G P Motors Private Limited v. Commissioner, State Tax & Others

Section 129 penalty for stock transfer without e-way bill: no tax payable, no intent to evade; penalty quashed.

Date of Order: October 16, 2026
Case Law No: GIB-GSTAT-2026-136
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The appellant, an authorised dealer of Honda two-wheelers, was moving five two-wheelers (valued at ₹3,50,000) in its own loader from its godown at Naini to its showroom at Civil Lines, Prayagraj, about 14 km away. On 30.04.2025 the vehicle was intercepted by the State Tax Mobile Squad. The goods were accompanied by a delivery challan (whose production the Revenue disputed) but no e-way bill. A penalty of ₹1,96,000 (₹98,000 each of CGST and SGST) was imposed under Section 129(3) on 05.05.2025 and was upheld in first appeal on 24.07.2025. The questions before the Tribunal were whether a Section 129 penalty could be sustained for moving a stock transfer without an e-way bill, and whether a charge of deliberate evasion by clandestine removal was warranted.

Final Verdict

The Tribunal held that an e-way bill was required even for a stock transfer, as a delivery challan under Rule 55 does not dispense with it, so there was a technical breach of Rules 138 and 138A. The charge of clandestine removal failed because two-wheelers are uniquely traceable through engine and chassis numbers and cannot be sold without invoice and RTO registration. Since penalty under Section 129 is computed on 'tax payable' and a transfer between one's own premises under the same GSTIN is not a 'supply' under Section 7 (no second person, no consideration), no tax was payable and no penalty was leviable, following the Bombay High Court in *Fabricship Pvt. Ltd. v. The Union of India and Ors* and the Allahabad High Court in *Vacmet India Ltd. vs Additional Commissioner Grade-2 India* and *M/S Goverdhan Oil Mill vs Additional Commissioner And Another* [1]. The Revenue's authorities, arising under the Rajasthan Sales Tax Act, were distinguished. **Although the law required an e-way bill, the virtual impossibility of tax evasion in such stock transfers and the absence of fraudulent intent rule out the severe penalty meant for tax evasion under Section 129.** The appeal was allowed, both orders were set aside, the penalty

was quashed and refund of any amount deposited was directed with interest as per law.

The Tribunal held that mens rea (intention to evade tax) is necessary for imposing penalty under Section 129. Mere non-generation of an e-way bill does not automatically establish tax evasion. In a genuine stock transfer without tax liability or fraudulent intent, penalty under Section 129 cannot be sustained.

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