GSTAT

State Bench Agra

Court No. Court I

APL/219/AGR/2026

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

Versus

M/S D K ENTERPRISES, PROPRIETOR, 95 KAVERI KUNJ PHASE 2 KAMLA NAGAR AGRA UPAGR 282005 **.....Respondent**

Quorum

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

Counsel for Appellant
SH. MUKESH KUMAR, AUTHORIZED REPRESENTATIVE

Counsel for Respondent
MANU KULSHRESHTHA, ADVOCATE

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA090401026000056H **Date of order :** 08/10/2026

1.	GSTIN/Temporary ID/UIN - 09ACPPG5020P1Z7	
2.	Appeal Case Reference no. - APL/219/AGR/2026	Date - 24/04/2026
3.	Name of the appellant - JITENDRA KUMAR , jksirsa2@gmail.com , 9412835058	
4.	Name of the respondant - 1. M/S D K ENTERPRISES , dkenterprisesgst@yahoo.com , 9568066688	
5.	Order appealed against - AD090525015213E	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD090625290978G	Date - 26/06/2025
6.	Personal Hearing - 08/10/2026 22/09/2026 09/09/2026 04/06/2026	

7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - The Impugned order as well as Order in Original passed by proper officer are set aside. The matter is remanded back to the Adjudicating officer for fresh adjudication in accordance with law following the directions given in the order.
Summary of Order	
9.	If demand order then whether demand quantified: No

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	SMT RUBY SINGH	

Place :AGRA

Date : 08.10.2026

Signature

AGRA Sandeep Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Agra

ORDER

Per- Vivek Kumar (Technical Member)

Commissioner, State Tax Vs. M/S D K Enterprises

Appeal No. APL/219/AGR/2026

ORDER

1. This departmental appeal has been preferred by Commissioner State Tax through Shri Jitendra Kumar Deputy Commissioner State Tax Sector-4 Agra, against the order dated 25-06-2025 passed by the learned Additional Commissioner, Grade-II (Appeal)I, State Tax Agra, in Appeal No: 195/2025, ARN-AD090525015213E Year 2020-21 CGST/SGST, whereby the appeal filed by the respondent/dealer against the adjudication order was allowed and the tax and penalty determined against the respondent tax payer were set aside.

Facts of the Case

2. The brief facts of the case are that during the financial year 2020-21, as many as 81 E-Way Bills pertaining to the respondent/tax payer were found to have been cancelled. On the basis of the said cancelled E-Way Bills, proceedings were initiated against the dealer and a notice was issued under Section 73 of the applicable GST enactment.

3. No reply to the notice was submitted by the dealer before the adjudicating authority. Consequently, the proceedings were decided ex party and an amount of Rs. 17,02,994/- towards tax along with penalty of Rs. 170299/- under Section 73 was determined against the dealer.

4. Aggrieved by the aforesaid adjudication order, the dealer preferred an appeal before the learned Additional Commissioner, Grade-II (Appeal)I, Agra. Before the first appellate authority, it was submitted on behalf of the dealer that the E-Way Bills in question had been cancelled inadvertently due to errors, and that fresh E-Way Bills had subsequently been generated in respect of the same transactions, against which the goods were actually transported.

5. In support of its contention, the dealer submitted a chart containing the details of the cancelled E-Way Bills and the corresponding fresh E-Way Bills allegedly generated in their place. The learned first appellate authority accepted the explanation furnished by the dealer and, relying upon the material produced before it, allowed the appeal and set aside the adjudication order.

6. Aggrieved by the aforesaid order of the first appellate authority, the Department has preferred the present

second appeal.

Submissions on behalf of the Department

7. Shri Mukesh Kumar, learned Authorized Representative appearing for the Department, reiterated the grounds taken in the memorandum of appeal and submitted that the order passed by the learned first appellate authority is contrary to law and the material available on record.

8. It was submitted that no satisfactory explanation was furnished by the dealer as to why such a large number, i.e. 81 E-Way Bills, were cancelled. It was further submitted that merely producing a chart showing cancelled E-Way Bills and allegedly corresponding fresh E-Way Bills could not by itself establish that the cancelled E-Way Bills were never used for transportation of goods or that the subsequent E-Way Bills pertained to exactly the same transactions.

