Dated: 19.11.2026

GSTAT

State Bench Agra

Division Bench Court No. Court I

APL/86/AGR/2026

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

Versus

KAMLESH TRADING CO., PROPRIETOR, W/O AKHIESH KUMAR
RAILWAY ROAD NEAR KOTWALI KAIMGANJ UPFAR 209502 **.....Respondent**

Quorum

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

Counsel for Appellant
MUKESH KUMAR

Counsel for Respondent
SH. SAURABH AGRAWAL, 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. : ZA090401126000119H **Date of order :** 19/11/2026

1.	GSTIN/Temporary ID/UIN - 09AAMPA3291P1Z7	
2.	Appeal Case Reference no. - APL/86/AGR/2026	Date - 18/04/2026
3.	Name of the appellant - SHAILENDRA KUMAR SINGH , singhparisha2007@gmail.com , 7235001522	
4.	Name of the respondant - 1. KAMLESH TRADING CO. , AKHILESH.AGRAWAL24@GMAIL.COM , 7887063227	
5.	Order appealed against - AD090625027697K	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD090925134963U	Date - 12/09/2025

6.	Personal Hearing - 19/11/2026 28/10/2026 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 - As per detailed order.
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

Signature

Date : 19.11.2026

AGRA Sandeep Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Agra

ORDER

Per. Ajeet Singh (Judicial Member)

Commissioner State Tax, U.P (Through- Shailendra Kumar, Assistant Commissioner)

Vs

Kamlesh Trading Company, Kaimganj, Farrukhabad.

APL/86/AGR/2026

(Passed on 19th day of November, 2026)

1. Under section 112(1) Central Goods and Services Tax, Act/ Uttar Pradesh Goods and Services Tax, Act (for short CGST/UPGST, Act), this appeal has been preferred by department of State tax, Uttar Pradesh, against order dated- 12.09.2025 passed by First appellate authority, Division- Etawah, in appeal no. AD090625027697K, whereby by allowing the appeal of respondent taxpayer first appellate authority has set aside the order in original and consequential demand of penalty and fine of Rs. 1,45,055/-. For convenience appellant and respondent will be addressed as department and taxpayer, respectively.
2. Facts giving rise to the present appeal are in brief that special investigation branch unit Etawah headed by Additional commissioner Grade-II had inspected the business premises of taxpayer on 30.11.2024, owner of taxpayer firm Sh. Akhilesh Agrawal, was present at that time who told that his firm is engaged in the trade of tobacco leaves and its processed items. On verifying the records and goods kept in business premises, it was found that 15,441 kg tobacco stem powder was found unaccounted searching officer issued I.N.S no. 0583 dated 30.11.2024, and seized the stock found so unaccounted. Thereafter, a SCN u/s 130 read with section 122 was issued by proper officer. Though, SCN was replied by taxpayer but not accepted by proper officer and by determination of value of goods found unaccounted of Rs. 3,39,442/-, penalty and fine of Rs. 1,45,055/- were imposed by order in original dated 17.03.2025.
3. Feeling aggrieved by that order in original, taxpayer firm had preferred appeal before first appellate authority u/s 107 of CGST/UPGST, Act which was allowed and amount of penalty and fine was set aside, hence this second appeal by department u/s 112(1) of CGST/UPGST, Act.
4. Learned departmental representative has assailed the order under appeal as not sustainable in law and submitted for allowing the appeal.
5. Per contra, learned counsel appeared for taxpayer has supported the findings recorded by first appellate authority and submitted to dismiss the appeal. We have heard both the learned representatives of parties and perused the record available digitally on GSTAT portal. The question for determination may be formulated as under-

Whether in a survey/search carried out under section 67 of CGST/UPGST, Act, proceedings u/s 130 read with section 122 is according to law?

FINDINGS WITH REASONS

6. Learned departmental representative Sh. Mukesh Kumar, has submitted that impugned order 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 this second appeal. On the other hand, learned counsel appearing for respondent has supported the findings recorded by first appellate authority and submitted for dismissal of appeal.
7. 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.
8. 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.
9. 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.
10. 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.
11. Thus, on going through the binding 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 and fine in lieu of confiscation of goods. In the present matter same is the position where on the survey of business premises which was being used by appellant 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 initiated 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 the Order-in-Original passed by proper officer resulted set aside the demand of penalty and fine.

12. As proceedings initiated by proper officer against taxpayer u/s 130 read with section 122 is found to be not according to law, therefore, factual aspect of the case need not to be discussed by this Tribunal.
13. 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 present appeal is liable to be dismissed as *sans* merit, which this bench directs.
14. There is no pending interim application in the appeals.
15. Order is pronounced in open court on this day of 19th day of November, 2026.
16. Copy of order be communicated to all concerned, as per rules.

Ajeet Singh
Digitally signed by Ajeet Singh
Date: 2026.11.20 12:33:51 +05'30'
(Ajeet Singh)

Vivek Kumar
Digitally signed by Vivek Kumar
Date: 2026.11.20 12:30:43 +05'30'
(Vivek Kumar)