



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 5465 OF 2025 (T-RES)

BETWEEN:

M/S BVM TRANS SOLUTIONS PRIVATE LIMITED
BESIDES ROYAL OAK, NO. 42/9, 42/10, MEENAKUNTE
VILLAGE, JALA HOBLI, BENGALURU - 562157.
REPRESENTED BY MR PREM SUNDAR,
DEPUTY GENERAL MANAGER
(COMPANY REGISTERED UNDER THE COMPANIES ACT)

...PETITIONER

(BY SMT.VEENA J.KAMAT, ADV. FOR
SRI. GOVINDRAYA KAMATH K.,ADVOCATE)

AND:

1. COMMERCIAL TAX OFFICER
(ENFORCEMENT) -55, SOUTH ZONE,
KORAMANAGALA, BENGALURU - 560047.
2. JOINT COMMISSIONER
OF COMMERCIAL TAXES (APPEALS)-4,
SHANTINAGAR, BENGALURU - 560027.
3. ADDITIONAL COMMISSIONER
OF COMMERCIAL TAX, ZONE-II, GANDHINAGAR,
BENGALURU - 560009.

...RESPONDENTS

(BY SRI. K. HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLES PRAYING TO SET ASIDE
THE ORDER DTD. 29.11.2024 PASSED BY THE R-3 BEARING NO.





ADCOM(SMR)-2/APP-4/GST/SMR-02/2024-25 UNDER SECTION 108(1) OF THE KGST AND CGST ACT R/W RULE 109B(2) OF THE KGST/CGST/RULES, 2017 AT ANNEX-A BY ISSUING WRIT OF CERTIORARI. & ETC.,

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks for the following reliefs:-

A. Set aside the order dated 29.11.2024 passed by the Respondent No. 3 bearing No. ADCOM(SMR)-2/APP-4/GST/SMR-02/2024-25 under Section 108(1) of the KGST & CGST Act R/w Rule 109B(2) of the KGST/CGST Rules, 2017 at Annexure - A by issuing Writ of Certiorari;

B. Declare that no penalty under Section 129 of the Karnataka Goods and Service Tax Act, 2017 and Central Goods and Services Tax Act, 2017 can be levied when tax has been paid on the goods and merely on the ground that Part - B of E-Way bill is not updated by issuing a Writ of Mandamus;

C. Consequently, set aside order of the Respondent No. 2 vide bearing de G57. A.P.No. 300/23-24 order dated 18.03.2024 under Section 107(11) of the KGST and CGST Act, 2017 to the extent of levy of penalty of Rs. 25,000/- at Annexure K by issuing a Writ of Certiorari;



D. Grant any other relief in favour of the Petitioner as this Hon'ble Court deems fit in the facts and circumstances of the above case, in the interest of justice and equity.

2. Heard learned counsel for the petitioner and learned AGA for the respondents and perused the material on record.

3. A perusal of the material on record will indicate that the petitioner is a transport service provider which was transporting the subject goods from Chennai to Bangalore in the subject vehicle bearing Registration No.TN-12 AK-8272, when the subject conveyance and goods were intercepted on 14.11.2023 by the respondents who conducted inspection on 15.11.2023 and passed an order of detention on 16.11.2023 and issued a notice under Section 129(3) the KGST Act, proposing to levy penalty on the ground that Part-B of the e-way bill did not contain / mention the vehicle number at the time of interception. The petitioner having submitted a detailed reply dated 22.11.2023 specifically stating that due to oversight and inadvertence by way of a bonafide mistake and without any malafide intention to avoid / evade payment of GST, the petitioner had omitted to fill the vehicle number in Part-B of the e-



way bill, the said omission may be condoned and the subject goods and vehicle be released in favour of the petitioner.

4. Subsequently, on 01.12.2023, the petitioner made a further submission offering to pay penalty under protest so as to obtain release of the goods, since there was urgency for the petitioner to supply the same to its recipient i.e., M/s.Bosch Limited, Bangalore, which was a reputed company. The said request made by the petitioner was rejected by the 1st respondent vide order dated 02.12.2023 imposing penalty under Section 129(3) and (6) of the KGST Act. The petitioner paid the said penalty on 08.12.2023 and also furnished a bank guarantee in favour of the respondents, who passed a release order dated 08.12.2023 and released the subject goods and vehicle in favour of the petitioner, who delivered the goods to the recipient company on 09.12.2023.

