GSTAT

Court No. Court I

APL/112/AGR/2026

AMIT TYAGI **............Appellant**

Versus

TATA PLAY LIMITED, MANAGING DIRECTOR & CEO, C1 3RD FLOOR
WADIA INTERNATIONAL CENTRE PANDURANG BUDHKARMARG
WORLI MHMUC 400025 **............Respondent**

Counsel for Appellant
SH. MUKESH KUMAR, AUTHORIZED REPRESENTATIVE

Counsel for Respondent
SH. PRABHAT KUMAR, ADVOCATE

Hon'ble Ajeet Singh, Member(Judicial)
Hon'ble Vivek Kumar, Member (Technical)

ORDER

Per. Ajeet Singh (Judicial Member)

(Passed on 10th day of September 2026)

1. Present appeal has been directed by Revenue/State of U.P, against order dated 09-07-2025 passed by Additional Commissioner Gr. II (Appeal), State Tax, Judicial division Etawah in Appeal no. 0325/2025 *M/s Tata Play limited* Lucknow Vs State, whereby penalty of Rs. 10,10,186/- imposed by Adjudicating officer u/s 129(3) of CGST/UPGST, Act has been set aside. For shake of convenience here-in-after in the order, appellant and respondent will be addressed as department and taxpayer, respectively.

2. Facts giving rise to the appeal in brief may be stated thus, Mobile squad headed by Assistant Commissioner, state tax Fatehgarh (Farrukhabad), had intercepted a truck bearing Registration no. DL-01MB-3570 at Naviganj toll plaza District Mainpuri on 25.03.2025 at 03:51 A.M, which was running from Delhi to Lucknow, in which electric equipment were being transported. Mobile squad in charge asked driver of the truck to show relevant papers regarding goods being carried in the vehicle. On such demand driver has shown consignment note no. 9059234 dated 24.03.2025 GSTIN No. 07AAGCS9294MIZH of *M/s Tata Play limited* C/o Bakshi Associate pvt. south west, New Delhi. Consignment was being transported by M/s TATA Play Limited to its another inter-state godown Balaji enclave, opposite CRPF gate 01, Bijnor road, Lucknow, having GSTIN-09AAGCS9294MIZD. In shipping the consignment invoice no. DI2430008602 dated 22.03.2025 with e-way bill (EWB01)

no. 741512630575 dated 24.03.2025 and invoice no. DI2430008590 dated 22.03.2025 with e-way bill no. 741512183264 dated 22.03.2025 were found and shown by driver of the vehicle intercepted.

3. On verification it was found that vehicle mentioned in e-way bill no. 741512183264 was DL-01LAL-7401 while actual vehicle in which said consignment was being carried was DL01MB-3570. As per, tax invoices, goods were being transported from *M/s Tata Play limited*, southwest, New Delhi to its inter-state another firm Bijnor road Lucknow, U.P. As per further allegations from in charge of mobile squad, goods mentioned in invoice no. DI2430008602 and e-way bill no. 741512630575 were being transported in truck no. DL-01MB-3570. As per Mobile squad in charge above discrepancy was clearly showing that the e-way bill no. 741512183264 did not correspond to the actual conveyance and was therefore invalid for movement of goods. Show cause notice accordingly was issued to respondent followed by imposing penalty of amount Rs 10,10,186/- by order dated 01.04.2025 by adjudicating officer, as he reached to the conclusion that taxpayer has violated the provisions of section 129 read with section 68 of CGST/UPGST, Act, 2017 read with rule 138 of CGST rules, 2017.
4. Respondent taxpayer has deposited the penalty ordered by learned officer with protest and accordingly goods and conveyance seized, were released.
5. Taxpayer/Respondent has preferred first appeal no. 0325/2025, against order dated 01.04.2025, on the ground that mismatching of the vehicle no. in said consignments having goods transported in the same vehicle was a bona fide clerical mistake and cannot be treated the same with intent to evade tax. It was further alleged by respondent/taxpayer that all other documents like quantity and payment of tax etc. were found in order at the time of interception of the vehicle.
6. Learned 1st Appellate Authority, on hearing the both sides have accepted the contentions raised by respondent/taxpayer, has allowed the first appeal and order passed by Adjudicating officer dated 01/04/2025 and accordingly penalty imposed was set-aside, hence this second appeal by Revenue/State.
7. On being heard learned departmental representative from state and learned counsel appearing for taxpayer the question before this bench for determination may be formulated as under-

i) Whether an e-way bill reflecting an entirely different vehicle no. (and not merely a one- or two-digit variation) constitutes a valid document for transportation of goods u/s 68 of CGST, Act, 2017 read with rule 138 of CGST Rules, 2017.

