

**Order u/s 129 of CGST Act determining tax liability is bad in law  
and liable to be quashed: HC**

**Facts of the case - Bharti Airtel Ltd. v. State of U.P. - [2022]  
(Allahabad)**

The goods of petitioner were detained on the ground that Part-B of the e-way bill was not generated prior to the commencement of the transport of goods. The SCN was issued on this ground and imposed tax and penalty under section 129 of CGST Act, 2017. It filed appeal but the same was dismissed. Thereafter, it filed writ petition and contended that order passed u/s 129 of CGST Act determining tax liability & penalty was bad in law.

**Decision of the case:**

- The Honorable High Court observed that Section 129 can be invoked by the department with regard to the goods in transit and the goods can be released only in the event the owner of the goods comes forward for payment of penalty as specified in section 129(1) of CGST Act. However, in case the owner of the goods or the person does not volunteer to pay the penalty as prescribed under section 129(1) then the department is well equipped to initiate proceedings by taking recourse to sections 73, 74, 75 of CGST Act read with section 122 for determination of tax and the penalty.
- In the present case, the department proceeded to determine the tax liability as well as penalty only under the provisions of Section 129 of the Act, which is not contemplated or intended. Therefore, it was held that the entire action of determining the tax and penalty under section 129(1) was not legally substitutable and liable to be set aside.