GSTAT

State Bench Lucknow

Division Bench Court No. Court I

APL/217/LCK/2026

SHAILY SINGH **.....Appellant**

Versus

M/S PRABHU AASTHA ENTERPRISE PVT. LTD., DIRECTOR, 117/P1/376 SHIVPURI KAKADEO KANPUR UPKNN 208025 **.....Respondent**

Quorum

Hon'ble Santosh Kumar Srivastava, Member(Judicial)
Hon'ble Arvind Kumar, Member (Technical)

Counsel for Appellant
MR. MAHENDRA PRATAP SINGH, ASSISTANT COMMISSIONER, SGST

Counsel for Respondent
MR. DINESH SHUKLA, ADVOCATE

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA090371126000018H **Date of order :** 02/11/2026

1.	GSTIN/Temporary ID/UIN - 09AAECP3166D1ZI	
2.	Appeal Case Reference no. - APL/217/LCK/2026	Date - 06/05/2026
3.	Name of the appellant - Shaily Singh , sctolko@gmail.com , 9450666909	
4.	Name of the respondant - 1. M/S PRABHU AASTHA ENTERPRISE PVT. LTD. , prabhuaastha@rediffmail.com , 9554432009	
5.	Order appealed against - AD090822012001Q	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD0901231330611	Date - 31/01/2023
6.	Personal Hearing - 02/11/2026 31/10/2026 01/10/2026 25/09/2026 21/09/2026	

7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The present appeal was filed by the Revenue under Section 112(3) of the CGST/UPGST Act, 2017, challenging the Order-in-Appeal dated 31.01.2023, whereby the penalty of Rs.2,55,792/- imposed under Section 129(3) was quashed. The case arose when a vehicle carrying Pan Masala and Zarda Tobacco from M/s Prabhu Aastha Enterprise Pvt. Ltd., Kanpur, to M/s Mohit Agency, Gorakhpur, was intercepted by the Mobile Squad on 07.05.2022. The department imposed a penalty on the ground that Part-B of the E-Way Bills had not been updated with vehicle details. The taxpayer contended that the goods were being transported only about 5 km from the consignor's premises to the local transporter's depot within Uttar Pradesh for onward transportation to Gorakhpur. Therefore, the movement was exempt under the Third Proviso to Rule 138(3), which permits non-furnishing of Part-B details for transportation up to 50 km within the State. It was also established that the goods matched the tax invoices and physical verification revealed no discrepancy. The Revenue challenged the appellate order, alleging violation of Rule 138, route deviation and possibility of tax evasion. However, the Tribunal observed that the short-distance movement was covered by the statutory exemption, the goods were fully supported by valid documents, and no tangible evidence of tax evasion was established.

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	0	0	0	0	0	0	0	0	0	0
(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	33072	0	33072	0	189648	0	0	0	255792	0
(d) Fees	0	0	0	0	0	0	0	0	0	0
(e) Others		0		0		0		0		0
(f) Refund		0		0		0		0		0

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal

Levy of Penalty	Appeal No. KNP/04/AD090822012001Q/2223AKNP000215/2022 for the year 2022-23 is hereby allowed; consequently, the Order dated 09-05-2022, issued under Section 129(3), is set aside, and the imposed penalty is quashed. The amount paid in cash by the trader against the relevant heads is eligible for refund/adjustment in accordance with the applicable rules.	The appeal filed by the Department is dismissed.

Place :LUCKNOW

Signature

Date : 02.11.2026

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

ORDER

1. This present Appeal has been preferred by the Revenue (hereinafter referred as Appellant) under Section 112(3) of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the "Act" / "Rules"). The Revenue assails the legality, propriety, and correctness of Order-in-Appeal No. ZD0901231330611 dated 31.01.2023 passed by the First Appellate Authority (Additional Commissioner, Grade-2 (Appeal)-IV, State Tax, Kanpur). The First Appellate Authority had allowed the appeal of the taxpayer (hereinafter referred as Respondent) and quashed the penalty of ₹2,55,792/- originally generated by the Adjudicating Authority via Form GST MOV-09 under Section 129(3) of the Act. The Revenue now seeks the total reversal of the First Appellate Order and the complete restoration of the original penalty.

