Dated: 23.11.2026

GSTAT

State Bench Lucknow

Court No. Court I

APL/14/LCK/2026

M/S F I T BRICK FIELD **.....Appellant**

Versus

RAMESH CHANDRA DUBEY, ADDITIONAL COMMISSIONER GRADE-II APPEAL, SECTOR 2 (SIB),SITAPUR:SITAPUR:LUCKNOW II:UTTAR PRADESH & ORS. **.....Respondent**

Quorum

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

Counsel for Appellant
MR. PURNODAYA KUMAR SINGH, ADVOCATE

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

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. : ZA090371126000375H **Date of order :** 23/11/2026

1.	GSTIN/Temporary ID/UIN - 09ASWPB4417E1ZO	
2.	Appeal Case Reference no. - APL/14/LCK/2026	Date - 28/02/2026
3.	Name of the appellant - M/S F I T BRICK FIELD , devanshverma642@gmail.com , 8953165559	
4.	Name of the respondant - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. RAMESH CHANDRA DUBEY	
5.	Order appealed against - AD090724045487N	

	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD090325165121N	Date - 24/03/2025
6.	Personal Hearing - 23/11/2026 16/10/2026 05/10/2026 18/09/2026 07/09/2026 06/08/2026 22/07/2026 19/05/2026 11/05/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - M/s F.I.T. Brick Field, a composition taxpayer under Section 10 of the CGST/UPGST Act, filed an appeal challenging the demand of Rs.6,62,482/- (including tax, interest and penalty) raised for FY 2018–19. The demand was based on an alleged suppression of turnover of Rs.63,67,350.33, estimated by the Department on the basis of coal purchases of 544 tonnes, without any detailed verification of actual brick production or sales. The Appellant contended that the demand was based on assumptions without a scientific coal-to-brick conversion formula, ignored the varying grades of bricks and was contrary to Section 75(7) of the Act. It was also argued that the orders were passed ex-parte without providing an effective opportunity of hearing. The Department supported the demand on the ground that the Appellant had failed to submit replies or produce relevant records despite repeated opportunities. The Tribunal observed that the adjudication order exceeded the grounds and interest amount specified in the Show Cause Notice, incorrectly alleged excess ITC against a composition taxpayer and applied a 5% tax rate instead of the applicable 1% composition rate without justification. It further held that the coal-based turnover estimation lacked proper technical and evidentiary basis. Accordingly, both the Order-in-Original and Order-in-Appeal were set aside, and the matter was remanded to the Adjudicating Authority for fresh de novo adjudication after proper verification of records and providing an effective opportunity of hearing to the Appellant.	
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	The Appellant preferred an appeal against the adjudication order passed under Section 73(9) of the CGST/UPGST Act before the Learned Additional Commissioner Grade-II (Appeal), State GST Department, Uttar Pradesh. The Appellate Authority examined the records of adjudication, grounds raised in appeal and the material available on file. The Appellate Authority recorded that the Adjudicating Authority had determined differential turnover on the basis of quantity of coal purchased by the Appellant during the relevant financial year and the corresponding estimated production of bricks. It was observed that the methodology adopted by the Adjudicating Authority was based on consumption pattern of coal and resultant production capacity, which, according to the department, indicated higher outward supply than that declared by the Appellant in returns. During appellate proceedings, the Appellate Authority noted that the Appellant had contested the estimation of turnover and submitted that production and sale could not be equated with coal consumption alone. However, the Appellate Authority observed that the Appellant had not furnished sufficient documentary evidence, quantitative reconciliation or material records capable of disproving the estimation adopted by the Adjudicating Authority. The Appellate Authority further recorded that the adjudication order was passed after issuance of notice and opportunity of hearing and that the Appellant had not satisfactorily rebutted the basis of demand. Accordingly, the Appellate Authority held that there was no sufficient ground to interfere with the findings of the Adjudicating Authority. Consequently, the Appellate Authority rejected the appeal and upheld the demand of tax along with applicable interest and penalty as determined in the adjudication order, concluding that the estimation based on coal consumption and inferred production remained unrebutted on record.	The appeal has been allowed by way of remand.

Place :LUCKNOW

Signature

Date : 23.11.2026

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

ORDER

1. The present appeal has been filed by the Appellant, M/s F.I.T. Brick Field (Proprietor: Smt. Najimi Begum), under Section 112 of the Central Goods and Services Tax Act, 2017 / Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as **"the Act"**), challenging the Order-in-Appeal dated 22.03.2025 (communicated in Form GST APL-04 vide Order No. ZD090325165121N dated 24.03.2025), passed by the Learned Additional Commissioner Grade-II (Appeal), State Tax, Sitapur (hereinafter **"the First Appellate Authority"**). By the impugned appellate order, the First Appellate Authority rejected Appeal No. 509/2024 *ex-parte* and affirmed the Order-in-Original No. ZD090424346372D dated 24.04.2024 passed under Section 73(9) of the Act by the Assistant Commissioner, State Tax, Sector-2, Sitapur (hereinafter **"the Adjudicating Authority"**) for the Financial Year 2018–19.

