

JUDGMENTS ON E-WAY BILL

1. Supreme Court of India

Assistant Commissioner (St)

vs

M/S Satyam Shivam Papers Pvt. Limited on 12 January, 2022

Special Leave to Appeal (C) No(s). 21132/2022

The Supreme Court on the appreciation of facts made the following observations:-

“..... As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic. Having said so; having found no question of law being involved; and having found this petition itself being rather mis- conceived , we are constrained to enhance the amount of costs imposed in this matter by the High Court”

The Apex Court enhanced the cost of Rs. 10,000/- imposed by the High Court by imposing additional cost of Rs. 59,000/- payable by the department.

2. High Court of Himachal Pradesh

M/s Kunal Aluminum Company

Versus

State of Himachal Pradesh & ors.

CMPMO No. 40/2025

The Hon'ble High Court of Himachal Pradesh after appreciation of facts of the case made the observation relevant part of which are extracted

hereunder for ready reference:-

“24 Mere technical errors, without having any potential financial implications, should not have been made the grounds for imposition of penalties. The underlying philosophy is to maintain a fair and just tax system, where penalties are proportionate to the gravity of the offence.

25 In the realm of taxation, imposition of penalty serves as a critical measure to ensure compliance with tax laws and regulations. However, a nuanced understanding prevails within legal frameworks that for penalties to be justly imposed, there must be a demonstrated actual intent to evade tax. This principle underscores the importance of distinguishing technical errors from deliberate attempts to evade tax obligations.

26 Penalties have to be reserved for cases where an intentional act to defraud the tax system is evident, rather than for inadvertent technical errors. The legal foundation for this principle lies in the recognition that taxation statutes are not designed to punish inadvertent mistakes but rather deliberate acts of non-compliance. The burden of proof, therefore, rests on tax authorities to establish the actual intent to evade tax before imposing penalties on taxpayers. This safeguards individuals and entities from punitive measures arising from honest mistakes, administrative errors, or technical discrepancies that lack any malicious intent.

27 The authorities need to meticulously examine the facts and circumstances surrounding each case to establish the presence or absence of intentional tax evasion.

28 The requirement of intent to evade tax for the imposition of penalties is a fundamental principle that underpins the fairness and integrity of taxation systems. Recognizing the distinction between technical errors and intentional evasion is essential for maintaining a balanced and equitable approach to tax enforcement (see : Falguni Steels vs State of U.P. and others, 2024 AHC 11990).

29 In view of aforesaid discussions, we find merit in the instant petition and the same is accordingly allowed. Consequently, the impugned orders, Annexures P-14 and P-8 are quashed. The respondents are directed to release bank guarantee as furnished by the petitioner (under protest) with applicable rate of interest within a period of four weeks from today. Pending application(s), if any, also stands disposed of.”

3. Calcutta High Court

M/s. Ishaan Plastics Pvt. Ltd

vs

The Deputy Commissioner of State Tax

2023 TAXSCAN (HC) 1596

Key Points:-

- i) No Tax Evasion Intent Found**
- ii) 9-Hour Gap Between E-Way Bill Expiry and Vehicle Interception**
- iii) Calcutta HC Order Refund of Penalty**

The Calcutta High Court has ruled in favour of refunding a penalty in a case involving a 9-hour time gap between the expiration of an e-way bill and the interception of the associated vehicle. The judgment was delivered by a Single bench of Justice Md. Nizamuddin, who noted that there was no evidence of the petitioner’s intent to evade tax. The court, in its judgment, disposed of the writ petition by overturning the orders issued by the appellate authority and adjudicating authority. Consequently, the petitioner is entitled to a refund of the penalty in question, provided that all necessary legal requirements are met.

The Calcutta High Court ordered for refund of penalty as the time between expiry of the e-way bill and the interception of the vehicle in question was proved.

4. Gujarat HC

SHREE GOVIND ALLOYS PVT. LTD.

Vs

STATE OF GUJARAT 2022 TAXSCAN (HC) 997

Key Points:-

i) Intention to Evade GST cannot be Assumed Merely on Ground of Expiry of E-Way Bill:.

“The Gujarat High Court has recently set aside the detention order of trucks of Shree Ram Road Carriers, as the demand and detention was based merely on assumption of tax evasion from expiry of E-Way Bill. The Division Bench of Justice Sonia Gokani and Justice Manuna M Bhatt observed that the conduct of petitioner appeared to be bonafide and without establishing any fraudulent intention. Resultantly, the petition for release of goods and the truck was allowed, while the impugned order of demand was set aside.”

5. Allahabad HC

M/s GLOBE PANEL INDUSTRIES INDIA PVT. LTD "

vs

STATE OF U.P. AND OTHERS 2024 TAXSCAN (HC) 331

Key Points:-

- i) Expired GST E-Way Bill Pre-Detention,
- ii) No Intention to Evade Tax
- iii) Refund of Tax and Penalty Amount.

“The Allahabad High Court overturned a penalty imposed for presenting 10-days expired Goods and Services Tax (GST) E-way bill during detention. The Court observed that the authorities failed to establish any intent to evade tax in the case. While acknowledging a technical violation, the court found insufficient evidence of repeated E-Way Bill misuse or deliberate tax evasion. Consequently, the court ruled that the mere technical violation, without intent to evade tax, cannot warrant penalty under Section 129(3) of the UPGST Act. The impugned orders were quashed, and the respondents were directed to refund the tax and penalty

within four weeks.”

6. Delhi High Court

NIRMAL KUMAR MAHAVEER KUMAR

Vs

COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX
2022 TAXSCAN (HC) 662

Key Points:-

i) Penalty not justifiable for mere expiry of E-Way Bill,

“The Delhi High Court has held that penalty for mere expiry of an e-way bill is not justifiable when all documents produced except the reason for the delay in transportation of goods are not stated. It was evident that the petitioner was not intended to evade tax and the court opined that the petitioner needs to be given another chance to establish a reason, as to why the subject goods did not reach their designated designation before the expiry of the e-way bill. Mr Justice Rajiv Shakhder and Ms Justice Tara Vitasta Ganju disposed of the writ petition by setting aside the impugned order.”

7. Kerala HC

SANSKRUTHI MOTORS

vs

JOINT COMMISSIONER 2022 TAXSCAN (HC) 643

Key Points:-

i) Officer duty bound to consider explanation for Expiry of E-way Bill u/s 129 CGST, Rules.

“The Single Bench of Kerala High Court held that, the reason for invoking Section 129 of the Central Goods and Service Tax (CGST) Act when the E-way bill has expired then the officer is duty bound to consider the explanation offered by the petitioner for the expiry of the E-way bill. Justice Gopinath P, observed that “As noticed by the Division

Bench of the Telangana High Court in Satyam Shivam's case, the officer was duty bound to consider the explanation offered by the petitioner for the expiry of the E-way bill."

8. Gujarat HC

ORSON HOLDINGS COMPANY LIMITED & 1 other(s)

Vs

UNION OF INDIA & 2 other(s) 2023 TAXSCAN (HC) 217

Key Points:-

E-Way Bill Expired during Transit:

Quashes Penalty and Demand Orders for Want of "Ill-Intent.

"In a significant ruling, a division bench of the Gujarat High Court has held that since the assessee does not have ill-intent to evade GST as the e-way bill expired during the transit. Granting relief to the petitioners, the Court held that "the impugned order dated 28.09.2018 demanding a sum of Rs.63,40,000/- is quashed and set aside. The order of detention as well as the further notice issued under Section 129(3) of the CGST Act in FORM GST MOV- 07 is also quashed and set aside, with all consequential benefits. The tax of Rs.11,41,200/- and the matching amount of penalty had been recovered, making it total of Rs.22,82,400/-. The penalty being an additional amount in wake of this quashing, the same shall be refunded to the pe oner with interest, within eight weeks."

Assistant Commissioner (St) vs M/S Satyam Shivam Papers Pvt. Limited on 12 January, 2022

Bench: Dinesh Maheshwari, Hrishikesh Roy

1

ITEM NO.3

Court 14 (Video Conferencing)

SECTI

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (C)

No(s).

21132

(Arising out of impugned final judgment and order dated 02-06-2021 in WP No. 9688/2020 passed by the High Court For The State Of Telangana At Hyderabad)

ASSISTANT COMMISSIONER (ST) & ORS.

Petitione

VERSUS

M/S SATYAM SHIVAM PAPERS PVT. LIMITED & ANR.

Responden

(FOR ADMISSION and I.R. and IA No.168896/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 12-01-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s)

Mr. P. Venkat Reddy, Adv.

Mr. Prashant Tyagi, Adv.

Mr. P. Srinivas Reddy, Adv.

