**GSTAT**

**State Bench Lucknow**

**Division Bench Court No. Court I**

**APL/83/LCK/2026**

AJENDRA KUMAR TRIPATHI **.....Appellant**

**Versus**

M/S SHIVAM COLOUR TRADERS, PROPRIETOR, 13/242 BLOCK NO. 13 GOVIND NAGAR KANPUR UPKNN 208006 **.....Respondent**

**Quorum**

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

**Counsel for Appellant**
MR. ASHUTOSH MISHRA, ASSISTANT COMMISSIONER, SGST

**Counsel for Respondent**
MR. RAJ KISHORE TRIVEDI, 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. :** ZA090371026000645H **Date of order :** 29/10/2026

| | | |
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| **1.** | GSTIN/Temporary ID/UIN - 09ABNPC2046G1ZU | |
| **2.** | Appeal Case Reference no. - APL/83/LCK/2026 | Date - 21/04/2026 |
| **3.** | Name of the appellant - Ajendra Kumar Tripathi , ajju873@gmail.com , 9453949835 | |
| **4.** | Name of the respondant -<br>1. M/S SHIVAM COLOUR TRADERS , shivamcolourtraders.kanpur@gmail.com , 9415127954 | |
| **5.** | Order appealed against - AD091023009713F | |
| | **(5.1) Order Type** - Enforcement Order | |
| | **(5.2) Ref Number** - ZD0904251625076 | Date - 04/04/2025 |
| **6.** | Personal Hearing - 29/10/2026 01/10/2026 21/09/2026 10/09/2026 20/08/2026 12/08/2026 06/08/2026 16/07/2026 | |

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| **7.** | Status of Order under Appeal - Confirmed – Order under Appeal is confirmed |
| **8.** | Order in brief - The present second appeal was filed by the Revenue under Section 112 of the CGST/UPGST Act, 2017, against the Order-in-Appeal dated 04.04.2025 passed in the case of M/s Shivam Colour Traders, whereby the First Appellate Authority had set aside the penalty imposed under Section 129(3) of the Act. The dispute arose from the interception of vehicle No. UP78HN8510 on 19.07.2023, carrying consignments of paints from Kanpur to Raebareli. During verification, it was found that E-Way Bills corresponding to Tax Invoice Nos. 1826 and 1827 had not been completed by updating Part-B with vehicle details, while the E-Way Bill corresponding to Tax Invoice No. 1718 had expired on 17.07.2023. Consequently, the goods were detained and a penalty of ?2,70,444/- was imposed under Section 129(3) of the Act vide Order-in-Original dated 24.07.2023. The First Appellate Authority set aside the penalty on the grounds that the goods physically matched the invoices, the transactions were subsequently declared in GSTR-1 returns, and the documentation deficiencies were merely technical errors attributable to the transporter without any intention to evade tax. Upon examination of the facts, statutory provisions and submissions of both parties, the Tribunal held that the movement of goods with an incomplete Part-B and an expired E-Way Bill constituted a violation of the mandatory requirements of Section 68 read with Rule 138 of the CGST/UPGST Rules, 2017. It further observed that the Respondent failed to establish any valid reason for the delay in transportation, non-updating of Part-B or expiry of the E-Way Bill. The subsequent updating of vehicle details and declaration of transactions in GSTR-1 returns could not cure the statutory contravention existing at the time of interception. The Tribunal accordingly held that the First Appellate Authority had erred in treating the statutory violations as mere technical or procedural lapses and in waiving the penalty on the ground of absence of mens rea. The findings of the First Appellate Authority were found to be legally unsustainable. Accordingly, the Revenue's appeal was allowed, the impugned Order-in-Appeal dated 04.04.2025 was set aside, and the Order-in-Original dated 24.07.2023 was restored, thereby upholding the penalty of ?2,70,444/- imposed under Section 129(3) of the CGST/UPGST Act, 2017. |

## Summary of Order

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| **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** | 13522 | 135222 | 13522 | 135222 | 0 | 0 | 0 | 0 | 27044 | 270444 |
| **(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 |

