**GSTAT**

**State Bench Agra**

**Court No. Court I**

**APL/245/AGR/2026**

SHAILENDRA KUMAR SINGH **.....Appellant**

**Versus**

M/S VIJAY & BROTHERS, PROPRIETOR, JAWAHAR NAGAR WORD NO-7 KAMALGANJ UPFAR 209724 **.....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**

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. :** ZA090401026000057H **Date of order :** 08/10/2026

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| **1.** | GSTIN/Temporary ID/UIN - 09AYOPP3515D2ZA | |
| **2.** | Appeal Case Reference no. - APL/245/AGR/2026 | Date - 28/04/2026 |
| **3.** | Name of the appellant - SHAILENDRA KUMAR SINGH , singhparisha2007@gmail.com , 7235001522 | |
| **4.** | Name of the respondant -<br>1. M/S VIJAY & BROTHERS , prakashvijai262@gmail.com , 7080523001 | |
| **5.** | Order appealed against - AD0905240224919 | |
| | **(5.1) Order Type -** Demand Order | |
| | **(5.2) Ref Number -** ZD090925297732N | Date - 23/09/2025 |
| **6.** | Personal Hearing - 08/10/2026 22/09/2026 04/06/2026 | |

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| **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**

Per. Ajeet Singh (Judicial Member)

Shailendra Kumar Singh Vs Vijay Brothers

Appeal No. APL/245/AGR/2026

ORDER

(Passed on 08th day of October, 2026)

1. This appeal has been directed by Sh. Shailendra Kumar Singh, Deputy 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 this appeal order impugned dated- 23.09.2025 passed in first appeal no. 0264/2025 has been set aside by first appellate authority by allowing the first appeal filed by respondent herein.
2. Facts of the case in brief are that on 10.10.2023, special investigating team Etawah, headed by appellant herein, had inspected the business premises of respondent running for trading of *Gutka Pan Masala*. At the time of inspection proprietor of firm Sh. Vijay Prakash, was found to be present. In the presence of two other independent witnesses stock was verified and it was found that goods of worth Rs. 10,01237 was not mentioned in books of account maintained by respondent. SIB incharge has assumed that goods which were found to be excess from the books of account were stored in violation of section 130 of CGST/UPGST, Act and rules made thereunder. Goods found so, were seized, SCN was issued for payment of tax on worth of goods Rs. 1,01,237, Rs. 54,588 as penalty and Rs. 1,32,290 as Cess and fine thereon. As per further, case of SIB, respondent did not respond the SCN and accordingly Deputy Commissioner/Adjudicating officer imposed tax, penalty and fine of Rs. 1,86,878 on respondent in lieu of confiscation of goods seized.
3. Being dissatisfied by the order passed by appellant/proper officer, respondent/taxpayer filed appeal u/s 107 of CGST/UPGST Act, 2017 before first appellate authority, which was allowed. Order passed by proper officer and consequential amount of tax, penalty and fine have been set aside, hence present second appeal by revenue.

4. Before embarking to the facts of the appeal it is worthy to note that in present matter, learned proper officer had imposed penalty and fine u/s 130(2) in lieu of confiscation of seized goods found unaccounted at the time of inspection of business premises running by respondent. In first appeal, filed by respondent herein order-in-original passed by proper officer was set aside by holding that seizure and confiscation cannot be made if, like in the present matter, goods were found unaccounted on business premises and instead thereof department should launch proceedings u/s 73/74 of CGST/UPGST, Act. Thus, present appeal has been directed by the revenue in respect of amount of fine only. It is submitted in the grounds of appeal that section 35 does not provide for the imposition of fine on confiscated goods and there is a provision for a fine in lieu of confiscation. It is further submitted that releasing the goods without payment of fine would not be legal. At last, it is submitted by the appellant that present appeal has been filed on the issue of fine only.
5. We have heard the learned authorized representatives of appellant and perused the record of appeal uploaded on the GSTAT Portal, the question for determination before us may be formulated as under-

   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) read with section 122 of CGST/UPGST, Act?

**FINDINGS WITH REASONS**

6. 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.
7. 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.
8. 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.
9. 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.

10. 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 matter same is the position where on the survey of business premises which were being used by respondent for trading of Gutka Pan Masala excess/unaccounted stocks of such items are said to be found but instead of initiation of 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 or set aside the Order-in-Original passed by proper officer.
11. 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 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 appellant to file the present appeal in a peripheral manner and without application of mind, which cannot be appreciated.
12. Therefore, in view of discussion of facts of the case in hand and law applicable thereto, by answering the question formulated in positive, we are of the considered opinion that this appeal is liable to be dismissed as *sans* merit, which this bench directs.
13. There is no pending interim application in the appeal.
14. Order is pronounced in open court on this day of 08$^{th}$ of October, 2026.
15. Copy of order be communicated to all concerned, as per rules.

(Ajeet Singh)

(Vivek Kumar)

**Dated: 08.10.2026**