Dated: 05.11.2026

GSTAT

State Bench Lucknow

Court No. Court I

APL/144/LCK/2026

VISHAL SINGH **.....Appellant**

Versus

JAY JAY BRICKS, PARTNER, 102 C NEW CIVIL LINES RAILWAY GANJ HARDOI 102 C NEW CIVIL LINES RAILWAY GANJ HARDOI 102 C NEW CIVIL LINES RAILWAY GANJ HARDOI UPHAR 241001 **.....Respondent**

Quorum

Hon'ble Santosh Kumar Srivastava, Member(Judicial)
Hon'ble Arvind Kumar, Member (Technical)

Counsel for Appellant
MR. MAHENDRA PRATAP SINGH, ASSISTANT COMMISSIONER, SGST
MR. ASHUTOSH MISHRA, ASSISTANT COMMISSIONER, SGST

Counsel for Respondent
MR. VISHAL SRIVASTAVA, 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. : ZA090371126000133H **Date of order :** 05/11/2026

1.	GSTIN/Temporary ID/UIN - 09AAFFJ5853M1ZS	
2.	Appeal Case Reference no. - APL/144/LCK/2026	Date - 08/05/2026
3.	Name of the appellant - Vishal Singh , vishalschandel75@gmail.com , 9839556691	
4.	Name of the respondant - 1. JAY JAY BRICKS , gst.rnmlko@gmail.com , 9415149909	
5.	Order appealed against - AD090825142688F	
	(5.1) Order Type - Enforcement Order	

	(5.2) Ref Number - ZD090925230010Q	Date - 04/09/2025
6.	Personal Hearing - 05/11/2026 06/10/2026 22/09/2026 15/09/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - 1. The Revenue Department filed an appeal against the Order-in-Appeal dated 04.09.2025 in the case of M/s Jay Jay Bricks, whereby the First Appellate Authority had quashed the penalty of Rs.1,33,548 and fine of Rs.1,33,547.88 imposed under Sections 122 and 130 of the CGST/UPGST Act, 2017. The dispute arose from an SIB inspection dated 16.04.2025, during which 5,66,500 bricks valued at Rs. 22,25,798 were found at the taxpayer's premises. Since the taxpayer failed to produce stock registers and books of accounts at the time of inspection, the department treated the stock as unaccounted and initiated confiscation proceedings under Section 130. The Tribunal observed that: 1. Non-maintenance of Records: The absence of stock registers and books of accounts during inspection could attract Section 130(1)(ii), which does not specifically require proof of intent to evade tax. 2. Failure of Appellate Authority: The First Appellate Authority failed to properly verify the taxpayer's books of accounts and reconcile the unaccounted stock before deleting the entire demand. 3. Judicial Precedents: The judgments relied upon by the taxpayer were held to be distinguishable on facts and could not be applied mechanically. Final Decision: The Tribunal set aside the Order-in-Appeal dated 04.09.2025 and remanded the matter to the First Appellate Authority for fresh adjudication on merits, after proper examination of the records and applicability of Section 130(1)(ii) of the CGST/UPGST Act, 2017.	
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	As per Annexure attached	The impugned Order-in-Appeal dated 04.09.2025 is set aside. The matter is remanded back to the First Appellate Authority (Additional Commissioner (Appeals)) for a fresh, adjudication on merits in accordance with the observations contained hereinabove.

Place :LUCKNOW

Signature

Date : 06.11.2026

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

ORDER

1. This present Appeal has been preferred by the Revenue (hereinafter referred to as the **"Appellant"**) under Section 112(3) of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the **"Act"** / **"Rules"**). The Revenue assails the legality, propriety, and correctness of the Order-in-Appeal No. GST-294/2025 dated 04.09.2025 passed by the First Appellate Authority (**Additional Commissioner, Grade-2 (Appeal) First, State Tax, Lucknow**), arising out of the dynamic search and seizure proceedings initiated against the taxpayer.