9.Learned Authorized Representative further submitted that the first appellate authority did not undertake any verification from the GST portal regarding the dates and timings of cancellation of the original E-Way Bills and generation of the subsequent E-Way Bills. No verification was also made as to whether the particulars mentioned in the cancelled E-Way Bills and those mentioned in the subsequently generated E-Way Bills were identical or whether there were any material differences in the quantity, value, consignor, consignee, vehicle number or other relevant particulars.

10. According to the learned Authorized Representative, the most material question requiring verification was whether any of the cancelled E-Way Bills had actually been used for transportation of goods. He also submitted that most of the cancelled E-Way Bills were issued for very small distances, therefore possibility of transporting goods using a cancelled E- Way Bill cannot be ruled out.

11. It was, therefore, submitted that the first appellate authority had allowed the appeal without undertaking the necessary factual verification and, consequently, the impugned appellate order deserves to be set aside.

Submissions on behalf of the Respondent/Dealer

12. Shri Manu Kulshreshtha, learned counsel appearing on behalf of the respondent/dealer, supported the order passed by the first appellate authority and submitted that the same is based upon the material available on record and does not call for any interference.

13. Learned counsel submitted that the E-Way Bills had been cancelled inadvertently and there was no intention whatsoever to evade payment of tax. It was specifically contended that no goods were transported on the basis of the cancelled E-Way Bills.

14. It was further submitted that fresh and valid E-Way Bills were generated in place of the cancelled E-Way Bills and the goods were transported on the basis of such valid E-Way Bills. A detailed chart showing the cancelled E-Way Bills and the corresponding subsequently generated E-Way Bills had been furnished

before the first appellate authority.

15. Learned counsel submitted that the first appellate authority had rightly appreciated the material produced by the dealer and had reached a finding that the cancelled E-Way Bills did not represent actual transportation of goods. The impugned order, according to him, is legally justified and calls for no interference. It was accordingly prayed that the departmental appeal be dismissed.

Analysis and Conclusion:

16.We have heard Shri Mukesh Kumar, learned Authorized Representative appearing for the Department, and Shri Manu Kulshreshtha, learned counsel appearing for the respondent/dealer. We have also carefully examined the pleadings, the orders passed by the authorities below and the material available on record.

17. From the material placed before us, it is evident that the entire proceedings have their genesis in the cancellation of 81 E-Way Bills during the financial year 2020-21. The adjudicating authority proceeded on the basis of the cancelled E-Way Bills and, in the absence of any reply from the dealer, determined the tax liability and penalty

18. In appeal, however, the dealer came forward with an explanation that the E-Way Bills had been cancelled inadvertently and that fresh E-Way Bills had subsequently been generated in their place. A chart was also produced showing the cancelled E-Way Bills and the corresponding fresh E-Way Bills.

19. In our considered view, the production of such a chart, by itself, cannot be treated as conclusive proof that the transactions represented by the cancelled E-Way Bills were never undertaken or that the cancelled E-Way Bills were not used for transportation of goods. The explanation furnished by the dealer requires verification from the contemporaneous electronic records available on the GST/E-Way Bill portal.

20. It is significant that the cancellation of as many as 81 E-Way Bills is involved in the present matter. Such a substantial number of cancellations require a proper and transaction-wise examination. The reason for cancellation of each E-Way Bill ought to be ascertained and the explanation furnished by the dealer should be tested against the corresponding electronic records.

21. The first appellate authority has accepted the explanation of the dealer primarily on the basis of the chart furnished by the dealer. However, in our opinion, before recording a final finding in favour of the dealer, it was necessary to undertake a factual verification on the following material aspects:

(i) the reason for cancellation of each of the 81 E-Way Bills;

(ii) whether, against each cancelled E-Way Bill, a fresh E-Way Bill was in fact generated;

(iii) the date and exact timing of generation and cancellation of the original E-Way Bills;

(iv) the date and timing of generation of the corresponding fresh E-Way Bills;

(v) whether the fresh E-Way Bills were generated immediately before or after cancellation of the original E-Way Bills and the circumstances in which such cancellation and re-generation took place;

(vi) whether the particulars contained in the cancelled E-Way Bills and the corresponding fresh E-Way Bills are identical, particularly with regard to the consignor, consignee, invoice number and date, description of goods, quantity, taxable value, tax amount, vehicle number and other relevant particulars;

(vii) whether the E-Way Bills were cancelled by the respondent/dealer himself or by the concerned recipient/consignee;

(viii) whether the goods covered by the transactions were actually transported and, if so, on which E-Way Bill such transportation took place;

(ix) whether any of the cancelled E-Way Bills were used or relied upon for actual movement/transportation of goods; and

(x) whether the electronic records available on the portal corroborate the explanation furnished by the dealer.

