Goods and Services Tax Appellate Tribunal
Thiruvananthapuram
Division Bench Court No. I

Appeal No: APL/41/TVP/2026

[Arising out of OIA JC KTM 2024 GSTA (ALPY)17 dated 12/06/2025 of the Joint Commissioner (Appeals), State GST Department, Kottayam]

Abhayakumar Khimchand Kothari **……..... Appellant**
Mumbai

Versus

The Commissioner of State Taxes, Keralam State,
Thiruvananthapuram **…….....Respondent**

Counsel for Appellant
K RAMASWAMY, CA

Counsel for Respondent
Shri Mansur, MI - AR

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

……

FINAL ORDER NO. 23/TVP/KERALAM/2026

धर्मो रक्षति रक्षितः

Date of Hearing: 30-10-2026

Date of Order: 20-11-2026

Order per: Shri Ramamoorthi Sriram, Member (Technical)

1. The present appeals are directed against OIA No GSTA (ALPY)17 dated 12/06/2025 of the Joint Commissioner (Appeals), State GST Department, Kottayam

2 Brief Facts of the Case

2.1 While on vehicle checking duty on 03.03.2023 the Assistant State Tax Officer, Enforcement Squad , SGST Department, Alappuzha intercepted and checked

www.taxcode.in

a vehicle bearing No. MH 02 FG 1558 carrying gold jewellery weighing 384.080gms valued Rs.20,18,345/-, through BVC Logistics from Mumbai, Maharashtra to Mullackal, Alappuzha, Kerala. It is alleged that M/s. Shree Khima Kanchi having (GSTIN 27ACFPK3175R1ZZ) was transporting gold ornaments to M/s. AVJ Emporium, Mullackal, Alappuzha without tax invoice. On verifying the delivery note accompanied it is alleged that description of the services is mentioned as gold jewellery for job work and no tax is seen collected. On further verification, it is found that the item in transport is finished products of gold ornaments. Hence it appeared that GST Tax invoice as per Section 31 read with rule 46 was necessary.

2.2 Penalty of Rs.1,21,100/- was levied under section 129 of IGST by issuing Form GST Mov-09 dated 06.03.2023 (Order No. ZD321223003016B dated 05.12.2023) for release of the goods and vehicle.

2.3 Appeal filed against the above order was rejected vide the impugned OIA of JC (Appeals) , Kottayam.

2.4 Aggrieved by the said OIA, the appellant has filed this appeal before the Tribunal.

धर्मो रक्षति रक्षितः

At the outset, we notice that this case raises certain glaring fundamental issues of jurisdiction/ due process (which were raised by the representative of the Appellant during the personal hearing in the presence of the learned AR for the Revenue) need to be addressed upfront before we proceed to examine the merits of the arguments on either side.

3.0 Issue of jurisdiction

3.1 At the outset, on perusal of the documents of the case, we observe that:

(i) Forms GST Mov -01 to 07 were issued to M/s Shree Khima Kanchi , Mumbai, GSTIN 27ACFPK3175 R1ZZ. (as stated in Form MOV GST 09) (on various dates ranging from 3/3/2023 to 6/3/2023

(ii) Order under section 129 (3) of the CGST Act (Form GST MOV 09) has also been issued to M/s Shree Khima Kanchi , Mumbai, GSTIN 27ACFPK3175 R1ZZ

(iii) We find that in this case, a temp id was issued to the appellant only on 30/11/2023,

(iv) In effect we find , the SGST officials could have exercised jurisdiction on the appellant only from 30/11/2023 and all proceedings prior to this date(from the date of detention- 3/3/2023 to the date of issue of temp id – 30/11/2023) are non est and void ab initio.

3.2 We find therefore find that on the territorial jurisdiction issue alone the case is hit by the principle of coram non judice and the entire proceedings are liable to be quashed and declared non est and void ab initio.

3.3 We find support for this finding in the judgement of the honorable Supreme Court of India in the case of the State of West Bengal vs Jai Hind P.Ltd on 6 February, 2026 (2026 INSC 132) wherein the Court observed as follows:

> "*9. In the instant case, as the Revenue Officer did not have the jurisdiction to review the earlier vesting determination, the 2008 review order strikes at the very root of the matter and is a non-curable defect. Importantly, "competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction", as was held in Hira Lal Patni v. Kali Nath. A decree or order passed by a Court which lacks inherent*

jurisdiction in passing such an order or decree is non-est and void ab initio, as was held by this Court in the case of Balvant N. Viswamitra v. Yadav Sadashiv Mule. In the said case, a three-judge Bench of this Court held that:

(v) *"9…The main question which arises for our consideration is whether the decree passed by the trial court can be said to be "null" and "void". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."*

धर्मो रक्षति रक्षितः

4.0 Due Process

4.1 During the personal hearing the representative of the appellant made a forceful argument on the following grounds on the violation of due process:

a. Section 129(3) of the CGST Act, reads as under:-

"(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1)."

b. The section specifically gives 7 days time for issue of notice (MOV 07) and further 7 days for order (MOV 09). Applying the above provision, GST MOV 07 has to be issued on or before 10.03.23 and order to be issued on or before 17.03.23.

c. Order has been issued only on 25.11.23 and the uploaded on 05.12.23. Hence the order has been passed in total violation of time lines. Hence on that ground alone the orders are not sustainable.

4.2 On perusal of the order Mov09 passed we find that no date is mentioned in the order. The appellant claims that though in terms of section 129(3), the said order should have been passed on or before 17/3/2023, it was passed only on 25/11/2023. We reproduce portions of the last paragraph of MOV -09 which read as follows:

*As part of the adjudication process , notices were issued to the tax payer on **24/7/2023**, the recipient on **10/08/2023** and the transporter on **10/08/2023** respectively and directed to appear and produce all necessary documentary evidence in support of this claim in my office ……In this regard the recipient M/s AVJ Emporium came forward and filed a detailed reply to this office on **14/09/2023.***

4.3 We find that this is a classic case of res ipsa loquitur in as much as from the contents of MOV-09 itself, it is self-evident that the said order was not passed before the mandatory date of 17/03/2023 as stipulated in section 129(3) of the CGST Act.

4.5 We find that on this point the learned AR in his written submissions dated 7/9/2026 has submitted that :

(i) Section 129(3) of the CGST / SGST Act , 2017 requires the proper officer to issue notice within 7 days of detention / seizure and to pass an order within a further seven days of service of that notice and that this timeline has been held to be mandatory in nature by various High Courts.

(ii) Revenue is mindful of this position and will place before the Tribunal at the appropriate stage the certified record establishing the dates on which detention, notice and order came to be effected.

4.6 However we observe that till the date of passing this order no such record has been produced. In fact the learned AR in response to a pointed question on this question during the personal hearing only stated that these directions under section 129(3) may be treated as directory and not mandatory. We find that this stand of the learned AR is in contradiction to his own written submissions which record that these provisions are held to be mandatory by various High Courts throughout the country. We are unable to agree with these contentions of the learned AR for the reason that once the constitutional courts throughout India have held a provision to be mandatory, that amounts to a declaration of the law of the land, and this Tribunal does not have the authority / discretion to read down as directory, what the constitutional Courts have held to be mandatory.

4.7 We find that in terms of section 129(3) of the CGST Act he above, it is mandatory on the part of the officer detaining or seizing the goods to pass an order for payment of penalty within seven days of the date of service of the notice. In the instant case, we find that while the goods were detained on 3/3/2023, the order under section 129(3) for payment of penalty was not issued within the stipulated date of 17/3/2023.

4.5 We also extract portions of para 5 of the order in appeal which read as follows:

Since it is evident that there is no nexus between the goods under transport and accompanying documents along with the consignment, there is clear violation of Section 31 read with Rule 46 which is an offence punishable under Section 129 of GST Act and Rules 2017, the Official demanded penalty u/s 129 IGST Rs.1,21,100/-

by issuing ***Form GST Mov-09 dated 06.03.2023 (Order No. ZD321223003016B dated 05.12.2023)*** *for release of the goods and vehicle.*

Thus it emerges from the OIA itself that there were two possible dates (6/3/2023 or 5/12/2023) as to when MOV-09 was issued. As it is clearly established in para 4.2 itself that the Mov 09 makes a reference to AVJ Emporium reply dated 14/9/2023, it is evident that the MOV-09 was issued not on 6/3/2023 , but on 5/12/2023.

4.6 We find that in view of this blatant violation of the statutory time limits, the order GST MOV 09 *(Order No. ZD321223003016B dated 05.12.2023)* dated 5/12/2023 (which has been upheld by the appellate authority). is void ab initio and is a nullity in the eyes of the law.

4.7. We find support for the above decision in the decision of this Tribunal in the case of **Siddhivinayak Automobiles vs Commissioner of Kerala State GST** (Final order no 2/TVP/Kerala/2026 dated 14/8/2026) wherein it was held as follows:

From the plain reading of Sub-section (3) of Section 129 of the Act of 2017, it is abundantly clear that the legislature by using the expression "shall" in respect of show cause notice as well as notice for payment of penalty has signified its intent that adherence to timeline is mandatory. Otherwise also, the CGST / KGST Act, 2017 is a fiscal statute and, therefore, required to be construed strictly.