2. The First Appellate Authority had allowed the appeal of **M/s Jay Jay Bricks** (hereinafter referred to as the **"Respondent"**) and completely quashed the penalty of ₹1,33,548.00 and fine of ₹1,33,547.88, aggregating to **₹2,67,096.00**, which was originally generated by the Adjudicating Authority via Form GST DRC-07 under Section 130 read with Section 122 of the Act on 18.06.2025.

3. BRIEF FACTS OF THE CASE

3.1. The Respondent, M/s Jay Jay Bricks, is a registered partnership firm engaged in the manufacturing and retail sale of clay bricks. The firm holds a valid registration under GSTIN **09AAFFJ5853M1ZS**, with its principal place of business located at Kurria Shahabad Road, Hardoi, Uttar Pradesh, 241001.

3.2 The SIB Unit, Range-A, Lucknow, conducted a physical inspection and search on 16.04.2025 at the manufacturing site of the firm under the powers conferred by Section 67 of

the Act. During the on-site verification, the officers performed a physical count of the finished bricks stacked inside the kiln chambers and calculated a total inventory of **5,66,500 units**. The market value of this physical stock was evaluated at **₹22,25,798/-**. The inventory breakdown was recorded as follows:

- First-Class Bricks (अव्वल ईंट): **2,32,500 units** valued at ₹4,900/- per thousand.
- Second-Class Bricks (दोयम ईंट): **1,27,000 units** valued at ₹4,000/- per thousand.
- Yellow Bricks (पीली ईंट): **1,18,000 units** valued at ₹1,886/- per thousand.
- Kharanja Bricks (खड़ंजा ईंट): **89,000 units** valued at ₹4,000/- per thousand.

3.3. During the search operations, the firm's manager, Shri Vivresh, was present. When requested by the SIB officers to show the stock register and updating books of accounts to reconcile the physical inventory, the manager stated his inability to do so. He explained that the principal accountant was on a temporary three-day leave and the managing partners were out of station to attend a family ceremonial function.

3.4. Because no account books or production logs could be instantly scrutinized on the spot, the SIB unit treated the entire stock as unrecorded and undeclared. They issued a dynamic seizure order in **Form GST INS-02** on the same day, freezing the stock.

3.5 Show Cause Notice dated 02.05.2025 under Section 130 was issued to the taxpayer via Form GST DRC-01 (Reference No. ZD090525011093P), alleging failure to keep and maintain statutory books of accounts at the business premises under Section 35 read with Rule 56. The taxpayer submitted a preliminary reply stating that all raw materials and brick stocks were legitimately accounted for through invoices and bank records, which would be produced as soon as the accountant returned.

3.6. The Adjudicating Authority proceeded to decide the matter ex-parte on **18.06.2025**. He rejected the taxpayer's explanations, concluded that the firm was operating completely

outside the statutory tax net to execute clandestine outward supplies, and issued a Demand Order via **Form GST DRC-07** (Order No. ZD0906251429028). The total confirmed liability was calculated at **₹2,67,096/-**, comprising **Penalty (Section 122):** ₹66,773.94 under Central Tax (CGST) + ₹66,773.94 under State Tax (SGST) and **Fine in Lieu of Confiscation (Section 130(2)):** ₹1,33,547.88 levied under State Tax (SGST).

3.7 Aggrieved by the adjudication order, the taxpayer preferred an appeal under Section 107. The First Appellate Authority, through its judgment dated 04.09.2025, completely **quashed the entire demand and deleted all liabilities**. The authority ruled that the department **failed to prove a deliberate "intent to evade tax,"** which is an essential prerequisite for invoking Section 130. It held that the correct course of action for the department **was to evaluate the stock discrepancy under Section 73 or Section 74 by virtue of Section 35(6).** The Revenue has filed the present appeal against this decision.

