility to prepare documents as required under statutory provisions. Hence, I have sought the help of the consignee M/s. Kurian Abraham Pvt Ltd to prepare the delivery challan for each transport, on my behalf.

In the delivery challan no. 001/2021-22, a GSTIN No was inadvertently printed of some other dealer. Being an agriculturist, I do not have a GSTIN No. and not statutorily required to obtain a registration. Hence, it is submitted that the GSTIN No. 32BPDPS8305H1ZX is not my registration no. However, I confirm that all other facts narrated in the said delivery challan, other than the GSTIN No. is true and correct."

8.0 We also find that the Notification No. 3/2018-State Tax dated 14-5-2018 is issued by the Commissioner of State Tax, wherein two categories of goods are notified which are exempted from the requirement of e-way bill. The Sl. No. 2 of the Table is reproduced herewith:

Sl. No.	Description of goods	Area of movement	Value of goods	Conditions
…	…	…	…	…
2	**Rubber latex,** rubber sheets, and rubber scrap, spices	Within the State, and **from the premises of the agriculturist** to the registered business place of the taxable person	Irrespective of value	The person who causes the movement of goods should be in possession of : i. **delivery chalan** prescribed under Rule 55 of the Kerala State Goods and Services Tax Rules, 2017; or ii. invoice prescribed under Section 31 (3) (f) of the Kerala Goods and Services Act, 2017, as the case may be.

9.0 On perusal of the said Notification, we find that the transportation of Rubber Latex from the place of an agriculturist to the registered taxable person is exempt from the requirement of an e-way bill, when such transporter is holding a delivery challan as prescribed under Rule 55 of the KGST Rules. In the present case, we find

that the supplier Arun Scaria has filed an affidavit that he is an agriculturist and the goods were supplied by him from his Rubber Estate at Karikayam – Chittar to the appellant's premises at Pannimattam. We find that the transporter was carrying a proper delivery challan required as per Rules. Therefore, we find that the conditions of the said Notification No. 3/2018-State Tax was satisfied and the transport of such goods from the agriculturist-premises to the appellant's place was exempt from the requirement of the e-way bill irrespective of the value of the goods. Therefore, the detention and imposition of penalty against the appellant is unsustainable.

10.0 As regards, the mentioning of the GSTIN of some other person appears to be a genuine mistake as there is no evidence to show that the appellant or their supplier or the transporter was in any way related to such GSTIN holder. Such mistakes are condonable and we condone the same, with a suggestion to the appellant to refrain from making such avoidable mistakes which unnecessarily creates doubts in the minds of the Tax authorities.

11.0 In view of the above, we do not find any reason to penalise the appellant for a clerical error, when all other details in the delivery challan are not disputed. We therefore, pass the order as below:

ORDER

The penalties imposed vide impugned OIA dated 20-9-2022 is set aside and the appeals is allowed with consequential relief.

(Order pronounced in open court)

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Subramanya Rayaprol
Vice-President

Ramamoorthi Sriram
Member (Technical)

Date : 30-10-2026

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