Dated: 12.11.2026

GSTAT

State Bench Chandigarh

Court No. Court I

APL/169/CHD/2026

R.K. ENTERPRISES **.....Appellant**

Versus

K S CHAHAL, DEPUTY EXCISE AND TAXATION COMMISSIONER PATIAL DIVISION, PATIAL DIVISION MOHALI & ORS. **.....Respondent**

Quorum

Hon'ble Jatinder Pal Singh, Member(Judicial)
Hon'ble Pradeep Kumar Goel, Member (Technical)

Counsel for Appellant
SH. VIKRANT KACKRIA, ADVOCATE, ALONG WITH SH. RAM NIWAS, ADVOCATE

Counsel for Respondent
SH. YADWINDER SINGH, AC, STATE TAX, ALONG WITH SH. AMIT KUMAR, STO

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. : ZA040281126000202H **Date of order :** 12/11/2026

1.	GSTIN/Temporary ID/UIN - 04ACZPC8050F1ZK	
2.	Appeal Case Reference no. - APL/169/CHD/2026	Date - 08/06/2026
3.	Name of the appellant - R.K. ENTERPRISES , rubalgupta82@gmail.com , 9876527947	
4.	Name of the respondant - 1. K S CHAHAL 2. Anurag Bharti Assistant Commissioner of StateTaxes (Jalandhar-1) , aetcjal1@punjab.gov.in , 9872910024	
5.	Order appealed against -	
	(5.1) Order Type - Enforcement Order	

	(5.2) Ref Number - 306/APPEALS, MOHALIR K ENTERPRISESR K ENTERPRISESRRR	Date - 23/07/2024
6.	Personal Hearing - 12/11/2026 30/09/2026 16/09/2026 26/08/2026 20/08/2026 13/08/2026 06/08/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - We, therefore, hold that confiscation of the goods and vehicle under Section 130 of the Act cannot be justified or sustained. Consequently, no penalty can be imposed under Section 122 of the Act in the present case. The appeal is allowed accordingly. The Impugned Order passed by the Appellate Authority and the Order-in-Original passed by the Adjudicating Authority are quashed and set aside with consequential relief.	
Summary of Order		
9.	If demand order then whether demand quantified: No	

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	THE GOODS HAS BEEN CONSFICATED AND FINE AND PENALTY HAS BEN IMPOSED ON THE GROUNDS THAT PRECEEDING PURCHASE IS NOT GENUINE	Confiscation of the goods and vehicle under Section 130 of the Act cannot be justified or sustained. Consequently, no penalty can be imposed under Section 122 of the Act in the present case.

Place :CHANDIGARH

Signature

Date : 12.11.2026

CHANDIGARH Jatinder Pal Singh

Designation : Member

Jurisdiction :Chandigarh

ORDER

The present appeal has been filed by M/s R. K. Enterprises, Chandigarh ('the Appellant'), an entity registered with the GST Department vide GSTIN 04ACZPC8050F1ZK. The appeal has been filed against Order-in-Appeal No. 306/Appeals, Mohali dated 23.07.2024 ('the Impugned Order') passed by the Deputy Commissioner of State Tax (Appeals), Patiala Division ('the Appellate Authority'). The SGST Department is the Respondent herein.

2. Before proceeding further, it is relevant to note that in the cause title appearing on the GSTAT Portal, the name and designation of the Appellate Authority who has passed the Impugned Order-in-Appeal is appearing as the Respondent. However, as per Rule 33(1) of the GST Appellate Tribunal (Procedure) Rules, 2025, in an appeal filed before the Tribunal by a person other than the Commissioner, the Commissioner concerned shall be made the respondent. Hence, the Respondent in the cause title of this appeal should be corrected and read as "Commissioner of State GST, Punjab".