4. Grounds of Appeal (Submissions by the Appellant-Department)

4.1. The department submitted that the Respondent, M/S Jay Jay Bricks, is formally registered with the State Tax Department under the jurisdiction of Sector-2, Hardoi, holding a valid GSTIN 09AAFFJ5853M1ZS. According to the mandatory registration data maintained on the common GST portal, the respondent had explicitly designated their Principal Place of Business at Kurria Shahabad Road Hardoi, Hardoi, Uttar Pradesh, 241001. By establishing this factual baseline, the department seeks to legally bind the taxpayer to all statutory compliance requirements and record-keeping rules that govern a declared business location under the GST framework.

4.2. The department submitted that the physical Search and Survey operations executed by the Special Investigation Branch (SIB) Unit, Range-A, Lucknow on April 10, 2025, were conducted at an entirely undeclared place of business. The department's strict legal position is that even if a site shares a general geographic description or parcel road with a registered

address, the specific physical structures, manufacturing grounds, or storage zones active during the raid had not been properly amended or added as an authorized place of business on the official portal, rendering the operational site unmapped and unauthorized.

4.3. The department states that the entire physical stock of 5,66,500 bricks valued at ₹22,25,798/- discovered on-site during the SIB inspection was completely undeclared and outside the state regulatory network. Furthermore, at the exact time and date of the survey, absolutely no books of accounts, stock ledgers, inventory files, or manufacturing logs were available or presented at the location. The department argues that storing commercial quantities of stock while failing to maintain contemporaneous, verifiable record books directly on the operational floor proves an intent to execute secret commercial operations outside of standard oversight.

4.4. The department alleges that the respondent systematically manipulated their financial accounts post-survey by introducing retroactive purchase entries from both registered and unregistered entities to artificially match the seized stock. The department highlights a severe trade discrepancy, explicitly stating that brick products are not commercially sold or supplied by unregistered persons to registered manufacturers in the manner claimed. They argue that these external transactions were fabricated after the event because a casual, unregistered supplier cannot logistically furnish the raw material inputs required for a mass-scale industrial brick kiln operation.

4.5. The department directly charges that the production of business registers during later adjudication stages was entirely a product of subsequent book manipulation and artificial balancing adjustments by the respondent. The department completely rejects the taxpayer's defense that records were simply unavailable on the day of the raid due to the accountant being on leave. Instead, they maintain that the respondent actively rewrote, balanced, and backdated

their inventory logs to mirror the exact breakdown of Awwal, Doyam, Peeli, and Kharanja bricks that the SIB officers had already cataloged and detained during the raid.

4.6. The department argues that while standard tax shortfalls can be demanded or recovered under the routine recovery mechanisms of Section 7 of the Act, a penal "Fine" cannot be legally collected or enforced under those general provisions. The department's legal stance is that ordinary assessment sections are designed for straightforward errors or declarations, whereas an active attempt to operate from unrecorded premises requires harsher enforcement measures. Therefore, initiating proceedings strictly under Section 130 was fully justified to levy a heavy fine in lieu of confiscation to penalize clandestine operations.

4.7. The department relies heavily on the literal statutory text of Section 130(1) of the GST Act to solidify their case, stating that the respondent's actions directly triggered multiple penal clauses of the law. Specifically, they contend that the respondent violated clause (i) by supplying or receiving taxable goods in absolute contravention of the Act with a clear intent to evade tax, as well as clause (ii) by failing to account for goods on which they are legally liable to pay tax. The department claims that these combined statutory violations automatically make the physical goods eligible for absolute state confiscation and attract a corresponding penalty under Section 122.

4.8. The department argues that because the physical bricks met the legal criteria for absolute confiscation, the enforcement provisions of Section 130(2) were automatically activated. This section mandates that the adjudicating officer must provide the owner an option to pay a fine in lieu of losing their property altogether. The department defends the proper officer's original demand consisting of a regular penalty alongside a matching fine equal to 100% of the tax payable stating that the calculation remained strictly within the market value threshold of ₹22,25,798/- and complied with the minimum penalties prescribed by law.