M/S. Venkat Palwai Law Associates, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Having heard learned counsel for the petitioners and having perused the material placed on record, we find no reason to consider interference in the well-considered and well-reasoned order dated 2nd June, 2021, as passed by the the High Court for the State of Telangana at Hyderabad in Writ Petition No. 9688 of 2020. Rather, we are clearly of the view that the error, if any, on the 15:02:21 IST Reason:

part of the High Court, had been of imposing only nominal costs of Rs. 10,000/- (Rupees Ten Thousand) on the respondent No. 2 of the writ petition, who is petitioner No.2 before us. The consideration of the High court in the order impugned and the material placed on record leaves nothing to doubt that the attempted inference on the part of petitioner No.2, that the writ petitioner was evading tax because the e-way bill had expired a day earlier, had not only been baseless but even the intent behind the proceedings against the writ petitioner was also questionable, particularly when it was found that the goods in question, after being detained were, strangely, kept in the house of a relative of the petitioner No.2 for 16 days and not at any other designated place for their safe custody.

The High Court has, inter alia, found that:

“41.It was the duty of 2nd respondent to consider the explanation offered by petitioner as to why the goods could not have been delivered during the validity of the e-way bill, and instead he is harping on the fact that the e-way bill is not extended even four(04) hours before the expiry or four(04) hours after the expiry, which is untenable.

The 2nd respondent merely states in the counter affidavit that there is clear evasion of tax and so he did not consider the said explanations.

This is plainly arbitrary and illegal and violates Article 14 of the Constitution of India, because there is no denial by the 2nd respondent of the traffic blockage at Basher Bagh due to the anti CAA and NRC agitation on 4.01.2020 up to 8.30 pm preventing the movement of auto trolley for otherwise the goods would have been delivered on that day itself. He also does not dispute that 04.01.2020 was a Saturday, 05.01.2020 was a Sunday, and the next working day was only 06.01.2020.” The High Court has further found and, in our view, rightly so thus:

“42. How the 2nd respondent could have drawn an inference that petitioner is evading tax merely because the e-way bill has expired, is also nowhere explained in the counter- affidavit.

In our considered opinion, there was no material before the 2nd respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill because even the 2nd respondent does not say that there was any evidence of attempt to sell the goods to somebody else on 06.01.2020. On account of non-extension of the validity of the e-way bill by petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax”.

The High Court has also commented on blatant abuse of the power by the petitioner No.2 and has deprecated his conduct in the following words:

“43. We are also unable to understand why the goods were kept for safe keeping at Marredpally, Secunderabad in the House of a relative of 2nd respondent for (16) days and not in any other place designated for such safe keeping by the State.

44. In our opinion, there has been a blatant abuse of power by the 2nd respondent in collecting from the petitioner tax and penalty both under the CGST and SGST and compelling the petitioner to pay Rs.69,000/- by such conduct.

45. We deprecate the conduct of 2nd respondent in not even advertng to the response given by petitioner to the Form GST MOV-07 in Form GST MOV-09 and his deliberate intention to treat the validity of the expiry on the e-

way bill as amounting to evasion of tax without any evidence of such evasion of tax by the petitioner.” Having said so, the High Court has set aside the levy of tax and penalty of Rs. 69,000/- (Rupees Sixty-nine Thousand) while imposing costs of Rs. 10,000/- (Rupees Ten Thousand), payable by the petitioner No.2 to the writ petitioner within four weeks. The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.

Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic.

Having said so; having found no question of law being involved; and having found this petition itself being rather mis- conceived , we are constrained to enhance the amount of costs imposed in this matter by the High Court.

The High Court has awarded costs to the writ petitioner in the sum of Rs. 10,000/- (Rupees Ten Thousand) in relation to tax and penalty of Rs.69,000/- (Rupees Sixty-nine Thousand) that was sought to be imposed by the petitioner No.2. In the given circumstances, a further sum of Rs. 59,000/- (Rupees Fifty-nine Thousand) is imposed on the petitioners toward costs, which shall be payable to the writ petitioner within four weeks from today. This would be over and above the sum of Rs. 10,000/- (Rupees Ten Thousand) already awarded by the High Court.

Having regard to the circumstances, we also make it clear that the State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person/s responsible for this entirely unnecessary litigation. This petition stands dismissed, subject to the requirements foregoing.

Compliance to be reported by the petitioners.

(NISHA KHULBEY)
SENIOR PERSONAL ASSISTANT

(RAM SUBHAG SINGH)
BRANCH OFFICER



IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 40/2025

Reserved on: 23.6.2025

Decided on: 26 .6.2025

M/s Kunal Aluminum CompanyPetitioner

Versus

State of Himachal Pradesh & ors.Respondents

Coram:

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?¹ yes

For the Petitioner: Mr. Ajay Vaidya, Advocate.

For the Respondents: Mr. Anup Rattan, A.G. with Mr. Ramakant Sharma, Mr. Navlesh Verma, Ms. Sharmila Patial, Mr. Sushant Kaprate, Addl. A.Gs. and Mr. Raj Negi, Dy.A.G.

Justice Tarlok Singh Chauhan, Judge

The instant petition under article 227 of the Constitution of India has been filed for grant of the following substantive reliefs:

- 1. Direct the respondent No.3 or his agents to not to act in furtherance of the order dated 22.08.2024 passed by the Respondent No-3 in Appeal ARN AD0201210011194*

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.

/2020 till the time appellate tribunal in terms of Section 109 of the Act is constituted by the State of Himachal Pradesh and thereafter appeal within prescribed period of limitation as detailed in circular dated 3.12.2019 issued by the Ministry of Finance, Government of India, is filed by the petitioner in the Appellate Tribunal.

2. Set aside Ann P-14 and Ann P-8 being without jurisdiction, arbitrary, unreasonable,

3. Allow the release of Bank Guarantee as furnish by the Petitioner under protest with applicable Interest.

2 The admitted facts of the case are that vehicle bearing registration No. PB03BC-3791 was intercepted at Dherowal, District Solan on 5.11.2020 at 11:54 P.M. and the Incharge of the conveyance/vehicle could not produce any e-way bill for the movement of consignment (Aluminum Scrap HSN 760220010) to respondent No.3. Hence, the vehicle and the goods were detained under Section 129 of the Central Goods and Services Tax Act, 2017 (for short, "the Act") read with Rule 138 of the Central Goods and Services Tax Rules, 2017 (for short, "the Rules").

3 According to the petitioner, it explained to respondent No.3 that the goods were duty paid and the custom duty and IGST tax amounting to Rs. 4,09,144/- had already been paid before clearing the goods from custom port and,

therefore, there was no intention for tax evasion from the side of the petitioner. However, despite this, respondent No.3 passed an order on 20.11.2020, thereby imposing tax of Rs.3,56,183/- and penalty amount of Rs.3,56,183/-. Due to urgent need of the imported material, the goods were released by the respondents on furnishing security by the petitioner in the form of bank guarantee for the aforesaid amount. The petitioner thereafter filed an appeal before the Appellate Authority, who dismissed the same on 22.8.2024.

4 It is vehemently argued by Mr. Ajay Vaidya, learned counsel for the petitioner that the order passed by respondent No.3 and thereafter Appellate Authority is absolutely perverse given the fact that the tax in the instant case already stood paid and thus there was no occasion for the petitioner to have evaded the tax and in such circumstances, non generation of e-way bill would only be a technical error, for which tax penalty, as aforesaid, could not have been fastened upon the petitioner. This, according to the counsel, assumes importance because all the other material particulars and information were already available to the respondents in the other documents carried by the driver of the vehicle. It is further argued that an order imposing penalty for failure to carry out a statutory obligation

is the result of quasi-criminal proceedings and penalty would not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations. After all, penalty would not be imposed merely because it is lawful to do so. Even otherwise, tax and penalty as imposed are totally unwarranted apart from being harsh and oppressive.

5 On the other hand, Mr. Anup Rattan learned Advocate General, assisted by Mr. Sushant Kaprate, learned Additional Advocate General, would argue that the intention of the petitioner to evade tax is writ large as it did not produce the e-way bill in contravention of Rule 138 of the Rules, which clearly prohibits the movement of vehicle containing goods of more than Rs.50,000/- and generating e-way bill by the petitioner after detention itself proves the malafide intention to evade tax.

6 We have heard the learned counsel for the parties have also gone through the records of the case carefully.

7 At the outset, we need to reproduce necessary provisions of law, as contained in Sections 129, 130 of the Act and Rule 138 of the Rules, which read as under:-

Section 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, shall be released,--

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within ¹[fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

Section 130. Confiscation of goods or conveyances and levy of penalty.

(1) Notwithstanding anything contained in this Act, if any person

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit: Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an

option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Rule 138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-

(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 in Part A of FORM GST EWB-01, electronically, on the common portal.

[Provided that where goods are sent by a principal located in one State to a job worker located in any other State, the e-way bill shall be generated by the principal irrespective of the value of the consignment:

Provided further that where handicraft goods are transported from one State to another by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

(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 by railways or by air or by vessel, the said person or the recipient may 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.