3. The facts of the case in brief are that on 10.11.2022, the goods (namely, aluminium scrap) being transported in vehicle number PB12 T4058 were checked in transit by the proper officer of the mobile team of the SGST Department, under Section 68(3) of the Punjab Goods and Services Tax Act, 2017 ('PGST Act') / Central Goods and Services Tax Act, 2017 ('CGST Act') read with Section 20 of the Integrated GST Act, 2017 ('IGST Act'). The driver of the vehicle produced the documents for the goods, namely, tax invoice issued by the Appellant, GR Note issued by the transporter, e-way bill, and weighment slip. The statement of the driver was recorded by the officials and the goods were detained under Section 68(3) read with Section 129(1) of the PGST Act / CGST Act read with Section 20 of the IGST Act. A notice in Form GST MOV-2 was served upon the driver with the following observations:

i. The genuineness the goods in transit (quantity, etc.) and the documents tendered required further verification; and

ii. The genuineness of the transaction needed verification from the regular books of account in terms of genuineness of ITC being claimed / transferred.

4. On the basis of inquiries / investigation by the Department to the effect that the Appellant had shown inward supply and claimed Input Tax Credit ('ITC') in the past from firms who were not paying output tax correctly, a Show Cause Notice dated 22.11.2022 ('the SCN') was issued in Form GST MOV-10 proposing confiscation of the goods and conveyance and levy

of penalty under Section 130 of the PGST Act / CGST Act, read with Section 20 of the IGST Act.

5. An order was passed by the Asst. Commissioner, State Tax (Mobile Wing), Chandigarh 2 ('the Adjudicating Authority') in Form GST MOV-11 on 29.11.2022 ('the OIO'), confiscating the goods (i.e. aluminium scrap falling under HSN code 7602 weighing 9015 kg and valued at Rs 14,78,460/-) which were detained in transit on 10.11.2022, and imposing penalty of Rs. 2,66,123/- under Section 130(1) read with Section 122 of the CGST Act / PGST Act / IGST Act. Fine of Rs. 5,32,246/- in lieu of confiscation of goods was also imposed under Section 130(2).

6. The Appellant filed an appeal under Section 107 of the PGST Act / CGST Act before the Appellate Authority, and vide the Impugned Order the Appellate Authority rejected the appeal. The Appellant is now in further appeal before this Tribunal, against the Impugned Order.

7. The Appellant has urged various grounds of appeal. The principal grounds are summarised as under:

a. The original order passed by the Asst. Commissioner of State Tax ('ACST') was without jurisdiction. As per the Circular dated 13.04.2018 issued the Central Board of Indirect Taxes and Customs ('CBIC'), the office detaining the goods will issue GST MOV-10. Therefore, the order having been passed by the ACST which is a different office is liable to be set aside, being without jurisdiction.

b. Section 129(3) of the PGST Act / CGST Act mandates that the Proper Officer detaining or seizing goods or conveyance shall issue notice specifying the tax and penalty payable and shall thereafter pass an order for payment of tax and penalty. In the present case, the ACST, rather than issuing the statutory notice in Form GST MOV-07, surpassed the provisions of Section 129 and directly issued notice for confiscation in Form GST MOV-10 under Section 130.

c. Section 129(6) specifically provides that if the person transporting any goods or the owner of the goods fails to pay the tax and penalty within 14 days of detention and seizure, proceedings shall be initiated under Section 130 of the Act. In the present case, the Appellant is entirely governed under Section 129(1), so there is no question of invoking Section 129(6) read with Section 130 of the Act.

d. The Appellant, in order to get its goods released, came forward and deposited the penalty & fine vide challan dated 02.12.202 for Rs. 7,98,369/- (Rs. 2,66,123 as penalty + Rs. 5,32,246 as fine). The Department had no authority to invoke Section 130 when the Appellant had come forward and deposited the tax in terms of Section 129.

e. The OIO passed by the ACST was violative of the principles of natural justice as no opportunity was afforded to the Appellant to rebut the allegations as alleged in the notice as well as during the course of the proceedings.