4.9. The department concludes its formal grounds by asserting that the first appellate authority accepted the taxpayer's appeal illegally and without sustainable basis in law. The department claims that the Upper Commissioner (Appeals) committed a severe legal error by completely deleting the tax demand, penalty, and fine based entirely on the taxpayer's oral explanations and post-raid documentation. They argue that by ignoring the uncontradicted physical findings recorded on the field during the SIB survey, the appellate order became entirely unsustainable, contrary to public interest, and liable to be quashed by the Second Appellate Tribunal.

5. Submissions of the Respondent (Taxpayer);

5.1. The taxpayer submits that the Revenue's appeal is fundamentally self-destructive and legally unsustainable due to a direct internal contradiction between its primary grounds. The department explicitly admits that the respondent's "Principal Place of Business" was formally declared at Kurria Shahabad Road, Hardoi, yet asserts that the survey was conducted at an "undeclared place" featuring the exact same address. The taxpayer argues that the state cannot simultaneously label a single physical address as both declared and undeclared in its own pleadings. Furthermore, the department's appeal misstates the actual date of the raid as April 10, 2025, which directly conflicts with its own Show Cause Notice, adjudication order, and official SIB panchnama, which all uniformly record that the survey occurred on April 16, 2025.

5.2. The taxpayer opposes the department's fresh allegation that the business was operating out of an "undeclared place," highlighting that this accusation appears for the very first time in the Memorandum of Revenue Appeal. A review of the prior record reveals that neither the original SIB panchnama dated April 16, 2025, the Show Cause Notice dated May 2, 2025, nor the final Section 130 adjudication order contains any such characterization; instead, they all reference the site simply as the taxpayer's business premises. It is a settled principle of revenue law that the tax department cannot travel beyond the four corners of its original Show Cause

Notice at the appellate stage to mount an entirely new factual case that the taxpayer was never given an opportunity to meet or rebut during the initial adjudication.

5.3. The taxpayer points out a severe procedural infirmity by demonstrating that the department itself did not treat its own inquiry as concluded when it rushed to pass the Section 130 confiscation order on June 18, 2025. According to official records and GST portal logs, the department issued a secondary reminder summons under Section 70 on July 1, 2025, and went on to record a formal statement from the owner/partner as late as July 15, 2025 nearly a month *after* the final demand order had supposedly wrapped up the case. The taxpayer contends that this subsequent conduct proves the department finalized its harsh confiscation proceedings prematurely, utilizing incomplete material and bypassing the mandatory tax determination mechanisms before executing the seizure.

5.4. The taxpayer submits that because the entire dispute stems strictly from an alleged variation of physical stock found inside their own factory premises without any proof or allegation of an actual, completed taxable supply the department was statutorily mandated to follow Section 35(6). Section 35(6) explicitly mandates that when excess or unaccounted goods are discovered, the proper officer must determine the tax payable by applying the mechanisms of Section 73 or Section 74 *mutatis mutandis*. The taxpayer argues that by skipping this mandatory pathway and proceeding directly to the severe confiscation provisions of Section 130, the department completely acted outside its statutory authority.

5.5. The taxpayer has placed reliance upon the judgments passed by the Hon'ble Allahabad High Court in the matters of S/S Dinesh Kumar Pradeep Kumar v. Additional Commissioner, M/s Vijay Trading Company and M/s PP Polyplast Pvt. Ltd. The contention raised by the taxpayer regarding the judgments cited in support of the alleged settled legal position is not acceptable in the manner sought to be projected. The taxpayer has incorrectly construed the

dismissal of Special Leave Petitions by the Hon'ble Supreme Court as an affirmation of the entire reasoning and ratio of the judgments passed by the Hon'ble Allahabad High Court.