2A) Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall either before or after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01:

PROVIDED that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter in Part B of FORM GST EWB-01 on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, as the case may be, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own

conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of less than ten kilometres within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in FORM GST EWB-01:

Provided that where the goods are transported for a distance of less than ten kilometres within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to

another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment:

PROVIDED that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions of sub-rule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate

FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the email is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within 24 hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance the goods have to be transported, as mentioned in column (2) of the said Table:

<i>Sl. No.</i>	<i>Distance</i>	<i>Validity period</i>
1	<i>Upto 200 km</i>	<i>One day in cases other than over dimensional cargo or multimodal shipment in which at least one leg involves transport by ship.</i>
2	<i>For every 200 km or part thereof thereafter</i>	<i>One additional day in cases other than over dimensional cargo or multimodal shipment in which at least one leg involves transport by ship.</i>
3	<i>Upto 20 km</i>	<i>One day in case of over dimensional cargo or multimodal shipment in which at least one leg involves transport by ship.</i>
4	<i>For every 20 km or part thereof thereafter</i>	<i>One additional day in case of over dimensional cargo or multimodal shipment in which at least one leg involves transport by ship.</i>

Provided that the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill

after updating the details in Part B of FORM GSTEWB-01, if required.

Provided also that the validity of the e-way bill may be extended within eight hours from the time of its expiry.”

8 Normally, ‘penalty’ imposed by the Sales Tax Authorities is only a civil liability under the Sales Tax Act, though penal in character. The object behind imposing penalty in tax statutes is to protect public revenue and deter tax evasion while serving a compensatory role for breaches of statutory tax duties.

9 As observed above, penalty imposed by the Sales Tax Authorities is only a civil liability, though penal in character, but for invoking the proceedings under Section 129 (3) of the Act, section 130 thereof is required to be read together where the intent to evade payment of tax is mandatory while issuing notice or while passing the order of detention, seizure or demand of penalty or tax, as the case may be. Meaning thereby that intention to evade tax for the imposition of penalty is *sine qua non* before imposing penalty. In other words, penalty in such like tax matters would require an element of “*mens rea*”. Thus, it can be safely concluded that

the presence of *mens rea* for evasion of tax is a *sine qua non* for imposition of penalty.

10 The Hon'ble Supreme Court in ***CST vs. Satyam Shivam Papers (P) Ltd., (2022) 14 SCC 157*** has upheld the judgment of the Telangana High Court, wherein the Court had held in favour of the assessee and underscored that authorities must not presume evasion of tax solely on procedural lapses, such as expiry of an e-way bill, especially when valid reasons are provided. It was implied by the Hon'ble Court that the penalty by the Assessing Officer under Section 129 of Telangana Goods and Services Tax Act cannot be imposed in absence of *mens rea*. It shall be apt to reproduce paras 7 and 8 of the judgment passed by the Hon'ble Supreme Court, which read as under:-

7. *The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.*

8. Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic.

11 Law with regard to penalty in tax delinquency cases has been very eloquently summarized by a Division Bench of the Allahabad High Court in **M/s Patanjali Ayurved Ltd. vs Union of India and 3 others**, 2025 AHC 92242, which reads as under:-

“a. The object of the legislature in levying a severe penalty is to provide deterrence against tax evasion and to put a stop to a practice, which the legislature considers to be against the public interest. The object of the legislature in enacting a penalty provision is not to provide for punishment under criminal law but to

provide a penalty for concealment of income and that too by providing a deterrent penalty.

b. Deterrence is the main theme of object behind the imposition of penalty.

c. Corpus Juris Secundum states that 'a penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature and is far different from the penalty for a crime or a fine or a forfeiture provided as punishment for violation of criminal and penal laws'.

d. An order made by an adjudicating authority under the statute with regard to penalty is not that of conviction but of determination of the breach of the civil obligation by the offender (See: **Director of Enforcement vs M.C.T.M. Corp. (P) Ltd. and others**, 1996 (2) SCC 471).

e. Blameworthy conduct in adjudicatory proceedings is established by proof only of a breach of the civil obligation under the statute, for which the defaulters are obliged to make amends by payment of the penalty imposed.

f. As per **SEBI v. Cabot International Capital Corporation** reported in 2004 SCCO OnLine Bombay 180 (para 47) the following principles are summarized:

- i. Mens rea is an essential or sine qua non for criminal offence.
- ii. A straitjacket formula of mens rea cannot be blindly followed in each and every case. The scheme of a particular statute may be diluted in a given case.

(iii) If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contradistinction to criminal or quasi-criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word 'penalty' by itself will not be determinative to conclude the nature of proceedings being criminal or quasi-criminal. The relevant considerations being the nature of the functions being discharged by the authority and the determination of the liability of the contravenor and the delinquency.

(iv) Mens rea is not an essential element for imposing a penalty for breach of civil obligations or liabilities.

v. There can be two distinct liabilities, civil and criminal, under the same Act.

g. In relation to Section 129 of the CGST Act, this court in ***M/s Hindustan Herbal Cosmetics (supra)*** has held that the principle that emerges is that in certain cases the presence of mens rea for evasion of tax is a *sine qua non* for imposing of penalty.

39. Upon a perusal of the above principles, it is blatant that penalty may be imposed in cases where mens rea is a requirement. It is the scheme of a particular statute that shall determine whether for imposition of penalty there is a requirement for mens rea or not. However, when a taxing statute speaks of prosecution, for those offences mens rea or guilty intent is a *sine qua non*. As held in ***Cabot International Capital Corporation (supra)***, if from the scheme, objects and words used in the statute, it appears that the proceedings for imposition of penalty are adjudicatory in nature, in contradistinction to criminal and

quasi-criminal proceedings, the determination is of the breach of civil obligation by the offender. The word penalty by itself will not be determinative to conclude the nature of proceedings being criminal or quasi criminal. It is crystal clear that in a particular statute penalty may be imposed for certain contraventions that do not require mens rea and in the same statute penalty may be imposed for contraventions which are far more serious in nature wherein mens rea would be a desideratum.”

12 If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contradistinction to criminal or quasi-criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word 'penalty' by itself will not be determinative to conclude the nature of proceedings being criminal or quasi-criminal. The relevant considerations are the nature of the functions being discharged by the authority and the determination of the liability of the contravenor and the delinquency.

13 Normally, *mens rea* is not an essential element for imposing a penalty for breach of civil obligations or liabilities. There can be two distinct liabilities, civil and criminal, under the same Act.

14 As regards Section 129 of the Act, the Allahabad High Court in **M/s Hindustan Herbal Cosmetics vs. State of U.P. (Neutral Citation No. 2024:AHC:209)** has held as under:-

"8. Upon perusal of the judgments, the principle that emerges is that presence of mens rea for evasion of tax is a sine qua non for imposition of penalty. A typographical error in the e-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty.

In the case of M/s. Varun Beverages Limited (supra) there was a typographical error in the e-way bill of 4 letters (HR-73). In the present case, instead of '5332', '3552' was incorrectly entered into the e-way bill which clearly appears to be a typographical error. In certain cases where lapses by the dealers are major, it may be deemed that there is an intention to evade tax but not so in every case. Typically when the error is a minor error of the nature found in this particular case, I am of the view that imposition of penalty under Section 129 of the Act is without jurisdiction and illegal in law."

15 In **Roli Enterprises v. State of UP and Others reported in [2024] 158 taxmann.com 468 (Allahabad)**, the Allahabad High Court has noted that the non-generation of Part B of e-way bill was a mere technical error, and since the invoice contained the details of the vehicle transporting the

goods, there was no intention on the part of the petitioner therein to evade tax. Accordingly, the penalty levied in the said case was held to be unjustified.

16 In the instant case, tax, as observed above, already stands paid, therefore, there is no question that the petitioner was trying to evade tax.

17 In **Modern Traders v. State of U.P. 2018 SCC Online Allahabad 6054**, the Allahabad High Court was dealing with a case wherein the vehicle carrying the goods was intercepted solely on the ground that there was no e-way bill accompanying the goods. The e-way bill in the said case was generated as soon as information about interception of the vehicle was received. Accordingly, the Court concluded that once e-way bill has been produced and if all the relevant documents accompanied the goods, then seizing the goods and imposing penalty cannot be justified. It shall be apt to reproduce paras 10 and 11 of the judgment, which read as under:

10. The learned counsel for the petitioner has also brought to our notice that respondent No. 3, with malice intention, has deliberately not mentioned the time in either of the orders passed being the seizure order under section 129(1) and penalty under section 129(3). Both the

aforesaid orders are passed on May 5, 2018, i.e., before the date which has been indicated in the interception memo being May 6, 2018. Learned counsel for the petitioner has submitted that since the petitioner has placed the e-way bill on May 5, 2018 itself respondent No. 3 has illegally proceeded to pass the impugned orders before any physical verification done.

11. We find substance in the submission of the learned counsel for the petitioner. Once the e-way bill is produced and other documents clearly indicates that the goods are belongs to the registered dealer and the IGST has been charged there remains no justification in detaining and seizing the goods and asking the penalty.

