GSTAT

State Bench Agra

Court No. Court I

APL/23/AGR/2026

DEVENDRA SINGH **.....Appellant**

Versus

HEMA INDUSTRIES, PARTNER, 15/16 A NEAR J K CHAPPAL STORE KRISHNA TOLA ALIGARH UPALI 202001 **.....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
SH. ROHIT KUMAR, C.A

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. : ZA090401026000154H **Date of order :** 16/10/2026

1.	GSTIN/Temporary ID/UIN - 09AANFH1558D1ZB	
2.	Appeal Case Reference no. - APL/23/AGR/2026	Date - 22/04/2026
3.	Name of the appellant - Devendra Singh , devendra.2971972@gov.in , 9412191336	
4.	Name of the respondant - 1. HEMA INDUSTRIES , khandelwalrr1989@gmail.com , 8449066691	
5.	Order appealed against - AD090323013771C	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD0903230849706	Date - 25/03/2023
6.	Personal Hearing - 16/10/2026 24/09/2026 11/08/2026	

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
Short or non-payment of tax	0.00	AGRA BENCH

Place :AGRA

Date : 16.10.2026

Signature

AGRA Sandeep Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Agra

ORDER

Per. Ajeet Singh (Judicial Member)

(Passed on 16th day of October, 2026)

1. Being dissatisfied with the order dated- 25.03.2023, passed by first appellate authority in first appeal no. 161/2023, Sh. Devendra Singh, Assistant commissioner, state tax, U.P, has preferred this second appeal on behalf of State of U.P. Vide impugned order learned first appellate authority by allowing the first appeal order passed by proper officer dated 10.02.2023, and consequential demand of tax and penalty has been set aside. For brevity hereinafter in the order appellant and respondent will be addressed as dealer and revenue, respectively.
2. Facts giving rise to the present second appeal filed u/s 112 of Central goods and Services Tax, Act/Uttar Pradesh Goods and Services Tax, Act, 2017 (for short CGTS/UPGST, Act) may be stated thus, Assistant commissioner CGST division Aligarh had informed vide a letter no. 1037 dated 30.05.2022 that firm M/s Adil enterprises Lucknow having GSTIN 09CZFPA1341AZZ4, was non-existent one. Dealer herein had purchased GP sheet used in manufacturing of padlock and metal items of worth Rs. 8,51,570/- from M/s Adil enterprises Lucknow with tax invoice no. 01 dated 14.06.2021. Accordingly, proper officer of state tax department, by assuming that firm Adil enterprises was non-existent, issued show cause notice to dealer by stating that he had purchased the goods through invoice dated- 14.06.2021 without actual inward supply. Dealer has replied the notice by stating that he had purchased the goods and got actual inward supply. He also submitted several documents in support of his stand but learned proper officer has not accepted such explanation and imposed tax of Rs. 1,53,282/- interest thereon Rs. 37,554/- and penalty of Rs. 1,53,282/- in total 3,44,118/- on dealer.
3. Aggrieved by the order passed by proper officer dealer has filed first appeal no. 161/2023 before first appellate authority which was allowed by the order-in-appeal dated 25.03.2023, hence this second appeal by revenue.
4. Learned departmental representative has submitted that first appellate authority has committed a manifest error in allowing the first appeal and setting aside the order passed by proper officer. He has further submitted that in the relevant year 2021-22 and in the month of June therein, dealer has shown inward supply on Rs. 8,51,570/- without actual movement of goods in the invoice and has claimed ITC thereon wrongly. He has further submitted that Assistant commissioner CGST division Aligarh had informed vide his letter dated 23.05.2022 that outward supplier Adil enterprises was found to be non-existent firm and was only indulging issuing fictitious invoices and generating GSTR-01 without actual supply of goods.

5. On the other hand, learned counsel appearing for dealer has submitted that he had received actual supply of GP sheet which is being used in manufacturing of metal and padlock goods. He has also submitted that his firm used to manufacturing such items not even today but for the years. He has further submitted that before proper officer he submitted invoice, e-way bill, bilty and proof of payment of goods to supplier firm via verifiable banking channels and considering the same even a common prudent man can assume that dealer received inward supply of the goods from supplier firm M/s Adil Enterprises Lucknow.

