GOODS AND SERVICES TAX APPELLATE TRIBUNAL
THIRUVANANTHAPURAM BENCH
Division Bench :: Court No. I
(hybrid hearing)

APPEAL NO : APL/64/TVP/2026
a/w RECT.APPL No 4/TVP/2026

[arising out of OIA No: GSTA (KLM) 26/2021 dated 27-4-2022 passed by the Joint Commissioner (Appeals)-I, Kollam]

TASTY NUT INDUSTRIES ……..Appellant

VERSUS

THE COMMISSIONER OF KERALAM STATE GST THIRUVANANTHAPURAM ……Respondent

For Appellant
KR Balachandran, Advocate

For Respondent
Vineeth U Krishnan, AR

CORAM : **Hon'ble Shri Subramanya Rayaprol, Vice-President**
Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

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FINAL ORDER NO: 21/TVP/KERALA/2026

Date of Hearing: 25-9-2026
Date of Order: 13-11-2026

Per: Subramanya Rayaprol, Vice-President

1.0 Mr KR Balachandran, Ld Advocate appeared for the appellant. Mr Vineeth U Krishnan, Deputy Commissioner appeared as AR for the respondent.

2.0 Ld Advocate appearing for the appellant submits that the Appellant is registered under GST both in the State of Tamil Nadu and in the State of Kerala. On 14.11.2021, the Appellant transported 4,182 kg of cashew kernels from its own branch in Tamil Nadu to its own branch in Kerala by way of stock transfer. The movement was

supported by Invoice No. 37/2021-22 dated 13.11.2021 and E-way Bill No. 581312387606. The departmental order itself records the invoice and e-way bill particulars and the quantity/value of the consignment tallies and there is no discrepancy. He submits that the vehicle was intercepted by the Assistant State Tax Officer, Mobile Squad No. V, Kollam, at about 12.12 PM on 14.11.2021. The only discrepancy recorded was non-generation of e-invoice under Rule 48(4)/(5) of the CGST/KGST Rules. He submits that he has made a detailed written submission and also uploaded supporting documents. As regards, the Rectification of Mistake application filed by the appellant, which is allotted the no. RECT.APPL No 4/TVP/2026, he submits that it is wrongly filed in Misc Application while uploading additional documents. He submits that the rectification of mistake application may be ignored as erroneously filed. He prays that the appeals may be allowed.

3.0 Ld AR for the respondent reiterates the findings in the order of the JC (Appeals), and submits that the vehicle bearing no KL-02AJ4695 loaded with cashew kernels was intercepted at Ithikara, Kollam on 14-11-2021. The documents which accompanied the transport was Tax Invoice No. 37/2021-22 dated 13-11-2021 issued by the appellant's registered unit in Tamil Nadu with GSTIN No. 33AAEFT7698D1ZW to the appellant with GSTIN 32AAEFT7698D0ZY located at Kollam, along with an e-way bill no. 581312387606 dated 13-11-2021. It was observed that the supplier was required to issue e-invoice wherein they had issued only normal Tax Invoice, which was in gross violation of Rule 48(5) of the CGST/KGST Rules, 2017 read with Section 20 of the IGST Act. Based on such violation the goods were detained and penalty of Rs 101631/- equal to GST under section 129 (1) was imposed. He also submits that Rule 48(4) and Rule 48(5) are mandatory in nature. The first appellate authority has

specifically examined Rules 48(4), 48(5) and 48(6) and recorded that Rule 48(4) provides the manner in which invoice is required to be prepared. The appellate authority further relied upon Rule 48(5) which provides that an invoice issued by a person to whom Rule 48(4) applies otherwise than in the prescribed manner shall not be treated as an invoice. He submits that the appellant cannot contend that generation of an ordinary tax invoice and an e-way bill completely cures the non-compliance with Rule 48(4). The failure to generate the prescribed e-invoice is not merely a procedural omission that can be automatically ignored. He further submits that the argument of appellant that the transaction was stock transfer between branches and there is no revenue loss is also not maintainable. The transaction being one between distinct persons having separate GSTIN is considered a taxable supply for which IGST is attracted. The argument of the appellant that Rule 48(4) was a nascent provision and they had insufficient time to familiarise with it is not acceptable. Vide notification no 88/2020 CT dated 10-11-2020, the e-invoice was made mandatory wef 1-1-2021, whereas the vehicle was intercepted on 14-11-2021. As such their argument is not acceptable. He prays that the appeals may be rejected.

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4.0 Heard both sides.