18 Upon a reading of the aforesaid judgment, one cannot help, but draw a parallel between the fact situation obtaining in the aforesaid case with the one in the instant case. Here also, the petitioner had generated the e-way bill before the order imposing penalty was passed, which fact the respondents failed to take into account and this failure on the part of the respondent No.3 was not even corrected by the appellate authority. Imposition of penalty must be backed by potent reasoning, which is totally absent in the instant case.

19 In ***Axpress Logistics Pvt Ltd. v. Union of India, 2018 SCC Online Allahabad 6089***, the Court quashed the penalty order issued under Sections 129(1) and 129(3) of the

UPGST Act, 2017, since the petitioner therein had produced e-way bill before the detention and seizure of the goods and vehicle.

20 Thus, what emerges from a perusal of the aforesaid judgments is that, if penalty is imposed, in the presence of all the valid documents, even if e-way bill has not been generated, and in the absence of any determination to evade tax, it cannot sustain.

21 Adverting to the facts of the instant case, order passed by respondent No.3 stands on a foundationless ground since there is no intention to evade tax, which could sustain the impugned order(s). There is no reason whatsoever recorded by respondent No.3 for imposing tax as well as penalty.

22 Surprisingly, the appellate authority, merely on the basis of observations made by the Hon'ble Supreme Court in para 8 of **Satyam Shivam Papers's case** (supra) upheld the order passed by respondent No.3 by observing as under:-

In the recent case, Hon'ble Apex Court in the case of M/s Satyam Shivam Papers Pvt. Ltd. Vs. Assistant Commissioner State & Others held that:-

"In our considered opinion, there was no material before the 2nd respondent to Come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill because even

the 2nd respondent does not say that there any evidence of attempt to sell the goods to somebody else on 06.01.2020. On account of extension of the validity of the e-way bill by petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax",

So, in view of the facts & Judgment by the Hon'ble Supreme Court in the case of M/s Satyam Shivam Papers Pvt. Ltd. Vs Assistant Commissioner State & Others it has become quite clear that penalty u/s 129(1)(a) of the Act cannot be imposed simply for the procedural lapses unless there is an intention to evade tax on the part of the appellant. In the present case the appellant has failed without any reasonable cause, to file the E-way Bill on the portal. So, he has attempted to evade tax and the mala-fide intention to evade tax cannot be rule out. Declaring the transaction on the E-way Bill portal after the intentional lapse has been detected, does not absolve the Appellant from the action u/s 129 of the Act.

23 To say the least, there has been no sound rationale to pass the order imposing penalty. After all, the essence of any penal imposition is intrinsically linked to the presence of *mens rea*, a facet conspicuously absent from the record of the instant case. The order, therefore, stands vulnerable to challenge on the grounds of disproportionate punitive measures meted out in the absence of concrete evidence substantiating an intent to evade tax liabilities. Clearly, the imposition of penalties without

a clear indication of intent has resulted in an arbitrary exercise of authority, undermining the principles of justice. Tax evasion is a serious allegation that necessitates a robust evidentiary basis to withstand legal scrutiny. The mere rejection of post-detention e-way bills, without a cogent nexus to intention to evade tax, is fallacious.

24 Mere technical errors, without having any potential financial implications, should not have been made the grounds for imposition of penalties. The underlying philosophy is to maintain a fair and just tax system, where penalties are proportionate to the gravity of the offence.

25 In the realm of taxation, imposition of penalty serves as a critical measure to ensure compliance with tax laws and regulations. However, a nuanced understanding prevails within legal frameworks that for penalties to be justly imposed, there must be a demonstrated actual intent to evade tax. This principle underscores the importance of distinguishing technical errors from deliberate attempts to evade tax obligations.

26 Penalties have to be reserved for cases where an intentional act to defraud the tax system is evident, rather than for inadvertent technical errors. The legal foundation for this

principle lies in the recognition that taxation statutes are not designed to punish inadvertent mistakes but rather deliberate acts of non-compliance. The burden of proof, therefore, rests on tax authorities to establish the actual intent to evade tax before imposing penalties on taxpayers. This safeguards individuals and entities from punitive measures arising from honest mistakes, administrative errors, or technical discrepancies that lack any malicious intent.

27 The authorities need to meticulously examine the facts and circumstances surrounding each case to establish the presence or absence of intentional tax evasion.

28 The requirement of intent to evade tax for the imposition of penalties is a fundamental principle that underpins the fairness and integrity of taxation systems. Recognizing the distinction between technical errors and intentional evasion is essential for maintaining a balanced and equitable approach to tax enforcement (see : **Falguni Steels vs State of U.P. and others**, 2024 AHC 11990).

29 In view of aforesaid discussions, we find merit in the instant petition and the same is accordingly allowed. Consequently, the impugned orders, Annexures P-14 and P-8 are quashed. The respondents are directed to release bank

guarantee as furnished by the petitioner (under protest) with applicable rate of interest within a period of four weeks from today. Pending application(s), if any, also stands disposed of.

For compliance, list on 04.08.2025.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

26.6.2025
(pankaj)

High Court of H.P.

20.09.2023
PB
Sl. No.17.

WPA 22612 of 2023

M/s. Ishaan Plastics Pvt. Ltd. & Anr.
Vs
The Deputy Commissioner of State Tax
Bureau of Investigation (South Bengal)
Durgapur Zone & Ors.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah.
... For the Petitioners.

Mr. A. Ray,
Mr. T. M. Siddiqui,
Mr. T. Chakraborty.
.....for the State.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order of the appellate authority under WBGST Act confirming the order of the adjudicating authority imposing the penalty for transporting the vehicle in question after expiry of the e-way bill which was expired on 27.12.2022 at 11.59 p.m. and the vehicle in question was intercepted at 8.37 a.m. on 28.12.2022 that there is a time gap between the expiry of the bill and interception of the vehicle in question is about 9 hrs., which is less than a day and writ petitioner submits that there was no intention of any evasion of tax on the part of the petitioner.

Learned advocate appearing for the petitioner in support of his contention relies on an order of this Court dated 1st March, 2022 in WPA No. 11085 of 2021 in the case of Ashok Kumar Sureka – Vs – Assistant Commissioner, State Tax, Durgapur Range and also a Division Bench decision of this Court dated 12th May, 2022 in MAT No. 470 of 2022.

Learned advocate appearing for the respondents could not make out any case against the petitioner that there was any deliberate or willful intention of the petitioner to avoid and evade the tax.

In view of the facts and circumstances of the case which appears from record and considering the aforesaid two orders of this Court, this writ petition being WPA 22612 of 2023 is disposed of by setting aside the aforesaid impugned order of the appellate authority and adjudicating authority and as a consequence, petitioner will be entitled to get the refund of the penalty in question subject to compliance of legal formalities.

With this observation, this writ petition being WPA 22612 of 2023 stands disposed of.

(Md. Nizamuddin, J.)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 23835 of 2022

=====

SHREE GOVIND ALLOYS PVT. LTD.

Versus

STATE OF GUJARAT

=====

Appearance:

MR. HEMAL SHAH(6960) for the Petitioner(s) No. 1,2

MS POOJA ASHAR, ASST.GOVERNMENT PLEADER for the Respondent(s)
No. 1,2

=====

CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 01/12/2022

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. Petitioner is a Private Limited Company.
Petitioner No.2 is a transport authority, which is the name and style of "Shree Ram Road Carriers".
2. It is before this Court seeking to question and challenge the authority of the respondent demanding the sum of Rs. 7,53,364/- as demand of tax and penalty dated 04.11.2022 under section 129(3) of the Central Goods & Services Tax Act, 2017 ("the Act" for short).
3. It is the grievance on the part of the petitioner

that the truck had remained in non-motorable condition and thus, the goods which were to be delivered on or before 17.10.2022 could not be delivered in time and on 19.10.2022 at the time of inspection, because of the expiration of the e-Way bill number, it came to the notice of the officer that the entire truck along with the impugned goods has been seized. The petitioner has been issued GST Form MOV No.1,2,6 and 7 where he was called upon to remain present and eventually the order of 4.11.2022 was passed demanding the tax and penalty.

4. The petitioner has sought the following reliefs:

“14 PRAYERS:-

The petitioner therefore prays to this Hon'ble Court to:

- a) Your lordship may be pleased to issue appropriate writ, order or direction in the nature of certiorari thereby quashing and setting aside the impugned order passed on 4/11/2022 by the respondent authority thereby demanding the sum of Rs.7,53,364/- as tax and penalty u/s 129(3) of the CGST Act, 2017;
- b) Your lordship may be pleased to issue appropriate writ, order or direction in the nature of certiorari thereby quashing and setting aside the order of detention under section 129(1) of the GST Act read with section 20 of the IGST Act, 2017, dated

19/10/2022 passed by the respondent authorities.

c) Your Lordship may be pleased to issue appropriate writ, order or direction in the nature of Certiorari thereby quashing and setting aside the notice under section 129930 of the CGST Act, 2017 and section 20 of the IGST Act, 2017 issued on 19/10/2022 by the respondent authorities.

d) Your Lordship may be pleased to issue appropriate writ, order or direction in the nature of mandamus thereby ordering the release of goods and impugned vehicle bearing no.GJ-12BW-8082;

e) Pending admission, hearing and final disposal of this petition, an ad interim relief may be granted in the favour of the present petitioners, for release of the impugned vehicle and goods with any conditions that the Hon'ble High Court may deem fit.

f) Such other and further relief/s as may be deemed just and necessary in the facts and circumstances of the present case may kindly be granted."