4.8 We also find that a similar view has been taken by various Hon'ble High Courts across the country as detailed below (chronologically – starting from the latest order)

a. Danish Hassan vs Ut Of J&K & Ors WP (C) 2538/2024 of the J&K High Court , dtd 7/9/2026

b.Mohd Hazzak Lohar & Others vs Commissioner of State Tax, J&K cited in 2026 (7) TMI 1769 – J&K and Ladakh HC, dtd 23/7/2026

c.M/s. Allcargo Logistics Limited vs State of Gujarat cited in 2025 (12) TMI 1732 – Gujarat HC dtd 22/12/2025

d. Khatu Enterprises vs State of Gujarat cited in 2025 (10) TMI 1341 – Gujarat HC dtd 10/10/2025

e. Pawan Carrying Corporation vs State of Bihar, cited in (2024) 16 Centax 405 (Pat.) dtd 29/12/2024

f. K.P. Sugandh Ltd vs Chief Commissioner of CT & GST, Odisha cited in (2025) 26 Centax 62 (Ori.) dtd 17/12/2024

g. Deepam Roadways vs Deputy State Tax Officer, Chennai, cited in (2023) 3 Centax 37 (Mad.) dtd 23/1/2023

h. Tvl.Udhayan Steels Private Limited vs Deputy State Tax Officer (Int.) cited in 2023 (1) TMI 378 - MADRAS HIGH COURT dtd 28/12/2022

We therefore find that High Courts across the country right from 28/12/2022 to as recently as 7/9/2026 have consistently held that any violation of the mandated timeline in Sub Section 3 of Section 129 of the CGST Act by the proper officer vitiates the entire proceedings. This is a well-settled issue and is no longer res integra.

धर्मो रक्षति रक्षितः

On merits

5.0 The appellants have made the following submissions:

5.1 The Appellant dispatched the finished gold ornaments to M/s. A.V.J. Emporium under Delivery Note No. JW 217 dated 01.03.2023. The description in the Delivery Note inadvertently read "gold jewellery for job work" instead of "gold jewellery after job work". This was a pure typographical/clerical error in phrasing and not a deliberate misrepresentation. Every other particular in the Delivery Note — the recipient's name, GSTIN, address, the description of goods, the quantity (384.080 grams), and value

(₹20,18,345/-) — was correctly stated and unimpeachable. The error here was acknowledged by both the Appellant and the recipient before the Enforcement Officer and the Adjudicating Authority, leaving no reasonable doubt as to the nature of the transaction.

5.2 The Adjudicating Officer while confirming the penalty made the finding that there is no nexus between the goods under transport and the accompanying document. The Delivery note comprehensively detailed every essential particular including quantity, value and the recipient address of the goods transported which were not disputed. The sole irregularity being a clerical mis-description of the service as "gold jewellery for job work" instead of "gold jewellery after job work". Both the appellant and the recipient convincingly explained this as a factual error during preparation of Delivery note, confirming that the gold ornaments were indeed being transported post - job work, and it was fully brought to the Adjudicating Officer's knowledge. Despite this, the Adjudicating Officer persisted in alleging a lack of nexus without specifying any substantive reasons rendering his finding arbitrary and unsustainable.

5.3 From the above statement of the Adjudicating Officer, it has been proved that the Adjudicating Officer was convinced that the ornaments transported were out of the materials (bullion) supplied by the recipient AVJ Emporium. Having been convinced on this factual position, the Adjudicating Officer none the less took refuge in the incorrect description in the delivery note- "gold jewellery for job work"- to invoke penalty under Section 129 of the CGST Act. Such an approach disregards the substance of the transaction, elevated a clerical misstatement over material facts and contravened the principles of natural justice and substantive compliance under GST law. The penalty is thus perverse and liable to be set aside.

5.4 The appellant could not issue tax invoice since the goods transported were not

www.taxcode.in

their own goods but received for job work. The transporting document supported the transport ie, delivery note- is the correct document as contemplated under Rule 55 of the CGST Rules. Penalization of the appellant for the absence of tax invoice is therefore illegal and unwarranted.

