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E-Way Bill generated 9 minutes after interception, is a bona fide procedural lapse and not tax evasion where goods are genuine and fully traceable

The GSTAT, Lucknow Bench in *M/s Lucknow Automotives v. Assistant Commissioner (Mobile Squad), Gonda, Raj Kumar & Ors. [Appeal No. APL/8/LCK/2026 dated August 19, 2026]* set aside the penalty of Rs. 2,63,330/- imposed under Section 129(3) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) read with the Uttar Pradesh Goods and Services Tax Act, 2017 (**"the UPGST Act"**) for an E-Way Bill generated approximately nine minutes after interception of the conveyance, and held that where the transaction is genuine and fully identifiable, the goods are covered by valid tax invoices and challans, no discrepancy in quantity, value or classification is found and no independent material demonstrates suppression, clandestine movement, undervaluation or fake documentation, the post-interception generation of the E-Way Bill is a bona fide procedural lapse and not an act forming part of an attempt to evade tax.

Facts:

M/s Lucknow Automotives (**"the Appellant"**) is a registered proprietorship concern engaged in the business of purchase and sale of motorcycles and spare parts.

On January 20, 2025, at about 7:25 A.M., vehicle No. UP32 DN 2873 carrying motorcycles covered by Challan/Invoice Nos. 405, 406, 407 and 408 was intercepted by the Mobile Squad, State Tax, Gonda (**"the Respondent"**). At the time of interception, no E-Way Bill had been generated. E-Way Bill No. 471521531708 dated January 20, 2025 was generated at 7:34 A.M., i.e., approximately nine minutes after interception, and was produced before the inspecting authority.

Proceedings under Section 129 of the CGST Act were initiated and, vide Order dated February 04, 2025 (**"the Impugned Order"**), the Proper Officer imposed a penalty of Rs. 2,63,330/- (CGST

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Rs. 1,31,665/- and SGST Rs. 1,31,665/-) under Section 129(3) of the CGST Act, which was deposited by the Appellant. The appeal preferred by the Appellant was dismissed by the First Appellate Authority vide Order dated June 06, 2025 in Appeal No. AD0905250107428/2025 (**"the Appellate Order"**) and the penalty was confirmed.

Aggrieved, the Appellant preferred an appeal under Section 112 of the CGST Act before the GST Appellate Tribunal, Lucknow Bench (**"the Tribunal"**) seeking setting aside of both the orders and refund of the amount deposited.

The Appellant contended that the penalty was imposed merely on account of a procedural lapse without any intention to evade tax; the E-Way Bill was generated within nine minutes of interception owing to bona fide human error; the goods were accompanied by valid tax invoices and delivery documents; the motorcycles were identifiable by engine and chassis numbers and subject to R.T.O. registration; the transaction was between registered dealers, duly recorded in the books of account and supported by purchase invoices, tax invoices, challans, ledgers and bank statements; no discrepancy in quantity, value or classification was found; there was no loss of revenue; and the penalty was excessive and disproportionate. Reliance was placed on *Uttam Electric Store v. State of U.P.* [Writ Tax No. 153 of 2021 dated July 26, 2024], *OSR Creation v. State of U.P.* [Writ Tax No. 1914 of 2024 dated January 27, 2025], *Vishnu Singh v. State of U.P.* [Writ Tax No. 599 of 2024 dated February 20, 2025], *Kunal Aluminum Company v. State of Himachal Pradesh* [(2025) 16 GSTJ Online 373 (HP)], *Shyam Sel and Power Ltd. v. State of U.P.* [(2024) 13 GSTJ Online 147 (All)] and *Falguni Steels v. State of U.P.* [(2024) 13 GSTJ Online 150 (All)].

The Respondent contended that the Appellant admittedly had no E-Way Bill at the time of interception; the E-Way Bill was generated only after the vehicle had been intercepted and, therefore, the statutory requirement was not complied with at the relevant point of time; and subsequent generation of the E-Way Bill cannot retrospectively validate the movement of

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goods. Reliance was placed on *M.B. Computers v. State of U.P.* [Writ Tax No. 1559 of 2024], as quoted in the Appellate Order.

Issue:

Whether penalty under Section 129(3) of the CGST Act can be sustained where the E-Way Bill was generated approximately nine minutes after interception of the conveyance and was immediately produced, when the goods were covered by valid tax invoices and challans, the transaction was genuine and fully traceable, and no discrepancy or intention to evade tax was found?

Held:

The GST Appellate Tribunal, Lucknow Bench in ***Appeal No. APL/8/LCK/2026*** held as under:

- **Observed that**, it is undisputed that the E-Way Bill was generated approximately nine minutes after interception and, therefore, there was a procedural lapse at the time of interception. However, the goods were motorcycles, fully identifiable through their invoice particulars and engine and chassis numbers and subject to R.T.O. registration; the transaction was supported by purchase and sale invoices, challans, ledger accounts and bank records; no discrepancy in quantity, value or classification was found; and there was no material on record indicating suppression, undervaluation, fake documentation, unaccounted goods or any intention to evade tax.
- **Noted that**, the lapse occurred in the background of a genuine and fully identifiable transaction; the E-Way Bill was generated within approximately nine minutes and immediately produced before the authority; and no independent material was brought on record demonstrating suppression, clandestine movement, undervaluation, fake documentation or any other positive circumstance indicating tax evasion. The peculiar

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facts disclose a bona fide procedural lapse rather than an act forming part of an attempt to evade tax.