ii) Whether the protection of CBIC circular no. 64/38/2018-GST (minor errors) can be extended to cases involving complete mismatching of vehicle registration nos. in e-way bills.

iii) Whether the first Appellate Authority was justified in setting aside the penalty-imposed u/s 129(3) of CGST Act.

Findings with reasons

8. We have heard the learned authorized representatives of respective parties, perused the materials on record and evaluated the relevant provisions of the law applicable to the facts of the case in hand.
9. As per section 68 of the CGST Act, the driver of a conveyance carrying goods exceeding specified

threshold must carry relevant documents. Further explanation (2) to rule 138(3) clearly provides that an e-way bill is not valid for movement of goods until its part- B is duly filled up with correct details of the vehicle. Insofar, CBIC circular no. 64/38/2018-GST applies strictly to “error in one or two digits/ characters of the vehicle number. Thus, this concession covers only minor clerical slips i.e. writing as DL-01-AB-1234 instead of no. DL-01-AB-1243, It cannot be extended to cover a completely substitution of vehicle like DL-01-LA-9876. Substituting an entirely different vehicle without updating part B or mentioning therein entirely different number, then that of vehicle in which goods is being actually transported. Thus, aforesaid CBIC circular can not be extended to the present case because of there is entirely different vehicle no. has been mentioned in part-B of e-way bill while goods were being transported in other vehicle bearing different registration number.

10. To buttress his submissions learned authorized representative appearing for appellant/state has cited three *ratios* laid down by Hon’ble Apex court and Allahabad High court titled 1. **Union of India vs Dharmendra textiles processors (2008) 231ELT3 (SC), BM Computers vs Commissioner Commercial taxes and others (2025) (4) TMI810 Allahabad, Jhansi enterprises vs state of U.P and others (2024) Allahabad** and **Famus India ltd. Vs state of U.P (2024) Allahabad**.

11. On *contrario sensu*, learned counsel appearing for respondent has also cited several case laws to substantiate his version, namely **K Transport Company vs state of U.P (2021-VIL-49-ALH), Siddharth associated vs State of U.P (2018), K.P Sugandh ltd. Vs State of U.P(2019), M/s Vishnu Singh vs State of U.P wp. No. 599 of 2024 Allahabad, M/s VSL Alloys India pvt. Ltd. Vs State of U.P and others Allahabad** and **Assistant Commissioner (ST) and others vs M/s Satyam Shivam papers pvt. Ltd. And another SLP to appeal (C) no. 21132 of 2021 date of judgement 12.01.2022 (SC).**

12. Apart from above, learned counsel appearing for respondent/taxpayer has also drawn our attention to the principle laid down in the matters **Roli enterprises vs State of U.P, writ tax no. 937/2022, Allahabad, R.S industrial solutions vs Additional Commissioner writ tax no. 684/2024 Allahabad, Precision tools India vs State of U.P writ tax no. 415/2023 Allahabad** and **Banaras Industries vs Union of India writ tax no. 597/2022 Allahabad.**

13. In **Roli enterprises and R.S industrial (Supra)** it was held that penalty can not be imposed solely for leaving part-B in e-way bill blank if the accompanying invoice contains the vehicle details and there is no intention to evade tax. In the present matter part-B of alleged e-way bill was not kept blank but was filled up by mentioning entirely different registration no. of the vehicle form the vehicle in which goods were being actually transported. Leaving the part-B of the e-way bill blank inadvertently and deliberately mentioning entirely different registration no. are different things and can not be equated to each other. Therefore, observations made in above two case laws would not be applicable here. In the same manner in **Precision tools India (Supra)** though, part-A of e-way bill was correctly filled up but part-B could not be generated due to technical difficulties it was held that in absence of intent to evade tax or clear *mens rea* penalty cannot be imposed for omission of filling up part-B of e-way bill. As stated earlier in the present matter part-B of e-way bill was not kept blank but entirely different number from the vehicle in which goods were being transported was written therein.