5. We issued notice on 25.11.2022 making it returnable on 30.11.2022. On issuance of notice, learned Assistant Government Pleader appeared for the State, where it is attempted to justify the detaining of the goods bearing invoice value of Rs. 24,69,358/- along with Conveyance No.GJ-12-BW-8082 on the ground that e-Way bill had expired 41 hours before the time of interception. According to him, the period between the expiry of

validity of e-Way bill and time of interception was not substantiated and no justification was offered by conveyance driver. There was no satisfactory reason for non-updation of the e-Way bill which was given.

6. We have heard learned advocates on both the sides and also have considered the material on the record. We notice section 129, which provides as under:

“Detention, seizure and release of goods and conveyances in transit

129(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, shall be released.-

(a) on payment of penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount

payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) xxx xxx xxx

(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)

(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section(1), all proceedings in respect of the notice specified in sub-section(3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3);

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section(3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”

7. It is not in dispute that in the instant case, e-Way Bill had expired 41 hours before and the release

of goods of conveyance and transit through the authority concerned.

8. We could notice that the detention is also on the ground that the goods are of expiration of the e-Way bill number, which had expired during the transit and the same cannot be the ground for detaining and seizure of M.S. Billet along with the vehicle truck.
9. This Court in ***Govind Tobacco Manufacturing Co. vs. State of U.P.***, [2022] 140 taxmann.com 383 (Ahahabad) has held that as there is expiry of e-Way bill on transit, the seizure of said vehicle and the goods is not permissible under the law. In the case before the High Court of Madhya Pradesh at Jabalpur in ***M/s. Daya Shaker Singh vs State of Madhya Pradesh*** passed in Writ Petition No.12324 of 2022 on 10.08.2022, where also the Court had intervened considering the fact that the respondent could not establish any element of evasion of tax with fraudulent intent or negligence

on the part of the petitioner. Delay was of almost 4 ½ hours before the e-Way bill could expire. It appeared to be *bona fide* and without establishing any fraudulent intention. Here also what is found is that there is no fraudulent intention for this to happen.

10. Resultantly, present petition stands allowed. The impugned order dated 04.11.2022 demanding the sum of Rs.7,53,364/-is quashed and set aside. The order of detention dated 19.10.2022 as well as the notice issued under section 129(3) of the Act dated 19.10.2022 are also quashed and set aside.

(MS. SONIA GOKANI, J.)

(MAUNA M. BHATT,J)

SUDHIR

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Neutral Citation No. - 2024:AHC:19158

Court No. 1

Present:

The Hon'ble Justice Shekhar B. Saraf

WRIT TAX No. - 141 of 2023

M/s GLOBE PANEL INDUSTRIES INDIA PVT. LTD.

v.

STATE OF U.P. AND OTHERS

For the petitioner : Shubham Agarwal, Advocate
For the Respondents : Rishi Kumar, Additional Chief
Standing Counsel

(Judgment dicated in open Court)

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the penalty order dated January 16, 2023 passed by the respondent No.3/Assistant Commissioner, State Tax Department, Sector 1, Mobile Squad, Deoria under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") and the appellate order dated January 30, 2023 passed by the respondent No.2/Additional Commissioner, Grade-2 (Appeal)-I, State Tax, Judicial Division, Gorakhpur.

2. Learned counsel appearing on behalf of the petitioner submitted that the particular vehicle was accompanied by two e-Invoices and two E-Way Bills. He further submitted that the goods matched the description in the e-Invoices and the E-Way Bills. The only discrepancy that was found at the time of detention was that one of the E-Way Bills had expired. Apart from this discrepancy, there is no other finding with regard to intention of the petitioner to evade tax. He relied upon the documents to indicate that the vehicle had broken down. The same is evidenced by the letter of the mechanic, who had repaired the particular vehicle. Furthermore, the

movement of the goods have been traced by way of the 'fast tag' chart. He further submits that none of these documents were considered by the authorities. He further relies upon the judgments in **M/s Pepsico India Holdings Limited Lucknow v. Commissioner of Trade Tax** reported in **2003 U.P.T.C. 856** and **Jain Shudh Vanaspati Limited Ghaziabad and Others v. State of U.P. and Others** reported in **1983 U.P.T.C. 198** to buttress his arguments that the penalty cannot be imposed merely for the reason that the said goods were not accompanied by requisite documents.

3. Learned Additional Chief Standing Counsel submitted that the E-Way Bill is the necessary part of the documents and the expired E-Way Bill does not fulfill the requirements of the Rules. He further submitted that the authorities have considered the arguments raised by the petitioner and the orders indicate that the E-Way Bill has expired ten days before the date of detention. He further submitted that the petitioner could not explain the reason for not issuing a fresh E-Way Bill even though it was obvious that the petitioner was aware of the said expiry. He thus submitted that the penalty was in order.

4. This Court in **M/s Hindustan Herbal Cosmetics v. State of U.P. and Others** (Writ Tax No.1400 of 2019 decided on January 2, 2024) and **M/s Falguni Steels v. State of U.P. and Others** (Writ Tax No.146 of 2023 decided on January 25, 2024) held that mens rea to evade tax is essential for imposition of penalty. The factual aspect in the present case did not indicate any intention whatsoever to evade tax. Furthermore, the documents that have been relied upon by the petitioner have not been considered by the authorities. The authorities have dealt with the issue with regard to the expiry of the E-Way Bill and held that no explanation was offered by the petitioner with regard to the fresh generation of the E-Way Bill, as the same had expired ten days before the detention. However, it is to be noted that the goods in the vehicle were for two e-Invoices and two E-Way Bills and only one E-Way Bill had expired. There is no dispute with regard to the consignor and consignee nor any dispute with regard to the description of

the goods in the vehicle. In relation to the e-Invoices and the E-Way Bills, the authorities have not been able indicate any intention whatsoever on behalf of the petitioner to evade tax. Indubitably, there is a technical violation that has been committed by the petitioner. However, the authorities have not been able to indicate in any manner that the E-Way Bill had been used repeatedly nor have they made out any case with regard to an intention to evade tax by the petitioner. Accordingly, this Court is of the view that such a technical violation by itself without any intention to evade tax cannot lead to imposition of penalty under Section 129(3) of the Act. This view is fortified by a catena of judgments as indicated above.

5. In light of the same, this Court is unable to agree with the findings of the authorities, and accordingly, the impugned orders dated January 16, 2023 and January 30, 2023 are quashed and set aside.

6. This Court directs the respondents to refund the amount of tax and penalty deposited by the petitioner within a period of four weeks from date.

7. The instant writ petition is allowed in aforesaid terms. There shall be no order as to the costs.

Date: 05.02.2024
Kuldeep

(Shekhar B. Saraf, J.)

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 23.08.2022*

+ **W.P.(C) 8585/2022**

NIRMAL KUMAR MAHAVEER KUMARPetitioner

Through: Mr Rahul Gupta with Mr Rakesh Kumar,
Adv.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX AND
ANOTHERRespondent

Through: Mr Anurag Ojha, Sr Standing Counsel
for R-1.

Mr Gautam Narayan, ASC with Ms
Pragya Barsaiyan, Adv. for R-2 & 3.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. We have heard the learned counsel for the parties at some length.
2. This writ petition is directed against the order dated 31.12.2021 passed by respondent no.2/Office of Appellate Authority (Delhi GST).
3. Respondent no.2 *via* the impugned order dated 31.12.2021, has sustained the demand raised by respondent no.3/Assistant Commissioner, Ward-112, Special Zone, Delhi, towards tax and penalty.

4. The amount demanded towards tax is Rs.2,33,100/-.An equal amount has been also demanded towards penalty i.e., Rs.2,33,100/-.

4.1 Thus, as is obvious, penalty has been imposed on the petitioner, at the rate of 100%.

4.2 In this regard, the respondent no. 3 appears to have taken recourse to the provisions of Section 129(3) of the Central Goods and Services Tax Act, 2017 [in short “CGST Act”].

5. What has emerged from the record, is that the impugned demand was raised against the petitioner on account of the fact that the e-way bill generated had expired. In other words, when the goods were intercepted, the e-way bill was no longer valid.

6. The record also shows, that the subject goods were being transported from Guwahati to New Delhi.

7. The e-way bill was valid till 28.09.2020.

7.1 The subject goods were intercepted on 29.09.2020 at 3:40 AM, by which time the e-way bill had expired.

8. On record, we have two e-way bills. These are marked as Annexure P-1 and Annexure P-3, appended on pages 25 and 30 of the casefile respectively.