2. At the outset, we find that the Learned counsel for Respondent contends that the disputed penalty of ₹2,55,792/- falls below the ₹20,00,000/- monetary threshold prescribed for departmental appeals under Circular No. 207/01/2024-GST. However, the department opposed and stated that this objection is not acceptable as per the Paragraph 4 of the said Circular which mandate as under;

4. EXCLUSIONS; Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

iv. Where the matter is related to -

a. Valuation of goods or services; or

b. Classification of goods or services; or

c. Refunds; or

d. Place of Supply; or

e. Any other issue,

Which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/circular/order/instruction etc; *or*

It explicitly carves out exceptions where the monetary limits shall not apply, stating that the decision to file an appeal shall be taken on merits, irrespective of the monetary limits, in cases involving an ***'issue of a recurring nature.'***

2.1. We find that the central dispute here involves a legal question of a recurring nature affecting the mobile squad's enforcement jurisdiction. Since this legal issue arises repeatedly in transportation checks, it falls within the explicit exclusions of the litigation policy. Accordingly, the preliminary objection is overruled, and the appeal is held to be maintainable.

3. BRIEF FACTS OF THE

3.1 A mobile squad enforcement unit operating under the Assistant Commissioner, State Tax, Mobile Squad-11, Kanpur, intercepted a transit conveyance bearing Registration No. UP77AN0993 at Tatmill Crossing, Kanpur on May 7, 2022, at approximately 09:18 AM. The vehicle was driven by Shri Ram Babu Kanoujia. The commercial cargo inside consisted of 10 Jhals of "Sir Black Gold Sada Pan Masala" and 5 Jhals of "Sir Black Gold Zarda Tobacco".

3.2. At the time of interception, the person-in-charge produced valid Tax Invoices issued by the seller firm, M/s Prabhu Aastha Enterprise Pvt. Ltd., Kanpur, to the buyer firm, M/s Mohit Agency, Gorakhpur (GSTIN: 09APQPK3453C2ZS). The invoices tendered were Invoice No. 122 dated 07.05.2022 (Value: ₹1,77,000.00), Invoice No. 123 dated 07.05.2022 (Value: ₹69,000.00) Alongside these invoices, the driver produced Part-A slips of two E-Way

Bills (E-Way Bill No. 421249428042 generated at 11:08 AM on 07.05.2022 & E-Way Bill No. 441249428655 generated at 11:11 AM on 07.05.2022

3.3. The Inspecting Officer noted that Part-B (Conveyance Details) of the E-Way Bills had not been filled out. The officer also alleged that the vehicle was intercepted on a route diverging away from Transport Nagar or the Railway Station. He deemed the transaction suspicious, brought the vehicle to the department, and issued a physical verification order via Form GST MOV-02. The subsequent physical audit, documented via Form GST MOV-04 dated 08.05.2022, revealed a zero discrepancy. The physical stocks perfectly matched the face value, quantity, and HSN parameters of the tax invoices.

3.4. The officer issued a Detention Order via Form GST MOV-06, followed by a Show Cause Notice (SCN) in Form GST DRC-01 under Section 129(3). On 09.05.2022, the Adjudicating Authority passed the Order-in-Original (OIO) in Form GST MOV-09 (summary in Form GST DRC-07), creating a penalty demand matching 20% of the value of the goods under Section 129(1)(a) Imposed Total Penalty Demand ₹2,55,792/-(CGST Penalty-₹33,072.00, SGST Penalty-₹33,072.00 & Compensation Cess ₹1,89,648/-). To secure release of the goods and cargo, the Respondent deposited the entire penalty amount under protest on May 9, 2022.

3.5. Aggrieved by the OIO, the Respondent preferred a Appeal under Section 107 of the Act. The First Appellate Authority (FAA), via Order-in-Appeal No. ZD0901231330611 dated 31.01.2023, analyzed the localized transport parameters of the shipment. The First Appellate Authority quashed the penalty in full and allowed the appeal on the following findings;

- The 5 km transit from the consignor to the transporter was covered under the third proviso to Rule 138(3). Under Explanation 2 to Rule 138(3), this specific movement was completely exempt from generating Part-B.

- The interception spot at Tatmil Crossing is the natural, necessary route from Fazalganj to Transport Nagar.
- The physical verification report (MOV-04) confirmed nil difference between the actual goods and the invoices.
- Pre-generated e-invoices proved the transaction was pre-declared, establishing absolutely no intent to evade tax.
- Goods Receipt (G.R.) No. 299266 confirmed the goods were genuinely delivered to the buyer at Gorakhpur.

