GSTAT

State Bench Agra

Division Bench Court No. Court I

APL/82/AGR/2026

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

Versus

M/S SHAMBHU DAYAL KAUSHAL AND SONS, PARTNER, W/O SHAMBHU DAYAL KAUSHAL WARD NO 17 BAGIYA SOHANLAL KAIMGANJ UPFAR 207502 **.....Respondent**

Quorum

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

Counsel for Appellant
MUKESH KUMAR

Counsel for Respondent
SAKET BINDAL

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. : ZA090401026000221H **Date of order :** 30/10/2026

1.	GSTIN/Temporary ID/UIN - 09AAZFS6753K1Z2	
2.	Appeal Case Reference no. - APL/82/AGR/2026	Date - 18/04/2026
3.	Name of the appellant - SHAILENDRA KUMAR SINGH , singhparisha2007@gmail.com , 7235001522	
4.	Name of the respondant - 1. M/S SHAMBHU DAYAL KAUSHAL AND SONS , caanshul93@gmail.com , 9415124365	
5.	Order appealed against - AD090624007639S	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD091224023880J	Date - 03/12/2024
6.	Personal Hearing - 30/10/2026 06/10/2026 03/09/2026 19/08/2026 06/08/2026	

7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - This second appeal filed by department is dismissed. Order passed by first appellate authority is upheld.
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.	AGRA BENCH

Place :AGRA

Date : 30.10.2026

Signature

AGRA Sandeep Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Agra

ORDER

1. Appeal No. **APL/82/AGR/2026**

Commissioner State Tax (through-Shailendra Kumar Singh, Assistant Commissioner)

Vs

M/S Sambhu Dayal Kaushal and Sons, Kaimganj.

2.Appeal No. **APL/87/AGR/2026**

Commissioner State Tax (through-Shailendra Kumar Singh, Assistant Commissioner)

Vs

M/S Anant Enterprises, Kaimganj.

3. Appeal No**. APL/90/AGR/2026**

Commissioner State Tax (through- Jitendra kumar, Assistant Commissioner)

Vs

M/S Raghav International, Kaimganj.

4. Appeal No. **APL/162/AGR/2026**

Commissioner State Tax (through- Jitendra kumar, Assistant Commissioner)

Vs

M/S Vishesh Tobacco Company, Kaimganj.

5. Appeal No. **APL/69/AGR/2026**

Commissioner State Tax (Through-Shailendra Kumar Singh, Assistant Commissioner)

Vs

Nihal Tobacco Company, Kaimganj.

Per. Ajeet Singh (Judicial Member)

ORDER

(Passed on 30th day of October, 2026)

- These five appeals have been preferred u/s 112 (1) of Central Goods and Services Tax, Act/ Uttar Pradesh Goods and Services Tax, Act, 2017 (for brevity "CGST/UPGST, Act) by authorized officials on behalf of State Tax department of Uttar Pradesh. In view of similarity of facts and identical questions for determination and to avoid the repetition of facts all are being disposed of by this common order.

Particulars of the appeals are as follows-

i) Appeal no. **APL/82/AGR/2026,** in which impugned order dated- 03.12.2024 has been passed by Additional Commissioner Gr. II, appeal, state tax, Etawah vide which application filed by respondent herein u/s 161 of CGST/UPGST, Act for rectifying the omission in original order in appeal dated- 19.09.2024 was allowed. In this second appeal filed u/s 112 of CGST/UPGST, Act, original order dated 19.09.2024 is not under challenge. Therefore, this appeal is not mentionable u/s 112 of CGST/UPGST Act, as vide order dated 03.12.2024 only a omission left by first appellate authority in original order has been corrected.

ii)Appeal no. **APL/87/AGR/2026** in which impugned order dated-17.06.2025 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- 20.02.2025 has been set aside and amount of penalty and fine in total Rs. 3,38,323/- imposed therein has also been quashed.

iii)Appeal no. **Apl/90/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- 18.09.2025 has been set aside and amount of penalty and fine in total Rs. 5,63,396/- imposed therein has also been quashed.

iv)Appeal no. **Apl/162/AGR/2026** in which impugned order dated- 25.09.2024 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- 22.12.2022 has been set aside and amount of penalty and fine in total Rs.6,28,350/- imposed therein has also been quashed.

v)Appeal no. **Apl/69/AGR/2026** in which impugned order dated- 15.11.2025 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 and fine in total Rs. 1,21,676/- imposed therein has also been quashed.

1. Facts in brief in appeal no. Apl/87/AGR/2026, are that special investigating team Etawah reached to the business premises of respondent running for producing tobacco products on 30.11.2024. On being verified tobacco raw material 56,735 kg was found to be unaccounted, same was seized by issuing INS-02 and in lieu of confiscation Rs. 3,38.823/- were offered to be deposited as penalty and fine by

respondent u/s 130 of CGTS/UPGST, Act. SCN was issued accordingly to respondent which was replied by respondent but learned proper officer was not satisfied with the explanation given by respondent and order was passed resulting issuing a demand of penalty plus fine as noticed earlier.

