

**GIB/WB/ BANSAL/05-12-2019/HC-66****High Court Category :** E-way Bill**State :** West Bengal**Order No.:** GIB/WB/ BANSAL/05-12-2019/HC-66**Name of Entry :**  
BANSAL EARTH MOVERS PVT. LTD.**Date :** 05-12-2019**Breif Issue :****Facts & Issues involved:**

The petitioner is a company trading in heavy machineries. In the course of its business the petitioner had bought one Soil Compactor machine from M/s. JCB India Limited, Maharashtra for the purpose of selling the same in the local market pursuant to an order placed by M/s. Akash Enterprise. As per the petitioner, the machinery was sold to M/s. Akash Enterprise upon raising valid sale documents as required under the CGST Act, 2017 and the corresponding State Act. The sale invoice and the delivery challan was raised and the insurance policy in favour of the buyer had also been taken out. The vehicle was loaded with the goods and was accompanied with the relevant sale documents and the insurance policy documents. However, as per the petitioner the waybill could not be generated as the server of the GST Portal remained continuously nonfunctional. the vehicle had left the premises of the petitioner at 4.15 p.m. and the waybill was generated at 5.10 p.m. vehicle had been intercepted at Phool Bari and because of the lack of the waybill the vehicle was detained by the relevant authorities.

Competent Authority detained goods of assessee under transport on ground that no e-way bill was tendered for goods in question. Thereafter he served penalty notice under section 129(3) to driver of vehicle and imposed penalty upon assessee?

**Decision of Advance Ruling Authority :****Decision:**

The fact that the petitioner did not possess the waybill at the time of interception was not entirely its fault but also as a result of the malfunctioning of the server. the service of the notice to the driver of the conveyance who was not even an employee of the owner of the goods cannot be construed to be good service under sub-sections (3) and (4) of section 129. As all other documents such as the invoice, challan and insurance policy were with the goods, there was no question for evading tax. Sub-section (4) of section 129 states that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. In the present case, the goods have already been released upon furnishing a bank guarantee. the tax liability ascertained by the officials

has also been paid by the petitioner. notice required to be served under section 129 (3) has not been served properly. Accordingly, there has been a clear violation of the principles of natural justice, and therefore, the high court quash and set aside the impugned order.