6. Thus, on hearing the arguments of the rival authorized representative and perusal of the record questions for determination may be formulated here as under-

i) Whether ITC can be denied u/s 16(2) of CGST/UPGST, Act to a purchasing taxpayer who possesses valid tax invoice, e-way bills, transport records and proof of payment through banking channels, merely because the supplier was subsequently found to be non-existent?

ii) Whether a penalty order u/s 74 is justified against a purchasing dealer without proving collusion or active participation in the fraud?

FINDINGS WITH REASON.

7. Before adverting to the facts of the case it is worthwhile to note the relevant provisions of CGST/UPGST, Act which may be applicable in the matter. a) section 16(1) and 16(2) prescribes conditions for claiming ITC these are possession of tax invoice, actual receive of goods, tax charged in respect of supply has been paid to the public exchequer and filing of return u/s 39.

b) Section 74 applies only where tax is not paid, short paid or ITC is wrongly availed by reason of fraud or any willful misstatement or suppression of facts to evade the tax liability, as per section 155 burden of proof regarding eligibility of ITC lies on the person claiming such credit.

c) Now we revert to the facts of the present case, the respondent dealer has produced complete verifiable documents proving the transaction in question these are e-way bill, consignment note and payment details. The raw material (GP sheet) was utilized in the manufacturing of metal and padlock goods. The department has neither questioned nor disputed the manufacture or the sell of the finished padlock items by the recipient firm. Manufacturing GP based products without raw material is impermissible thereby validating the actual physical receipt of goods u/s 16(2) b. Further, taxpayer has also proved the payment for inward supply through verifiable banking channels prior to the SCN received by him.

8. In June 2021, when the transaction took place supplier dealer M/s Adil Enterprises was a registered entity carrying a valid GSTIN on the GST common portal and subsequent investigation declaring a supplier non-existent or cancelling its registration retrospectively can not automatically disentitle a bonafide buyer to claim ITC who acted upon the valid registration status displayed on the official government portal at the time of purchase.

9. Suffice to say, that to invoke section 74 the onus is on the department to establish deliberate fraud, misinterpretation or collusion between buyer and supplier, while in the SCN proper officer fails to produce any direct evidence, statement or materials to show that the taxpayer was aware of in any bogus invoice ring operated by supplier firm. The revenue can not make the purchasing the dealer a guarantor for the supplier's statutory compliance or post transaction records.
10. In case of **M/s LGW Industries ltd. vs Union of India** (2022) Hon'ble Calcutta High court, has held that if the purchasing dealer has verified the active GST status of the supplier at the time of purchase, paid the consideration along with tax through banking channel and posses valid transport documents ITC cannot be denied or reversed already availed solely due to retrospective cancellation of supplier's registration or non-existence of the supplier discovered in a subsequent investigation.
11. In an another case Shaurya Alloys pvt. Ltd. Vs State of Punjab and Haryana High court has held that reversal of ITC form a purchasing dealer cannot be done mechanically until unless revenue does not establish direct collusion/ complicity before invoking the provisions of section 74. Delhi High court in case on Quest merchandising Ind. Pvt. Ltd. Vs Government of NCT Delhi has held that a purchasing dealer who has been complied with all requirements at the time of purchasing of goods cannot be penalize for the seller's failure or its fraudulent activities unless active complicity of purchasing dealer is established.
12. Though, it is true that burden to discharge genuineness of ITC is on a person who claims the same by virtue of section 155 CGST/UPGST, Act but as stated earlier too, purchasing dealer has successfully discharged its burden by supplying tax invoice, e-way bill, bilty, bank transaction statement and evidence of raw materials consumption in finished padlock goods. Now the burden to rebutte the same casts on the department which has failed to do so by showing complicity or collusion of purchasing dealer with supplier. Therefore, in the light of facts and circumstances of the case and materials supplied by the purchasing dealer he is seemed to be a bonafide taxpayer who cannot be penalized for the even post transaction disappearance of the supplier, when the transaction was entered into in good faith with a registered entity.
13. Thus, in view of facts and circumstances of the case discussed above we are of the considered opinion that learned first appellate authority has rightly allowed the first appeal by setting aside the order of reversal of ITC passed by proper officer. Accordingly, both the question for determination formulate in para no. 06 are hereby answered against the appellant/state.
14. Consequently, this second appeal fails and dismissed as found to be devoid of merit. Order-in-Appeal is upheld.
15. There is no pending interim application in the appeal.
16. Order is pronounced in open court on this day of 16th of October, 2026.
17. Copy of order be communicated to all concerned, as per rules.

(Ajeet Singh)

Dated: 16.10.2026