GSTAT

Court No. Court I

APL/52/LCK/2026

D.S TRADERS ....**Appellant**

Versus

COMMISSIONER, COMMISSIONER STATE GOODS AND SERVICES TAX DEPARTMENT LUCKNOW UTTAR PRADESH. , COMMISSIONER STATE GOODS AND SERVICES TAX DEPARTMENT & ORS. ....**Respondent**

Counsel for Appellant
DR. SWAYAMBHAV MANU, ADVOCATE

Counsel for Respondent
SHRI SANJEEV KUMAR DEPUTY COMMISSIONER OF SGST

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

ORDER

BRIEF FACTS OF THE CASE:

1. The present appeal is filed by the appellant M/s D.S. Traders, GSTN: 09GYMPS0010J1Z7 against the penalty order passed under Section 129(3) of the U.P. GST Act, 2017 by the original adjudicating authority order no ZD090725182974N dt. 18.7.2025 and first appellate authority order dt. KNP4/484/AD091025014132Q/2526AKNP002257/2025 dt. 27.11.2025 and, in respect of goods being transported in vehicle No. UP78GN8559 without E way Bill.

1.1 On 18.07.2025, the vehicle carrying the goods were intercepted, which were accompanied by Delivery Challan No. 01 dated 18.07.2025 while an Excavator Machine, which was also found along with the goods as mentioned in the challan issued by M/s D.S. Traders, Kanpur, which was being transported without a valid e-Way Bill and consequently treated the transportation as a violation of the Rule 138 Under of UP GST Act provisions relating to movement of goods.

1.2 The Excavator Machine was stated to have been sent to the work site of M/s OPSIS Projects India Pvt. Ltd. at Trans Ganga City, Unnao, for work at the site. The value of the machine/goods was stated to be approximately Rs. 9,00,000.

1.3 The proper officer passed a seizure/penalty order and imposed a total penalty of Rs. 3,24,000.00, comprising Rs. 1,62,000.00 CGST and Rs. 1,62,000.00 SGST, under Section 129(3).

QUESTION OF LAW INVOLVED:

2. Since the goods was being transported without E-Way Bill, which is mandatory under Rule 138(A). Therefore, we find the matter deserve to be heard in Division Bench.

GROUNDS OF APPEAL:

3. The First appellate authority dismissed the appeal primarily on the ground of transit of goods without generating E – Way Bill without examining the substantive merits of the case. Which violates the Principal of Natural Justice as technical procedural lapses cannot overshadow merits of the case.

3.1 The appellant has sent its excavator Machine on rent to M/s OPSIS Projects India Pvt. Ltd. With a valid job work agreement for execution of work at project site, the appellant was bringing back the goods to its registered place of business from project site situated at Trans Ganga City, Unnao to Kanpur, during the course of transaction the same was intercepted by the Mobile Squad of State Tax Department, Kanpur.

3.2 The appellant requested for the quash of the impugned order and allow the appeal and refund the deposited penalty or grant of remedy that this hon'ble tribunal may deem fit and proper in facts and circumstances of the case.

SUBMISSION OF THE APPELLANT:

4.0 The appellant contended that the movement was not pursuant to a sale, but was for use/work at the site and was supported by the delivery challan and other documents. It was argued that there was no intention to evade tax and that the absence/non-generation of the e-Way Bill was at most a technical/procedural lapse.

4.1 The goods in question of without E way bill was having a delivery challan for return of the machine.

4.2 The appellant submitted that both the consignor and consignee in the Delivery Challan bear the same GSTIN 09GYMPS0010J1Z7. The Appellant is simultaneously the sender and the receiver. There is no second registered person, no buyer, no recipient, no transferee. The machine was simply being repositioned from one location back to its owner.

4.3 The dispute concerns the imposition of a Rs. 3.24 lakh GST penalty on the transportation of an excavator without an e-Way Bill, where the appellant's case is that the machine was being transported for work/site purposes and there was no sale or intention to evade tax.

4.4 The Appellant submitted that in the present case no sale or taxable supply is involved. Since the goods was a return of the appellant's own machinery from a job work site to its registered place of business, which does not constitute a 'Supply' under Section 7 of CGST/ UPGST Act, and therefore, no question of tax evasion arises.

4.5 The learned counsel for the appellant further submitted that the Government of Uttar Pradesh has, exercising this power, notified that movements within 20 kilometres within the State, accompanied by a valid Delivery Challan, are exempt from the E-Way Bill requirement.

4.6 The distance between the loading point (Trans Ganga City, Unnao) and the destination (1583/2A, Dehli Sujanpur, Kanpur) is under 20 kilometres. The movement was accompanied by Delivery Challan No. 01 dated 17.07.2025. Both conditions of the exemption are satisfied.