Aggrieved by this Order in appeal, the Department has preferred this Appeal before Tribunals.

4. Grounds of Appeal (Submissions by the Appellant-Department)

4.1. The Appellant (Revenue) respectfully submits that the Impugned Order-in-Appeal No. ZD0901231330611 dated 31.01.2023, passed by the Learned First Appellate Authority, is wholly illegal, perverse, and unsustainable both in law and on facts, and is liable to be set aside on the following grounds:

4.2. The Learned First Appellate Authority erred in law by granting absolute protection to the Respondent under the Third Proviso to Rule 138(3). The authority failed to appreciate that the safe-harbor exemption of 50 kilometers is strictly restricted to localized feeder transits within the state from the consignor's warehouse to the transporter's hub *solely for further transportation.*

4.3. In the present case, the final destination of the consignment was explicitly declared as Gorakhpur, Uttar Pradesh—a distance far exceeding the 50-kilometer threshold. Once a single vehicle is deployed to initiate long-haul transport across multiple districts, the exemption carved out for minor localized transfers is structurally extinguished.

4.4. The First Appellate Authority completely ignored *Explanation-2 to Rule 138(3)*, which mandates that an E-Way Bill shall not be valid for the movement of goods by road unless the vehicle details in Part-B are duly updated. The presence of the explicit, automated system warning on the Respondent's documents—*"Not valid for movement as Part B is not entered"*—was an absolute electronic block. The Respondent chose to defy this mandatory system rule by executing physical transit while the document remained legally invalid.

4.5. The First Appellate Authority erred in fact by dismissing the physical interception details compiled by the enforcement squad. The vehicle was intercepted at Tatmill Crossing, Kanpur, which was geographically detached from the standard route designated for delivery to the long-haul railway depot or the specific transport agency hub indicated by the taxpayer.

4.6 The authority failed to note that the physical position of the truck at the moment of checking established a strong circumstantial presumption that the vehicle was heading toward a different local destination to dump highly sensitive goods "off the books". By treating this physical route deviation as a non-issue, the First Appellate Authority arrived at a perverse finding of fact that directly contradicts the recorded coordinates and transit observations captured in Form GST MOV-07.

4.7. The Learned First Appellate Authority committed a grave procedural error by completely ignoring and discarding the voluntary, sworn statement of the driver/person-in-charge, Shri Ram Babu Kanoujia, recorded concurrently at the time of interception under Form GST MOV-01.

4.8. As laid down by settled judicial consensus (e.g., *Yashika Overseas vs. Commissioner Commercial Tax UP*), an immediate deposition made before a Gazetted Inspecting Officer reflects the true operating parameters of the transit. The subsequent defenses and technical route justifications advanced by the Respondent's counsel were mere afterthoughts engineered post-facto to escape the penalty net. The failure of the appellate court to review the driver's

statement in conjunction with the circumstantial route parameters has severely compromised the interest of the State revenue.

4.9. The First Appellate Authority erred by holding that no motive for tax evasion was established simply because the underlying invoices matched the physical counts. The court failed to comprehend the widespread *modus operandi* associated with evasion-prone commodities like Pan Masala and Tobacco.

4.10. By purposefully generating only the Part-A segment and leaving Part-B empty, unscrupulous dealers secure an open-ended time window to execute multiple illicit, local commercial trips using a single documentation set. The absence of a completed Part-B is not a "mere technical lapse" but a structural breakdown of the statutory tracking network established under Section 68. Section 129(3) operates on the principle of strict liability for transporting goods in absolute contravention of the Act and Rules. Therefore, the First Appellate Authority had no legal jurisdiction to introduce the subjective requirement of *mens rea* to wipe out a valid penalty demand.

4.11. In view of the aforementioned comprehensive facts and grounds of law, it is most respectfully prayed that SET ASIDE and QUASH the impugned appellate order bearing No. ZD0901231330611 dated 31.01.2023 passed by the First Appellate Authority and RESTORE and UPHOLD the original Adjudication Order No. ZD090522019624G dated 09/05/2022 passed by the Assistant Commissioner, State Tax, Mobile Squad-11, Kanpur.