5. The petitioner challenged the aforesaid order dated 02.12.2023 by filing an appeal before the 2nd respondent – appellate authority who passed an order dated 18.03.2024 and set aside the said order by partly allowing the appeal and directed levy of general penalty of Rs.25,000/- on the petitioner and further directed refund of



the balance amount and for release of the bank guarantee submitted by the petitioner back to it expeditiously.

6. Subsequently, before the said order of the 2nd respondent – appellate authority was implemented, the 3rd respondent initiated *suo moto* revision proceedings under Section 108 of the KGST Act which was contested by the petitioner and culminated in the impugned order dated 29.11.2024 whereby the order dated 18.03.2024 of the appellate authority was set aside and the penalty order dated 02.12.2023 passed by the 1st respondent was restored by the revisional authority. Aggrieved by the impugned order dated 29.11.2024 passed by the 3rd respondent – revisional authority, petitioner is before this Court by way of the present petition.

7. The respondents have filed their statement of objections and contested the petition.

8. A perusal of the material on record including the orders passed by respondents 1 to 3 referred to supra, will indicate that the 3rd respondent has set aside the order passed by the appellate authority on the ground that non-filling of the registration number of the subject vehicle in Part-B of the e-way bill would entail imposition



of penalty under Section 129 of the KGST Act and not general penalty under Section 125 of the KGST Act as held by the appellate authority. In this context, it is pertinent to note that in the case of ***Kamal Envirotech Private Limited vs. Commissioner of GST – W.P(C) 12142/2022 Dated 17.01.2025***, the Division Bench of the Delhi High Court as under:-

“1. The writ petitioners have approached this Court aggrieved by the demands raised by the respondents in purported application of the provisions enshrined in Section 129 of the Central Goods & Services Tax Act, 2017¹ and which have subsequently come to be Affirmed by the appellate authorities. The Order-in-Original which is impugned by Kamal Envirotech Pvt. Ltd.² is dated 26 September 2020 and which ultimately came to be Affirmed by the appellate authority in terms of its decision rendered on 15 January 2022. In the matter of M/s. Zeon Life Sciences Ltd.³, a demand originally came to be created against that writ petitioner by an order dated 12 January 2021, and which too was upheld by the appellate authority by its order of 15 February 2022. The demands themselves emanate from an allegation levelled against the writ petitioners of goods having been transported under an incomplete E-way Bill⁴, Part B whereof was incomplete or missing. The factum of taxes leviable on such goods having been duly paid is not disputed.

2. The respondents, however, would bid us to hold that Section 129 is a penal provision that necessarily entails



a levy and demand of tax. They view that provision as envisaging a compulsory exaction or impost. In fact, they urge us to recognize that provision as being one which contemplates the levy of a statutory penalty. They would contend that notwithstanding the absence of mens rea, fraudulent motive or an intent to evade tax, where goods are sought to be transported in contravention of the provisions of the Act, a demand of tax would inevitably arise. It is the correctness of the aforesaid view which is questioned by the writ petitioners.

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4. Kamal Envirotech is stated to have imported goods from Italy under Bill of Entry No. 8906095 on which Customs and Integrated Goods and Services Tax⁵ had been duly paid. Those goods were being transported to its factory at Neemrana, Rajasthan under Goods and Services Tax⁶ Invoice No. KEPL/DEL/021. Undisputedly, while Part A of the EWB had been duly filled out, the transporter appears to have failed to generate and complete Part B thereof. In the course of transit, the conveyance was intercepted on 24 September 2020. The GST Officer is stated to have noticed the discrepancy in the EWB as noted above and thus detained the goods for physical verification and inspection. It is the case of the writ petitioner that the discrepancy in the EWB upon being discovered was immediately rectified on 25 September 2020 and a corrected Part B generated that day itself. Post- verification of goods, the GST Officer proceeded to pass an order of detention on 26 September 2020. The



said officer proceeded to raise a demand of Central GST7 and State GST8 amounting to INR 19,80,000/- together with penalty of an equivalent amount. It is asserted by the petitioner that it was compelled to get the goods released by submitting a bond under protest on 05 October 2020 whereafter the goods came to be handed over on the next day. Aggrieved by the order in terms of which a tax liability stood created, the petitioner instituted an appeal which came to be dismissed and led to the institution of the present writ petition.

