



## Expiry of E-Way Bill Alone Cannot Justify Penalty Under Section 129 of GST Law

### Background:

In a significant ruling reinforcing the distinction between procedural lapses and tax evasion, the Calcutta High Court in **Ashok Kumar Sureka vs. Assistant Commissioner, State Tax, Durgapur Range, Government of West Bengal (WPA No. 11085 of 2021, Order dated 01 March 2022)** held that mere expiry of an e-way bill during transit does not automatically warrant imposition of penalty under Section 129 of the Goods and Services Tax (GST) law.

The judgment provides important relief to taxpayers and transporters by emphasizing that penalties under GST should be imposed only where there is evidence of a deliberate or willful intention to evade tax and not for isolated technical or procedural breaches.

### Facts of the Case

The taxpayer's goods were intercepted during transit after the validity period of the e-way bill had expired. The e-way bill had expired at midnight and the goods were detained the following morning.

The authorities proceeded to detain the goods and levy tax and penalty under Section 129 of the GST Act on the ground that the goods were being transported with an expired e-way bill.

The taxpayer challenged the action contending that:

- The delay was only for a few hours;
- The extension of the e-way bill validity could not be completed;
- The delay occurred due to vehicle-related difficulties.
- All goods were duly accounted for and accompanied by valid tax invoices; and
- There was no intention whatsoever to evade payment of GST.

Despite these submissions, the adjudicating authority and appellate authority upheld the levy, prompting the taxpayer to approach the High Court.

## Observations of the High Court

The Court examined the scheme of Section 129 dealing with detention and seizure of goods during transit.

While acknowledging that transportation of goods with an expired e-way bill constitutes a procedural contravention, the Court observed that imposition of a penalty cannot be sustained merely because a technical violation has occurred.

### The Court emphasized the following principles:

#### 1. Penalty Requires Presence of Mens Rea or Intent to Evade Tax

The Court noted that a willful and deliberate violation with an intention to evade tax is a critical factor for sustaining penal action.

Where goods are accompanied by proper invoices and the taxability of the transaction is not in dispute, a mere lapse in e-way bill validity should not automatically be equated with tax evasion.

#### 2. Technical Breaches Should Be Distinguished from Tax Fraud

The Court distinguished between:

- Genuine procedural lapses; and
- Deliberate attempts to suppress transactions or evade tax.

According to the Court, the GST framework should not impose harsh penalties where the lapse is merely technical, and revenue interests remain fully protected.

#### 3. Authorities Must Examine Circumstances of Delay

The Court observed that tax authorities are required to consider the facts and circumstances leading to the expiry of the e-way bill rather than mechanically invoking Section 129. Where a taxpayer provides a reasonable explanation, and there is no evidence of revenue loss, penal provisions should be invoked cautiously.

## Reliance on Supreme Court Precedent

The taxpayer relied upon the Supreme Court's decision in **Assistant Commissioner (ST) v. Satyam Shivam Papers Pvt. Ltd. (2022)**.

In that case, the Supreme Court had set aside proceedings arising solely from expiry of the e-way bill and directed refund of amounts deposited for release of the vehicle.

The Calcutta High Court found support from the principles laid down by the Supreme Court and observed that procedural infractions without any element of tax evasion should not result in punitive consequences.

## **Decision:**

The High Court set aside the orders passed by the GST authorities and granted relief to the taxpayer. The Court further directed refund of the tax and penalty amounts deposited under protest, subject to compliance with prescribed procedural formalities.

The ruling reiterates that penalty proceedings cannot survive solely on account of expiry of an e-way bill where there is no material demonstrating intent to evade tax.

## **Conclusion:**

The Calcutta High Court's decision is another important judicial pronouncement curbing excessive penal action for procedural non-compliance under GST. The ruling reinforces the principle that penalties should target tax evasion and fraudulent conduct rather than bona fide technical lapses.

While taxpayers should continue to ensure the timely generation and extension of e-way bills, the judgment offers reassurance that inadvertent procedural errors, in the absence of any intent to evade tax, should not result in disproportionate penal consequences.

**Businesses should nevertheless maintain robust e-way bill compliance mechanisms and contemporaneous evidence explaining transit delays to defend against any future disputes effectively.**

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