5. Submissions of the Respondent (Taxpayer);

5.1. The Learned Counsel for the Respondent opposes the departmental appeal and submits that the Impugned Order-in-Appeal is flawless, well-reasoned, and deserves to be affirmed on both preliminary jurisdictional bars and substantive legal merits:

5.2. On the merits of the transit, the Respondent argues that there is absolutely no contravention of Section 68 or Rule 138 of the Rules. The physical movement of the cargo was limited to a localized haul of approximately 5 kilometers from the consignor's factory at Fazalganj to the depot of the declared transport agent, M/s Swastik Transport Corporation, at Transport Nagar, Kanpur, for onward carriage to Gorakhpur.

5.3. The Respondent submits that this localized transit is squarely protected under the **Third Proviso to Rule 138(3)**, which explicitly exempts taxpayers from entering conveyance details in Part-B for distances up to 50 kilometers. This statutory exemption is fully reinforced by *Explanation 2 to Rule 138(3)*, which preserves the legal validity of a standalone Part-A slip under such short-haul circumstances, meaning an automated portal legend cannot override explicit statutory provisions.

5.4. The Respondent dismisses the Revenue's allegations of a 'deviated route' and *mens rea* as entirely speculative and unsupported by evidence. Geographically, any vehicle traveling from Fazalganj to Transport Nagar in Kanpur must standardly navigate through **Tatmill Crossing**, which is precisely where the enforcement squad intercepted the truck. Crucially, the allegations of 'midnight generation' and 'multiple trips' are entirely new grounds foreign to the original adjudication record in Form GST MOV-09. Complete digital transparency is established by the fact that the Respondent had pre-registered formal **E-Invoices** on the government portal before the shipment departed, tax was charged in full, and the physical audit report in Form GST MOV-04 recorded a **net variance of zero**.

6. QUESTIONS OF LAW;

- Whether moving taxable cargo from a consignor's warehouse to a local transporter's depot within a distance of 5 kilometers without a vehicle number in Part-B constitutes a violation of Section 68 read with Rule 138, or if it is protected by the 50 km local transit safe-harbor rule?

7. Discussion and Findings;

7.1. We have meticulously evaluated the submissions, scrutinized the lower records, and examined the statutory matrix alongside the landmark judicial precedents cited by both sides.

7.2. We find that it is an undisputed position of fact that the goods were being transported with an un-updated Part-B at the time of interception, however, it is equally undeniable that the physical goods in transit precisely matched the description, weight, volume, and values declared in the tax invoices, and that the transaction was duly captured in the commercial books and subsequently reported in the tax returns. The physical verification report in Form GST MOV-04 firmly establishes a net variance of zero between the actual cargo of Pan Masala and Tobacco found in vehicle No. UP77AN0993 and the parallel values recorded in Tax Invoices Nos. 122 and 123.

7.3. We find that the Third Proviso to Rule 138(3) of the Rules categorically mandates that

> *(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 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, the transporter may, at his option, generate and carry the e-waybill 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 up to fifty kilometers 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 recipient, or as the case may be, the transporter may Not furnish the details of conveyance in Part B of FORM GST EWB-01.***

This provision is a statutory distance exemption that completely waives the mandatory requirement to update vehicle registration details in Part-B of the E-Way Bill during short-haul transit to a logistics hub. it creates a safe legal zone that allows a business to move its goods using only the first part (Part-A) declaring the tax invoice value without entering a vehicle number, provided the movement is restricted to a local distance of 50 kilometers or less, occurs entirely within the same State or Union Territory, and is executed specifically to transfer the goods to a transporter's depot for further onward transportation. The First appellate authority already held that the physical movement of the cargo was limited to a localized haul of approximately 5 kilometers from the consignor's factory at Fazalganj to the depot of the declared transport agent, M/s Swastik Transport Corporation, at Transport Nagar, Kanpur, for onward carriage to Gorakhpur and respondent had already generated **E-Invoices** on the government portal before the shipment departed. Thus, the taxpayer acted within its legal rights by not filling out Part-B for that short initial movement.

7.4. Further, the Revenue argues that the automated text stamped on the document—*"Not valid for movement as Part B is not entered"*—overrides this exemption. We reject this interpretation. An automated system stamp on a portal cannot override explicit, codified rules enacted by the legislature. Under *Explanation 2 to Rule 138(3)*, the E-Way bill remains valid without Part-B details if the trip fits within the scope of the Third Proviso.