9. A comparison of the two e-way bills, even according to Mr Gautam Narayan, who appears for respondent nos.2 and 3, shows that the vehicles were changed.

9.1 The explanation given across the bar, was that since the earlier vehicle had broken down, another vehicle was requisitioned for transporting the goods.

10. It appears, that the petitioner did not ask for extension of time for completion of journey. Resultantly, when the vehicle was intercepted, it was found that the e-way bill generated had already expired.

11. It is on this account, that a showcause notice was issued to the petitioner on 30.09.2020 in a prescribed form i.e., Form GST MOV-07.

11.1 This was issued as required under Section 129(3) of the CGST Act.

12. The reason given for issuance of the show-cause notice was “*goods not covered by valid documents*”. The proposed tax and penalty were also indicated in the said show-cause notice.

12.1 However, in consonance with the principles of natural justice, the petitioner was accorded seven days to file a reply with respect to the proposed demand made towards tax and penalty, and to appear before the concerned officer for a hearing on 07.10.2020.

13. We are informed that the petitioner paid the amount demanded towards tax and penalty, as he was keen that the goods reached the designated destination at the earliest.

13.1 The demand was liquidated on the same date on which it was made i.e., 30.09.2020.

14. Consequentially, the petitioner did not avail of the opportunity to demonstrate, that the goods could not reach their destination before the expiry of the validity period of the e-way bill.

15. It is not in dispute, that against the subject goods, the tax stands paid, and that the impugned demand has been raised, as noticed above, only for the reason that at the time of interception, the e-way bill was not valid.

16. This is not a case where the petitioner intended to evade tax. However, the impugned demand seeks not only the payment of tax, but also penalty.

17. Given the aforesaid circumstances, we are of the view, that the petitioner needs to be given another chance to establish, as to why the subject goods did not reach their designated designation before the expiry of the e-way bill.

18. Accordingly, the impugned order dated 31.12.2021 passed by respondent no. 2 is set aside.

19. The matter is remanded to respondent no. 2, to take a fresh decision in the matter, after giving the petitioner due opportunity to produce relevant material/evidence to establish its case, that the delay in transporting the

goods to their destination was on account of genuine reasons.

19.1 While carrying out this exercise, the concerned officer will also bear in mind, the provisions of section 126 of the CGST Act, which *inter alia* adverts to omission or mistake in documentation which is easily rectifiable.

20. Needless to add, respondent no. 2 will issue a notice, in writing, to the petitioner, indicating the date and time when he intends to hear the petitioner and/or his authorized representative, in support of his case.

21. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

AUGUST 23, 2022/pmc

W.P.(C) 8585/2022

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सत्यमेव जयते

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 17TH DAY OF AUGUST 2022 / 26TH SRAVANA,
1944

WP(C) NO. 17223 OF 2022

PETITIONER:

SANSKRUTHI MOTORS
FLAT NO.1, GURUKRUPA APARTMENT, PLOT NO.J1-
J2, SECTOR NO.3, BHOSARI, PUNE, MAHARASHTRA,
PIN - 411 039, REPRESENTED BY N.R.KALKUTE,
PARTNER.

BY ADVS.
V.PREMCHAND
SURYA MOHAN P.

RESPONDENTS :

- 1 THE JOINT COMMISSIONER (APPEALS) II
STATE GOODS & SERVICE TAX DEPARTMENT,
ERANHIPALAM, KOZHIKODE, PIN - 673 006.
- 2 THE STATE TAX OFFICER (INT) SQUAD NO.I
WAYANAD DISTRICT, PIN - 673 121.

ADV. DR. THUSHARA JAMES - SR. G.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17.08.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioner is an entity engaged in the transportation of goods. It has an agreement with M/s.Tata Motors Limited for transportation of commercial and passenger vehicles and chassis, which are driven to various destinations as required by that Company. On the request of M/s. Tata Motors Limited, the petitioner, transported a new tipper lorry (the goods) from Tamil Nadu to Kozhikode, Kerala. The said vehicle was intercepted and detained by the Assistant State Tax Officer of the Kerala GST Department, and a show cause notice was issued on 9.7.2019 at 12.20 p.m. It was found that the e-way bill had expired on 8.7.2019. Since the vehicle was detained, the petitioner moved this Court through W.P.(C)No.19284/2019 and the lorry was directed to be released on production of bank guarantee. Following the directions of this Court, the notice was adjudicated and Ext.P3 order was issued on 16.8.2019, imposing a penalty of Rs.5,24,017/- on the petitioner along with a demand for IGST for the same amount making a total demand of Rs.10,48,034/- on the petitioner. The petitioner preferred Ext.P4 appeal against Ext.P3 order under Section 107 of the Central Goods and Services Tax Act/ State Goods and Services Tax Act (hereinafter also referred to as the 'CGST/SGST Acts' or as 'GST Law'). The appeal filed by the petitioner

as Ext.P4 has been returned, stating that the appeal cannot be entertained as the petitioner had not paid any admitted tax, and there is no pre-deposit of 10% of the disputed tax. It was also pointed out that stamp paper equivalent to 1% of the disputed tax is not remitted towards the legal benefit fund.

2. The learned counsel for the petitioner would contend that there was no warrant for imposing any penalty on the petitioner in the facts and circumstances of the case. It is submitted that there is no suppression or evasion of tax. It is submitted that the e-way bill was valid up to 11.59 p.m. on 8.7.2019, and the vehicle was intercepted the next day. It may be noted here that though the writ petition proceeds (based on the endorsement in Ext.P1), that the vehicle was intercepted at 12.20 a.m. on 9.7.2019, it is clear from a reading of Ext.P3 that the detention was at 12.20 p.m. on 9.7.2019. It is pointed out by the learned counsel that the vehicle had failed to cross the check post on 8.7.2019 itself because it developed some mechanical problems on its way to Kozhikode and had to be taken to a workshop and also since the Bandipur Highway was closed during night hours. He also relied on Ext.P6 judgment of this Court to contend that for minor discrepancies, a major penalty cannot be imposed. He also relied on the judgment of the Madras High Court in WMP (MD) No.4567/2020 to contend that where there is only a technical breach and

W.P.(C)No.17223/2022

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no intention to evade tax, there is no justification for imposing a heavy penalty under the GST laws. He also relied on the judgment of the Madhya Pradesh High Court in W.P No.6118/2021 to contend that where there is only a bonafide mistake in the e-way bill, only a minor penalty can be imposed. The judgments of the Madras High Court and Madhya Pradesh High Court are produced as Exts.P7 and P8 along with the writ petition. The learned counsel appearing for the petitioner placed considerable reliance on the judgment of a Division Bench of the Telangana High Court in ***M/s. Satyam Shivam Papers Pvt.Ltd & Another v. Asst. Commissioner (ST) and others; 2021 SCC OnLine TS 698 : (2021) 50 GSTL 459.*** It is submitted that the fact situation, in this case, is almost identical to the fact situation considered by the Telangana High Court. It is pointed out that there also the validity of the e-way bill had expired just before the detention and that on a consideration of the provisions of Section 129 of the CGST/SGST Acts, the Court held that when there was a valid explanation for the expiry of the e-way bill and there were no materials to suggest evasion of tax, the power of detention under Section 129 was wrongly invoked and was a blatant abuse of power by the authorities concerned. He points out that the Court had even proceeded to impose costs on the officer concerned in the judgment referred to above. He submits that the State had challenged the

judgment of the Telangana High Court before the Hon'ble Supreme Court and the Supreme Court, through order in SLP(C) No.21132/2021 had dismissed the Special Leave Petition finding that the High Court had acted correctly and even observed as under:-

“The analysis and reasoning of the High Court commend to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.”

3. The learned senior Government Pleader appearing for respondents would contend that the contention of the learned counsel for the petitioner that the detention is within 20 minutes of the expiry of the e-way bill is absolutely incorrect. She states that the detention was at 12.20 p.m and the indication in Ext.P1 that the detention was on 12.20 a.m. is a genuine mistake. She relied on the judgment of a Division Bench of this Court in ***Ranjilal Damodaran v. Asst. State Tax Officer and another; 2020 SCC OnLine Ker 23975***, to contend that the petitioner could not have been allowed to continue the transport

without extending the validity of the e-way bill as provided under Rule 138 (10) of the CGST Rules. It is submitted that though there is an enabling provision, the transport could not have continued without extending the validity of the e-way bill. She also placed reliance on the judgment of a learned Single Judge of this Court in ***Podaran Foods India Pvt. Ltd and others v. State of Kerala and others; 2021 (1) KHC 471***, to reiterate the scheme of Section 129 of the Act. It is contended that since it is the admitted case of the petitioner that the e-way bill had expired when the detention was effected, there is absolutely no jurisdictional error or infirmity warranting interference with Ext.P3 at the hands of this Court under Article 226 of the Constitution of India at this stage of the proceedings. It is submitted that the petitioner has an effective remedy by way of an appeal and the defects pointed out in respect of Ext.P4 appeal, through Ext.P5 memo are justified as they only refer to the statutory requirements for maintaining the appeal under Section 107 of the CGST/SGST Acts. It is contended that the fact situation in the judgments relied on by the petitioner are completely different and do not apply in the case of the petitioner.