4.1 We find that the appellant has also filed a Misc Application no. RECT.APPL No 4/TVP/2026 for rectification of mistake even before the order is passed by this Tribunal. It appears that the appellant has uploaded some other document and as such is no application for rectification of mistake. The Misc Application RECT.APPL No 4/TVP/2026 is therefore rendered infructuous and dismissed as erroneously filed.

4.2 We find that on merits of the case, the issue to be decided is

Whether a penalty under Section 129(1) of the CGST/KGST Act, 2017, can be levied on the recipient of the goods in an inter-state supply, on interception of the vehicle, when the transporter is carrying proper Tax Invoice and a valid e-way bill, but the supplier has not prepared an e-invoice on the date of supply.

4.3 We find that the appellant is having two registrations under GST. One is in Tamil Nadu with GSTIN 33AAEFT7698D1ZW and the second is in Kerala with GSTIN 32AAEFT7698D0ZY. On 14-11-2021, the Tamil Nadu Unit has transported 4182 Kgs of Cashew kernels through a truck no. KL-02AJ-4695. It is on record that the transport vehicle was accompanied with a Tax Invoice issued by the supplier and a valid e-way bill, which is also not disputed. The only dispute is that the supplier who is mandated to issue e-invoice based on their turnover, has not issued the e-invoice and was not available at the time of interception of the vehicle.

4.4 We find that the vehicle was accompanied with a proper tax invoice and e-way bill. There was no discrepancy as regards to the quantity and description of goods. The e-way bill was also valid at the time of interception and no discrepancy noticed in the e-way bill either. We find that when there is a tax invoice and e-way bill, which is sufficient for the transporter to demonstrate, the vehicle should have been let go. As regards the non-issuance of e-invoice, it cannot be a ground for detention of the vehicle and imposing penalties.

4.5 We find that the argument of the appellant that the supply was a stock transfer only, we find that as per Section 20 of the IGST Act, 2017, the supply is between two

distinct taxpayers registered in two different states, is an inter-state supply even though both of them share common PAN, the tax payable is IGST. Therefore, there is no dispute that the impugned transaction attracts IGST.

4.6 The appellant has produced the Tax Invoice, GSTR1 filed by the Tamil Nadu unit showing the concerned Invoice No. 37/2021-22 dated 13-11-2021, Taxable Value: Rs. 21,34,254/- and IGST : Rs. 1,01,631/-. The appellant's own GSTR2B reflects the same invoice which proves beyond doubt that the transaction was IGST paid. The obligation on the part of the appellant i.e. recipient of the goods is limited to carrying the proper Tax Invoice, valid e-way bill, and showing the same to the officer during checking of the vehicle and its goods.

4.7 As regards, the procedure prescribed for issuance of the e-invoice, there is no compulsion anywhere in the CGST / KGST Act, to issue the e-invoice for supply of goods and to carry the same along with the goods. Circular No. 160/16/2021-GST dated 20-9-2021 has clarified, that there is no requirement of physically carrying the e-invoice. The CGST/KSGT Act does not prescribe any time lime for issuing the e-invoice. The GSTN / NIC has been issuing advisories from time to time and had advised that after issuing the Tax Invoice, and IRN can be generated through the e-invoicing portal within a period of 30 days from the date of Tax Invoice.

4.8 We find that the Section 31 of the CGST / KGST Act, 2017, prescribes a tax invoice to be issued by the registered supplier for supplying the taxable goods at the time of removal of the goods where there is movement of goods. The Section 31 (1) reads as,

31. Tax invoice

(1) A registered person supplying taxable goods shall, before or at the time of,-

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

4.9 Rule 46 of the CGST/KGST Rules gives the format of the Tax Invoices as to the contents of the Tax Invoice. Rule 48 of the CGST/KGST Act, gives the manner in which the Tax Invoices are required to be issued. Only for some notified taxpayers based on their AATO (Aggregate Annual Turn Over), it is mandatory to issue e-invoices i.e. to generate IRN from the e-invoice portal, by making entries of the Tax Invoice which is already issued. For such generation of e-Invoice with an IRN, the NIC/GSTN who are controlling the concerned website/portal have issued advisories pertaining to the timelines within which such Tax Invoices can be uploaded in the e-invoice portal for generation of IRN and reporting of the same in the GSTR1 Return.

4.10 We find that the Rule 46 of the CGST/KGST Rules, prescribes that a Tax Invoice under Section 31 shall be issued by the registered person, who is the supplier of the goods. Rule 48 (4) & (5) of the CGST/KGST Rules, which prescribes that the manner in which the Tax Invoice is to be issued, which reads as,

(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such

*particulars contained in **FORM GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.*

***Provided** that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.*

4.11 We find that the Section 31 of the CGST/KGST Act, and Rule 46 of the CGST/KGST Rules, applies only to the registered supplier of goods to prepare the Tax Invoice / e-Invoice and does not implicate the recipient of the goods, for any such omission.