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17. We, at the outset, note that the penalties that are spoken of in Sections 122 and 124 are those which would be attracted in case of infractions of statutory obligations and conditions imposed by the Act. However, Sections 122 and 124 in unequivocal terms couple the levy of penalty to tax evaded, tax not deducted, failure to establish reasonable cause or the wilful furnishing of false information. The penalty which is contemplated under Section 123 is one which would be attracted as a consequence of a failure to respond to a notice that may be issued by the proper officer. Section 125 then speaks of the imposition of a penalty if a person were to contravene any of the provisions of the Act or the Rules made thereunder.

18. The submission of Mr. Aggarwal that Section 129 being a provision creating a statutory penalty and intended to override the scheme of Chapter XIX of the Act by virtue of the non-obstante clause that it incorporates, does not appear



to be sound for reasons which we assign hereinafter. We in HDFC Bank Ltd. v. Commr. of Value Added Tax MANU/DE/8325/2023 had an occasion to explain in some detail the circumstances in which the levy of a penalty in terms of a statutory provision would be justified. Some of the factors that we had identified as being germane for penalties being imposed were guilt, dishonest conduct or acting in conscious disregard of a binding obligation. After noticing various decisions rendered by the Supreme Court on that subject including the celebrated decisions in Hindustan Steel Ltd. v. State of Orissa MANU/SC/0418/1969 : 1969:INSC:166 : (1969) 2 SCC 627 and State of Gujarat & Ors. v. M/s. Saw Pipes Ltd. MANU/SC/0393/2023 we had held as follows:

"22. It appears to us, and which view is reinforced with the respondents seeking to draw support for their submissions from the judgment in Saw Pipes Ltd., that they appear to read Section 86 (10, (14) & (15) as envisaging the levy of a statutory penalty. However, in our considered opinion, the aforesaid premise and on which the case of the respondents appears to be founded, is wholly incorrect. As noticed hereinabove, sub-sections (10), (14) & (15) embody the principles of mens rea when they speak of "false, misleading or deceptive" conduct of an assessee. It would thus be wholly incorrect to construe those provisions as being representative of penalties statutorily leviable.

23. We note that there are other sub-sections of Section 86 which embody the principles of a statutory penalty. For instance, sub-section (5) deals with the contingency of an assessee failing to comply with Section 21(1). The aforesaid provision obliges a registered dealer to apprise the Commissioner of circumstances which may warrant amendments in its registration. A similar example of a statutory penalty stands embodied in sub-section (6) and which authorises the levy of a penalty in case a dealer



violates Section 22(2). An assessee becomes liable to be penalized under Section 86(9) consequent to a failure to furnish a return or failing to append requisite documents with a return or its refusal to comply with a direction to revise a return. As would be manifest from a close scrutiny of sub-sections (5), (6) and (9) of Section 86, those provisions envisage the levy of penalties consequent to a failure on the part of a registered dealer to discharge certain obligations or a failure on the part of an assessee to comply with statutory duties as imposed. In such situations, the Act envisages penalty to be imposed as a necessary corollary. The aforementioned provisions do not vest the Assessing Officer with any discretion in the matter of imposition of a penalty.

24. In contrast to the above, sub-sections (10), (14) & (15), and which as we had an occasion to note hereinbefore, envisage the levy of a penalty only in case an assessee is charged with "false, misleading or deceptive" conduct. The concept of penalty being founded on mens rea and misleading conduct is no longer a principle which can brook of any doubt. This is evident from the following passage as appearing in the decision of the Supreme Court in Hindustan Steel Ltd. and which the Tribunal itself had an occasion to notice:

"8. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will 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 obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provision of the Act where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."



25. We also take note of the reiteration of the aforesaid position in law as appearing in the decision of the Supreme Court in Pratibha Processors. While the respondents had sought to derive support for their submissions in this respect from the decision of the Supreme Court in Saw Pipes Ltd., we find that those submissions proceed in ignorance of the evident fact that Sections 45(6) and 47(4A) of the 1969 Act constituted instances of statutory penalties.

26. The penalty under Section 45(6) of the said statute which formed the subject matter of consideration became automatically leviable upon a failure of the assessee to pay the amount of tax as assessed or re-assessed. Similarly, section 47(4A) of the 1969 Act provisioned for the levy of a penalty in a situation where a dealer failed to pay tax within the time prescribed. Those provisions thus contemplated the levy of a penalty and the assessee becoming liable to face penal action in case of an admitted failure to adhere with statutory obligations. The penalty contemplated under Section 45(6) and 47(4A) of the 1969 Act thus did not rest on a discretion which may otherwise have been vested in the authority concerned. It was in the context of the aforementioned two statutory provisions that the observations of the Supreme Court in Saw Pipes Ltd. are liable to be appreciated."