- **Noted that**, the decision in *OSR Creation* (supra) squarely supports the present facts, as the penalty order therein was quashed for lack of intention to evade tax despite the E-Way Bill lapse, and the other decisions relied upon by the Appellant are also applicable for want of any intention to evade tax. Per contra, *M.B. Computers* (supra) relied upon by the Respondent is distinguishable, since it involved an unfilled Part-B of the E-Way Bill and goods being transported to a different destination, whereas the Appellant's case relates only to the E-Way Bill having been generated after interception of the goods.
- **Held that**, the appeal is allowed. The Impugned Order dated February 04, 2025 passed by the Proper Officer under Section 129(3) of the CGST Act imposing penalty of Rs. 2,63,330/- and the Appellate Order confirming the said penalty are set aside.
- **Directed that**, the amount of Rs. 2,63,330/-, if deposited by the Appellant pursuant to the impugned proceedings, shall be refunded to the Appellant in accordance with law, subject to verification of the payment and statutory requirements.

Our Comments:

Statutory framework

Section 68 of the CGST Act, read with Rule 138 of the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**"), requires every registered person causing movement of goods of consignment value exceeding Rs. 50,000/- to furnish the prescribed information and generate the E-Way Bill in Form GST EWB-01 before commencement of such movement. Rule 138A of the CGST Rules obliges the person in charge of the conveyance to carry the invoice, bill of supply or delivery challan and a copy of the E-Way Bill in physical or electronic form. Section

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129 of the CGST Act empowers detention and seizure of goods and conveyances transported “in contravention of the provisions of this Act or the rules made thereunder”. Pursuant to the amendment by the Finance Act, 2021 (effective January 01, 2022), Section 129 stands delinked from Section 130, and the penalty under Section 129(1)(a) is 200% of the tax payable on the goods where the owner comes forward, while under Section 129(1)(b) it is the higher of 50% of the value of the goods or 200% of the tax payable where the owner does not come forward. Section 129(3) mandates a notice within seven days of detention and an order within seven days from the date of service of such notice.

The crux of the controversy is that Section 129, unlike Section 130, does not in terms employ the expression “intent to evade payment of tax”. The Courts have nonetheless consistently read the element of mens rea into Section 129, reasoning that the provision is penal in character and that the scheme of the Act, including Section 126 which discourages penalty for minor breaches and easily rectifiable mistakes (though excluded for fixed-percentage penalties by Section 126(6)), is not to punish mere technical lapses. Notably, Circular No. 64/38/2018-GST dated September 14, 2018 confines the concessional penalty of Rs. 500/- each under the CGST Act and the respective SGST Act (Section 125) to specified minor discrepancies in the E-Way Bill, viz., spelling mistakes, errors in PIN code, address, document number, 4-digit HSN or vehicle number. Non-generation of the E-Way Bill is not among the enumerated relaxations, which is precisely why it continues to attract full penalty proceedings and consequent litigation.

Pari materia decisions

- The Hon’ble Supreme Court in *Assistant Commissioner (ST) v. Satyam Shivam Papers Pvt. Ltd.* [SLP (C) No. 21132 of 2021 dated January 12, 2022] affirmed the view of the Hon’ble Telangana High Court that expiry of the E-Way Bill on account of a traffic blockade, without any intent to evade tax, cannot invite penalty under Section 129 of the CGST Act.

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- The Hon'ble Allahabad High Court in *Shyam Sel and Power Ltd. v. State of U.P.* [Writ Tax No. 603 of 2023 dated October 05, 2023] held that intention to evade tax is the sine qua non for invoking proceedings under Sections 129 and 130 of the CGST Act.
- The Hon'ble Allahabad High Court in *Falguni Steels v. State of U.P.* [Writ Tax No. 146 of 2023 dated January 25, 2024] held that where all valid documents are present and there is no determination of intent to evade tax, penalty cannot be sustained even if the E-Way Bill had not been generated, and that mere rejection of post-detention E-Way Bills without a cogent nexus to the intention to evade tax is fallacious.
- The Hon'ble Allahabad High Court in *Modern Traders v. State of U.P.* [Writ Tax No. 763 of 2018] and *Axpress Logistics India Pvt. Ltd. v. Union of India* [Writ Tax No. 602 of 2018] held that where the E-Way Bill is produced after interception but before the seizure order is passed, along with documents evidencing payment of tax, there is no justification for seizure and levy of penalty.
- The Hon'ble Allahabad High Court in *Hindustan Herbal Cosmetics v. State of U.P.* [Writ Tax No. 1400 of 2019 dated January 02, 2024] and *Roli Enterprises v. State of U.P.* [Writ Tax No. 937 of 2022 dated January 16, 2024] quashed penalty for a typographical error in the vehicle number and for non-filling of Part-B of the E-Way Bill respectively, in the absence of any intent to evade tax.
- The Hon'ble Allahabad High Court in *Om Enterprises v. Additional Commissioner, Grade-2 (Appeal)* [dated November 13, 2025] applied *OSR Creation* (supra) and quashed penalty where the E-Way Bill had been generated thirty minutes before interception but was not carried with the goods, distinguishing *Aysha Builders* (infra) on the ground that the E-Way Bill in that case was generated only after detention.
- The Hon'ble Calcutta High Court (Division Bench) in *Ashish Kumar Sharma v. Deputy Commissioner, State Tax* [FMA 504 of 2024 dated April 25, 2024] observed that though