4. Having heard the learned counsel for the petitioner and the learned senior Government Pleader, I am of the view that the petitioner is entitled to succeed in this case. The availability of the alternate remedy

does not dissuade me from granting relief as I am clearly of the view that the demand for tax and the imposition of a major penalty, in the facts of this case, was clearly without jurisdiction. The learned single Judge of this Court in ***Podaran Foods India's*** case (*supra*) had observed as under:-

“5. Tax legislations in our country, especially those dealing with indirect taxes, have always found the need to have provisions for detaining goods and vehicles while in transit to ensure that tax that is legitimately due to the State is not lost through deliberate evasion by unscrupulous assesseees. It is therefore that such provisions have been incorporated as incidental machinery provisions for levying the tax as contemplated in the statute concerned. The detection of evasion, and the consequential recovery of tax due to the State, are seen as acts that subserve larger public interest, and hence the restrictions to the exercise of the constitutional freedoms are seen as reasonable.

6. It follows, as a corollary to the above position, that unless there is a possibility of tax evasion, a detention of goods and vehicles cannot be justified, and that an authority vested with the powers of detention under a taxing statute has to bear in mind that the provisions authorizing detention have to be strictly construed for what is at stake is a constitutional right, fundamental or otherwise, of a citizen. There is also the aspect of fairness in the levy and collection of taxes that must inform the authorities entrusted with the said task, for fair implementation of the law has

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been recognised as an essential attribute of the rule of law in a republic such as ours.” (Emphasis is supplied)

The Learned Judge also held as follows:-

“It has to be borne in mind that Section 129 forms part of the machinery provisions under the Act to check evasion of tax and a detention can be justified only if there is a contravention of the provisions of the Act in relation to transportation of goods or their storage while in transit.”

The reason for invoking Section 129 of the CGST laws in this case, is only one - that the e-way bill has expired. A Division Bench of this Court in ***Renjilal Damodaran's*** case (supra), no doubt, observed that transport could continue only after e-way bill had been extended in the manner provided for in Rule 138(10) of the CGST Rules. However, the said finding does not compel me to take a view different from the view taken by the Telangana High Court in ***Satyam Shivam's*** case (supra) as the Division Bench has not considered the question as to whether the imposition of a major penalty along with a demand for IGST was justified for the reason that the e-way bill had expired. In the facts of the present case, it is clear from a reading of Ext.P3 that the vehicle (the goods) was accompanied by an invoice which showed the value of the vehicle to be Rs.23,96,505.64 including IGST at Rs.5,24,016.86. It was also

accompanied by an e-way bill that was valid up to 8.7.2019. The only discrepancy noted was that the e-way bill had expired on 8.7.2019. The officer who issued Ext.P3 has not found that there was any attempt to evade any tax. In Ext.P.6 judgment this Court held as follows:-

7. I have considered the rival contentions. Taking note of the circumstances arising in this case, this Court is of the view that the merits of the contention raised by the petitioner can be considered, despite the availability of alternative remedy.

8. Based on representations received pointing out the imposition of penalty even in cases of minor discrepancies in the invoice/e-way bill etc. and despite the absence of major irregularities in those documents, the Central Board of Direct Taxes and Customs, by virtue of the powers conferred under section 168 of the Act issued a Circular No.64/38/2018 dated 14-09-2018, providing as follows:

“4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section 129 of the CGST Act may be initiated.

“5. Further, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

- a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;*
- b) Error in the pin code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;*
- c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;*
- d) Error in one or two digits of the document number mentioned in the e-way bill;*

e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

6. In case of the above situations, penalty to the tune of Rs.500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1,000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.”

9. A reading of the above statutory Circular reveals that the purpose of issuing such a Circular was to mitigate the hardships being caused to taxpayers for minor discrepancies, which had no bearing on the liability to tax or on the nature of goods being transported. The circular is statutory in nature and is binding on the Tax Officers. Thus minor discrepancies cannot be penalized contrary to the mode and procedure contemplated under the Circular.

10. However, the Circular refers to only six instances of minor discrepancies. Strictly speaking, the present situation is not covered by the six instances mentioned in the Circular. However, the analysis of the six instances reveals those discrepancies which have no bearing on tax liability and are caused on account of bonafide mistakes like typographical errors, or otherwise are regarded as minor discrepancies. In fact, the situation in the present case can be even brought under the broader umbrage of clause (d) of para 5 of the Circular.

11. In the instant case, the discrepancy pointed out is only on the date of invoice which is shown as 03.02.2021 while that shown in the e-way bill was 02.03.2021. All other details in the invoice and the e-way bill including the nature of goods transported, the details of consignor and consignee, the GSTIN of supplier and recipient, place of delivery, invoice number, value of goods, HSN code, vehicle number etc. tallied and had no discrepancy. Thus the error noticed is insignificant and not of any consequence for invoking the power conferred under section 129 of the Act to impose tax and penalty.

12. The Madras High Court had in Tvl.R.K.Motors v. State Tax Officer [(2019) 72 GST 501 (Madras)] considered the applicability of the circular and granted relief to the taxpayer therein. The said decision lends credence to the view I have taken above.

13. The situation arising in the instant case, warranted imposition of only a minor penalty as contemplated under the Circular. In view of the above, the imposition of tax and penalty upon the petitioner to the extent imposed in Ext.P6 is perverse and illegal, warranting interference under Article 226 of the Constitution of India.

I am of the view that this is a case where the aforesaid judgment of this Court squarely applies. Further, as noticed by the Division Bench of the Telangana High Court in ***Satyam Shivam's*** case (*supra*), the officer was duty bound to consider the explanation offered by the petitioner for the expiry of the e-way bill. In Ext P.3 (the impugned order), the explanation offered by the petitioner has been rejected, stating that no evidence of repair being carried out has been produced. The further justification for imposing a penalty/tax is that the petitioner had ample time to revalidate the E-way bill. There is no finding in Ext P.3 that there was any attempt to evade tax. Further, the judgment of the Telangana High Court in ***Satyam Shivam's*** case (*supra*) was challenged before the Supreme Court and the Special Leave Petition was dismissed by a speaking order. There is clearly a merger of the judgment of the Division Bench of the Telangana High Court with the order of the Supreme Court in the Special Leave Petition mentioned above. Therefore, the view taken by the Telangana High Court as affirmed by the Supreme Court is a binding precedent as far as this Court is concerned.

In view of the aforesaid findings, this writ petition is allowed. Ext.P3

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will stand quashed. The matter will stand remanded to the 1st respondent who shall consider the amount of penalty to be imposed on the petitioner taking note of the findings in this Judgment and also keeping in mind the observations of this Court in Ext.P6 judgment (extracted hereinbefore), after affording an opportunity of hearing to the petitioner. In the light of the above findings, it is not necessary to examine the question as to whether the conditions stipulated in Ext.P5 for maintaining Ext.P4 appeal are valid.

Sd/-

**GOPINATH P.
JUDGE**

acd

W.P.(C)No.17223/2022

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APPENDIX OF WP (C) 17223/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 09/07/2019.
- Exhibit P2 TRUE COPY OF THE JUDGMENT DATED 15/07/2019 IN WP O NO 19284/2019 OF HIGH COURT OF KERALA.
- Exhibit P3 TRUE COPY OF THE ORDER DATED 16/08/2019 PASSED BY THE 2ND RESPONDENT.
- Exhibit P4 TRUE COPY OF THE APPEAL MEMORANDUM DATED 08/11/2019.
- Exhibit P5 TRUE COPY OF THE TRUE COPY OF THE NOTICE DATED 05/01/2022 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT.
- Exhibit P6 TRUE COPY OF THE JUDGMENT DATED 06/04/2022 IN WP (C) NO. 7716/2021 OF THIS HON'BLE COURT.
- Exhibit P7 TRUE COPY OF THE JUDGEMENT DATED 30/03/2022 IN WMP (MD) NO. 4567/2022 OF HON'BLE MADRAS HIGH COURT.
- Exhibit P8 TRUE COPY OF THE JUDGMENT DATED 30/03/2022 IN WP NO 6118/2021 OF HON'BLE MADHYA PRADESH HIGH COURT.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18982 of 2018

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ORSON HOLDINGS COMPANY LIMITED & 1 other(s)
Versus
UNION OF INDIA & 2 other(s)

=====

Appearance:

MR VINAY SHRAFF WITH MR PARTH S SHAH(8375) for the Petitioner(s)
No. 1,2

MR SIDDARTH RAMI, AGP for the Respondent(s) No. 2

MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1

UNSERVED REFUSED (N) for the Respondent(s) No. 3

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 18/01/2023

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. At the time of issuance of notice on 7.12.2018 in this petition which is filed under Article 226 of the Constitution of India, this Court has passed the following order:

“1. This petition challenges the constitutional validity of rule 138(10) of the Central Goods and Services Tax Rules, 2017 / Gujarat Goods and Services Tax Rules, 2017 as being unconstitutional and violative of Articles 14, 19(1)(g) and 301 of the Constitution of India, to the extent the said provision restricts validity period of the e-

way bill in terms of distance to be travelled in a day.