2. Respondent herein went in first appeal u/s 107 of CGST/UPGST, Act which was allowed by first appellate authority by setting aside the order in original and accordingly demand made on the basis thereof, now the revenue has knocked the door of this tribunal by way of second appeal.
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 have been set aside, now the department is before this tribunal by preferring second appeal u/s 112.
4. Facts in brief in appeal no. Apl/90/AGR/2026, are that special investigating team Etawah reached to business premises of respondent herein on 03.09.2025, at the same time Sh. Raghav Garg owner of firm was found to be present and he told that he use to trading of tobacco dust. On being verified 3,30,997 KG tobacco dust was found to be unaccounted in books of account mentioned by owner of firm. Learned seizing officer was of the view that storing of raw tobacco dust without its registration in books of account is a violation of section 130 (1) (I) of CGST/UPGST, Act. For such violation he assessed the value of goods as Rs. 16,54,985/-and imposed Rs. 5,63,396/- as penalty and fine. Before imposing such penalty and fine learned proper officer had also issued SCN which was replied by the respondent but same was not accepted by proper officer.
5. Respondent herein preferred first appeal by virtue of section 107 of CGST/UPGST, Act which was allowed by first appellate authority by setting aside order in original and amount of penalty and fine as well, now the department is before this tribunal by preferring second appeal u/s 112.
6. Facts in brief in appeal no. Apl/162/AGR/2026, are that on 28.07.2022, S.I.B, state tax, Etawah, reached to the business premises of respondent running for trading of tobacco leaves being used in preparing tobacco dust, such raw material of worth Rs. 35,22,208/- was found to be unaccounted in books of account mentioned at the business premises. Learned seizing officer was of the view that keeping unaccounted raw material by a business entity is a violation of the provision contained in section 68 which is liable of a legal action u/s 130 of CGST/UPGST, Act. Learned seizing officer issued SCN though same was replied by the taxpayer but not accepted by proper officer. On the same learned proper officer has imposed Rs. 6,28,350/- as penalty and fine on respondent taxpayer.
7. Taxpayer has preferred first appeal against order in original passed by proper officer which was allowed by setting aside order in original and demand created accordingly, hence present second appeal by revenue.
8. Facts in brief in appeal no. **Apl/69/AGR/2026**, are that special investigating team State tax U.P, unit Etawah reached to business premises of respondent on 16.09.2025. Respondent was running business of producing and selling of Tobacco products in the name and style of Gadiya tobacco. On being verified it was found that 27,029 Kg tobacco products was not accounted in the books of account and thus, same was seized and value thereof was also assessed as Rs. 12,16,755/-. After seizing the said goods in lieu of confiscation Rs. 60,838/- as penalty and Rs. 60,838/- as fine, in total Rs. 1,21,676/- were proposed to be paid by respondent. Accordingly, SCN dated 30.09.2025 was issued u/s 130 of CGST/UPGST, Act. Respondent did not reply the SCN and learned proper officer imposed penalty and fine as aforesaid.

9. Respondent herein has preferred first appeal before Additional Commissioner, Gr. II, appeal which was allowed and penalty and fine imposed by learned proper officer were set aside by holding that in case of search and seizure of goods found unaccounted form the business premises proceedings u/s 130 read with section 122 cannot be initiated by the tax officers and in place thereof proceedings u/s 73/74 may only be initiated. Being aggrieved by that order passed by first appellate authority, revenue now is before us by way of this second appeal.
10. 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 found unaccounted by respective business entities. 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 are 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 fine and penalty imposed by adjudicating officer and set aside by first appellate authority.
11. We have heard the learned authorized representatives of appellant/state 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 penalty and fine imposed by proper officer u/s 130(2) of CGST/UPGST, Act, in lieu of confiscation of goods founds to be unaccounted on verification?

FINDINGS WITH REASONS

12. Learned departmental representative Sh. Mukesh Kumar, has submitted that impugned orders passed by first appellate authority is not sustainable in law because of not only a tax officer is empowered to inspect and verify the records of any business firm in his local jurisdiction but he can also initiates proceedings u/s 130 of CGST/UPGST, Act. On the above, learned DR, has submitted for allowing these second appeals. On the other hand, learned counsels appearing for respondents have supported the findings recorded by first appellate authority and submitted for dismissal of appeals.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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 orders 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.
18. 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.
19. There is no pending interim application in the appeals.
20. Order is pronounced in open court on this day of 30th day of October, 2026.
21. Copy of order be communicated to all concerned, as per rules.

(Ajeet Singh)

(Vivek Kumar)

Dated: 30.10.2026