4.7 The appellant cited various judicial order pronounced by the Hon'ble High Court, which are produced below-

The Bombay High Court in Fabricship Pvt. Ltd. v. Union of India

The Allahabad High Court in D and D Construction and Developers Company v. Additional Commissioner (April 8, 2025)

i. M/S Abhay Prakash Katariar vs State Of UP (Allahabad High Court, September 22, 2025)
ii. Sachin Jain v. State of U.P. (Allahabad High Court, Lucknow Bench, November 12, 2025)
iii. M/S Varun Beverages Limited v. State of U.P. (Allahabad High Court, May 2024)
iv. M/S Shakuntalam Associates v. Additional Commissioner (Allahabad High Court, July 30, 2025)
v. Tata Hitachi Construction Machinery Company (P.) Ltd. v. State of U.P. (Allahabad High Court, May 9, 2025)
vi. M/S Cj Darcl Logistics Ltd. v. State of U.P. (Allahabad High Court, September 4, 2025)
vii. M/S Shanu Events v. State of U.P. (Allahabad High Court, August 5, 2022)
viii. Banaras Industries v. Union of India (Allahabad High Court, November 7, 2024)
ix. Satyam Traders v. State of U.P. (Allahabad High Court, March 19, 2025)
x. M/S Singhal Enterprises v. State of U.P. (Allahabad High Court, November 7, 2025)
xi. Kitchen Equipments Manufacturing Co. v. Additional Commissioner Grade 2 (Allahabad High Court, February 27, 2025)
xii. M/S Chawla Sugandhi Bhandar v. State of U.P. (Allahabad High Court, September 11, 2025)
xiii. M/S Rakesh Plastic Furniture And Crockery Emporium v. State of U.P. (Allahabad High Court, September 1, 2025)
xiv. Mohammad Shamasher v. State of West Bengal (Calcutta High Court)
xv. Prestress Steel LLP v. Commissioner (Uttarakhand High Court)
xvi. Vacmet India Ltd. v. Additional Commissioner (Allahabad High Court)
xvii. M/S Jaitron Communication Pvt. Ltd. v. State of U.P. (Allahabad High Court)

SUBMISSION OF THE RESPONDENT:

5. Learned Shri Sanjeev Kumar, Deputy Commissioner, appeared on behalf of the Department and vehemently opposed the appeal. He submitted that the impugned order passed by the First Appellate Authority is legal and proper and does not warrant interference.

5.1 It was submitted that the excavator was admittedly found in transit without a valid e-Way Bill. The mere fact that the machinery belonged to the appellant or was being returned from the project site does not, by itself, exempt the appellant from complying with the statutory requirements relating to transportation of goods.

5.2 The respondent further submitted that the Delivery Challan relied upon by the appellant cannot substitute the e-Way Bill where generation of an e-Way Bill is otherwise mandatory. The plea that there was no sale or intention to evade tax does not, by itself, absolve the appellant from the statutory contravention.

5.3 The respondent specifically disputed the appellant's contention regarding the alleged 20-kilometre exemption and submitted that the appellant has not produced any applicable notification or circular issued by the competent authority establishing that such movement was exempt from the e-Way Bill requirement.

5.4 As regards the various judicial pronouncements relied upon by the appellant, the respondent submitted that the said judgments are distinguishable on facts and law and cannot be applied mechanically to the present case. The appellant has failed to establish that the facts of the present case are identical to those considered in the cited decisions.

5.5 It was therefore submitted that there was no violation of the principles of natural justice and that the penalty was imposed in accordance with the applicable statutory provisions. Accordingly, the respondent prayed that the appeal be dismissed, the impugned order be upheld, and the prayer for refund of penalty be rejected.

FINDINGS:

6. We have carefully considered the submissions of both sides, the material available on record and the judicial precedents relied upon by the appellant.

6.1 It is an admitted fact that the excavator was intercepted while being transported without an e-Way Bill. Under Section 68 of the CGST/UPGST Act read with Rule 138 of the CGST/UPGST Rules, the prescribed documents/e-Way Bill is required for movement of goods, including movement for reasons other than supply, subject to the specified exemptions. Therefore, the plea that the excavator belonged to the appellant and was being returned to its registered premises does not, by itself, exempt the appellant from the requirement of an e-Way Bill.

6.2 The appellant has also failed to satisfactorily establish the tax treatment of the consideration received for use of the excavator at the project site. Though it has been stated that the machine was operated on an hourly basis, no sufficient evidence regarding the hours of operation, consideration charged and corresponding discharge of GST has been produced. This circumstance, coupled with transportation without an e-Way Bill, gives rise to a reasonable inference of intention to evade tax and cannot be treated as a mere technical lapse.

6.3 The contention regarding the alleged 20-kilometre exemption also cannot be accepted in the absence of satisfactory evidence establishing that the present movement was specifically covered by the applicable statutory exemption under Rule 138(14) or any relevant notification issued by the competent authority.

6.4 We have also considered the judicial precedents relied upon by the appellant. The facts and circumstances of those cases are distinguishable from the present case, particularly where the appellant has failed to establish the tax treatment of the consideration relating to the use of the excavator and the goods were admittedly transported without an e-Way Bill. Hence, the said judgments cannot be mechanically applied to the present case.

6.5 Accordingly, we find that the appellant has failed to establish either a valid exemption from the e-Way Bill requirement or that the lapse was merely procedural and without revenue implications. The action under Section 68 read with Rule 138 and Section 129 of the CGST/UPGST Acts is therefore justified.

ORDER

The order of the original adjudicating authority Order No. ZD090725182974N dated 18.07.2025 and the order of the First Appellate Authority Order No. KNP4/484/AD091025014132Q/2526AKNP002257/ 2025 dated 27.11.2025, in respect of goods transported in vehicle No. UP78GN8559 without an e-Way Bill, are hereby upheld.

Accordingly, the appeal is rejected.

GST APPELLATE TRIBUNAL
जीएसटी अपीलीय अधिकरण

(Santosh Kumar Srivastava)

(Arvind Kumar)

Dated: 25.08.2026