GSTAT

Court No. Court I

APL/79/LCK/2026

OM PRAKASH **.............Appellant**

Versus

PROP, 0 TALPURA TALPURA BAHERI UPBAR 243201 , ISLAM TRADING CO **.............Respondent**

Counsel for Appellant
SHRI SANJEEV KUMAR, DEPUTY COMMISSIONER, SGST

Counsel for Respondent
NON APPEARED

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

ORDER

Summary of the order by the GST Appellate Tribunal, Lucknow Bench.

Whether Remand Order: No

Date of Order: 20.08.2026

1.	GSTN/Temporary ID/UN -	09ACBPU8577H1ZW
2.	Appeal Case Reference No.	APL/023/2018
3.	Name of the Appellant:	OM PRAKASH
4.	Name of the Respondent:	NONE APPEARED

5.	Order Appealed Against:	APL/023/2018 dt. 24.09.2021
	(5.1) Order Type:	Enforcement Order
6.	Personal Hearing -	20/07/2026, 03/08/2026 & 14/08/2026
7.	Status of Order under Appeal	Order under Appeal is ALLOWED

Final Order

This appeal has been preferred by the Department under the relevant provisions of the GST Act against the order dated **24.09.2021** passed by the First Appellate Authority whereby the order passed under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty was set aside.

Question of law involved.

Since the goods (Scrap) were being transported without E-way Bill, which is mandatory under Rule 138(1). Therefore, we find the matter should be heard in Division Bench.

2. **Brief Facts**

The records reveal that on dated 08.03.2018, vehicle No. UP-25 CT-8554, carrying iron scrap, was intercepted by the Mobile Squad Unit III, Barielly. Though the goods accompanied by a tax invoice and other documents, weighing 55.55 Kg. and valued at Rs. 83,323/- but were not accompanied by a E-Way Bill, as mandated under Rule 138(I) of the UPGST Rules. Accordingly, proceedings under Section 129 were initiated, resulting in the order dated 09.03.2018 confirming tax of Rs. 15,000/- and penalty of Rs. 15,000/-, aggregating to Rs. 30,000/-.

The First Appellate Authority, however, allowed the appeal vide appeal no. APL/023/2018, year 2017-18, under Section 129(3) of Uttar Pradesh Goods and Services tax Act. on the ground that the E-Way Bill was subsequently produced during submission of reply before the seizing officer.

3. **Grounds of Appeal**

- At the time of interception, the goods were admittedly being transported without a valid E-Way Bill.

- Generation of an E-Way Bill is a statutory requirement intended to ensure transparency and prevent tax evasion.
- Acceptance of an E-Way Bill generated or produced subsequently defeats the very object of Rule 138, as the invoice is manually generated whereas the E-Way Bill is electronically generated and time-stamped.
- If the vehicle had not been intercepted, the transaction could have remained outside the statutory monitoring mechanism.
- The First Appellate Authority erred in treating the lapse as merely procedural.
- Shri Sanjeev Kumar, learned Deputy Commissioner of authorized representative appeared for department appellant and argued vehemently. He reiterated the as grounds of appeal as well as the bullet points of statements of the facts produced below-

- In the disputed transaction, the trader clearly violated E-way Bill Rule 138. If the goods had not been intercepted for inspection during transit, the transaction in question would have been completed without an E-way bill.
- The E way bill generation is an online process, whereas the tax-invoice is issued manually by the taxpayer.If the trader generated the E-way bill online, it would have appeared in his outward supply records preventing him from manipulating his books of accounts at his convenience. This fact established the trader's intention to evade tax.
- The loading of goods is shown at Baheri, Barielly (Uttar Pradesh) and the delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand, the distance from Baheri to Kichha is approximately 25 km. Since the Transportation of sensitive goods such as iron scrap without E-way bill, further highlights the trader's intent to evade tax.

4. **Submissions of Respondent –**

The respondent, despite being afforded adequate opportunity before this court, neither appeared nor filed any written submissions to contradict the grounds urged by the Department. Consequently, there is no material before the Authority to dislodge the findings recorded herein.