5.5.1. It is a settled principle of law, as laid down in *Kunhayammed & Ors. v. State of Kerala & Anr., (2000) 6 SCC 359*, that dismissal of an SLP by a non-speaking order, without grant of leave, does not result in merger of the impugned judgment with the order of the Supreme Court nor does it, by itself, constitute a declaration of law under Article 141 of the Constitution. Further, the judgments relied upon by the taxpayer cannot be applied mechanically without examining the factual matrix, nature of allegations and evidence available in the present proceedings. The applicability of Section 130 of the GST Act has to be determined with reference to the specific circumstances and statutory ingredients prescribed under the relevant clauses thereof. Therefore, the taxpayer's assertion that the mere discovery of excess stock invariably excludes the applicability of Section 130 and that the matter is conclusively governed by Sections 73/74 in every such case is an overbroad interpretation and cannot be accepted without examining the facts and evidence of the present case.

5.6 The taxpayer argues that for Section 130(1)(ii) or (iv) to be legally triggered, the department bears the heavy burden of proving a specific statutory contravention coupled with an explicit, deliberate "intent to evade payment of tax". In the present case, a mere volumetric difference between physical stock and book stock was treated as automatic proof of evasion. The taxpayer points out that neither the initial Show Cause Notice nor the original adjudication order contains a single piece of corroborative evidence or a concrete finding showing a deceptive intent; instead, the entire state action relies on a bare presumption triggered solely by the temporary non-production of records on the day of the survey.

5.7. The taxpayer provides a comprehensive factual explanation for the bricks found on-site, demonstrating that the temporary non-production of account books was a *bona fide* occurrence caused by the recorded absence of both the owner and the accountant on that

specific day. They explain that their commercial kiln operates with 80 distinct chambers moving through a rolling 25-to-30-day production cycle. The 5,66,500 bricks counted by the SIB unit represented nothing more than the normal, accumulated output of the manufacturing cycle since its commencement on March 16, 2025. The taxpayer invokes established tribunal precedents confirming that a minor volume of unrecorded finished stock lying within a factory floor, absent any evidence of intended clandestine removal, cannot legally justify an order of confiscation.

5.8. The taxpayer argues in the alternative that even if the department's case were accepted as true, the original demand order was structurally illegal as it exceeded the explicit statutory caps built into the law. The second proviso of Section 130(2) explicitly mandates that the aggregate total of the fine and penalty leviable cannot exceed a maximum threshold. By imposing a cumulative demand that effectively penalized the dealer at well over 200% of the tax leviable on the underlying brick stock, the original proper officer acted arbitrarily and excessively, an independent legal infirmity that fully justifies the relief and total deletion granted by the First Appellate Authority.

6. **QUESTION OF LAW;**

- Whether the Revenue can directly initiate severe confiscation and fine proceedings under **Section 130** solely on the discovery of excess or unrecorded stock during a survey at a registered business premises, or whether the statutory mandate under **Section 35(6)** strictly requires the department to determine tax liability through a regular assessment route under **Section 73 or Section 74**.
- Whether the mere physical presence of unrecorded inventory inside a working production unit automatically establishes a definitive **"intent to evade payment of tax"** under Section 130(1)(ii)/(iv),

7. Discussion and Findings;

7.1. We have meticulously considered the submissions of both the Revenue and the Respondent, perused the lower records, and examined the statutory framework of Section 130(1) along with the findings recorded in the Order-in-Appeal (OIA).

7.2. To properly analyze the statutory boundary of confiscation proceedings, it is vital to examine the literal text of Section 130(1) of the CGST/UPGST Act, 2017:

> *"Notwithstanding anything contained in this Act, if any person —*
>
> *(ii) does not account for any goods on which he is liable to pay tax under this Act; or*
>
> ...
>
> *(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax;*
>
> *then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122."*

7.3. A plain and literal interpretation of the statute reveals that the Legislature has carefully drafted distinct categories of offenses under separate clauses of Section 130(1). Section 130(1)(ii) of the Act penalizes a registered taxable person who *"does not account for any goods on which he is liable to pay tax."* Crucially, unlike clauses (i) and (iv), clause (ii) does not contain the qualifying phrase *"with intent to evade payment of tax."* Therefore, the mere objective failure to keep, maintain, or update records of taxable items found within a business unit satisfies the primary ingredient of this specific subsection.

