

S.N.	Case Subject	Case	Held
1.	Mens Rea needs to be established for levying penalty under Section 129	<b>Medha Servo Drives (P.) Ltd. v. Assistant Commissioner of State Tax [2023] 147 taxmann.com 151 (Calcutta) (17-11-2022)</b>	A single invoice was raised by the appellants to M/s. Chittaranjan Locomotive Works, a public sector undertaking. The goods which were to be supplied to the said Public Sector Undertaking was of very huge in size and, therefore, the appellants had raised multiple e-weigh bills and loaded the goods into three trucks. One of the three trucks had already reached the consignee which was not disputed by the Revenue. The other two trucks could not reach the destination within the validity of the e-weigh bills i.e. 23-8-2021. The vehicle along with the goods were intercepted by the authorities on 25-8-2021. <b>The Court observed that the short issue which the Appellate Authority was required to consider as to whether there is any mens rea on the part of the appellants in attempting to evade payment of tax. It is well settled that by merely using the expression "mens rea", it would not amount to concluding that there was a willful attempt on the part of the dealer to evade the payment of tax.</b> Concerned authority or First Appellate Authority, was required to record reasons in writing as to how and in what manner mens rea was established. Since this was lacking, the matter was remanded back to the Appellate Authority for fresh consideration to decide this short issue as to whether there is any mens rea to evade payment of duty.
2.	Intent to Evade required to be proved for levy of penalty for Expired Eway Bill	<b>Ajay Shaw v. Assistant Commissioner of State Tax [2022] 145 taxmann.com 162 (Calcutta) (23-08-2022)</b>	Goods were being transported after expiry of the e-way bill which was expired on 22-8-2021 at 11.59 p.m. and the vehicle in question was intercepted at 9.30 p.m. on 23-8-2021. <b>There was a time gap between the expiry of the bill and interception of the vehicle in question of about 21 hrs., which was less than a day and writ petitioner submitted that there was no intention of any evasion of tax on the part of the petitioner and there was a genuine problem of break down of the vehicle in question. The Court observed that the revenue could not make out any case against the petitioner that there was any deliberate or willful intention of the petitioner to avoid and evade the tax.</b> The Court disposed off the writ petition by setting aside the aforesaid impugned order of the appellate authority and adjudicating authority.
P	Mens Rea is to be established for levying penalty under Section 129	<b>KDG Projects (P.) Ltd. v. Assistant Commissioner of State Tax [2022] 144 taxmann.com 189 (Calcutta) (21-09-2022)</b>	The order was passed by the competent authority directing the appellants to pay 100% tax and 100% penalty on the goods, which were transported, on the ground that e-way bill had expired and 48 hours had lapsed. <b>The High Court was of the considered view that the learned appellate authority should consider the question as to whether there was any intentional attempt made by the appellants to evade payment of tax. Since this aspect has not been considered by the learned appellate authority, matter was remnded back to the appellate authority for fresh consideration.</b>
4.	Intent to Evade to be present for levy of penalty under Section 129 for movement of goods with Expired E-way Bill	<b>Hanuman Ganga Hydroprojects (P.) Ltd. v. Joint Commissioner, State Tax Authority, Siliguri [2022] 142 taxmann.com 348 (Calcutta) (06-07-2022)</b>	The issue in this appeal is whether the authorities were justified in imposing tax and penalty on the ground that, at the time of interception, the validity period of the E-Way bill stood expired. The High Court considered the reasoning of the petitioner for delay in transportation to be a <i>bona fide</i> one as the petitioner cannot be said to benefitted in any way by the delay in transportation of the crane and moreover the delay in transportation was on account of the heavy nature of the goods and the length of the vehicle. Further the period between expiry of the validity period of the E-Way bill dated September 25, 2021 and the time of interception and consequent detention of such vehicle was not a substantial one. The High Court was of the considered view that the error cannot be said to be a grave one for the purpose of holding the assessee liable to penalty as directed by the orders passed by the authorities under the said statute as it is not a case of tax evasion. <b>The Court observed that authorities have not returned any finding that there was any deliberate and wilful attempt on the part of the writ petitioner to evade payment of tax. Thus it was held that there was no lack of bona fide on the part of the writ petitioner in the instant case for not extending the validity period of the E-Way bill within the aforesaid short period of time. It was also not a case of wilful attempt on the part of the writ petitioner to evade payment of tax.</b> High Court stated that order was being passed on the peculiar facts and circumstances of this case as recorded hereinbefore and the same cannot be treated to be a precedent
5.	Movement of Goods with Expired Eway Bill not liable for Penalty in absence of Intent to Evade Tax	<b>Assistant Commissioner, State Tax v. Ashok Kumar Sureka [2022] 141 taxmann.com 378 (Calcutta) (12-05-2022)</b>	The tax invoice was raised by Bhaskar Steel and Ferro Alloy Pvt. Ltd. dated 7 <sup>th</sup> September, 2019 alongwith e-way bill dated 7 <sup>th</sup> September, 2019 as the goods were to be despatched from SRMB Srijan Pvt. Ltd. to the writ petitioner, who had its registered office at Kolkata. The said e-way bill was valid upto 9 <sup>th</sup> September, 2019 since the approximate distance was about 168 kilometers. The writ petitioner had a supply order from Om Dayal Educational and Research Society, which also has its registered office at Kolkata but, however the goods had to be shifted to a place in Durgapur. Therefore, the writ petitioner raised a second e-way bill on 7 <sup>th</sup> September, 2019 and since the distance from SRMB Srijan Pvt. Ltd., Durgapur to the Delhi Public School, Durgapur was only 9 kilometers, the e-way bill was valid only for one day, i.e. 7 <sup>th</sup> September, 2019 to 8 <sup>th</sup> September, 2019 (midnight). The e-way bill, which was being carried in the vehicle transporting the goods had expired on the midnight of 8 <sup>th</sup> September, 2019 and the goods were being transported on 9 <sup>th</sup> September, 2019 and the vehicle was intercepted at 1.30 p.m.(noon). <b>The High Court observed that admittedly, the first e-way bill dated 7<sup>th</sup> September, 2019 was valid upto 9<sup>th</sup> September, 2019 and therefore, in the absence of second e-way bill, the tax authorities at Durgapur could not have intercepted or detained the vehicle. Therefore, the explanation offered by the respondent/writ petitioner was held to be an acceptable explanation and a case could not be made out that there was a deliberate and willful attempt on the part of the respondent/writ petitioner to evade payment of tax so as to justify invocation of the power under section 129 of the Act.</b> Therefore, the Court upheld the relief granted by the writ Court and stated that they have examined the facts in hand, the <i>bona fides</i> of the respondent/writ petitioner and then arrived at a conclusion that it was not a case of willful attempt to evade payment of tax and therefore, decision having been rendered on peculiar facts cannot be treated as a precedent.