f. The Appellant sold aluminium scrap to M/s Roop Aluminium Extrusions (Relex), Rajpura holding GSTIN 03AAYFR7015C1Z8. The said goods having value of Rs. 14,78,460/- including tax @ 9% PGST and 9% CGST were covered by: (a) Invoice No. 307 dated 10.11.2022; (b) e-way bill No. 341521296250 dated 10.11.2022 showing the movement of the goods from Chandigarh to Rajpura; (c) Goods Receipt No. 553 dated 10.11.2022 issued by M/s Raja Road Line Regd., Chandigarh; & (d) weighment slip with Sr. No. 9041 dated 10.11.2022 of Shiv Kanta, Chandigarh. The goods were, therefore, being carried with proper and genuine documents.

g. Even if some anomalies had been found regarding the past transactions, if the documents tendered along with the goods were found to be in order, the authority was bound to allow the conveyance to proceed without imposing any penalty & fine.

h. The opinion of the proper officer about the goods under movement has to be objective based on hard evidences. The intention to evade tax cannot be decided based on presumption and conjectures.

i. None of the clauses of Section 130(1) of the CGST Act are applicable to the facts of present case, hence imposition of fine and penalty is legally not tenable.

j. The Appellant has been unjustifiably held guilty of attempted evasion of GST on outward supply of the detained goods on the sole premise that the ITC claimed by the Appellant on past inward supplies from two firms, namely M/s Pankaj Enterprises (GSTIN 03DFAPB2863C1Z8) and M/s Divyansh Enterprises (GSTIN: 03EEHPK2601A1ZG), was inadmissible as these firms are non-existent and their supply chain was initiated from dealers who neither have inward supply nor have they paid tax to the Government.

k. The SCN has not resorted to any specific clause of Section 130(1) while proposing to confiscate goods dispatched for outward supply to the Appellant's customer. The SCN has neither demonstrated as to how the alleged inadmissibility of ITC on past inward supplies

resulted in evasion of tax by the Appellant on such outward supply nor mentioned the specific clause of Section 130(1) of the CGST Act to support its case. The OIO also does not mention any of the specific clauses of Section 130(1) of the CGST Act under which the goods have been confiscated.

l. In the given case, the Appellant carried the requisite documents in terms of Rule 138A of the CGST Rules, and produced validly prepared E-way bill and Tax Invoice to the State Tax Officer, Mobile Wing on demand. The Department has not found any infirmity in the documents vis-a-vis the goods supplied under the cover of the said documents.

m. Further, the OIO nowhere provides for as to how there was any intention to evade payment of GST by the Appellant on such outward supply. Even after ignoring the amount of ITC availed on the inward supplies from the said two suppliers, the Appellant had sufficient ITC balance to pay GST on the said outward supply.

n. Without prejudice, a supplier of goods cannot be accused of having intention to evade tax on his outward supply for the act or omission, if any, on the part of any other person not immediately linked to his supply activity.

o. Further, the goods actually confiscated were the goods which were being supplied by the Appellant to its customer and not the goods received by the Appellant in the past from the said two firms.

p. The Impugned Order is devoid of the principles of natural justice. The demand proposed in the SCN and confirmed vide the OIO is based on mere allegations without providing any evidence to support the allegations. Thus, confirmation of demand based on mere allegations without supporting evidence has no legal sanctity in the eyes of law.

q. The Appellant has correctly availed ITC on the goods supplied by the impugned suppliers, who had supplied scrap to the Appellant under the cover of tax invoices and e-way bills. After receipt of the goods, the Appellant accounted for the inward supply in his books of accounts, made payment to the said firms towards the value of the goods and the GST charged thereon. The Appellant filed his Form GSTR-3B for availing the said ITC. As per the details available in Form GSTR-2A/GSTR-2B on the GST portal, the said two suppliers reported the tax invoices in their Form GSTR-1 and the status of the corresponding Form GSTR-3B filing status and ITC availability was mentioned as ‘Yes’ therein. It is incorrect to allege that the inward supply from the said two suppliers is disputable and they did not pay GST to the Government. In this regard, illustrative copy of tax invoice and corresponding e-way bill issued by each of the said two suppliers with a copy of Form GSTR-2A and GSTR-

2B downloaded from the GST portal evidencing filing of Form GSTR-3B by them and ITC availability as 'Yes' were enclosed before the authority. Thus, the conditions stipulated under Section 16 of the CGST Act regarding eligibility of ITC on such inward supply have been duly complied with.

r. Without prejudice to the above grounds, a bona fide law-abiding purchaser cannot be punished for the fault, if any, of the supplier of goods.

