GSTAT

State Bench Agra

Division Bench Court No. Court I

APL/157/AGR/2026

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

Versus

KRISHAN KUMAR AGARWAL & BROTHERS, PROP, RAILWAY ROAD
KAIMGANJ UPFAR 207502 **.....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
KAMAL KUMAR AGGRAWAL , 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. : ZA090401026000055H **Date of order :** 08/10/2026

1.	GSTIN/Temporary ID/UIN - 09AAXPA0740L1ZG	
2.	Appeal Case Reference no. - APL/157/AGR/2026	Date - 20/04/2026
3.	Name of the appellant - Jitendra Kumar , jitendra.19881989@gmail.com , 9451882327	
4.	Name of the respondant - 1. KRISHAN KUMAR AGARWAL & BROTHERS , ambika.agrawal99@gmail.com , 9415124397	
5.	Order appealed against - AD091025045172F	
	(5.1) Order Type - Enforcement Order	
	(5.2) Ref Number - ZD0911250948713	Date - 04/11/2025
6.	Personal Hearing - 08/10/2026 22/09/2026 02/09/2026	

7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The impugned order passed by the First Appellate Authority is found in full compliance with the legal provisions. Accordingly, the first appellate order is upheld and the departmental appeal is dismissed.
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
Levy of Penalty	The order passed by the First Appellate Authority under Section 130 read with Section 122 has been set aside.	

Place :AGRA

Date : 08.10.2026

Signature

AGRA Sandeep Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Agra

ORDER

1. Appeal No. APL/72/AGR/2026

Shailendra Kumar Singh, Assistant Commissioner

Vs

M/S Amir Ali Khan & Bros., Farrukhabad.

2. Appeal No. APL/81/AGR/2026

Shailendra Kumar Singh, Assistant Commissioner

Vs

M/S S.K Enterprises, Kaimganj.

3. Appeal No. APL/140/AGR/2026

Shailendra Kumar Singh, Assistant Commissioner

Vs

M/S Janki International, Kaimganj.

4. Appeal No. APL/141/AGR/2026

Shailendra Kumar Singh, Assistant Commissioner

Vs

M/S Subhash Chand Ashish Kumar, Kaimganj.

5. Appeal No. APL/157/AGR/2026

Jitendra Kumar, Assistant Commissioner

Vs

Krishan Kumar Agarwal & Brothers, Kaimganj.

Per. Ajeet Singh (Judicial Member)

ORDER

(Passed on 08th day of October, 2026)

1. First Four appeals have been filed by Sh. Shailendra Kumar, Deputy commissioner, Special Investigation Branch, State Tax, Zone- Etawah, U.P and fifth one by Jitendra Kumar, Assistant Commissioner, Special Investigation Branch, State Tax, Zone- Etawah, U.P, u/s 112(3) 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/72/AGR/2026** in which impugned order dated- 07.01.2026 has been passed by Additional Commissioner Gr. II, appeal, state tax, Etawah vide which order of Adjudicating officer passed u/s 130 read with section 122 of CGST/UPGST, Act, dated- 17.09.2025 has been set aside and amount of penalty imposed therein also has been quashed.

ii) Appeal no. **APL/81/AGR/2026** in which impugned order dated- 08.05.2025 has been passed by Additional Commissioner Gr. II, appeal, state tax, Etawah vide which order of Adjudicating officer passed u/s 130 read with section 122 of CGST/UPGST, Act, dated- 03.03.2025 has been set aside and amount of penalty imposed therein has also been quashed.

iii) Appeal no. **Apl/140/AGR/2026** in which impugned order dated- 07.01.2026 has been passed by Additional Commissioner Gr. II, appeal, state tax, Etawah vide which order of Adjudicating officer passed u/s 130 read with section 122 of CGST/UPGST, Act, dated- 19.09.2025 has been set aside and amount of penalty imposed therein has also been quashed.

iv) Appeal no. **Apl/141/AGR/2026** in which impugned order dated- 14.10.2024 has been passed by Additional Commissioner Gr. II, appeal, state tax, Etawah vide which order of Adjudicating officer passed u/s 130 read with section 122 of CGST/UPGST, Act, dated- 16.07.2020 has been set aside and amount of penalty imposed therein has also been quashed.

v) Appeal no. **Apl/157/AGR/2026** in which impugned order dated- 04.11.2025 has been passed by Additional Commissioner Gr. II, appeal, state tax, Etawah vide which order of Adjudicating officer passed u/s 130 read with section 122 of CGST/UPGST, Act, dated- 30.09.2025 has been set aside and amount of penalty imposed therein has also been quashed.

2.Facts in brief in appeal no. **Apl/72/AGR/2026**, are that special investigating team Etawah headed by appellant herein had inspected the business premises of respondent running for producing and selling of

Tobacco and Tobacco Garda. On verifying the stock and relevant registers by appellant it was found that *6,438 kgs Sabut gadiya and 38,705 kg tobacco garda* was not mentioned in in books of account and it was clear violation of section 35 of CGST, act. Appellant has seized the aforesaid goods found unaccounted. Show cause notice was accordingly issued by SIB incharge, to respondent but same was not responded, followed by order passed by appellant on 17.09.2025 vide which Rs. 7,15,080/- Penalty and Rs. 1,78,332/- fine was imposed. In *lieu* of confiscation of seized goods.

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 penalty and fine has been set aside.