4.12 We are also of the opinion for academic purpose, that for any omission in the preparation of e-invoice under Rule 48(4), it is for the jurisdictional assessment officer to raise this point during the course of scrutiny or assessment or audit of the supplier's records and returns, and take appropriate action as prescribed under GST Law.

4.13 We find that the penalty is levied for non-preparation of e-invoice by the supplier of goods, on the recipient of goods under section 129(1) of the CGST/KGST Act. Section 129(1) reads as,

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***

<u>of this Act or the rules made thereunder</u>, *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 penalty equal to two 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 penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, 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 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:

4.14 We therefore, find that the penalty levied on the recipient of goods, under Section 129(1) is not at all sustainable as there is no justification for penalizing the appellant as a recipient of goods, for non-preparation of e-invoice, by the supplier of goods from another state, even where the Tax Invoice and e-way bill was already available with the transporter at the time of interception of the vehicle. We find that only the supplier of the goods can issue an e-invoice for supply of goods, and the entire burden of issuing an e-invoice is only on the supplier. The imposition of penalty under Section 129(1), is not at all justified as the appellant, as a recipient of the goods, has not contravened any Section, including Section 31 of CGST/KGST Act or

any Rules, including Rule 46 & 48 of CGST/KGST Rules, so as to attract the penalties under Section 129(1) of CGST/KGST Act.

4.15 Our view is also supported by the judgements of Hon'ble High Court of Kerala in the case of OSEL DEVICES LIMITED vs Assistant Enforcement Officer cited in 2024 (12) TMI 209 - KERALA HIGH COURT wherein it is held that,

"1. The petitioner has approached this court challenging Ext.P16 order issued under Section 129 (3) of the CGST / SGST Acts on a short ground. It is the case of the petitioner that the only defect noted was that an E-invoice was not generated. It is submitted that the goods were being transported under the cover of E-way Bill as well as invoices and the Department has no case that there was evasion of tax. It is submitted that in such circumstances the imposition of penalty of Rs.12,12,120/- under Section 129 of the CGST / SGST Acts is without any legal justification.

. . .

"4. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader, I am of the view that the issue raised in this writ petition is covered in favour of the petitioner by the declaration in judgment of this court in T.P. Metal Roofings (supra), where this court held as follows;

"12. For all the aforesaid reasons, this writ petition is allowed. Ext.P10 is quashed. It is declared that the provisions of Section 129 of the CGST/SGST Acts do not authorise the imposition of tax/penalty as contemplated by the provisions of Section 129(1)(a) or Section 129(1)(b) in cases where only minor discrepancies are noticed and such penalty can be imposed only for violations which may lead to evasion of tax or where the transport was with an intent to evade tax or in cases of repeated violations (even of a minor nature). In other cases, the authorities will impose penalties having due regard to the provisions of Sections 122 and 126 of the CGST/SGST Acts. In the facts of the present case, this Court is of the considered opinion that a penalty of Rs.10,000/-

(Rupees Ten thousand only), as contemplated by the provisions of Section 122(1)(xiv) of the CGST/SGST Acts can be imposed. On payment of the penalty as directed above, the Ext.P7 bank guarantee produced by the petitioner shall be released to it. However, I clarify that this judgment should not be read as holding that every case of expiry of e-way bill or other discrepancy cannot lead to the initiation and conclusion of proceedings under Section 129 of the CGST/SGST Acts. Where it is found that such act was with the intention to evade tax, the Revenue would be justified in initiating and concluding proceedings under Section 129 of the CGST/SGST Acts leading to imposition of penalty as contemplated by that provision."

Accordingly, I overrule the objection raised by the learned Government Pleader that the petitioner has an effective alternative remedy by way of appeal and quash Ext.P16 order permitting the competent officer to impose penalty in terms of provisions contained in Section 122 of the CGST / SGST Acts also keeping in mind the provisions of Section 126 of the CGST / SGST Act. Any amount that has been collected from the petitioner towards the amount payable by the petitioner in terms of Ext.P16 shall be refunded to the petitioner after fresh orders are passed by the competent authority.

Writ petition is disposed of as above."

4.16 Another order of the Hon'ble Allahabad High Court in the case of Nancy Trading Company Versus State of U.P. And 3 Others cited in 2024 (7) TMI 1303 - ALLAHABAD HIGH COURT, wherein it is held that,

". . .