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| **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 First Appellate Authority allowed the appeal and quashed the penalty of Ã?Â¢Ã?Â?Ã?Â¹2,70,444/-. The Authority observed that the details of goods, value, and quantity matched the invoices, and the error of not updating Part-B or extending the E-way bill validity was a technical lapse on the part of the transporter. Relying on various High Court judgments, the Authority concluded that in the absence of mens rea or intent to evade tax, the penalty under Section 129(3) cannot be sustained | ORDER In view of the detailed findings and legal analysis recorded above, the Appeal preferred by the Revenue is hereby ALLOWED. • The impugned Order-in-Appeal No. KNP2/GST/2324AKNP001922/ AD091023009713F/2024/2024-25 dated 04/04/2025 passed by the Additional Commissioner Grade-2 (Appeal) Second, State Tax, Kanpur is hereby SET ASIDE. • The Original Adjudication Order-in-Original No. ZD090723126440K dated 24/07/2023 passed by the Assistant Commissioner, Mobile Squad, Sector 1, Bhognipur is hereby RESTORED. • The demand and recovery of the statutory penalty amounting to ?2,70,444/- (comprising CGST ?1,35,222/- and SGST ?1,35,222/-) levied under Section 129(3) against the Respondent is hereby UPHELD. |

Place :LUCKNOW

Signature

Date : 30.10.2026

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

# ORDER

The present second appeal has been preferred by the Revenue (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 (herein after referred as 'Act') against the Order-in-Appeal dated 04/04/2025 passed by the First Appellate Authority whereby first appellate authority allowed the appeal filed by **M/s Shivam Colour Traders** (hereinafter referred to as the **"Respondent"**). The Revenue seeks the quashing of the said Order-in-Appeal and the restoration of the penalty confirmed by the Adjudicating Authority vide Order in original dated 24.07.2023 under Section 129(3) of the Act.

## 1. BRIEF FACTS OF THE CASE:

1.1. The Respondent, **M/s Shivam Colour Traders**, is a proprietary firm duly registered under the statutory provisions of the Central Goods and Services Tax Act, 2017 and the Uttar Pradesh Goods and Services Tax Act, 2017, holding registration under GSTIN **09ABNPC2046G1ZU** having Principal Place of Business (PPOB) situated at **77/1,** Halsey Road, Coolie Bazar, Kanpur, Kanpur Nagar, Uttar Pradesh – 208001.

1.2. The dispute originated from the interception of a commercial vehicle no. UP78HN8510 on 19/07/2023 at 07:15 HRS by the AC mobile squad Bhognipur of the State Tax Department at Maharajpur, Kanpur Nagar. The vehicle was in transit, moving a commercial consignment of paints from Kanpur to Raebareli. The person-in-charge of the vehicle, Shri Saurabh Gupta, produced three physical tax invoices issued by the supplier/Respondent, M/s Shivam Colour Traders, Coolie Bazar, Kanpur, in favour of the purchasing dealer, M/s Shiv Shyam Lime Traders, Lalganj, Raebareli. The documents produced comprised Tax Invoice Nos. 1826 and 1827 (both dated 17/07/2023) and Tax Invoice No. 1718 (dated 11/07/2023).



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1.3. The interception authority the corresponding E-Way Bills on the departmental GST portal, which exposed critical statutory lapses. For Tax Invoice Nos. 1826 and 1827, the generated E-Way Bill Nos. 401353727488 and 411353729221 were found completely invalid for movement because Part-B (vehicle details) had not been updated on the portal. Furthermore, for Tax Invoice No. 1718, the accompanying E-Way Bill No. 461352173185 was found to have expired on 17/07/2023 at 02:56 PM, making it legally non-existent at the time of physical interception on 19/07/2023.

1.4. On account of these document failures, the vehicle was detained, and a physical verification was carried out on 20/07/2023 under FORM GST MOV-04. The physical check verified the presence of Luxol Paint matching the face value and description of the invoices. However, because the physical movement of the goods lacked active, completed transit documentation on the portal, the authority issued a order of detention under FORM GST MOV-06 and a Show Cause Notice (SCN) in FORM GST MOV-07 / DRC-01 on 21/07/2023, demanding a statutory penalty under Section 129(3) of the Act.