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21. In order to examine the correctness of the rival submissions, it would be apposite to briefly advert to the provisions enshrined in Chapter XIX of the Act and which have been noticed in some detail in the preceding parts of this decision. It becomes pertinent at the outset to note that Sections 122, 123, 124, 125 and the other provisions which are placed in Chapter XIX create distinct provisions insofar as the impositions of penalties are concerned. For instance, Section 122(1) prescribes in absolute terms "a penalty of ten thousand rupees or an amount equivalent to the tax evaded" as being leviable in case a taxable person is found to have



infracted any of the conditions which are spoken of in clauses (i) to (xxi) of that provision. Similar is the position which obtains under Section 122(1A).

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25. The Explanation which stands placed at the end of Section 126(1) fortifies our opinion in this respect with the Legislature clarifying that a minor breach would be one where the amount of tax involved is less than INR 5,000/- and that an omission or mistake shall be considered to be "easily rectifiable" if the same be an error apparent on the face of the record. We also bear in consideration that Section 126 stands placed in Chapter XIX and is titled "General disciplines related to penalty". The principles thus enshrined in that provision are clearly intended to regulate the power to impose penalties generally as well as to guide the proper officer in examining each case and ensuring that the levy of a penalty is commensurate with the severity of the breach.

26. We so hold additionally in light of the unambiguous terms in which that provision stands couched and infused as it is with the legislative policy of absolving a person from the imposition of penalties for what the statute describes to be minor breaches or a failure to abide by procedural requirements. The statute also enjoins officers under the Act to desist from imposing a penalty in cases where the omission or mistake in documentation is found to be easily rectifiable and was one which was not tainted by a fraudulent intent or the outcome of gross negligence.



27. The mandatory command of the Legislature is manifest from Section 126(1) ordaining "no officer under this Act shall impose any penalty from minor breaches...". The moderation which the statute contemplates is further underlined by Section 126(2) which bids officers administering the Act to bear in mind that penalty should be imposed dependent on the facts and circumstances of each case and be commensurate with the degree and severity of the breach.

28. The respondents, however, would argue that the non-obstante clause, and with which Section 129(1) commences, is liable to be read as overriding and eclipsing all other provisions contained in Chapter XIX, including Section 126 of the Act. In our considered opinion, the aforesaid submission proceeds on a fallacious understanding of the extent to which the legislative device of a non-obstante may be intended to extend. Regard may be had to the fact that the non-obstante clause in Section 129 is not ordained to operate in respect of any particular provision or set of provisions contained in the Act. If the submission as addressed by the respondents in absolute terms were to be accepted, Section 129 would be liable to be recognized as being one which overrides all other provisions and thus being the repository of a special and overriding power to levy a penalty irrespective of the principle of moderation which the Legislature had introduced in a provision which precedes its placement under the Act.



29. In our considered view, the non-obstante clause in Section 129 cannot possibly be interpreted as being intended to override what had been specifically provided in Section 126 or annihilate the rules of guidance which stood embodied therein.

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32. As was explained by the Supreme Court in R.S. Raghunath, while examining the scope and extent of a non-obstante clause, one would have to bear in mind that the usage of the expression "notwithstanding anything contained..." cannot be interpreted so as to scuttle down or abrogate other provisions forming part of that enactment and which may not necessarily be in conflict with the provision in which that clause appears. In R.S. Raghunath, the Supreme Court pertinently observed that the usage of the expression "notwithstanding anything contained..." could on a holistic examination of the statutory scheme be found to have been possibly placed by way of abundant caution as opposed to limiting the ambit and scope of the special rules. It was in this context that it held that absent a patent conflict or inconsistency between two competing sets of statutory provisions, the non-obstante clause would not be liable to be construed as obliterating all other provisions.

33. Of significance are some of the succinct observations which appear in JIK Industries where it was pertinently observed that in modern legislation, a non-obstante clause has a contextual and limited application. JIK Industries too was a case where Section 147 of the



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Negotiable Instruments Act, 1881 employed such a clause without reference to any particular section of the *Code of Criminal Procedure, 1973*. In such a situation, the Supreme Court opined that the non- obstante clause and the extent of its impact would have to be evaluated on the basis of the intent and purpose of insertion of such a clause.