8. On the Appellant's behalf, the following case-law has been referred to in support of the above-mentioned contentions:

Amrit Foods vs. CCE, 2005 (190) ELT 433 (SC); Synergy Fertichem Pvt. Ltd. Versus State of Gujarat -2020 (33) G.S.T.L. 513 (Guj); M/s Hindustan Coca Cola Private Limited Vs. Assistant State Tax Officer, SGST Department, Palakkad, Kerala-2020 (35) G.S.T.L. 545 (Ker.); Raghav Metals Vs. State of Haryana – 2022 (63) GSTL 300 (P&H); Shiv Enterprises Vs. State of Punjab -2022 (58) G.S.T.L. 385 (P&H); Vageesh Umesh Jaiswal Vs. State of Gujarat -2022 (64) G.S.T.L. 177 (Guj); Bansal Steel Power Ltd. Vs. Commissioner of C. Ex.& S.T., Rohtak – 2021 (377) E.LT. 623 (Tri.-Chan.); CCE, Bangalore v. Brindavan Beverages (P) Ltd., 2007 35 (213) ELT 487 (SC); Gheru Lal Bal Chand v. State of Haryana – 2011 (45) VST 195 (P&H); Chunni Lal Parshadi Lal –AIR 1986 SC 1966; Assistant Commissioner, Commercial Taxes Department, Jaipur vs. AM/s Asha Oil Traders, Jaipur – 2022 (2) TMI 301; TVL Sahyadri Industries Ltd. vs. The State of Tamil Nadu, Represented by The Joint Commissioner, Erode -2023 (4) TMI 912.

9. We have heard Sh. Vikrant Kackria, learned Advocate for the Appellant, who has vehemently argued that there was no case for detention of the goods in transit as the goods were accompanied by documents as required by the law. He has further argued about lack of jurisdiction of the officer who passed the Order-in-Original. He has also very forcefully argued that there were no grounds for confiscation of the goods and vehicle under Section 130 or for imposition of penalty under Section 122. Per contra, the Departmental Representatives S/Sh. Yadvinder Singh, ACST and Gurdeep Singh, STO have contended that detention of the goods was made in view of the prevailing modus operandi for evasion of tax. They have reiterated the findings as per the Order-in-Original and the Impugned Order, in support of the case of the Respondent Department.

10. At the outset it may be mentioned that we will refer to the CGST Act, the PGST Act and the IGST Act as "the CGST Act" or "the Act" for convenience, as the provisions of the CGST Act and the PGST Act are similar and the provisions of the CGST Act have been made

applicable to the IGST Act by virtue of Section 20 of the IGST Act.

11. We find that in the present appeal, the Appellant has raised various issues including unjustified detention of the goods and vehicle in transit, non-application of the correct provisions of Section 129 of the Act for proceedings relating to detained goods, lack of jurisdiction on the part of the officer passing the Order-in-Original, the legality of confiscation of goods and vehicle and imposition of penalty under Section 130 read with Section 122 of the Act, etc. As the cause for litigation in this case emanates from the confiscation of goods and vehicle and imposition of penalty, we will deal with the issue of confiscation and penalty first.