1.5. In the proceedings, the Respondent filed a reply defending the gaps as clerical oversights by the transporter. The proper officer rejected the explanation, stating that the law does not permit the active transit of taxable goods without fully completed and valid digital matching documents. Consequently, the proper officer passed the Order-in-Original (OIO) No. ZD090723126440K dated 24/07/2023, levying a mandatory penalty of ₹2,70,444/- (comprising CGST ₹1,35,222/- and SGST ₹1,35,222/-) under Section 129(3) of the Act.

1.6. Aggrieved by the OIO, the Respondent filed a first appeal. The First Appellate Authority (Additional Commissioner Grade-2 (Appeal) Second, State Tax, Kanpur), vide Order-in-Appeal (OIA) No. KNP2/GST/2324AKNP001922/AD091023009713F/2024/2024-25 dated 04/04/2025, allowed the appeal and completely quashed the penalty. The First



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Appellate Authority reasoned that since the quantities and description of the goods physically matched the tax invoices, and the transactions were subsequently declared by the dealer in its monthly GSTR-1 returns, there was an absolute absence of *mens rea* (intent to evade tax). It categorized the failure to fill Part-B and the expiration of the E-Way Bill as an isolated "technical breach" committed by the transporter. Aggrieved by this waiver of the statutory penalty, the Revenue preferred the present Second Appeal before this Tribunal.

## 2. GROUNDS OF APPEAL FILED BY THE APPELLANT:

The Revenue challenges the First Appellate order (OIA) on the following legal and structural grounds:

2.1. The Revenue submits that the First Appellate Authority committed a patent error in law by condoning the commercial transit of taxable cargo accompanied by incomplete and expired E-Way bills. Section 68 of the Act read with Rule 138 of the UPGST Rules, 2017 mandates that any cargo movement exceeding the statutory threshold must be covered by a valid, active E-Way bill. The law states that an E-Way bill is incomplete and legally non-functional for transit until Part-B (vehicle particulars) is updated. Moving goods with a blank Part-B or an expired certificate amounts to moving goods without an E-Way bill altogether.

2.2. The Appellant contends that the lower authority misdirected its legal jurisdiction by injecting the principle of *mens rea* (criminal intent) into Section 129. Section 129 is designed by the legislature as a standalone enforcement framework of strict liability. Unlike assessment sections like Section 74 or prosecution sections like Section 132, the penal consequences under Section 129(3) trigger automatically upon the objective factual demonstration of a compliance defect during transit. The presence or absence of an intent to evade tax is entirely irrelevant once a physical contravention is proven.



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2.3. The Department challenges the lower court's finding that the omissions were merely "procedural or technical errors". Part-B vehicle documentation provides the only legal tie between a digital registration and a physical truck in transit. If transit without Part-B or with expired documentation is condoned, it enables unscrupulous operators to reuse the same tax invoice and digital E-Way bill for multiple parallel, clandestine trips, creating a major risk of revenue leakage.

2.4. The Revenue argues that the dealer cannot escape its statutory liability by blaming a third-party transporter. The owner/consignor holds the definitive legal responsibility to ensure that no taxable goods leave their commercial facility without fully executed, verified, and complete portal documents.

2.5. The Revenue states that the proper officer calculated the penalty precisely in accordance with the mandatory statutory formula provided under Section 129(3) of the CGST/UPGST Act. Statutory tax authorities and appellate courts do not possess equitable jurisdiction to modify or waive a mandatory penalty once the objective fact of the documentation defect stands proved.

**3. SUBMISSIONS OF THE RESPONDENT :**

The Learned counsel for Respondent/Assessee resists the Revenue's appeal, relying on the following arguments:

3.1. The Respondent submits that valid tax invoices and E-Way bills were generated on the GST portal at the time the sales transactions were finalized. The physical goods were immediately moved to the transporter's go down for dispatch. However, due to an unexpected shortage of commercial vehicles at the transporter's end, the cargo was delayed at the warehouse. Once a vehicle was secured, the transporter loaded all three consignments onto a single truck (UP78HN8510) to complete the delivery.



