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 Company .....Petitioner

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*

[1]Whether 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 GSTEWB-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 eway 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:

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

Provided that the Commissioner may, by notification, extend the validity period of eway 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 men 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, l.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)