12. In the present case confiscation of the goods and vehicle detained as per Form GST MOV-2 dated 10.11.2022 was proposed vide the SCN dated 22.11.2022 in Form GST MOV-10, on the following grounds mentioned in the notice:

"1. During the course of checking under the provisions of Section 68 of the Punjab Goods and Services Tax Act, 2017 read with relevant provisions of Section 68 of the Central Goods and Services Tax Act 2017/ Section 20 of the Integrated Goods and Services Tax Act, 2017, conveyance bearing No. PB12T4058 was intercepted by Intercepting Officer on 10.11.2022 at 07:45 PM at Rajpura Shambhu Road carrying Aluminium scrap. On inquiry, the person in-charge of the conveyance Sh. Baljinder Singh has produced the following document for the goods in movement before the Intercepting Officer:

1) Invoice No. 307 dated 10.11.2022 of Consignor firm M/s R. K. Enterprises, Chandigarh (GSTIN: 04ACZPC8050F1ZK)

2) GR No. 553 dated 10.11.2022 of M/s Raja Roadline Regd., Chandigarh

3) Weighment slip with Sr No. 9041 dated 10.11.2022 of Shiv Shankar Kanta, Chandigarh

The statement of the driver/person in charge of the goods conveyance was recorded on spot which is placed on file.

2. The goods in movement were inspected under the provisions of sub-section (3) of section 68 of the Punjab Goods and Services Tax Act, 2017 read with subsection (3) of section 68 of the Central Goods and Services Tax Act, 2017 or under section 20 of the Integrated Goods and Services Tax Act, 2017 read with subsection (3) of section 68 of the Central Goods and Services Tax Act, 2017 and the following discrepancies were noticed:

Vehicle number HR69C0807 used lor transporting goods from M/S PANKAJ ENTERPRISES to M/s RK Enterprises was in Haryana at the given time as the E way bill 361519920903 was generated at 3.39 pm On 7-11 2022 from Ludhiana to Chandigarh whereas E way bill for the same vehicle was generated from Ambala to Saharanpur at 4.36 pm on 7-11-2022 so it is not possible for the said vehicle to travel from Ludhiana to Chandigarh and then to Ambala within 1 hr.

Further as per the toll data, the said vehicle had crossed MilkMajra Toll Plaza (Haryana) at 07/11/2022 17:58:58 and the same falls on the route from Ambala to Saharanpur which clearly proves the movement of vehicle from Ambala to Saharanpur.

Further the dealer has been confronted with the verification of the firms registered in the state of Punjab. The dealer is confronted with the fact that for the last one month he is having ITC wise transaction (max to min) from two firms namely 03???PK2601QIZG / DIVYANSH ENTERPRISES and 03DFAPB2863C1Z8 / PANKAJ ENTERPRISES registered in the state of Punjab. The supply chain of 03EEHPK2601Q1ZG / DIVYANSH ENTERPRISES is that the said firm is having inward exclusively from 03NZSPS9841H1ZC / GURDEEP ENTERPRISES who is further having inward exclusively from 03ICAPS0663H1ZO/ MAHANGA ENTERPRISES who is not having any inward and is not paying any tax.

All the firms in the said supply chain have been verified and does not exist at the given place of business. Regarding the second firm 03DFAPB2863C1Z8 / PANKAJ ENTERPRISES it is found that the said firm is having inward from 03HRPPM5393M1ZX / KASHIMOORAT ENTERPRISES, 03GBCPR6032N1ZF/ PARMAJIT ENTERPRISES and 03MKYPK5936P1ZW / ROYALSKINGENTERPRISES which do not exist at the given place of business.

From the above it is very much clear that the supply chain of both the firms are initiating from dealers having no inward and not paying the subsequent output tax which is being claimed as ITC by him in other words the ITC being claimed by him in lieu of the purchases from the above said two firms has never been paid. As requested by him the said two firms have been physically verified and does not operate/ exist at the given place of business. The prop of the firms were called on the phone numbers given at the time of registration and are switched off and could not be traced/contacted. Furthermore that the other two firms namely06AJMPK4248H1Z2 / VISHNU TRADERS and 06AQEPC9173G1ZW / OMKAR TRADERS registered in the state of Haryana from whom he is having inward supply are having subsequent inward from one common seller 03BMBPD3597B1ZL / DASIMPEX registered in Punjab who is subsequently not having genuine tax paid purchases and is not

paying the subsequent output Tax. In view of the above it is very much clear that the ITC claimed/ utilized and transferred has never been paid.