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3.2. The Respondent argues that the failure to log the vehicle number into Part-B and the failure to extend the validity period of the third E-Way bill resulted entirely from clerical negligence by the transporter's staff. Crucially, the Respondent submits that as soon as the oversight was noticed, the vehicle data in Part-B was fully updated on the portal on **19/07/2023**, well before the actual issuance of the Show Cause Notice by the mobile squad unit.

3.3. The Respondent points out that a physical stock verification confirmed that the cargo description, weight, and volume precisely matched the values declared on the invoices. The vehicle was traveling along the direct declared route. Furthermore, the entire transaction was cleanly recorded in the commercial books, reported in the GSTR-1 returns for July 2023, and fully paid for through formal banking channels, satisfying all input tax conditions under Section 16(2).

3.4. The Assessee relies on several decisions of the Hon'ble Allahabad High Court, including *Ram Chandra Gupta vs. State of U.P. (Writ Tax No. 728/2023)*, *M/s Globe Panel Industries India Pvt. Ltd. vs. State of U.P. (Writ Tax No. 141/2023)*, and *Prahlad Rai Vijay Kumar vs. State of U.P. (Writ Tax No. 587/2022)*. These rulings establish that minor, non-fraudulent clerical omissions or brief validity delays cannot sustain harsh Section 129(3) penalties when there is no established intent to evade tax.

## 4. QUESTION OF LAW:

- **Whether** the First Appellate Authority was justified in waiving the statutory penalty under Section 129(3) of CGST /UPGST Act 2017 based on the absence of *mens rea* (intent to evade tax) and matching physical goods, despite the undisputed fact that the goods were being transported with an un-updated Part-B and an expired E-Way Bill without a valid reason ?

## 5. DISCUSSION AND FINDINGS;



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

5.2. We find that it is an undisputed position of fact that the goods were being transported with an un-updated Part-B and an expired E-Way Bill at the time of interception, however, it is equally undeniable that the physical goods in transit precisely matched the description, weight, volume, and values declared in the tax invoices.

5.3. We find that the **First Appellate Authority quashed** the penalty order **on the grounds** that the **physical cargo perfectly matched** the declared tax invoices with zero volumetric discrepancies, the failure to update Part-B entries and extend the validity dates was an isolated **logistical omission committed strictly by the third-party transporter** without any control of the supplier, the transaction was entirely regularized and subsequently declared in the monthly GSTR-1 returns through formal banking channels showing an absolute **absence of mens rea (intent to evade tax)**, and established judicial precedents dictate that such minor technical and venial infractions carrying **zero financial loss to the exchequer** cannot sustain harsh statutory penalties under Section 129(3).

5.4. At the outset, we find that Section 68(1) of the Act categorically mandates that:

> *"The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed."*
>
> And Rule 138A (1) of the Central Goods and Services Tax Rules, 2017, reinforces this absolute rule by stating:
>
> *(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees-*
>
> *(i) in relation to a supply; or*
>
> *(ii) for reasons other than supply; or*



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*(iii) due to inward supply from an unregistered person,*

*shall, before commencement of such movement, furnish information relating to the said goods as specified in* ***Part A*** *of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:*

***(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01.***

*(3).....,*

It is very clear that the person-in-charge of a conveyance carrying any consignment of goods must carry such documents as may be prescribed. Rule 138 of the UPGST/CGST Rules, 2017 outlines these mandatory requirements. An E-Way bill consists of two parts, Part-A contains the details of the invoice, and Part-B contains the specific vehicle numbers. The dynamic integration of Part-A and Part-B is what constitutes a valid E-Way bill under the law. The movement of goods without completing Part-B vehicle details means the E-Way bill is legally incomplete and invalid for transit.

5.5. We find that the Respondent argues that the documentation gap was a "technical error" or an oversight by the transporter. The statutory system of E-Way bills is designed to track real-time cargo movement and prevent undocumented supply chains. If conveyances are permitted to travel across states with a blank Part-B or expired certificates, the enforcement checks become ineffective. Therefore, traveling without vehicle details or with expired paperwork is a substantive breach of the statutory framework.