5.5 The Appellate Authority's finding that that the Appellant had failed to prove that the goods were returned after job-work. This finding is perverse and contrary to the record. The following documents, which were duly produced before the Adjudicating Authority and the Appellate Authority, irrefutably establish the true nature of the transaction: (a) Material Out Challans Nos. 852 (25.02.2023) and 854 (28.02.2023) of M/s. A.V.J. Emporium evidencing dispatch of bullion to the Appellant for manufacture; (b) Delivery Note No. JW 217 dated 01.03.2023 containing all correct particulars of the finished goods; (c) Statement of the recipient before the Enforcement Officer confirming the job work transaction; (d) LR No. CH 64917 dated 01.03.2023 of BVC Logistics . Non-appreciation of these documents by the Appellate Authority renders the impugned order perverse and contrary to the principles of natural justice. The order deserves to be set aside in its entirety.

धर्मो रक्षति रक्षितः

6.0 Submissions of the Revenue on merits:

6.1 The consignment was accompanied by Delivery note JW-127 dated 1/3/2023 describing the goods as "gold jewellery for job work." No tax invoice accompanied the goods.

6.2 The description in the delivery note itself indicated an outward movement of goods for job work which is inconsistent with finished ornaments being returned from a job worker. The error was neither corrected contemporaneously nor revised/ corrected delivery note produced at the time of interception. The explanation was offered only

after detention and is an afterthought designed to bring the transaction within Rule 55.

6.3 Upon enquiry conducted by the Enforcement squad at the premises of M/s AVJ Emporium (the recipient) it is found that they are not engaged in any job work activity in the gold jewellery trade. This is a material and unrebutted finding of fact recorded after physical enquiry.

6.4 It is admitted that AVJ Emporium produced two "Material out vouchers" bearing nos 852 dated 25/2/2023 and 854 dated 28/2/2023 evidencing supply of bullion and copper to the appellant. However these vouchers are self-serving , unilaterally generated documents of the recipient , extraneous and unconnected with the transport documentation that actually accompanied the goods on 1/3/2023. Neither voucher was referenced in or appended to or in any manner cross linked with Delivery Note No JW-127.

6.5 Rule 45(1) of the CGST Rules 2017 read with circular No 38/12/2028 -GST requires that goods returned by a job worker travel under the cover of the principal's own challan or an endorsement thereon. The document found in transit, Delivery Note No JW-127 was neither. It was self-authored by the job worker, bore no cross reference to either challan and described an outward movement for job work.

धर्मो रक्षति रक्षितः

6.6 Absence of proceedings against the recipient does not validate the Appellant's version. Each person's liability under section 129 is assessed independently and the burden lies squarely on the person transporting the goods (the appellant) to justify the movement with proper documents.

6.7 The Appellant failed to establish this was a genuine job-work return at all. Once this is not established on the basis of documents actually accompanying the goods, the requirement of tax invoice under section 129(1) read with Rule 46 is attracted and in its absence renders the goods liable under section 129.

7. Findings on merits

7.1 We find from paragraph 5 of the OIA that the grounds for the case against the appellant are as follows and we also provide our analysis/ comments on the same .

a. Ground 1:

The tax payer M/s. Shree Khima Kanji having GSTIN 27ACFPK3175R1ZZ transporting gold ornaments to M/s. AVJ emporium, Mullackal, Alappuzha, bearing GSTIN 32ACFPP2857F1ZH without tax invoice.

Our comments / analysis

We find that the case against the appellant SCN starts with the premise that the transaction was a supply , necessitating issue of tax invoice. There is no basis provided for the above premise.

b. Ground 2 :

On verifying the delivery note accompanied it is ascertained that the description of the services is mentioned as gold jewellery for job work and no tax is seen collected. On further verification, it is found that the item in transport is finished products of gold ornaments. Hence GST Tax invoice as per Section 31 read with rule 46 is necessary.

Our comments / analysis

धर्मो रक्षति रक्षितः

We fail to understand as to how the mere fact that the item under transport is finished products of gold ornaments automatically entails issue of GST invoice as per section 31 read with Rule 46.

Section 31 of the CGST / SGST Act reads as follows:

(1) A registered person supplying taxable goods shall, before or at the time of,—

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.

Our comments / analysis

At the outset we find that the said section applies only in case of supply of goods and for the Revenue to allege non-issue of tax invoice under section 31 of the Act, the onus is on the Revenue to prove that the transaction in question is a supply of goods. We find that leave alone evidence, no argument is articulated to the effect that the transaction in question is a supply.

Therefore, we find that the revenue having made no case that the transaction in question is a supply, is not entitled to demand production of a tax invoice under section 31 which deals with transactions which are supplies.