From the above it is clear that there is a network of firms created with an intention to transfer the Tax without paying the same at any stage, thus contravening the provisions of the act which is liable for penal action."

13. In the Order-in-Original dated 29.11.2022 in Form MOV-11, the original Adjudicating Authority has given his findings as under:

"7. The person in charge of the firm and transporter/owner of the vehicle appearing in response to the issuance of notice in Form GST MOV-10 has requested to take up the case today itself as he is ready to pay the Penalty and fine as proposed in the Form GST MOV-10 in case of both the goods and the conveyance. On his request, the case has been taken up today on merits.

8. He has again been confronted to the facts of the case as well as the report of the State Tax Officer, but he has failed to produce inward supply invoices, account books, stock statement, bank statement or any other evidence regarding the genuineness of the transaction rather he has admitted to the facts of the case as confronted to him and is ready to pay the penalty and fine as proposed in the Form GST MOV-10. Therefore, the facts mentioned in the Show Cause Notice stand proved after confronting the same to the dealer. Thus, it can be clearly seen that the goods are taxable in nature and are meant for supply and are not covered with proper and genuine documents as required under Punjab Goods and Services Tax Act, 2017.

9. Hence details of the case have forced the undersigned to conclude that there are sufficient grounds to establish the attempt to evade the payment of tax. Therefore, I, by exercising the powers vested under the provisions of section 130 of the Central Goods and Services Tax Act,2017 read with Section 130 of the Punjab Goods and Services Tax Act read with Section 20 of the Integrated Goods and and Services Tax Act. 2017, order to confiscate the goods as listed below along with conveyance used to transport such goods. In addition, the firm is liable to pay the tax, penalty and other charges payable in respect of such goods."

14. In the Impugned Order, the Appellate Authority has given his findings as under:

"I have carefully gone through the written and verbal argument put forth by the counsel for the appellant and the judgements relied upon by him, I have also heard the verbal arguments put forth by the departmental representative. I agree with the arguments put forth by the State representative that the judgements relied upon by the counsel for the appellant are

distinguishable on facts and do not touch the subject matter of this appeal. Regarding the argument that the penalty imposing officer has failed to prove mens rea to evade the payment tax by the appellant, it has been held in, "Guljag Industries Vs Commercial Tax Officer (2007) 30 PHT 300 (SC)", that the penalty is attracted if there is contravention of Statutory provisions of law. Intention of the parties committing such violation is wholly irrelevant. It has been further held in, "State of Gujarat Vs M/s Saw Pipes Limited (2023)75 PHT 20 (SC) that mens rea is not an essential ingredient for contravention of the provision of a Civil Act. The breach of a civil obligation which attracts penalty under provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether contravention was made by the defaulter with any guilty intention or not. The judgement in the case of M/s Shiv Enterprises Vs State of Punjab relied upon by the counsel for the appellant has been set aside by the Hon'ble Supreme Court of India cited as 2023(2) CENTAX 244 (SC). In view of the above, I do not find any merit in the appeal and the same is dismissed. The order dated 29-11-2022 passed by ACST (MW) Chandigarh 2 at Shambhu is upheld."

15. From the narration of facts in the SCN, it is evident that confiscation of the goods and conveyance was proposed on the ground that the ITC claimed by the Appellant on past inward supplies from two firms with whom they were having maximum transactions (namely, M/s Pankaj Enterprises and M/s Divyansh Enterprises) was inadmissible as these firms were found to be non-existent and their supply chain had initiated from dealers who neither had inward supply nor had they paid tax to the Government. It was also alleged that results of verification in respect of two other suppliers of the Appellant, namely M/s Vishnu Traders and Omkar Traders, also appeared to have indicated that they had similarly passed on inadmissible ITC to the Appellant. The allegations as per the SCN start with an instance where a transaction showing movement of goods from M/s Pankaj Enterprises to the Appellant on 07.11.2022 by a particular vehicle (Vehicle number HR69C0807) as mentioned in the E-way bill appeared to be fraudulent. The allegations in the SCN were concluded with the statement: "*From the above it is clear that there is a network of firms created with an intention to transfer the Tax without paying the same at any stage, thus contravening the provisions of the act which is liable for penal action.*"

