GSTAT

Court No. Court I

APL/158/AGR/2026

JITENDRA KUMAR **.....Appellant**

Versus

M/S. R.V. BRICK FIELD, PARTNER, W/O AYUSH RASTOGI 4/69 PURANA KOTHA PARCHA FARRUKHABAD UPFAR 209625 **.....Respondent**

Counsel for Appellant
SH. MUKESH KUMAR, AUTHORIZED REPRESENTATIVE

Counsel for Respondent

Hon'ble Ajeet Singh, Member(Judicial)
Hon'ble Vivek Kumar, Member (Technical)

ORDER

1. Appeal No. **APL/158/AGR/2026**
Jitendra Kumar, Assistant Commissioner
Vs
M/S R.V Brick Field, Farrukhabad.
2. Appeal No. **APL/159/AGR/2026**
Jitendra Kumar, Assistant Commissioner
Vs
M/S Kisan Ent Bhatta, Chhibramau.
3. Appeal No. **APL/160/AGR/2026**
Jitendra Kumar, Assistant Commissioner
Vs
M/S Shri Shiv Sakti EIT Bhatta, Etawah.
4. Appeal No. **APL/161/AGR/2026**
Jitendra Kumar, Assistant Commissioner
Vs
M/S Gatimaan Brickfield, Farrukhabad.

Per. Ajeet Singh (Judicial Member)

ORDER

(Passed on 17th day of September, 2026)

1. These four appeals have been filed by Sh. Jitendra Kumar, Assistant commissioner, Special Investigation Branch, State Tax, Zone- Etawah, U.P, u/s 112 of Central Goods and Services Tax, 2017/Uttar Pradesh Goods and Services Tax, 2017 (for brevity "CGST/UPGST"). In these appeals orders impugned have been passed as given below and as in all these appeals facts of the case are similar and question for determination is also identical, therefore, all are being disposed off by this common order.

Particulars of the appeals are as follows-

i) Appeal no. **Apl/158/AGR/2026** in which impugned order dated- 12.09.2025 has been passed by Additional Commissioner Gr. II, appeal, state tax, Judicial Division - Etawah u/s 130 read with section 122 of CGST/UPGST, Act, vide which order of Adjudicating officer dated- 29.04.2025 has been set aside and amount of penalty imposed therein also has been quashed.

ii) Appeal no. **Apl/159/AGR/2026** in which impugned order dated- 18.10.2025 has been passed by Additional Commissioner Gr. II, appeal, state tax, Judicial Division - Etawah u/s 130 read with section 122 of CGST/UPGST, Act, vide which order of Adjudicating officer dated- 18.06.2025 has been set aside and amount of penalty imposed therein also has been quashed.

iii) Appeal no. **Apl/160/AGR/2026** in which impugned order dated- 31.10.2025 has been passed by Additional Commissioner Gr. II, appeal, state tax, Judicial Division - Etawah u/s 130 read with section 122 of CGST/UPGST, Act, vide which order of Adjudicating officer dated- 15.05.2025 has been set aside and amount of penalty imposed therein also has been quashed.

iv) Appeal no. **Apl/161/AGR/2026** in which impugned order dated- 29.09.2025 has been passed by Additional Commissioner Gr. II, appeal, state tax, Judicial Division - Etawah u/s 130 read with section 122 of CGST/UPGST, Act, vide which order of Adjudicating officer dated- 14.08.2025 has been set aside and amount of penalty imposed therein also has been quashed.

2. Facts in brief in appeal no. Apl/158/AGR/2026, are that special investigating branch headed by appellant had inspected the business place of respondent running as bricks field (Eint Bhatta) on 29.04.2025. On physical verification it was found that 19,27,289 bricks and 60 metric ton coal were found which were not registered in books of account. Person who was present on the premises could not produced relevant documents asking by appellant. A show cause notice was served on respondent on 13.05.2026, reply dated 14.05.2025 was filed by Sh. Abhishek on behalf of respondent but in support of reply no relevant document was submitted and therefore appellant reached to the conclusion that unaccounted bricks and coal were stored by appellant with the intention to evade tax followed by order dated 16.05.2025 u/s 130 vide which Rs. 7,57,866/- penalty and Rs.75,562/- of fine in total amount Rs. 8,33,428/- were imposed upon respondent.