4.Facts in brief in appeal no. **Apl/81/AGR/2026**, are that special investigating team Etawah headed by appellant herein had inspected the business premises of respondent running for producing and selling of Tobacco and Tobacco products. On verifying the stock and relevant registers by appellant it was found that *24,775 kgs Tobacco stem powder, 31,055 kg tobacco Orchha, 31,055 kgs Nas Orchha, 6080kg Nas tobacco, 5000 kg fatkan tobacco and 7960 kg tobacco leaf powder* was not mentioned in books of account and it was clear violation of section 35 of CGST, act. Appellant has seized the aforesaid goods found unaccounted. Show cause notice was accordingly issued by SIB incharge, to respondent and same was replied by taxpayer, proper officer declined the version of respondent in reply of notice and passed order in original by imposing amount of penalty of Rs. 6,44,192/- and fine of Rs. 50,000/-, In *lieu* of confiscation of seized goods.

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 penalty and fine have been set aside.

6. Facts in brief in appeal no. **Apl/140/AGR/2026**, are that special investigating team Etawah headed by appellant herein had inspected the business premises of respondent running for producing and selling of Tobacco and Tobacco products. On verifying the stock and relevant registers by appellant it was found that *Tobacco nas 64,354, Tobacco Nas 10 Number 35,692 kgs, 2145 kg fatkan tobacco, 3557 kg tobacco dust, 11,131 kg tobacco Orcha, tobacco rawa 731 kg and tobacco gadiya 52593* were not mentioned in in books of account and it was clear violation of section 35 of CGST, act. Appellant has seized the aforesaid goods found unaccounted. Show cause notice was accordingly issued by SIB incharge, to respondent and same was replied by taxpayer, proper officer declined the version of respondent taken in reply of notice and passed order in original by imposing amount of penalty of Rs. 12,93,644/- and fine of Rs. 3,00,000/-, In *lieu* of confiscation of seized goods.

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 penalty and fine have been set aside.

8. Facts in brief in appeal no. **Apl/141/AGR/2026**, are that special investigating team Etawah headed by appellant herein had inspected the business premises of respondent running for producing and selling of Tobacco and Tobacco products. On verifying the stock and relevant registers by appellant it was found that Orcha 1090 bore 45kg/bag - 49050 kg, Orcha loose 18000 kg, Orcha 157 bore 45kg/bag- 7065 kg, Patti gadiya sabut 1250 bora 105kg/bag- 1,31,250kg, Nas 950 bore 45kg/bag- 42,750kg, Nas Rawa 42

bore 45kg/bag - 1890 kg, Bardana 240 bundle 21 bore- 5040 nos. were not mentioned in in books of account and it was clear violation of section 35 of CGST, act. Appellant has seized the aforesaid goods found unaccounted. Show cause notice was accordingly issued by SIB incharge to respondent which was not responded by taxpayer, proper officer passed order in original by imposing amount of tax 11,87,346/- penalty of Rs. 11,87,346/- and fine of Rs. 11,87,346/-, In *lieu* of confiscation of seized goods.

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, penalty and fine have been set aside.

10. Facts in brief in appeal no. **Apl/157/AGR/2026**, are that special investigating team Etawah headed by appellant herein had inspected the business premises of respondent running for producing and selling of Tobacco and Tobacco products. On verifying the stock and relevant registers by appellant it was found that Tabacco gadiya worth of Rs. 12,09,330/- was not mentioned in in books of account and it was clear violation of section 35 of CGST, act. Appellant has seized the aforesaid goods found unaccounted. Show cause notice was accordingly issued by SIB incharge, to respondent which was not responded by taxpayer, proper officer passed order in original by imposing amount penalty of Rs. 60,466.50/- and fine of Rs. 60,466.50/-, In *lieu* of confiscation of seized goods.

11. 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 penalty and fine have been set aside.

12. Before embarking to the facts of the appeals it is worthy to note that in all the five matters 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 orders-in-original 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 on business premises and instead thereof department should launch proceedings u/s 73/74 of CGST/UPGST, act. Thus, all these five appeals have been directed by the revenue in respect of amount of tax, fine and penalty imposed by adjudicating officer and set aside by first appellate authority.

13.We have heard the learned authorized representatives of appellants and perused the records of appeals uploaded on the GSTAT Portal, the common question for determination before us may be formulated as under-

i)Whether first appellate authority has rightly allowed the first appeals by setting aside the amount of tax, penalty and fine imposed by proper officer u/s 130(2) of CGST/UPGST, Act?

FINDINGS WITH REASONS

14. 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.

15. 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 CGST Act, rather than invoking the harsh confiscation provisions under Section 130.
16. 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 u/s 73 and 74 of CGST act/ UPGST act.
17. 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.
18. 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 lieu of confiscation of goods. In the present matters same is the position where on the survey of business premises which were being used by appellants for producing and selling of tobacco and its edible products excess/unaccounted stocks of such items are said to be found but instead of initiation proceedings u/s 73/74 of CGST/UPGST, act. Learned proper officer initiates the proceedings u/s 130 of the CGST Act directly, 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 and quashed of set aside the Orders-in-Original passed by proper officer resulted set aside the demand of Tax, penalty and fine.
19. 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 Orders-in-Original passed by learned A.O by holding that launching of proceedings u/s 130 of CGST/UPGST, Act is 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 peripheral manner and without application of mind, which cannot be appreciated.

20. Therefore, in view of discussion of facts of the cases in hand and law applicable thereto, by answering the question formulated in positive, we are of the considered opinion that all these five appeals are liable to be dismissed as *sans* merit, which this bench directs.
21. There is no pending interim application in the appeals.
22. Order is pronounced in open court on this day of 08th of October, 2026.
23. Copy of order be communicated to all concerned, as per rules.

(Ajeet Singh)

(Vivek Kumar)

Dated: 08.10.2026