34. Of equal significance were the observations rendered by the Constitution Bench of the Supreme Court in *Madhav Rao Jivaji Rao Scindia v. Union of India* MANU/SC/0050/1970 : 1970:INSC:250 : (1971) 1 SCC 85 which were noticed in paragraph 65 of the report and where it had been held that a non-obstante clause used in a "blanket fashion" would necessarily entail the Court determining the scope of its application against strict parameters. It was thus held that a broad and general sweep of the phrase "notwithstanding anything contained in this Act" cannot be interpreted as inexorably intended to override all other provisions of the statute or one which is contemplated to eclipse the other parts of the enactment completely. If the contention as advanced by the respondents were to be accepted, it would amount to us recognizing Section 129 as casting an unshakable shadow over all other provisions contained in Chapter XIX of the Act. We thus find ourselves unable to accord such an interpretation or read Section 129 in the manner as suggested.

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38. What we seek to emphasize is that the transgressions and contraventions of statutory obligations, and which are amplified in Section 122, clearly cannot be placed in the category of a minor infraction nor are those mistakes which could be said to be easily rectifiable. The expression "contravention" as appearing in Section 129 would thus have to be understood bearing in mind the special provisions which are contained in Section 126 and which indubitably carves out an exception with respect to minor breaches as well as mistakes and omissions which could be easily rectified. In fact, and as would be manifest from the discussion which ensues, even the Central Board of Indirect Taxes and Customs¹² had understood Section 129 as being tempered by the limits that the statute itself imposes while seeking to moderate the power to levy a penalty.

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43. In our considered opinion, the law on the subject has been correctly enunciated in Synergy Fertichem and where Pardiwala J. [as his Lordship then was] rightly observed that non-obstante clauses are not always liable to be regarded as intended to repeal or completely supersede all the other provisions of the law. His Lordship explained the purpose of such a clause as essentially intended to remove obstructions which may otherwise arise in the implementation of the enacting provision to which the non-obstante clause is attached. However, and as has been consistently held by courts, the extent of its application is to



be discerned from the context in which it is employed and if worded in broad and sweeping terms to be construed strictly. Ultimately, as the decisions noticed by us explain, one would have to ascertain the extent to which the Legislature intended it to apply.

44. As was noticed by us in the preceding parts of this decision, Section 129 is principally concerned with the release of goods and conveyances which may have been detained or seized. That is clearly not a subject which is regulated or controlled by any of the other provisions contained in Chapter XIX of the Act. The use of the non-obstante clause is thus liable to be appreciated and construed in the aforesaid light. In our considered opinion, since the subject of levy of penalty in connection with goods being transported in contravention of the Act had not been previously dealt with, the Legislature thought it fit and appropriate to deploy the non-obstante in order to deal with that subject. The extent of the "notwithstanding" phrase which introduces Section 129 into the statute book is thus liable to be construed in that light and thus the limit of its essay acknowledged accordingly.

45. We also find ourselves unable to read Section 129 as embodying an intendment of the Legislature to either override or completely supersede and obliterate Section 126. Accepting such an interpretation would clearly amount to depriving a person of the benefit of the principles of moderation and modulation which Section 126 introduces and enjoins to be borne in consideration while considering



the levy of a penalty. The provisions contained in sub-section (6) of Section 126 also cannot possibly be read as whittling down the application of sub- sections (1) and (2) of Section 126 when it ordains that it would not apply to cases where penalties stand specified either as a fixed sum or percentage. The prescription of a fixed sum or percentage for purposes of quantification of penalty, as was noticed above, is one which the Act adopts principally in sub-sections (1), (1A), (1B) and (2) of Section 122. We have already found that the transgressions which are spoken of in Section 122(1) can neither be said to be trivial nor rectifiable. Section 126(6) would thus operate only insofar as transgressions would fall within the ambit of the sub-sections referred to above. All the other provisions comprised in Chapter XIX either use the expression "which may extend to" or "shall not exceed". Those are thus instances where the penalty in any case cannot be described to be a fixed sum or one expressed as a fixed percentage.