3. Being dissatisfied by the order passed by appellant, respondent/ taxpayer filed appeal u/s 107 of CGST/UPGST Act, 2017 before first appellate authority, which was allowed. Order impugned and consequential amount of tax and penalty has been set aside.

4. Facts in brief in appeal no. Apl/159/AGR/2026, are that special investigating branch headed by appellant had inspected the business place of respondent running as bricks field (Eint Bhatta) on 18.06.2025. On

physical verification it was found that 15,15,500 bricks were found which were not registered in books of account. Person who was present on the premises could not produced relevant documents asking by appellant. A show cause notice was served on respondent on 21.06.2025, reply dated 28.06.2025 was filed by respondent but in support of reply no relevant document was submitted and therefore appellant reached to the conclusion that unaccounted bricks were stored by appellant with the intention to evade tax followed by order dated 16.05.2025 u/s 130 vide which Rs. 5,33,882/- penalty and fine were imposed upon respondent.

5. Being dissatisfied by the order passed by appellant, respondent/taxpayer filed appeal u/s 107 of CGST/UPGST Act, 2017 before first appellate authority, which was allowed. Order impugned and consequential amount of tax and penalty has been set aside.

6. Facts in brief in appeal no. Apl/160/AGR/2026, are that special investigating branch headed by appellant had inspected the business place of respondent running as M/s Shri Shiv Shakti bricks field (Eint Bhatta) on 15.05.2025. On physical verification it was found that 21,53,500 bricks were found which were not registered in books of account. Person who was present on the premises could not produced relevant documents asking by appellant. A show cause notice was served on respondent on 10.06.202, reply dated 24.06.2025 was filed by Advocate Vivek Swaroop Aggarwal on behalf of respondent, but in support of reply no relevant document was submitted and therefore appellant reached to the conclusion that unaccounted bricks were stored by appellant with the intention to evade tax followed by order dated 26.06.2025 u/s 130 vide which Rs. 15,17,820/- penalty and fine were imposed upon respondent.

7. Being dissatisfied by the order passed by appellant, Respondent/ Taxpayer filed appeal u/s 107 of CGST/UPGST Act, 2017 before first appellate authority, which was allowed. Order impugned and consequential amount of tax and penalty has been set aside.

8. Facts in brief in appeal no. Apl/161/AGR/2026, are that special investigating branch headed by appellant had inspected the business place of respondent running as M/s Gatimaan bricks field on 22.06.2025. On physical verification it was found that 16,30,000 bricks were found which were not mentioned in books of account. Person who was present on the premises could not produced relevant documents asking by appellant. A show cause notice was served on respondent on 21.06.2025 reply dated 02.07.2025 was filed by Advocate Ayush Rastogi, on behalf of respondent, but in support of reply no relevant document was submitted and therefore appellant reached to the conclusion that unaccounted bricks were stored by appellant with the intention to evade tax followed by order dated 14.08.2025 u/s 130 vide which Rs. 5,65,151/- penalty and fine were imposed upon respondent.

9. Being dissatisfied by the order passed by appellant, respondent/ Taxpayer filed appeal u/s 107 of CGST/UPGST Act, 2017 before first appellate authority, which was allowed. Order impugned and consequential amount of tax and penalty has been set aside.

10. Before embarking to the facts of the appeals it is worthy to note that in all the four matter under consideration, learned proper officer had imposed penalty and fine u/s 130(2) in lieu of confiscation of seized goods. In first appeals filed by respondents herein original order passed by proper officer were set aside by holding that seizure and confiscation cannot be made if, like in the present matters, goods were found unaccounted and instead thereof department should launch proceedings u/s 73/74 of CGST/UPGST, act, all the four appeals have been directed by the revenue only to the extent of amount of fine imposed by adjudicating officer.

11. We have heard the learned authorized representative of appellant and perused the records of appeals uploaded on the GSTAT Portal, the common question for determination before us may be formulated as

under-

Whether an appeal may be filed against order of fine only where amount of penalty in lieu of confiscation of goods has been set aside by first appellate authority?