2. Mr. Vinay Shraff, learned advocate with Mr. Vishal Dave, learned advocate for the petitioners invited the attention of the court to the notice under section 129(3) of the Central Goods and Service Tax Act, 2017 (Annexure "J" to the petition), to point out that in terms of the said notice, the petitioner was directed to appear before the State Tax Officer-2. It was submitted that in response to the notice, the petitioner filed its reply. Reference was made to the impugned order passed under section 129(3) of the Act, to point out that the same has been passed on 28.09.2018 without waiting for the date of hearing, that is, 02.10.2018. It was submitted that therefore, the impugned order has been passed in breach of the principles of natural justice.

3. The attention of the court was invited to sub-section (4) of section 129 of the Act, which provides that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. It was submitted that despite the fact that in the show cause notice the date has been fixed, the order has been passed prior to the said date, without giving an opportunity of hearing to the petitioner, which is in breach of sub-section (4) of section 129 of the Act.

4. *It was further pointed out that penalty is sought to be imposed under section 129(1) of the Act, whereas section 122(1)(xiv) of the Act provides that where a taxable person who transports any taxable goods without the cover of documents as may be specified in this behalf, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government, etc., whichever is higher.*

5. *Reference was made to section 73 of the Act, which provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts, and more particularly, to sub-section (8) thereof, which provides that where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded. It was submitted that in the facts of the present case, the petitioner had deposited the amount of tax and penalty within thirty days from the date of issue of the notice and therefore, the petitioner*

was entitled to the benefit of sub-section (8) of section 73 of the Act.

6. Reference was also made to section 74 of the Act, which provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts, and more particularly, to sub-section (8) thereof, which provides that where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twentyfive per cent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded. It was submitted that therefore, even in the case of fraud or willful misstatement or suppression of facts, the statute provides for payment of penalty equivalent to twenty-five per cent of the tax within thirty days from the date of the notice.

7. It was further submitted that the statute is required to be read as a whole and that section 129 of the Act ought not to have been read in isolation. Reliance was placed upon the decision of the Supreme Court in Kailash Chandra and others v. Mukundi Lal and others, AIR 2002 SC 829, wherein the court has held that a provision in the statute is not to be read in isolation. It has to be

read with other related provisions in the Act itself, more particularly, when the subject matter dealt with in different sections or parts of the same statute is the same or similar in nature.

8. *The attention of the court was also invited to the circular No.64/38/2018-GST dated 14th September, 2018 and more particularly, clause (5) thereof, which provides that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the situations enumerated thereunder. It was submitted that the situations enumerated in the said circular are illustrative and not exhaustive. Therefore, a mistake in writing distance can be deemed to have been included within the ambit of the said circular.*

9. *Another contention raised by the learned advocate for the petitioner is that in terms of the Government of India circular No.3/3/2017-GST dated 5th July, 2017, the functions under different sections of the Central Goods and Service Act, 2017 or the rules made thereunder, are specifically delegated to the officers in terms of the said circular. It was pointed out that the powers under sub-section (3) of section 129 of the Act have been delegated to the Deputy or Assistant Commissioner of Central Tax.*

It was contended that the impugned order has been passed by the State Tax Officer, who is not an officer empowered to exercise powers under sub-section (3) of section 129 of the Act and therefore, suffers from lack of jurisdiction.

10. Having regard to the submissions advanced by the learned advocate for the petitioner, Issue Notice returnable on 10th January, 2019. Direct Service is permitted today.”

2. On 13.10.2022, when the matter came up for hearing, Mr. Shah for the petitioners, on instructions, submitted that the petitioners have not pressed for the prayers at paragraphs 7(a) to 7(c) and thus, he is giving up the challenge to the vires, particularly, Rule 138(10) of the CGST Rules and GGST Rules.

3. The only prayers that survives for consideration of this Court are prayers para 7(d) and 7(e).

4. We have heard learned advocate for the petitioners who has urged that the case of the petitioners is covered by the decision of this Court in

the case of Special Civil Application No.23835 of 2022 in the case of *Shree Govind Alloys Pvt.Ltd. V/s State of Gujarat*. It is further urged that in his case also, the way bill has expired and it appears to be bonafide and not with any fraudulent intent.

5. As the challenge to the Rule 138(10) of the CGST Rules has not been insisted, learned senior counsel Mr.Raval assisted by learned advocate urges that he has nothing to offer, whereas learned AGP Mr.Kathiriya appearing for the State in wake of the challenge given up of Rule 138(10) of the CGST Rules has urged this Court to consider the peculiar facts of this case, however, there is no dispute to the fact that in this case, this matter is squarely covered by the decision of Special Civil Application No.23835 of 2022.

6. Having heard both the sides, at the outset, it is to be noted that in case of *Shree Govind Alloys Pvt. Ltd. (supra)*, the respondent had challenged the authority of the respondent demanding the tax and penalty under Section 129(3) of the Central Goods & Services Tax Act, 2017, where the goods, which were to be delivered on or before 17.10.2022, could not be delivered in time and on 19.10.2022 when inspected, some of the e-Way bill

numbers had shown expired. The entire truck along with the goods had been seized on account of expiration of the e-Way bill. Therefore, the Court had, after a detailed consideration, held that e-Way bill had expired 41 hours before and the release of goods of conveyance and transit through the authority concerned. Relevant observations are made in paragraphs 6 to 10 are as under :

“6. We have heard learned advocates on both the sides and also have considered the material on the record. We notice section 129, which provides as under:

“Detention, seizure and release of goods and conveyances in transit

129(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, shall be released.-

(a) on payment of penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) xxx xxx xxx

(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)*

(4) *No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

(5) *On payment of amount referred in sub-section(1), all proceedings in respect of the notice specified in sub-section(3) shall be deemed to be concluded.*

(6) *Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days fro the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under*

sub-section (3);

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section 93) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”

7. It is not in dispute that in the instant case, e-Way Bill had expired 41 hours before and the release of goods of conveyance and transit through the authority concerned.

8. We could notice that the detention is also on the ground that the goods are of expiration of the eWay bill number, which had expired during the transit and the same cannot be the ground for detaining and seizure of M.S. Billet along with the vehicle truck.

9. This Court in Govind Tobacco Manufacturing Co. vs. State of U.P., [2022] 140 taxmann.com 383 (Ahahabad) has held that as there is expiry of eWay

bill on transit, the seizure of said vehicle and the goods is not permissible under the law. In the case before the High Court of Madhya Pradesh at Jabalpur in M/s. Daya Shaker Singh vs State of Madhya Pradesh passed in Writ Petition No.12324 of 2022 on 10.08.2022, where also the Court had intervened considering the fact that the respondent could not establish any element of evasion of tax with fraudulent intent or negligence on the part of the petitioner. Delay was of almost 4 ½ hours before the e-Way bill could expire. It appeared to be bona fide and without establishing any fraudulent intention. Here also what is found is that there is no fraudulent intention for this to happen.

10. Resultantly, present petition stands allowed. The impugned order dated 04.11.2022 demanding the sum of Rs.7,53,364/- is quashed and set aside. The order of detention dated 19.10.2022 as well as the notice issued under section 129(3) of the Act dated 19.10.2022 are also quashed and set aside.”

7. In the instant case also, as we could notice that the goods of the said vehicle has been detained at 6:05 p.m. at Amirgadh on 27.9.2018, after about expiry of 48 years. This case is squarely covered by the

decision of this Court which has not been further challenged and even otherwise, from the facts which are robust in nature, it can be gathered that there does not appear to be any ill-intent on the part of the petitioner to use the expired e-Way bill. The company is situated at Howrah, West Bengal and the place of delivery was Jamnagar, Gujarat and in transit, this e-Way bill has expired.

8. The petition deserves to be allowed and is allowed.

9. The impugned order dated 28.09.2018 demanding a sum of Rs.63,40,000/- is quashed and set aside.

10. The order of detention as well as the further notice issued under Section 129(3) of the CGST Act in FORM GST MOV-07 is also quashed and set aside, with all consequential benefits.

11. The tax of Rs.11,41,200/- and the matching amount of penalty had been recovered, making it total of Rs.22,82,400/-. The penalty being an additional amount in

wake of this quashment, the same shall be refunded to the petitioner with interest, within eight weeks.

12. Rule is made absolute to the aforesaid extent.

(SONIA GOKANI, J)

(SANDEEP N. BHATT, J)

SRILATHA

