

**Court No. - 7**

**Case :-** WRIT TAX No. - 1834 of 2025

**Petitioner :-** Shri Raju Ujir / M/S R. R. Enterprises

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Akashi Agrawal

**Counsel for Respondent :-** C.S.C.

**HON'BLE PIYUSH AGRAWAL, J.**

1. Heard Ms. Akashi Agrawal, learned counsel for the petitioner and Sri R.S. Pandey, learned Additional Chief Standing Counsel for the State-respondents.
2. By means of instant writ petition, the petitioner has assailed the order dated 08.04.2025 passed by Additional Commissioner Grade2 (Appeal)-III, State Tax, Agra and the order dated 09.03.2025 passed by the Assistant Commissioner, Mobile Squad, Unit-10, Agra, whereby penalty has been imposed under Section 129 (1) (b) upon the petitioner.
3. Learned counsel for the petitioner submits that the goods were in transit from Delhi to Adilabad, Telangana, which were intercepted at Agra, Uttar Pradesh. At the time of inspection, the e-way bill could not be produced and thereafter, it was found that the registration of the purchasing dealer was suspended with effect from 22.02.2025 as during physical verification of the premises, the petitioner was not found in existence, however, no e-way bill was produced before the detention or the seizure order could be passed.

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4. She submits that due to technical glitch, the e-way bill could not be generated. She further submits that the authorities were not justified in passing the order under Section 129 (1) (b) of the GST Act instead of Section 129 (1) (a) of the GST Act.
5. In support of her submission, she has placed reliance upon the Clause 6 of the Circular dated 31.12.2018 and submits that if invoice or any other specified document are accompanied with the consignment then either the consignor or the consignee should be deemed to be the owner.
6. She further submits that the case in hand, at the time of inspection and passing of the seizure order, the tax invoice was accompanied with the goods, and no discrepancy with regard to description of quality and quantity mentioned therein has been pointed out.
7. She further submits that once no discrepancy whatsoever has been pointed out in the accompanying tax invoice, the order ought to have been passed under Section 129 (1) (a) instead of under Section 129 (1) (b) of the GST Act.
8. She further submits that the authorities were not justified in rejecting the appeal of the petitioner.
9. In support of her submission, she has placed reliance upon the judgment of the Division Bench of this Court passed in the case of ***H/S Halder Enterprises Vs. State of U.P. and others (Writ Tax No. 1297 of 2023)*** and the judgments of this Court passed in the cases of ***M/s Shahil Traders Vs. State of U.P. and Another (Writ Tax No.178 of 2023)*** as well as ***judgment of the High Court of Tripura, Agartala*** passed in the case of ***M/s Sri Gopikrishna Infrastructure Pvt. Ltd. Vs. The State of Tripur and Ors. [WP (C) 317 of 2020]***.

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10. *Per contra*, learned A.C.S.C. supports the impugned orders and submits that at the time of inspection of the goods in transit, no e-way bill was presented, this fact has specifically been mentioned in para no.7 of the present writ petition.
11. He further submits that non-generation of e-way bill could easily be the intention of evasion of legitimate payment of tax as movement of goods will go unnoticed. The petitioner would have succeeded in its attempt if the goods were not inspected and the seizure and penalty order was passed. He prays for dismissal of this writ petition.
12. In support of his submission, he has placed reliance upon the judgment of Division Bench of this Court passed in the case of *M/s Aysha Builders and Suppliers Vs. State of U.P. and another (Writ Tax No.2415 of 2024)* as well as the judgment of this Court passed by the Single Judge in the case of *M/s Akhilesh Traders Vs. State of U.P. and 3 others (Writ Tax No.1109 of 2019)*. He further submits that the judgment relied upon by the petitioner, counsel for the petitioner are of no aid for quashing the penalty order. At best, instead of releasing the goods as per Section 129 (1) (b) of the GST Act, some relief can be granted under Section 129 (1) (a) of the GST Act, but the penalty and seizure order cannot be said to be illegal.
13. After hearing the parties, the Court has perused the record.
14. It is not in dispute that the goods were in transit and at the time of inspection of the same, no e-way bill was produced.
15. It is not the case of the petitioner that by mistake or due to some technical glitch, the e-way bill could not be generated. In para no.7 of the writ petition, it has specifically been stated that no e-way bill was generated even after the movement of goods. Only after the seizure and detention of the goods in transit, the requisite documents were produced.

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16. This Court in the case of *M/s Aysha Builders and Suppliers (supra)* has categorically held that in absence of e-way bill at the time of inspection, the seizure and detention, the intention to evade the payment of tax is attributed and penalty order cannot be said to be illegal.
17. Similar view has been followed by this Court in the case of *M/s Akhilesh Traders (supra)*.
18. So far as penalty order is concerned, no interference is called for by this Court in view of the peculiar facts and the judgments cited above by the learned A.C.S.C.
19. So far as the requisite document as prescribed under the GST Act is concerned i.e. tax invoice was accompanied with the goods in transit, in view of the Clause 6 of the Circular dated 31.12.2018 wherein it has specifically been stated that if tax invoice or any other specified document are accompanied with the consignment then either the consignor or the consignee should be deemed to be the owner of the goods.
20. In the case in hand, the tax invoice was accompanied with the goods in transit and therefore, the owner of the goods can be said to be the petitioner. The said contention was not accepted at the lower stage only on the ground that after the movement of goods and at the time of detention of the goods, the registration of the purchasing dealer has been suspended, but later on, the same was revoked and the registration has been restored. Once the registration has been restored, it cannot be said bad by stretch of imagination that the consignor or consignee are bogus.
21. The record further shows that at the time of movement of goods, the registration was valid but before it reach to its destination, the registration of the purchaser was suspended, but later on it has been

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restored. No adverse effect can illegally been drawn against the petitioner on the said ground as the purchaser was a registered dealer before its movement started. Further, once in the Circular dated 31.12.2018, it has specifically been stated that any of the specified document is accompanied with the goods in transit, the proceedings under Section 129 (1) (a) ought to have been initiated in view of the judgment of the cases of *H/S Halder Enterprises (supra)* & *M/s Shahil Traders (supra)*.

22. In view of the peculiar facts and circumstances of case as stated above, the writ petition is partly **allowed**. The impugned orders are modified to the extent that the impugned orders must be treated as passed under Section 129 (1) (a) of the GST Act.

**Order Date :-06.08.2025**

*Pravesh Mishra/-*

**(PIYUSH AGRAWAL, J.)**