16. The Adjudicating Authority has proceeded to confiscate the goods on the ground that the Appellant has failed to produce inward supply invoices, account books, stock statement, bank statement or any other evidence regarding the genuineness of the transaction. He has further stated in the OIO that: "*The person in charge of the firm and transporter / owner of the vehicle …. has requested to take up the case today itself as he is ready to pay the Penalty and Fine as proposed in the Form GST MOV-10 in case of both the goods and the conveyance*".

17. We note that in the Impugned Order, the Appellate Authority has not examined whether confiscation of the goods and vehicle was justified under Section 130 of the Act on the basis of the allegations in the SCN and as per the OIO passed by the original Adjudicating Authority. He has dismissed the appeal of the Appellant holding that penalty was correctly imposed.

18. The facts of the case are thus clear from the narration chronicled in the paras hereinabove, and are summarised as follows. The goods (viz. aluminium scrap) being transported in a vehicle were detained for verifying the correctness of the accompanying documents and the ITC being claimed / transferred. The SCN was issued proposing confiscation of the detained goods along with the vehicle and imposition of penalty on the ground that the Appellant had in the past availed ITC on goods purchased from certain suppliers which was not legally admissible.

19. The Adjudicating Authority confiscated the goods and conveyance and imposed penalty on the ground that the Appellant had failed to produce documents to prove the genuineness of the transaction. However, this ground / finding is based on allegations regarding the inward supplies of the Appellant. This ground / finding is not based or founded on the documents relating to the goods in question (namely, the aluminium scrap which was detained during transit). These goods were the Appellant's outward supply to its customer. Further, as noted above, documents relating to the detained goods (being the Appellant's outward supply) were duly produced before the intercepting officer. The validity or genuineness of these documents has not been challenged in the SCN or in the OIO. It is also significant that these documents were produced before the intercepting officer at the time of interception itself.

20. We also note that the Appellate Authority has dismissed the appeal against the OIO by holding that imposition of penalty was correct.

21. The issue before us is not whether the Appellant had taken ITC on purchases from its suppliers correctly, but whether confiscation of the goods in transit along with vehicle and imposition of penalty was legally correct. Vide the SCN, the SGST Department did not even seek to deny the ITC or order reversal thereof. In the OIO as well, the Adjudicating Authority has not ordered recovery or reversal of the ITC claimed by the Appellant.

22. For the purpose of deciding the validity of the confiscation and penalty, reference has to be made to the provisions of Section 130(1) of the Act, which are extracted hereunder:

"Section 130. Confiscation of goods or conveyances and levy of penalty.-

(1) Where 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."

23. The provisions relating to the documents required to be accompanied along with goods in transit are contained in Rule 138A of the CGST Rules, 2017, which provides as under:

"Rule 138A. Documents and devices to be carried by a person-in-charge of a conveyance. -

(1) The person in charge of a conveyance shall carry-

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-waybill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be Notified by the Commissioner"

24. There are five clauses under sub-section 130(1), of which clauses (i) and (iv) are relevant in the present case. Clause (i) provides for confiscation of goods supplied in contravention of any of the provisions of the Act or the rules made thereunder with intent to evade payment of tax, and clause (iv) provides for confiscation if a person contravenes any of the provisions of the Act or the rules made thereunder with intent to evade payment of tax.

25. It is observed from the Form MOV-2, that the detained goods were accompanied by the documents as required by Rule 138A, and no discrepancies were found in these documents by

the officer who had checked these goods in transit. Even the SCN which was issued after verification of documents does not allege any irregularities or discrepancies in these documents. At this point we also note that the tax invoice accompanying the goods shows payment of GST, which must have been found in order as there is no allegation in the SCN in respect of the invoice.