14. Facts and question for determination in case of **Banaras industrials (Supra)** are different with the case in hand and therefore, principle laid down in this case law also not applicable here.

15. As per facts of **M/s Satyam Shivam (Supra)** e-way bill was expired before a day as there was traffic

blockage at the route due to anti CAA and NRC agitations and goods were detained without considering circumstances being out of control of the taxpayer. In this way the facts of the present case are explicitly distinguishable to the case cited **M/s Satyam Shivam (Supra)** and thus principle laid down in such ruling would not also be applicable to the facts of the case in hand.

16. Learned first appellate authority has also cited various other case laws titled **State of U.P v/s Maa Vindhyavashini tobacco Pvt. Ltd. Writ-CNo.20203 of 2019, M/s Balaji traders and another Vs State of U.P and others Writ tax no. 784/2023, the citykart retail Pvt. Ltd Vs the Commissioner of commercial tax U.P order dated 06.09.2022** and **M/s Hindustan Herbal Cosmetics Vs state of U.P and others writ tax no. 1400 of 2019.**

17. In cases quoted by learned first appellate authority as mentioned above either there was a mere typographical error in part-B of e-way bill or omission to fill up the same. While in the present case goods with an e-voice were being transported in vehicle No. DL-01MB-3570, with another consignment but in part-B of e-way bill entirely different no. DL-01LAL-7401of the vehicle was filled up.

18. Learned departmental representative sh. Mukesh Kumar too, has also cited ratio of Hon'ble Supreme Court of India titled **Union of India vs Dharmendra textile processors (Supra),** in which by answering a reference a three-judge bench of Hon'ble Supreme Court established foundational principles regarding statutory penalty provisions in fiscal legislation. It was held by Hon'ble Apex court that statutory penalties imposed for infractions under Revenue statues (such as section 11AC of Central Excise Act, 1944 or Section 271(1) (c) of Income tax Act, 1961 constitutes civil liability meant to remedy the loss of Revenue. It is further held that *mens rea* is not an essential element for attracting civil penalties under fiscal statues unless specifically incorporated in to the text of the provision. It is also held by Hon'ble Apex court that courts can not supply words or read *mens rea* in to a tax provision where the statue is clear and unambiguous and court must give effect to the plain language of the statues as written by the legislation. Though, the case **Dharmendra (Supra)** had arisen out of the provisions of Central excise Act, 1944 and case in hand has arisen out of the provisions of Central goods and services Act, 2017 and similarly enacted UP Goods and Services Tax. 2017 but in both the fiscal laws the relevant provisions in respect of evasion of tax are *in pari materia* and thus in my considered opinion ratio laid down by Hon'ble Supreme Court in **Dharmendra (Supra)** would directly be applicable to the case at hand.

19. In cases **Jhansi enterprises and B.M Computers (Supra)** it has been held by Allahabad High court that incorrect or incomplete e-way bill justifies the penalty u/s 129 read with rules 138 of CGST, Act and rules 2017 respectively. In M/s B.M Computer (Supra) decided by Hon'ble Allahabad High Court on 10.04.2025 re-affirmed strict procedural compliance regarding the e-way bill mechanism u/s 129 of CGST/UPGST Act, 2017. It is further held by the High Court that movement of goods without fully completed e-way bill specifically where its part-B is omitted prior to transit violates rule 138 of CGST rules, merely generating part-A does not full fill statutory compliance. It is also held in that case that transporting consignments with an incomplete e-way bill creates a rebuttable presumption of and intention to evade tax and thereafter onus shifts entirely to the dealer/consigner to rebutte such presumption with credible positive evidence or by surrounding circumstances of that particular matter.