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5.6. Under the GST compliance framework, the registered person causing the movement of goods bears the absolute, non-delegable statutory responsibility to ensure that no taxable cargo leaves its commercial premises or moves on public highways without fully executed portal documentation. While Rule 138(3) allows a transporter to update vehicle details, it does not absolve the primary dealer/consignor's liability. The transporter acts as an agent of the registered person. Any contractual negligence, systemic failure, or logistical omission committed by the transporter is legally attributable to the Respondent. A statutory penalty cannot be bypassed by shifting the blame onto a chosen agent/transporter. The fact that the dealer later uploaded the details before the final SCN was issued, or declared the transactions in its GSTR-1 returns, does not erase the legal contravention that existed at the exact moment of physical interception on the highway.

5.7. We are of the view that the judicial precedents relied upon by the First Appellate Authority are completely misplaced and factually distinguishable. The findings of the First Appellate Authority cannot be sustained under the law as it failed to appreciate that Section 129(3) of the CGST/UPGST Act, 2017 read with Section 68(1) and Rule 138(1) & (3) of the UPGST Rules, 2017 establishes a standalone mechanism of liability where the lack of an updated Part-B or transporting cargo under an expired E-Way Bill constitutes a substantive violation rather than a forgivable technicality without a valid reason.

5.8. We are of the view that the commercial movement of taxable cargo without an updated Part-B of the E-Way Bill and under an expired E-Way Bill at the time of physical interception constitutes a substantive and fatal violation of Section 68(1) of the Act read with Rule 138 of the UPGST Rules, 2017 in the lack of valid reason. The static availability of tax invoices or subsequent declaration of transactions in GSTR-1 returns cannot cure a physical documentation failure existing on the highway, nor can the statutory liability be shifted onto the transporter as an agent. Therefore, the First Appellate Authority committed a error in law by treating a clear



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statutory default as a mere venial or technical breach. The findings in the Order-in-Appeal are legally unsustainable, and the proper officer's decision to impose the mandatory statutory penalty under Section 129(3) of the Act is legally sound, fully justified, and must be restored.

5.9. Apart from this, it is also noteworthy that the respondent failed to prove on the basis of solid evidence that the why the validity of E-way bill verified and why the part-B was not filled.

5.10. Furthermore, it is noteworthy that the distance between Raebareli and Kanpur is not so significant as to preclude the possibility of misuse of these documents. Moreover, the movement of goods was taking place two days after the expiry [of the documents/e-way bill], and no valid reason regarding this could be provided by the respondent.

5.11. The facts of the precedent cited by the applicant in their reply are completely different, because the applicant has failed to prove why they were unable to procure a truck. Ultimately, no reason has been provided as to why a truck could not be made available, forcing them to keep the goods stored in the warehouse for so many days. Furthermore, the distance between Raebareli and Kanpur is not substantial; yet, the goods are being demanded two days after their expiry. Therefore, based on these facts, the cited ruling does not apply to their case.

## ORDER

In view of the detailed findings and legal analysis recorded above, the Appeal preferred by the Revenue is hereby **ALLOWED**.

- The impugned Order-in-Appeal No. KNP2/GST/2324AKNP001922/ AD091023009713F/2024/2024-25 dated 04/04/2025 passed by the Additional Commissioner Grade-2 (Appeal) Second, State Tax, Kanpur is hereby **SET ASIDE.**



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- The Original Adjudication Order-in-Original No. ZD090723126440K dated 24/07/2023 passed by the Assistant Commissioner, Mobile Squad, Sector 1, Bhognipur is hereby **RESTORED.**

- The demand and recovery of the statutory penalty amounting to **₹2,70,444/-** (comprising CGST ₹1,35,222/- and SGST ₹1,35,222/-) levied under Section 129(3) against the Respondent is hereby **UPHELD**.

29/10/2026

(Arvind Kumar)

29.10.26

(Santosh Kumar Srivastava)

Date: 29.10.2026



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