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Section 129 statutorily prescribes a stringent penalty, the authorities cannot ignore the element of mens rea altogether and are required to examine the accompanying documents to ascertain whether there was any intention to evade tax.

Contrary decisions

- The Hon'ble Allahabad High Court (Division Bench) in *Aysha Builders & Suppliers v. State of U.P.* [Writ Tax No. 2415 of 2024] held that where no E-Way Bill was available at the time of inspection and the same was generated only after detention, an intention to evade tax is attributable and the penalty order cannot be said to be illegal. This view has been followed in *Raju Ujir / R.R. Enterprises v. State of U.P.* [Writ Tax No. 1834 of 2025 dated August 06, 2025].
- The Hon'ble Allahabad High Court in *Akhilesh Traders v. State of U.P.* [Writ Tax No. 1109 of 2019 dated February 20, 2024] and *Jhansi Enterprises, Nandanpura, Jhansi v. State of U.P.* [Writ Tax No. 1081 of 2019 dated March 01, 2024] held that after April 01, 2018 the E-Way Bill is mandatory, that absence of the E-Way Bill at the time of interception raises a presumption of intent to evade tax, and that subsequent production of the document does not by itself absolve the assessee of penalty, although the presumption is rebuttable by cogent material.
- The Hon'ble Allahabad High Court in *Gurunanak Arecanut Traders v. Commercial Tax* [Writ Tax No. 1177 of 2022] and *Lalitpur Power Generation Company Ltd. v. State of U.P.* [Writ Tax No. 595 of 2023] reiterated that carrying a valid E-Way Bill is mandatory after the 14th Amendment to the UPGST Rules and that subsequent downloading of the E-Way Bill would not absolve the liability under the Act.

Analysis and way forward

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The present ruling is significant as one of the early pronouncements of the newly operational GST Appellate Tribunal on the vexed question of post-interception generation of the E-Way Bill. The Tribunal has adopted the taxpayer-friendly line of authority and placed the onus squarely on the Revenue to bring on record “positive circumstances” indicating evasion, such as suppression, clandestine movement, undervaluation or fake documentation. Its emphasis on the inherent identifiability and traceability of the goods (engine and chassis numbers and R.T.O. registration) is a useful and transferable argument for dealers in vehicles, machinery and other serial-numbered goods.

That said, the ruling must be applied with circumspection. As recorded in the order itself, in *OSR Creation* (supra) the E-Way Bill had been generated at 4:59 P.M. whereas the goods were intercepted at 6:00 P.M., i.e., the document pre-dated the interception. The present case, by contrast, involved generation after interception, which is the fact pattern addressed by the Division Bench in *Aysha Builders* (supra), a decision that does not appear to have been noticed by the Tribunal. In terms of Section 117 of the CGST Act, an appeal lies to the High Court against an order of the State Bench on a substantial question of law, and it is not unlikely that the Revenue will test the ruling on this ground. Until the position is settled, the ruling is best relied upon in cases where the taxpayer can demonstrate, with documents, that the lapse was momentary, that the E-Way Bill was generated and produced before the seizure order under Section 129(3), and that the goods and transaction are otherwise genuine and traceable.

Two further aspects merit attention. First, although the penalty involved was well below Rs. 50 lakh, the Tribunal treated the matter as involving a question of law and heard it in Division Bench in terms of Section 109 of the CGST Act, signalling that the Tribunal regards the post-interception E-Way Bill question as one of law and not a mere appreciation of facts. Second, on the principle of judicial discipline laid down by the Hon'ble Supreme Court in *Union of India v. Kamalakshi Finance Corporation Ltd.* [1991 (55) ELT 433 (SC)], the Proper Officers and First Appellate Authorities within the jurisdiction of the Tribunal would be bound to follow this ruling in comparable cases unless it is stayed or reversed.

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From a compliance standpoint, the ruling does not dilute the mandate of Rule 138 of the CGST Rules that the E-Way Bill be generated before commencement of movement. Taxpayers should ensure that the E-Way Bill is generated at the time of dispatch itself and, where a lapse nonetheless occurs, generate it immediately upon detection, produce it before the seizure order along with the invoice, challan, ledger and payment trail, and specifically plead in the reply to Form GST MOV-07 the absence of any intention to evade tax and the complete traceability of the goods, so that a finding on mens rea is compelled at the adjudication stage itself.

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