20. Learned Counsel appearing for respondent had argued before the bench that mistake in part-B of e-way bill concerned was rectified before interception of the vehicle but argument in such a way is not

acceptable because of time of interception of vehicle and verification of relevant documents was indisputedly at 03:51 A.M on 25.03.2025, while mistake was corrected after more than 06 hours at 09:58 A.M on the same day. In case of **M Computers (Supra)** it is also clearly held that updating/correcting or generating part-B of e-way bill after interception of the vehicle does not cure the initial statutory breach nor neutralize the presumption of tax evasion.

21. Though, it is true and well-established principle of law that department is required to show an intention to evade tax of taxpayer and in absence thereof penalty can not be imposed in the grab of section 129, CGST, Act read with rule 138 of CGST rules 2017. Intention of a person is a mental state of mind and no positive evidence can be given by the department as it is commonly said that “Not even the devil himself can discern the secret thoughts of man’s heart”. However, intention of a person or mens rea may be gathered from the facts and surrounding circumstances of a particular case.

22. Learned counsel for respondent has contended that e-way bill had been corrected before issuance of Show Cause Notice. Such arguments may be true but it has no bearing to the contention of the respondent because of rectification of e-way bill was made after 06 hours of interception of the vehicle and detention of the goods and conveyance.

23. Respondent/Taxpayer has neither contended nor proved the shifting of consignment from one vehicle to another.

24. From the facts and circumstances narrated above it is clear that because of the questioned invoice and e-way bill were issued on 24.03.2026 and later was valid till 27.03.2026. Distance from Delhi to Lucknow is shown 580 kms in transporter’s consignment note and a transport vehicle may cover such a distance maximum in 12 hours generally. The vehicle runs from Delhi to Lucknow on 24.03.2026 and is stopped near Naviganj toll plaza located in Mainpuri District of U.P at around 03:51 A.M in the coming night. If the vehicle had not been intercepted and had reached its destination Lucknow then as sufficient time would have been left. In such a case the e-way bill and invoice, with intent to refund of tax paid, could be cancelled within 24 hours of issuing the e-way bill or it could be reused as sufficient time would left in the period of validity of the e-way bill. In such circumstances and accordingly principle laid down in **BM computers (Supra)** the department/state has succeeded to established a presumption that by mentioning entirely different no. in e-way bill respondent taxpayer has violated the relevant provisions section 68 read with section 129 of CGST/UPGST Act read with rule 138 of CGST rules 2017 with intent to evade tax. Though this is a rebuttable presumption and in my considered opinion respondent has completely failed to rebutte the same even from the surrounding circumstances of the case.

25. Thus, in the back drop of above discussion of the facts question no. (i) (ii) & (iii) formulated in para no. 7 are answered in negative, and thus in my considered opinion learned First Appellate Authority has committed manifest error of law and facts in allowing the first appeal and waiving the penalty imposed by adjudicating officer.

26. Consequently, the second appeal filed by the Revenue is allowed, Order impugned dated 09.07.2025 passed in First Appeal no. 0325/2025 is set aside and order passed by Adjudicating officer in order no. ZD090425006528B on 01.04.2025 is restored.

27. Respondent taxpayer is directed to pay the penalty as assessed u/s 129 of CGST/UPGST Act, by Adjudicating officer, failing which recovery proceedings u/s 79 be initiated.

28. There is no pending interim application in the appeal.

29. Order is pronounced in open court on this day of 11th of September, 2026.
30. Copy of order be communicated to all concerned, as per rules.

Ajeet Singh
Digitally signed by Ajeet Singh
Date: 2026.09.14 14:47:18 +05'30'
(Ajeet Singh)

Per. Vivek Kumar (Technical Member)

Analysis and Conclusion

1- After hearing both parties and upon perusal of the documents annexed to the appeal, it is quite obvious that in the present transaction, goods were being transported from New Delhi to Lucknow and the said goods were checked by the mobile squad authorities.

2-Two e-invoices were generated via the portal for the consignment, and separate e-way bills were generated for each of the two e-invoices. The vehicle, along with the goods, was intercepted by the mobile squad officer.