46. *Section 126(6) of the Act provides that its provisions will not apply in cases where the penalty under the Act is specified as a fixed sum or as a fixed percentage. This is further reflective of the Legislature seeking to distinguish between discretionary penalties and those that are predetermined. By excluding fixed penalties from the scope of this section, the law ensures clarity and consistency in its application, underscoring the principle that certain penalties are non- negotiable and uniformly applicable irrespective of the circumstances of the breach.*



47. It would also be pertinent to note that in Synergy Fertichem, the Gujarat High Court emphasized that authorities must distinguish between trivial breaches and serious contraventions under the Act. The High Court clarified that confiscation is penal in nature and should only apply in cases of a clear intent to evade tax as opposed to mere procedural lapses such as an incomplete EWB when other valid documents are present. Further, issuing confiscation notices under Section 130 at the initial stage, without proper grounds or evidence of an intent to evade tax, the High Court held would be unjustified and would render Section 129 ineffective. The Court ultimately came to conclude that a reasoned and fair approach is essential to avoid an unnecessary detention of goods and conveyances. It would be pertinent to refer to the following principles which the High Court came to formulate in Synergy Fertichem:

"97. The questions whether the movement of the consignments sans valid e- way bills constitutes a substantive error or a mere technical breach are to be considered by the assessing officer, having regard to the provisions of sections 122, 125 and 126 of the Act as well all relevant instructions and Circulars issued by the Board, including the circular extracted above.

98. A Division Bench of the Kerala High Court in the case of Assistant State Tax Officer v. Indus Towers Limited MANU/KE/1685/2018 : [2018] 55 GSTR 404 (Ker); [2018] KHC 498; (2018) 3 KLT SN 53, had an occasion to consider a question of release of goods ordered as provided under sub-section (1) or order passed under sub-section (3) of section 129 of the Act. It was held thus (page 419 in 55 GSTR) :

"... The finding that the transaction would not fall within the scope of taxable supply under the statute, cannot be sustained for reason of there being no declaration made under rule 138. The resultant finding



that mere infraction of the procedural rules cannot result in detention of goods though they may result in imposition of penalty cannot also be sustained. If the conditions under the Act and Rules are not complied with, definitely section 129 operates and confiscation would be attracted. "

99. It is practically impossible to envisage various types of contravention of the provisions of the Act or the Rules for the purpose of detention and seizure of the goods and conveyances in transit. The contravention could be trivial or it may be quite serious sufficient enough to justify the detention and seizure. This litigation is nothing but an outburst on the part of the dealers that practically in all cases of detention and seizure of goods and conveyance, the authorities would straightway invoke section 130 of the Act and thereby would straightway issue notice calling upon the owner of the goods or the owner of the conveyance to show-cause as to why the goods or the conveyance, as the case may be, should not be confiscated. Once such a notice under section 130 of the Act is issued right at the inception, i.e, right at the time of detention and seizure, then the provisions of section 129 of the Act pale into insignificance. The reason why we are saying so is that for the purpose of release of the goods and conveyance detained while in transit for the contravention of the provisions of the Act or the rules, the section provides for release of such goods and conveyance on payment of the applicable tax and penalty or upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) to clause (1) of section 129. Section 129(2) also provides that the provisions of sub- section (6) of section 67 shall mutatis mutandis apply for detention and seizure of goods and conveyances. We quote section 67(6) as under :

"67(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be."

100. Section 129 further provides that the proper officer, detaining or seizing the goods or conveyances, is obliged to issue a notice, specifying



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the tax and penalty payable and, thereafter, pass an order for payment of such tax and penalty. Clause (4) provides that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. Clause (5) provides that on payment of the amount, referred to in sub- section (1) of the proceedings in respect of the notice, specified in sub-section (3) are deemed to be concluded, and in the last, clause (6) provides that if the tax and penalty is not paid within 14 days of detention or seizure, then further proceedings would be initiated in accordance with the provisions of section 130.

101. We are of the view that at the time of detention and seizure of goods or conveyance, the first thing the authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rules. The second step in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was with an intent to evade the payment of tax. Section 135 of the Act provides for presumption of culpable mental state but such presumption is available to the Department only in the cases of prosecution and not for the purpose of section 130 of the Act. What we are trying to convey is that in a given case, the contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was with the necessary intent to evade payment of tax.