5. **Findings**

We have carefully considered the grounds raised in the appeal and perused the record.

It is an admitted fact that no E-Way Bill accompanied the goods at the time of transportation. The requirement of carrying an E-Way Bill during transportation is mandatory under Rule 138(1) of the GST Rules, the said rule is produced as under-

"(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

(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, 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"

Thus E-Way Bill is an integral part of the statutory mechanism for monitoring movement of taxable goods.

The first Appellate Authority on the premise that the E-Way Bill was subsequently produced and there is no discrepancy existed in the accompanying documents. The first appellate authority has also relied, upon various precedents in his order to support his stand, as follows-

In case of Singh Tyre v. State of U.P. (2018) 98 Taxmann.com 388, before the hon'ble Allahabad High Court "*If the goods are being accompanied with proper documents and E-way Bill has been produced along with the reply to notice then the seizure cannot take place*"

The Hon'ble Allahabad High Court order in case of M/s Harle Foods Products Pvt. Ltd. v. State of U.P. and others (2018) 37 V.L.J. -16 " *U.P. Goods and Services Tax Act, 2017 section 129(I) and 164 e-Way bill 01 not produced at the time of interception of goods along with other documents-Goods- seized-presumption-intention of evade tax all the requisite documents including e-Way bill were with the goods intention to evade tax not proved-goods directed to be released without security-penalty proceeding quashed."*

The Hon'ble Allahabad High Court order in case of M/s Modern Traders Vs. The State of UP and 2 Others 2018 NTN (Vol-67)-71 "*the sole ground of seizure of goods in non-production of E-way Bill, whereas no dispute with regard to Issuance of invoice and charge of Tax by the petitioner.*

We have seen no error at the hands of the Petitioner and therefore. The order of seizure passed under section 129(I) of the acts well as the notice issued under section 129(3) of the act are hereby set aside. We are informed and it is not in dispute that the condition of accompanying the E-Way Bill with respect of interstate transaction is mandatory w.e.f. 1.4.18, whereas in the present case, the transaction is much before the aforesaid date. We directed the seizing authority to release the goods and vehicle forthwith."

The Hon'ble Allahabad High Court order in case of M/s Raj Iron and building material Vs. UOI dt. 22.12.2017 "*Therefore it does appeal that the E-way bill had been downloaded and produced though with some delay but before conclusion of the penalty proceedings.*

In view of the fact that in the present case, there is no allegation of evasion of tax liability established either from the reading of the show cause notice or the seizure order or the penalty order, the consequential penalty imposed appear to have been occasioned upon a mere technical breach and not on account of any intention to evade tax".

The Hon'ble Allahabad High Court order in case of M/s Rai Prexim India Private Limited Vs. State of Kerala 2019 NTN (Vol.70) -29 " *If a human error which can be seen on naked eye is detected, such human error cannot be capitalized for penalization."*

We have gone through above all precedents thoroughly. We find that the contents of those judicial pronouncements are not similar to the present case because we find in the present case E way bill generation is an online process where as the tax invoice issued manually by the tax payer, preventing generation of E-way bill leads to manipulation in his books of accounts at his convenience. Therefore, we are of the opinion that, in such circumstances conducting a transaction without E way bill establishes an intention to evade tax.

Moreover, in this transaction, the loading of goods is shown at Baheri, Barielly (Uttar Pradesh), and the delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand; the distance from Baheri to Kichha is approximately 25 km. Its further highlights the trader's intent to evade tax. Thus, in the present case the intention to evade tax is crystal clear.

Accordingly, we are of the considered opinion that the First Appellate Authority committed an error in interfering with the order passed under Section 129(3). The original adjudicating authority had rightly invoked the provisions of Section 129.

Order

In view of the foregoing discussion,

For the facts and reason discussed above, the appeal filed by the Appellant (revenue) is accordingly allowed. Hence, the order dated 09.03.2018 passed by the Proper Officer under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty is restored. Accordingly, the order passed by the First Appellate Authority is hereby quashed.

(Santosh Kumar Srivastava)

(Arvind Kumar)

Dated: 20.08.2026