22. These questions are essentially questions of fact. A finding regarding absence of tax evasion cannot appropriately be recorded merely on the basis of an assertion that the E-Way Bills were cancelled inadvertently. The surrounding electronic records and the actual movement of goods have to be examined before a definitive conclusion can be reached.

23. We are conscious of the fact that the dealer had not filed any reply before the adjudicating authority. However, in the appellate proceedings the dealer furnished an explanation along with a chart relating the cancelled E-Way Bills to subsequently generated E-Way Bills. Since this material has a direct bearing upon the determination of the actual tax liability, the same deserves proper verification rather than being accepted or rejected merely on the basis of the chart.

24. At the same time, the mere fact that an E-Way Bill was cancelled cannot, by itself, conclusively establish that the corresponding goods were transported without payment of tax. The Department must also establish, on the basis of appropriate factual verification, the nexus between the cancelled E-Way Bills and the alleged movement of goods. Conversely, the dealer’s assertion that fresh E-Way Bills were generated cannot, without verification, be treated as conclusive proof that the cancelled E-Way Bills were never used.

25. Thus, in our considered opinion, the controversy involved in the present appeal cannot be effectively and finally determined without a detailed factual examination of the electronic records and the corresponding transactions.

26. Having regard to the totality of the facts and circumstances, we are of the considered view that the learned first appellate authority ought to have undertaken a more detailed verification of the material facts before setting aside the adjudication order. The matter, therefore, requires reconsideration by the

adjudicating authority after undertaking appropriate factual verification.

27. Consequently, without expressing any final opinion on the merits of the tax liability or the explanation furnished by the respondent/dealer, the impugned order passed by the learned first appellate authority and the order-in-Original passed by the proper officer are liable to be set aside and the matter deserves to be remanded to the adjudicating authority for fresh adjudication.

ORDER

28. In view of the foregoing discussion, the departmental appeal is allowed in part. The order dated 25.06.2025 passed by the learned Additional Commissioner, Grade-II (Appeal), Agra, and Order-in-Original dated 25.02.2025 passed by proper officer are hereby set aside. The matter is remanded to the adjudicating authority for fresh consideration and adjudication in accordance with law. The adjudicating authority shall undertake a transaction-wise verification of the 81 cancelled E-Way Bills and, in particular, shall examine:

1. the reason for cancellation of each E-Way Bill;
2. whether a corresponding fresh E-Way Bill was generated;
3. the date and time of generation and cancellation of the respective E-Way Bills;
4. whether the particulars of the cancelled and subsequently generated E-Way Bills correspond with each other;
5. whether the corresponding fresh E-Way Bills were actually valid and operative at the time of movement of goods;
6. whether the cancelled E-Way Bills were ever used for actual transportation of goods; and
7. such other connected facts as may be necessary for determining the actual tax liability.

29. For this purpose, the adjudicating authority shall verify the relevant electronic records available on the GST/E-Way Bill portal and shall afford reasonable opportunity of hearing to the respondent/dealer. The respondent/dealer shall also be permitted to furnish all relevant documents, including the original and fresh E-Way Bills, invoices, transport documents and any other material in support of its claim.

30. After undertaking the aforesaid verification and considering the material produced by both sides, the adjudicating authority shall pass a fresh, reasoned and speaking order in accordance with law, without being influenced by any observation made in this order on the ultimate merits of the tax liability.

31. It is clarified that we have not expressed any final opinion as to whether the cancelled E-Way Bills were actually used for transportation of goods or whether the subsequent E-Way Bills represented the same transactions. These issues are left open for determination by the adjudicating authority on the basis of the evidence and verification undertaken pursuant to this order.

32. The appeal is accordingly allowed by way of remand.

33.There is no interim application in the appeal.

34.Order is accordingly pronounced on 08.10.2026 in open court.

35.Order be communicated to all concerned, as per rules.

(Ajeet Singh)

(Vivek Kumar)

Dated: 08.10.2026