3-Upon verification of the goods and accompanying documents, no discrepancy has been pointed out in the documents related to the goods. There was no dispute regarding the quantity, description or the value of goods either. Destination was according to the declaration.

4- Only discrepancy was observed that one e-way bill listed the same vehicle number as the one being used to transport the goods, whereas a different vehicle number was recorded on the other e-way bill.

5- This error was interpreted as violation of rule 138 by the mobile squad officer and seized the vehicle along with the goods. Show cause notice issued in Mov-07 and an order was passed under Section 129(3), rejecting the detailed reply submitted by the respondent, and a penalty of ?10,10,186 was imposed.

6-Learned mobile squad officer has imposed a penalty solely for the violation of provisions. No finding of intention to evade tax is mentioned in his order.

7- It is also pertinent to mention that the department has nowhere in the grounds of appeal has taken stand that in this case there is any underlying intention to evade tax; rather the attempt is to justify the imposition of penalty based on the violation of provisions.

8 -The question for consideration now is whether penalty under Section 129(3) can be imposed merely on the basis of technical errors or whether intention to evade tax is sine qua non for invoking section 129.

9 -Hon'ble Allahabad High Court has repeatedly held that mens rea / intention to evade tax is an essential requirement for imposing penalty under section 129 of the CGST/UPGST Act, particularly where alleged

violation is merely technical and the transaction is otherwise genuine.

10.In Writ Tax No. 1095 of 2025 decided on 19 March 2025 **M/S Satyam Traders Vs. State of U.P. and others Hon. Allahabad High Court** held:

“Since no mens rea to evade tax was there, we are of the view that the detention proceedings along with order under Section 129(3) of the Act are arbitrary and invalid in law”

11- Similarly in **WRIT TAX No. - 1400 of 2019 M/S. HINDUSTAN HERBAL COSMETICS VS STATE OF U.P. AND 2 OTHERS decided on 2-1-2024** Court held;

“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.

12 -Taking together, the core operative principles emerging from these decisions can be summarized as:

- Mens rea is a necessary ingredient for section 129 proceedings
- Presence of genuine commercial documentation negates presumption of evasion.
- There should be reasoned findings on intent; mere recitation of contravention is insufficient

13- The facts of the present case are required to be analysed in the light of the above principles. In the present case, two e-invoices for transportation of goods were generated from the portal. Detailed description of the goods, quantity of goods, HSN Code, bill number and vehicle number have been mentioned in the e-invoice issued, in which no discrepancy has been found.

14 - As noted by the First Appellate Authority in its order, the details entered in the e-Invoice are automatically populated in the seller's GSTR-1 and the buyer's GSTR-2. Therefore, the possibility of tax evasion in this case is nil.

15- Generated E-invoices contain the E-way bill number and vehicle number. The correct vehicle number is mentioned in one e-Invoice and its corresponding E-Way Bill Whereas the vehicle number was mentioned correctly in the second E-Invoice, the wrong vehicle number was mentioned in the corresponding e-way bill. Hence, there is no possibility of any misuse as the correct vehicle number is mentioned in the E-Invoice and mentioning the wrong vehicle number in the E-Way Bill is only a bona fide mistake.

From the above discussion it is clear that there is no mens rea or intention to evade tax in this case.

16- The learned adjudicating officer did not make out any case of intent to evade tax in his order. The penalty order has been justified solely on the grounds of violation of rule 138. However, the foregoing discussion makes it clear that the provisions of section 129 do not merely relate to non-compliance involving civil liability; rather, proceedings under section 129 can be initiated only when there is an underlying intention to evade tax.

17- It is also necessary to discuss the judicial pronouncements cited by the appellant here.

Appellant has cited judgement of B M Computers stating that in this case it has been held “Incorrect or incomplete e-way bill justifies penalty under Section 129.” But it’s wrong interpretation. Honourable Allahabad high Court in the case of B M Computers WRIT TAX No. - 1559 of 2024 has observed

“Moreover, conduct of the petitioner clearly reveals that an intention to evade the tax is there as not only the goods in transit were not accompanied by Part B of e-way bill but also goods were being transported from Agra to Noida while the e-way bill was issued by the petitioner firm from Agra to Agra.”