102. In such circumstances, referred to above, we propose to take the view that in all cases, without any application of mind and without any justifiable grounds or reasons to believe, the authorities may not be justified to straightway issue a notice of confiscation under section 130 of the Act. For the purpose of issuing a notice of confiscation under section 130 of the Act at the threshold, i. e., at the stage of section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction, the authority concerned is convinced that the contravention was with a definite intent to evade payment of tax. We may give one simple example. The driver of the vehicle is in a position to produce all the relevant documents to the satisfaction of the authority concerned as regards payment of tax, etc.,



but unfortunately, he is not able to produce the e-way bill, which is also one of the important documents so far as the Act, 2017 is concerned. The authenticity of the delivery challan is also not doubted. In such a situation, it would be too much for the authorities to straightway jump to the conclusion that the case is one of confiscation, i. e, the case is of intent to evade payment of tax.

103. We take notice of the fact that practically in all cases, after the detention and seizure of the goods and the conveyance, straightway notice is issued under section 130, and in the said notice, one would find a parrot like chantation "as the goods were being transported without any valid documents, it is presumed that the goods were being transported for the purposes of evading the tax". We have also come across notices of confiscation, wherein it has been stated that the driver of the conveyance is presumed to have contravened the provisions of the Act or the Rules with an intent to evade payment of tax. This, in our opinion, is not justified. The resultant effect of such issue of confiscation notice at the very threshold, without any application of mind or without there being any foundation for the same, renders section 129 of the Act practically otiose. We take cognizance of the fact that once the notice under section 130 of the Act is issued, then the vehicle is not released even if the owner of the goods is ready and willing to pay the tax and the penalty that may be determined under section 129 of the Act. Such approach leads to unnecessary detention of the goods and the conveyance for an indefinite period of time. Therefore, what we are trying to convey is that all cases of contravention of the provisions of the Act or the Rules, by itself, may not attract the consequences of such goods or the conveyance confiscated under section 130 of the Act. Section 130 of the Act is altogether an independent provision which provides for confiscation in cases where it is found that the intention was to evade payment of tax. Confiscation of goods or vehicle is almost penal in character. In other words, it is an aggravated form of action, and the object of such aggravated form of action is to deter the dealers from evading tax."



48. We are in complete agreement with the view expressed by the Gujarat High Court and which correctly explains the interplay between Sections 129 and 130 of the Act. The harsh consequences which would follow a confiscation clearly warrant the provisions of the Act being accorded an interpretation which would be fair, reasonable and in consonance with the requirement of Article 14 of the Constitution. In any event, Section 129 can neither be construed as envisaging an inevitable levy of tax nor the imposition of a penalty. As noticed hereinabove, the said provision is primarily concerned with the release of seized and detained goods.

49. It would also be relevant to notice the important message and note of guidance which was conveyed by the CBIC in its Circular No. 64/38/2018-GST : MANU/GSCU/0041/2018 dated 14 September 2018, relevant parts whereof are extracted below:

"3. Section 68 of the CGST Act read with rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding Rs 50,000/- should carry a copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the Mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part B of FORM GST EWB-01 amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods



are transported for a distance of upto fifty kilometres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.

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.1000/- 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."

50. *Upon noticing the above, the Gujarat High Court in Synergy Fertichem held:*

"96. As far as the determination of penalty is concerned, it is the Assessing Officer/State Tax Officer who is the competent and proper person for such determination/quantification. However, a holistic reading of the statutory provisions and the circular noted above, indicates to me that the Department does not paint all violations/transgressions with the same brush and makes a distinction between serious and substantive violations and those that are minor/procedural in nature."

As is evident from the above, even the CBIC accepts the position that the Act does not contemplate the imposition of an inevitable levy of penalty under Section 129.

51. *We are also of the firm opinion that the levy of penalties under the Act must be guided by the salutary principles which stand embodied in Section 126. That statutory provision is undoubtedly an embodiment of the legislative intent of levy of penalties being guided by principles of moderation, restraint and reasonableness.*

52. *Consequently, and for all the aforesaid reasons, we allow the present writ petitions and quash the impugned orders dated 15 January 2022 and 15 February 2022. The demand of tax and penalty thereunder are consequently set*



aside. The petitioners shall be entitled to all consequential reliefs.”

9. So also, the Division Bench of the Himachal Pradesh High Court in the case of ***Kunal Aluminium Company vs. State of Himachal Pradesh – CMPMO No.40/2025 Dated 26.06.2025***, held as under:-

“17. In Modern Traders v. State of U.P. MANU/UP/2594/2018, 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 Apress Logistics Pvt Ltd. v. Union of India, MANU/UP/3272/2018, 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, MANU/UP/0204/2024 : 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.”



