GSTAT

State Bench Agra

Court No. Court I

APL/95/AGR/2026

SANJEEV KUMAR SINGH **.....Appellant**

Versus

M/S CROWN GLASS INDUSTRIES, PARTNER, 143 SHAHI MAEJID KATRA PATHANA FIROZABAD UPFIR 283203 **.....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
RAJEEV 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. : ZA090401026000152H **Date of order :** 16/10/2026

1.	GSTIN/Temporary ID/UIN - 09AADFC8353K1Z4	
2.	Appeal Case Reference no. - APL/95/AGR/2026	Date - 22/04/2026
3.	Name of the appellant - SANJEEV KUMAR SINGH , sanjeev.1071977@gov.in , 9454303459	
4.	Name of the respondant - 1. M/S CROWN GLASS INDUSTRIES , titu@crownoverseas.net , 9837042888	
5.	Order appealed against - AD0906240550742	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD091224036465E	Date - 04/12/2024
6.	Personal Hearing - 16/10/2026 23/09/2026 12/08/2026	

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
Levy of Penalty	The Appellate Authority vide order dated 04-12-2024 accepted the appeal	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. Present second appeal u/s 112(3) of Central Goods and Services Tax/Uttar Pradesh Goods and Services Tax, Act, 2017 (here-in- after referred as "CGST Act/UPGST Act") has been preferred by the Revenue through Sanjeev Kumar Singh, Deputy Commissioner, State Tax, U.P, against order in appeal dated- 04.12.2024, passed in Appeal no. AD0906240550742/2024, by First appellate authority, vide which by allowing the first appeal of respondent herein set aside the penalty, fine and proceedings initiated by the proper officer.
2. Facts of the case in brief are that, respondent firm named M/s Crown glass industries, karbla road, Firozabad (U.P), is a registered dealer having GSTIN 09AADFC8353K1Z4, under UPGST, Act. On 07.12.2022, special investigating Branch (SIB) Mainpuri had inspected its business premises in the presence of two independent witnesses. On being verified it was found that taxable raw material, 133.565 ton worth of Rs. 4,00,700/-, flask 986-piece worth of Rs. 41,412/-, Raw material+ packaging material 200 bag + 12.855 MTPKM of worth Rs. 6,41,390/- in total worth of Rs. 10,83,502/- was not declared in books of account mentioned by defendant. SIB incharge has prepared seizure memo accordingly and show cause notice was issued which was not responded by respondent firm. Several dates- 04.03.2023,17.07.2023 and 09.10.2023 were fixed for hearing of the case initiated u/s 130 read with section 122 of CGST/UPGST, Act. On behalf of respondent firm its partner sh. Naved Mukkram, has sent an application to proper officer on hearing date 09.10.2023, with the prayer that he should be allowed 45 days to respond the case. After 45 days case was refixed for hearing by proper officer but no one has appeared for respondent firm. Thus, learned proper officer had adjudicated the lis ex-parte against the firm. As per such ex-parte adjudication, value of unaccounted goods was determined as of Rs. 2,95,050/- and imposed penalty u/s 130 read with section 122 of CGST/UPGST, Act.
3. On being aggrieved by the order-in-original dated 13.12.2023, passed by proper officer respondent firm has preferred first appeal which was allowed and amount of penalty and fine was 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.
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 in a search case of premises of business entity proceedings under section 130(2) read with section 122 of CGST/UPGST, Act are sustainable?

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, penalty and fine. 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 authorized by law to initiate proceedings u/s 130 and levy the penalty in lieu of confiscation of goods.

11. In the present matter same is the position where on the survey of business premises which were being used by respondent for trading of raw material etc. 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 the second appeal and quashed or set aside the Order-in-Original passed by proper officer.
12. Therefore, in view of discussion of facts of the case in hand and law applicable thereto, by answering the question formulated in negative, 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 16th of October, 2026.
15. Copy of order be communicated to all concerned, as per rules.

(Ajeet Singh)

(Vivek Kumar)

Dated: 16.10.2026