18- Similarly, appellant has cited judgement of Jhansi Enterprises (2024) stating that “Movement without proper e-way bill is a contravention.” But again, in this case WRIT TAX NO. - 1081 OF 2019 M/S JHANSI ENTERPRISES, NANDANPURA, JHANSI Vs. STATE OF U.P. AND OTHERS Honourable Allahabad High Court has observed.

“It is a well settled position of law that if there is no intention to evade tax on the part of a person then imposition of tax and penalty is not proper and justified. But there must be some reasonable grounds to show that there was actually no intention to evade tax on the part of tax payer.”

Further it has been observed

“In the present case, one comes to an inexorable conclusion that the petitioner has not been able to rebut the presumption of evasion of taxes, as he has not been able to explain the absence of invoice and the E-Way Bill. Production of these documents subsequent to the interception cannot absolve the petitioner from the liability of penalty”

Similarly, some other cases have also been cited out of context and they do not support the department’s stand that proceedings under section 129 can be initiated solely for violation of the provisions.

19- As far as the assumption that if had not been intercepted and had reached its destination Lucknow than as sufficient time would have been left and in such a case the e- way bill and invoice, with intent to refund of tax paid, could be cancelled within 24 hours of issuing the e- way bill or it could be reused, is merely a presumption without any basis. It’s a settled principal of law that imposition of penalty being quasi-criminal proceeding, cannot be imposed on conjectures and surmises.

20- Finding that mistake in one or two digits only can be considered typographical error and if vehicle number mentioned is totally different than it becomes wilful wrong declaration is not sustainable if there is no circumstantial evidence to support this finding. Mentioning different vehicle number in this case is merely a typographical error, and no malicious intent is evident behind it.

21- In light of the foregoing discussion, the presumption of “Intention to evade Tax” is successfully rebutted by the genuine documents accompanying the goods in this case. Hence in my opinion, the decision of the first appellate authority to quash the penalty order is entirely justified and supported by the facts of the case. In my opinion, the departmental appeal does not contain any material fact that would suggest any infirmity in the impugned order. Therefore, the order passed by the first appellate authority is affirmed, and the departmental appeal is dismissed.

Vivek Kumar Digitally signed by Vivek Kumar Date: 2026.09.14 14:46:44 +05'30'

(Vivek Kumar)

Reference order

Order of Reference to the Hon’ble Vice President, State of Uttar Pradesh, under Section 109(9) of the CGST Act, 2017

The present appeal has been preferred by the State of Uttar Pradesh / Department under Section 112 of the CGST Act, 2017 against Order-in-Appeal No. 0325/2025 dated 09.07.2025 passed by the First Appellate Authority / Additional Commissioner Grade-II, first (Appeal), State Tax, Etawah.

The matter came up for hearing on 10.09.2026 for final hearing. After considering the submissions of the Learned Departmental Representative and learned counsel for respondent, the material available on record, both members of the Bench have differed in their opinions on key points of fact and law. Separate opinions authored by the respective Judicial Member and Technical Member are appended to this reference as **Annexure-A**.

Point of Difference:

Whether e-way bill reflecting an entirely different vehicle no. (and not merely a one- or two-digit variation) from the no. of actual vehicle in which goods was being transported constitutes a valid document for movement of goods u/s 68 read with rule 138 or may constitutes a deliberate violation of the relevant provisions with intent to evade tax by taxpayer?

In view of the split opinions and the point of difference formulated hereinabove, the Registry is directed to place the entire case record along with the opinions of both members before the Hon’ble Vice President, GSTAT, Uttar Pradesh, with the request that the Hon’ble Vice President may kindly nominate another member to hear the appeal on the specified point of difference.

Ajeet Singh Digitally signed by Ajeet Singh Date: 2026.09.14 14:47:38 +05'30'
(Ajeet Singh)

Vivek Kumar Digitally signed by Vivek Kumar Date: 2026.09.14 14:46:21 +05'30'
(Vivek Kumar)

Dated: 10.09.2026