3. Learned counsel for the petitioner submits that the goods in question were in transit along with tax invoice, GR's, E waybills. The said goods were detained on the ground that E Tax Invoice was not generated as per Rule 48 of the Goods and Services Tax Rules, 2017 (for short the Rules). He further submits that as per Rule 138A of the Rules there is no provision for carrying E Tax Invoice, hence it was not correct on the part of the authorities to seize the goods and pass the impugned orders against the petitioner.

He further submits that once the E Waybill was generated, it was within the knowledge of the authorities about the movement of the goods, hence there was no intention to avoid payment of tax. He further submits that the authorities have not recorded any finding with regard to any intention to avoid tax. He further submits that the annual turn over of the petitioner was much less than the prescribed limit for generating the E Tax Invoice. He further submits that the dealers who were having annual turn over above Rs. 20 crores was required to issue E Tax Invoice. He further submits that now the said limit has been reduced to annual turn over of Rs. 10 crores by notification dated 1st August, 2022. He further submits that there was a bona fide mistake as the petitioner was not aware that the said limit has been reduced from Rs. 20 crores to Rs. 10 crores. He prays for allowing the writ petition.

4. Per contra, learned standing counsel submits that Section 129(3) of the UPGST and CGST Act 2017 empowers the authorities to initiate proceedings and the petitioner is duty bound to issue tax invoice as per Rule 48 (4) of the Rules which has not been done in the present case, therefore the action taken by the authorities is justified. He prays for dismissal of the writ petition.

5. After hearing the learned counsel for the parties, the Court has perused the records.

6. It is admitted that while transiting the goods in question all documents as required under Rule 138 A of the Rules were accompanying with the goods. Only a technical error has been committed by the petitioner for not generating E Tax Invoice before movement of goods in question. It is not in dispute that Waybill was generated. It is not the case of the Revenue that there was any discrepancy with regard to quality and quantity of the goods as mentioned in Tax Invoice, E Waybill as well as GRs accompanying the goods. The error committed by the petitioner for not generating E Tax Invoice before movement of goods is a human error. It is also not in dispute that prior to 1st August, 2022 the dealers who were having annual turn over of more than Rs. 20 crores was required to issue E Waybill. The said limit has now been reduced with effect from 1st August, 2022 to Rs. 10 crores, hence there was bona fide mistake

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on the part of the petitioner for not generating E Tax Invoice but in absence of any specific finding with regard to mens rea for evasion of tax, the proceeding under section 129 (3) of the Act should not have been initiated. On the pointed query to the learned standing counsel as to whether any finding was recorded by the authorities at any stage with regard to mens rea for evasion of tax has been recorded, the answer was very fairly in negative.

7. In view of the above, in absence of any finding with regard to mens rea the proceeding under section 129(3) of the Act cannot be initiated. The impugned order dated 26.12.2022 passed by respondent no.4 as well as the order dated 26.5.2023 passed by respondent no.3 are hereby quashed. The writ petition is allowed.

8. Any amount deposited in the said proceeding shall be returned back to the petitioner within a period of one month from the date of production of a certified copy of the order."

4.17 We find that the Section 129(1) of the CGST/KGST Act, 2017 cannot be invoked for imposing penalties for non-issuance of e-invoice under Rule 48(4), when a proper Tax Invoice is already issued. Any omission under Rule 48 of the CGST/KGST Rules is to be monitored by the jurisdictional GST officer during audit/scrutiny or assessment, of the registered supplier, and take action as per GST Law.

5.0 To answer the issue raised at para 4.2, we find that a penalty under Section 129(1) of the CGST/KGST Act, 2017, cannot be levied on the recipient of the goods in an inter-state supply, on interception of the vehicle, when the transporter is carrying a proper Tax Invoice and a valid e-way bill, but the supplier has not prepared an e-invoice on the date of supply.

6.0 Accordingly, we pass the following order.

ORDER

(1) The Rectification of Mistake Application (RECT.APPL No. 4/TVP/2026) is disposed off as erroneous and infructuous.

(2) The Order-in-Appeal No. GSTA (KLM) 26/2021 dated 27-4-2022 is set aside and the appeals are allowed with consequential relief.

(Order pronounced in open court)

Rayaprol Subramanya Viswanatha
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Date: 2026.11.13 19:32:52 +05'30'

Subramanya Rayaprol
Vice-President

Ramamoorthi Sriram
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Ramamoorthi Sriram
Member (Technical)

Date: 13-11-2026

GST APPELLATE TRIBUNAL
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