Once the transaction is not established to be a supply, we find that section 31 has no application to the case. Once section 31 is not applicable to the instant case, we find that Rule 46 also has no application as it deals with the modalities of issuing of tax invoice in respect of transactions governed by section 31.

c. Ground 3

On a detailed enquiry conducted by the respondent at the business premises of the recipient, it is revealed that the recipient AVJ Emporium is not doing any type of job work carried out in gold jewellery industry.

Our comments / analysis

We do not understand as to how the fact that the recipient is not doing any type of job work is relevant to the issue under consideration where the appellant's contention is that he is the one providing job work to the recipient.

d Ground 4

Since it is evident that there is no nexus between the goods under transport and

accompanying documents along with the consignment, there is clear violation of Section 31 read with Rule 46 which is an offence punishable under Section 129 of GST Act and Rules 2017.

Our comments / analysis

We fail to understand what is the “lack of nexus” between the goods under transport and accompanying documents. The appellant has contended that

(i) They dispatched the finished gold ornaments to M/s. A.V.J. Emporium under Delivery Note No. JW 217 dated 01.03.2023.

(ii) The description in the Delivery Note inadvertently read "gold jewellery for job work" instead of "gold jewellery after job work”.

(iii) Every other particular in the Delivery Note — the recipient's name, GSTIN, address, the description of goods, the quantity (384.080 grams), and value (₹20,18,345/-) — was correctly stated and unimpeachable

The above statement of the appellant regarding the particulars mentioned in the Delivery Note are not refuted by the Revenue. The only lack of nexus (if it may be called that) is that the description said “gold jewellery for job work” instead of “gold jewellery after work”

धर्मो रक्षति रक्षितः

We fail to understand that how this discrepancy can form the basis for invocation of section 31 Rule 46 (without proving supply) / and consequent invocation of section 129 .

Section 129 of the Act reads as follows:

> **129. Detention, seizure and release of goods and conveyances in transit.**
>
> (*1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and*

conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure…..,

We find that for section invocation of section 129 , contravention of the provisions of the Act or the Rules made thereunder has to be established. In the instant case, the Revenue has sought to make out a case of contravention of section 31 / Rule 46 without establishing the factum of supply , which is a sine qua non for invocation of section 31 / Rule 46. We therefore find that invocation of section 31/ Rule 46 is not sustainable .

7.2 Once the invocation of section 31 / rule 46 is held to be non sustainable, the bottom falls out of this case and invocation of Rule 129 (which is consequent to contravention of section 31 / Rule 46) is also not sustainable and the case against the appellant fails in toto, even on merits.

8.0 We find that the Appellate Authority in his OIA and the learned AR in his written submissions have sought to rely on Rule 45 (1) of the CGST Rules to fortify the case made against the appellant. However we find that the allegation of contravention of Rule 45(1) was neither a part of the SCN , nor was it a part of the OIO and therefore any attempt at invocation of the same at the appellate stage is not sustainable. We find support for this finding in the decision of the honorable Supreme Court of India in the case of **M/s G.R. Infra Projects Limited Ratlam Versus The State of Madhya Pradesh & Ors. (2026 (8) TMI 1497 - Supreme Court)** wherein the Court held as follows:

Learned Counsel appearing for the appellant submits that the SCN is beyond the time of three years provided under Section 73 for determination of tax inter alia short paid, for any reason other than fraud, willful misstatement or

suppression of facts. The learned Government Advocate, however, attempts to take us through the counter affidavit in which according to him the allegations of fraud and suppression of facts have been elaborated, justifying the proceedings under Section 74 and not under Section 73.

5. We refused to look at the counter affidavit on the trite principle that <u>when an authority has issued a notice or an order, the requirements to make the notice or order valid should be contained in such notice order and cannot be supplanted by a counter affidavit in Court, where the notice or order is alleged to be invalid for reason to non-application of mind, the requirements having not met and so on and so forth.</u>

9. In view of all of the above, we find that the case against the appellant fails

a. on the grounds of lack of jurisdiction, in as much as officers of Kerala SGST had no jurisdiction to conduct these proceedings against the appellant who was registered in Maharashtra

b. on grounds of violation of due process, as the order GST Mov-09 was clearly issued beyond the statutory time lines prescribed under section 129(3) of the CGST / KGST Act.

c. on merits, as no case is made out for invocation of section 129 of the CGST Act / KGST act against the appellant.

10. In view of the findings as above, the following order is passed:

धर्मो रक्षति रक्षितः

The order in appeal is set aside and the appeal is allowed, with consequential relief.

Order pronounced in open court on 20/11/2026

Subramanya Rayaprol
Vice-President

Ramamoorthi Sriram
Member (Technical)

Date: 20-11-2026

www.taxcode.in