FINDINGS WITH REASONS

12. As quoted by First Appellate authority in its order, in case of **M/s Dinesh Kumar Pradeep Kumar V/s Additional commissioner, Gr-II and others writ tax no. 1082** of 2022 date of decision 25.07.2024, it was held by Allahabad High court that whereon survey of business premises excess stock of goods was found which triggered the initiation of the proceedings u/s 130 of CGST act against petitioner then proceedings u/s 73/74 of CGST/UPGST act, should be initiated and not proceedings u/s 130 of the UPGST/CGST, Act read with rule 120 of the rules framed under the act.

13. Further in a recent case **M/s Shri Om steels vs Additional Commissioner Gr. II and others writ tax no. 1007 of 2022** dated 19.07.2024, It is also held that if excess stock is found during a survey, tax and penalty proceedings must be initiated under Section 73 or 74 of the GST Act, rather than invoking the harsh confiscation provisions under Section 130.

14. Section 35(1) of the CGST, Act provides that all the registered persons are required to keep and maintain at the principal palace of business a true copy and correct account of things specified in clause (a) to (f). The second proviso to this section and rule 56 and 57 makes it further necessary to keep the said documents in electronic form. Further section 35(6) of the CGST, act enumerates the consequences if such person fails to keep his account for the goods or services, the proper officer is empowered to determine the amount of tax payable on the goods or the services which are unaccounted for as if such goods or services had been supplied by such person and the provisions of section 73 or 74 shall mutates mutandis apply for determination of the said tax. Thus, by bare perusal of the section 35(1) and 35(6) conjointly makes it clear that proper officer is empowered to determine the taxes payable and while determine the said tax he is bound to determine the same in-accordance with the provisions section 73 and 74 of CGST act/ UPGST act.

15. Apart from above, in case of **V. K electricals vs Additional commissioner Gr-II and another writ tax no. 957/2024** date of decision 23.08.2024, Allahabad High court has held that in case of excess stock found at the time of survey proceeding u/s 73/74 of CGST/UPGST, Act should be initiated and in place or in addition to launching proceedings u/s 130 read with rule 120 unsustainable and liable to be quashed.

16. Thus, on going through the principle laid down in above quoted ratios established by Hon'ble Allahabad High court as well as on bare perusal of section 35 of CGST/UPGST, Act, it is crystal clear that where at the time of survey of business premises excess or unaccounted goods are found the proper officer is only empowered to initiate proceedings u/s 73/74 of CGST/UPGST, Act, against business entity concerned, he is not authorised by law to initiate proceedings u/s 130 and levy the penalty in view of confiscation of goods. In the present matters same is the position where on the survey of business premises which were brick fields excess/unaccounted stocks of bricks and coal are said to be found but instead of initiation proceedings u/s 73/74 learned proper officer initiates the proceedings u/s 130 of the CGST Act, which is not sustainable in law and by holding so and quashing the order passed by Adjudicating officer, Learned First Appellate Authority has rightly allowed the first appeals filed by taxpayers. First Appellate Authority has also rightly quashed the proceedings-initiated u/s 130 of CGST Act, by proper officer resulting set aside the demand of penalty and fine.

17. Interestingly, Appellants in this bunch of four appeals have not challenged the findings of first appellate

authority in respect of quashing the proceedings and amount of penalty-imposed u/s 130 of CGST act, but they have only stated that as question of imposing fine by first appellate authority has left open therefore, appellants have requested to this tribunal that amount of fine imposed by adjudicating officer be maintained.

18. We are unable to understand that how question of imposing the amount of fine by adjudicating officer is said to be left open where learned first appellate authority has quashed and set aside the order-in-original passed by learned A.O by holding that launching of proceedings u/s 130 of CGST/UPGST, Act, was not backed by law. In second appeal before Goods and Services Tax Appellate Tribunal, commissioner of State Tax department is required to direct his subordinate officer to file the appeal by going through the facts of the case and law applicable thereto. In our opinion learned commissioner has directed the appellants to file the appeals in perfunctory manner and without application of mind, which cannot be appreciated.

19. Therefore, in view of discussion of facts of the cases in hand and law applicable thereto, by answering the question formulated in negative, we are of the considered opinion that all these four appeals are liable to be dismissed as sans merit, which this bench directs.

20. There is no pending interim application in the appeals.

21. Order is pronounced in open court on this day of 17th of September, 2026.

22. Copy of order be communicated to all concerned, as per rules.

(Ajeet Singh)

(Vivek Kumar)

Dated: 17.09.2026