7.4. We find that the First Appellate Authority, as shown in the recorded findings of the impugned OIA, completely conflated these distinct clauses. The lower appellate authority applied a sweeping generalization, ruling that an absolute "intent to evade tax" must be proved uniformly across all categories to sustain a detention or confiscation order. In doing so, the

authority overlooked the fact that the complete absence of any stock books, logs, or primary registers at the spot during an active search operation can independently invite the operation of Section 130(1)(ii), where the objective factor of non-accounting takes precedence over established tax intent.

7.5. Furthermore, a perusal of the impugned OIA reveals a critical internal contradiction within the First Appellate Authority's own ruling. On one hand, the lower appellate authority explicitly notes the taxpayer's severe statutory lapses specifically recording that the respondent failed to maintain day-to-day transaction records at the business premises, failed to furnish primary books of account at the time of verification, and entirely failed to produce the mandatory stock register when demanded by the search officers. On the other hand, despite capturing these explicit baseline omissions, the First Appellate Authority proceeded to quash the demand without pointing to a single piece of documentary evidence on record that could legally discharge the taxpayer's burden or demonstrate that there was no active intent to operate outside the tax net.

7.6. Crucially, there is an absolute vacuum in the lower findings regarding any actual verification of physical ledgers. The record indicates that the respondent failed to submit verified, contemporaneous account books or authenticated production logs not just during the initial SIB search operations, but seemingly failed to substantiate them before the First Appellate Authority as well. The lower appellate order is completely silent on any systematic analysis or audit of physical files that could establish the legitimacy of the stock. In the absence of such baseline records, the First Appellate Authority's conclusion regarding the lack of an "intent to evade tax" rests entirely on uncorroborated oral pleadings and bare assertions, which cannot override the uncontradicted physical realities documented on the field by the proper officers.

7.7. We find that the reliance placed by the respondent upon the judgments in *Dinesh Kumar Pradeep Kumar*, *Vijay Trading Company* and *PP Polyplast* is misplaced and distinguishable on facts. The said cases cannot be applied mechanically to the present matter, wherein the proper officers specifically recorded the complete absence of statutory books and registers at the factory premises, as required under Section 35 of the CGST Act, 2017. Unlike those cases, the respondent failed to produce any verifiable books of accounts, invoices or supporting records during the search proceedings. Further, the First Appellate Authority failed to examine or physically verify the alleged books of accounts before granting relief merely on the basis of the respondent's oral submissions. Thus, the factual circumstances of the present case are materially different, and the aforesaid judgments cannot be relied upon to disregard the evidence recorded during search. Accordingly, the First Appellate Authority's mechanical application of these precedents, without appreciating the material factual distinctions and statutory requirements, is not legally sustainable.

7.8. We are of the opinion that adjudication requires a balanced assessment where the individual elements of each charged sub-section are measured against verified evidence. Since the First Appellate Authority failed to reconcile its own findings regarding the non-production of records with the distinct statutory mechanisms of Section 130(1)(ii) of the Act 2017, the interest of justice demands that the matter be properly re-examined.

7.9. Consequently, the impugned Order-in-Appeal dated 04.09.2025 cannot be sustained in its current form and is hereby set aside. The matter is liable to be remanded back to the First Appellate Authority for a fresh, comprehensive, and case-specific adjudication on merits.

ORDER

The impugned Order-in-Appeal dated 04.09.2025 is set aside. The matter is remanded back to the First Appellate Authority (Additional Commissioner (Appeals)) for a fresh, adjudication on merits in accordance with the observations contained hereinabove.

(Santosh Kumar Srivastava)

(Arvind Kumar)

Dated: 05.11.2026