7.5. Even when evaluating the transaction strictly from a procedural standpoint, the impugned penalty fails to stand the test of law. The entire transaction was securely logged on pre-generated e-invoices bearing Acknowledgement Nos. 142211244067068 and 142211244134227 before the vehicle departed. Such comprehensive physical and digital alignment completely eliminates any administrative presumption of revenue leakage. A minor procedural omission in updating conveyance details, entirely decoupled from an intent to evade tax, cannot legally sustain the invocation of the harsh penal mechanisms under Section 129(3).

Because the entire commercial transaction was fully transparent and embedded within the statutory tax network prior to interception, the non-generation of Part-B only due to movement of goods within 50 Kilometers.

7.6. We find that the Revenue argued that because the vehicle was caught on a different route at Tatmill Crossing, the Department was completely justified in assuming that the taxpayer intended to evade tax. However, we find that a mere deviation in the physical transit path cannot be mechanically equated with a fraudulent intention to evade tax or divert cargo under Section 129(3). The burden of proof rests strictly upon the Revenue to produce concrete, corroborative evidence showing that the alternative route was part of a clandestine, off-the-books operation. In the instant case, a meticulous evaluation of the contemporaneous statement of the driver, Shri Ram Babu Kanoujia, recorded under Form GST MOV-01, reveals that the Department's allegation lacks any evidentiary foundation and stands exposed as a pure administrative presumption. The driver merely declared the source as Kanpur and the ultimate destination as Gorakhpur, perfectly tracking the face value of Tax Invoices Nos. 122 and 123 and the E-Way Bill Part-A slips produced on the spot. There is absolutely zero admission, notation, or statement by the driver acknowledging any local route manipulation, spatial deviation, or intent to deliver to an unrecorded terminal.

7.6.1. We take note that the concurrent enforcement documents namely the Physical Verification Report in Form GST MOV-04 and the formal Order of Detention in Form GST MOV-06 remain completely silent on any route discrepancies, listing the non-generation of Part-B as the solitary transactional omission. This establishes beyond doubt that the theory of route divergence was imposed at the Show Cause stage in Form GST MOV-07 as an operational afterthought by the inspecting officers. Under the strict matrix of the law, subjective administrative suspicion can never substitute for tangible evidence, particularly when absolute

digital and physical transparency is verified by the record. Accordingly, the Revenue's ground on route deviation is not sustainable.

7.7. This complete digital and physical transparency establishes an absolute absence of any fraudulent intent or *mens rea* to evade tax on part of the Respondent. Hon'ble Supreme Court of India in the case of Hindustan Steel Ltd. v. State of Odisha, held as under:

> ***"The discretion to impose penalty must be exercised judicially. A penalty will ordinarily be imposed in case where the party acts deliberately in defiance of law*****……,**

Penalties should not be levied for technical or minor infractions unless there is clear evidence of a deliberate defiance of law. In this case, the Respondent pre-declared the entire transaction on the central government's digital network by generating formal E-Invoices before the shipment departed. Tax was fully charged, the physical verification showed zero inventory discrepancies, and the goods were logged at the transport hub via Goods Receipt (G.R.) No. 299266 immediately after their release.

7.8. The legal position regarding the non-filling of Part-B details during localized feeder transits is well-settled under the rule 138(3) of CGST/UPGST rule 2017 and by the under mentioned precedents:

- **M/s Monotech Systems Ltd. vs. State of U.P. (Writ Tax No. 1689 of 2024):** The Hon'ble Allahabad High Court ruled that proceedings under Section 129 are invalid when based on mere technical omissions, provided there is substantial statutory compliance, the physical cargo matches the documentation, and there is no evidence of intent to evade tax.

The transaction was fully documented, properly taxed, and complied with rules under Rule 138(3). Therefore, as all findings of fact and law recorded by the First Appellate Authority are well-reasoned and grounded, so, we are of the opinion that OIA is liable to be affirmed.

ORDER

In light of the foregoing findings, the present appeal filed by the Revenue is dismissed, and the Order-in-Appeal No. ZD0901231330611, dated 31.01.2023, passed by the Additional Commissioner Grade-2 (Appeals)-IV, State Tax, Kanpur, is upheld.

02.11.26

(Santosh Kumar Srivastava)

2/11/2026

(Arvind Kumar)

Dated: 02.11.2026