26. Here, it is important to note that in the opening para (Para 1) of the SCN itself, it is stated that at the time when the consignment in question was checked by the intercepting SGST officer during transit on 10.11.2022, documents including invoice issued by the Appellant for the goods, Goods Receipt of the transporter and weighment slip of a weighbridge operator, were produced before the SGST officers. At Para 2 of the OIO passed by the Adjudicating Authority, it is recorded that invoice, Goods Receipt, weighment slip, as also E-way Bill No. 341521296250 dated 10.11.2022, were produced by the driver of the vehicle before the intercepting SGST officer at the time of interception. In the SCN and the OIO, there is no allegation whatsoever regarding any discrepancy in the said documents. As noted hereinabove, it is significant that these documents were produced before the intercepting officer at the time of interception itself.

27. On going through the provisions of clauses (i) and (iv) of sub-section 130(1) it is evident that the goods and the conveyance carrying the goods cannot be said to have contravened any provisions of the Act or the Rules as the goods in question were cleared on payment of tax and were accompanied by the required documents while in transit. Even the SCN or the OIO does not allege any contravention of the provisions of the Act or Rules, in respect of the subject goods.

28. In Para 1 of the SCN dated 22.11.2022, it is stated that on 10.11.2022 the intercepting officer intercepted and detained the goods being transported in vehicle No. PB12T4058. In Para 2 of the SCN, it is stated that these goods in movement were inspected. Para 2 then proceeds to list some discrepancies. The first discrepancy stated in the SCN pertains to some other consignment, i.e. goods being transported by some other vehicle (No. HR69C0807) on some other date (07.11.2022). The other discrepancies alleged in Para 2 also do not relate to the goods in question which were detained on 10.11.2022, confiscation of which was proposed vide Para 4 of the SCN.

29. The only issue that remains to be examined is whether alleged irregular availment of ITC by the Appellant relating to past inward supplies can justify confiscation of the subject goods under Section 130 ibid. The Respondent Department appears to have carried out certain inquiries / investigations on the basis of which they have come to a conclusion that the

Appellant was availing ITC wrongly on the basis of invoices of certain suppliers who or whose suppliers in the backward chain were non-existent or not paying tax to the Government. It may be that the Department suspects that the goods detained in transit initially and confiscated subsequently were the goods on which ITC was wrongly availed and therefore these goods will be liable to confiscation under Section 130. The Department may also be thinking that clause (iv) of Section 130 ibid will be relevant in this case. However, there is no such allegation whatsoever in the SCN.

30. We are of the view that in the absence of any evidence that the goods which were confiscated were offending goods, confiscation cannot be justified. No evidence or documents have been cited in the SCN dated 22.11.2022, which would justify confiscation of the goods and vehicle detained on 10.11.2022. Even if it is assumed that the Appellant was availing ITC in violation of legal provisions, we are afraid confiscation of the subject goods cannot be justified in the absence of any allegation or evidence in the SCN regarding any nexus between the inward supplies received by the Appellant on which ITC was allegedly wrongly availed and the goods supplied by the Appellant which were detained during transit on 10.11.2022.

31. We, therefore, hold that confiscation of the goods and vehicle under Section 130 of the Act cannot be justified or sustained. Consequently, no penalty can be imposed under Section 122 of the Act in the present case.

32. As we are quashing and setting aside the confiscation and penalty, we do not deem it necessary to deal with the other issues raised in the appeal.

33. The appeal is allowed accordingly. The Impugned Order passed by the Appellate Authority and the Order-in-Original passed by the Adjudicating Authority are quashed and set aside with consequential relief.

Jatinder Pal Singh
Digitally signed by Jatinder Pal Singh
Date: 2026.11.12 17:15:00 +05'30'

(Jatinder Pal Singh)

Pradeep Kumar Goel
Digitally signed by Pradeep Kumar Goel
Date: 2026.11.12 17:17:09 +05'30'

(Pradeep Kumar Goel)