10. In the case of ***Ma Vindyavasini Tobacco Private Limited vs. State of U.P. – (2025) 179 taxmann.com 73 (Allahabad)***, held as under:-

“3. Counsel for the petitioner submits that the petitioner has a Private Limited Company and is registered under the Goods and Services Tax, Act, 2017 and he received an order for supply of Pan Masala for which goods were loaded on the vehicle. Goods were on its way from Kanpur to Surat but the same was intercepted on the ground that Part-B of the e-way bills was not generated. He further submits that all others documents were accompanied the goods, except Part-B of e-way bill. Thereafter, an order under section 129 of the GST Act was passed for release of the goods. Against the said order, an appeal was filed which has been dismissed without considering the material on record.

XXXXXX

8. It is not in dispute that the goods were on journey when same were intercepted, the requisite documents tax invoice, L.R. and e-way bill were available, only Part-B of e-way bill was not filled on the said premise.

9. The Division Bench of this Court in the case of Fiserv Merchand Solutions Private Limited (supra) has held that no adverse inference can be drawn for non filing of Part-B of e-way bill.

10. The issue in hand is fully covered by the judgment of this Court in the case of Fiserv Merchand



Solutions Private Limited (supra). The said fact could not be disputed by the learned Additional Chief Standing Counsel.

11. In the view of the above, the impugned order dated 22.11.2024 passed by the respondent no. 2/Additional Commissioner Grade-2, (Appeal), Second State Tax, Jhansi and order dated 13.07.2024 are hereby quashed.

12. The writ petition succeeds and is allowed.

13. As the petitioner has deposited the amount of penalty under protest, the same shall be refunded back to the petitioner within a period of three weeks from the date of this order.”

11. As can be seen from the aforesaid judgments, non- filling up of Part-B in the e-way bill by omitting to state / mention the vehicle number has been held to be a curable defect and the same would not invalidate or render illegal the e-way bill, especially when the other documents viz., Invoice etc., tally with the subject goods and vehicles at the time of interception, inspection and detention. In the instant case, it is an undisputed fact that there are no discrepancies, errors or lacunae in all the documents and the subject goods and vehicle tally with the documents and merely because the petitioner did not mention / state the registration number of the subject vehicle in Part-B of the e-way bill, in the absence of any material to establish that the said non-filling of the registration



number in Part-B of the e-way bill was with any malafide intention or with an intent to evade payment of tax by the petitioner, it cannot be said that the petitioner would be liable to pay penalty under Section 129 of the KGST Act, particularly when the petitioner had offered reasonable and satisfactory explanation in his detailed objections to the notice issued by the respondents. It is also significant to note that the first appellate authority had correctly, properly and meticulously appreciated the entire material on record and had set aside the penalty order and had directed the petitioner to pay general penalty of Rs.25,000/- under Section 125 of the KGST Act and the 3rd respondent – revisional authority clearly fell in error in passing the impugned order which is contrary to law and facts warranting interference by this Court in the present petition.

12. Insofar as the judgments of the Madhya Pradesh High Court in the cases of **(i) M/s.Gati Kinetetsu Express Private Limited vs. Commissioner – W.P.No.12399/2018 dated 05.07.2018** and **(ii) Manish Packaging Private Limited vs. State of Madhya Pradesh – W.P.No.20797/2022 dated 25.07.2025** are concerned, apart from the fact that the said judgments were rendered in the facts and circumstances obtaining in the said cases,



with due respect to the same, I do not subscribe to the view taken in the said judgments and on the other hand, the judgments of the Delhi High Court, Himachal Pradesh High Court and Allahabad High Court referred to supra, would be applicable to the facts of the instant case and as such, the contention of the respondents in this regard cannot be accepted.

13. In the result, I pass the following:

ORDER

(i) Petition is hereby allowed.

(ii) The impugned order at Annexure-A dated 29.11.2024 passed by respondent No.3 is hereby set aside.

(iii) The order passed by the 2nd respondent - Appellate Authority at Annexure-K dated 18.03.2024 is hereby restored.

(iv) Respondents are directed to refund the entire amount paid by the petitioner excluding Rs.25,000/- and also return the bank guarantee back to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

BMC/SRL
List No.: 2 Sl No.: 29