2. Brief facts of the case;

2.1. The Appellant is a proprietorship concern engaged in the manufacture and sale of clay bricks at Village Dharampur Sarai Bhaant, Ramkote, Mishrikh Road, District Sitapur, Uttar Pradesh, duly registered under the Act vide GSTIN 09ASWPB4417E1ZO. During the relevant Financial Year 2018–19, the Appellant opted for and operated under the **Composition Scheme** under Section 10 of the Act, declaring an aggregate outward turnover of **Rs. 1,17,66,983.00** in its returns and discharging composition tax liability thereon without availing any Input Tax Credit (ITC).

2.2. On the basis of scrutiny of returns and e-way bill data on the GST portal, the Adjudicating Authority issued a notice in Form GST ASMT-10 dated 12.04.2023 alleging a discrepancy between the outward supply declared by the Appellant in GSTR-3B (**Rs. 1,17,66,983.00**) and the "potential outward supply" estimated against coal purchases (**Rs. 1,81,34,333.33**), reflecting an alleged suppressed turnover of **Rs. 63,67,350.33**.

2.3. Subsequently, a Show Cause Notice (SCN) in Form GST DRC-01 (Ref. No. ZD091223254394D) dated 16.12.2023 was issued under Section 73 of the Act proposing a total demand of **Rs. 6,43,800.00** (Tax: Rs. 3,18,368.00; Interest: Rs. 2,93,596.00; Penalty: Rs. 31,836.00), followed by reminders dated 19.02.2024, 28.02.2024, and 13.03.2024. Since no reply was uploaded on the portal by the Appellant, the Adjudicating Authority passed ex-parte Order-in-Original dated 24.04.2024 under Section 73(9) of the Act (summarized in Form GST DRC-07), confirming total demand of **Rs. 6,62,482.00**, broken down as under:

- **Tax:** Rs. 3,18,368.00 (CGST Rs. 1,59,184.00 + SGST Rs. 1,59,184.00)
- **Interest:** Rs. 3,12,278.00 (CGST Rs. 1,56,139.00 + SGST Rs. 1,56,139.00)
- **Penalty:** Rs. 31,836.00 (CGST Rs. 15,918.00 + SGST Rs. 15,918.00)

2.4. Aggrieved by the adjudication order, the Appellant preferred an appeal before the First Appellate Authority (Appeal No. 509/2024). However, the Appellant could not attend the personal hearings scheduled on 28.10.2024, 10.12.2024, and 16.01.2025 provided by the First appellate authority. Consequently, the First Appellate Authority dismissed the appeal *ex-parte* on 22.03.2025 solely on the ground of non-appearance and non-submission of documentary evidence to rebut the coal-based turnover estimation.

3. Grounds of Appeal by Appellant;

3.1. Learned Counsel for the Appellant, has assailed the impugned Order-in-Appeal dated 24.03.2025 which upheld the Order-in-Original dated 24.04.2024 for FY 2018-19 raising a total demand of Rs. 6,62,482/- (comprising tax of Rs. 3,18,368/-, interest of Rs. 3,12,278/-, and penalty of Rs. 31,836/-) primarily on the ground that;

3.2. The adjudication order is a non-speaking and arbitrary order. The adjudicating authority determined a notional turnover of Rs. 1,81,34,333.33 solely on the basis of 544 tonnes of coal purchased, without disclosing the coal-to-brick ratio, total brick production, per-brick valuation rate,

or deductions for wastage, breakage, and stock, leaving the Appellant to reverse-engineer an unexplained rate of approximately Rs. 4.67 per brick across all grades. Even adopting the Department's implied benchmark of 14 tonnes of coal per 1,00,000 bricks (yielding 38,85,714 bricks), the Appellant's books completely reconcile with the declared GSTR-3B turnover of Rs. 1,17,66,983/-, as only 65% of production comprises saleable graded bricks (First, Second, and Third class) while the remaining 35% consists of under-burnt, over-burnt, and broken rejects fetching nominal value, a distinction entirely ignored by the Department.

3.3. Furthermore, even if general market rates of Rs. 4.50 or Rs. 5.00 per brick were applied to the theoretical maximum output, the resulting figures do not match the adjudicated turnover, and the Department arbitrarily adopted the most revenue-favourable end of the coal-consumption range (14 tonnes rather than 16 tonnes per lakh bricks) without justification.

3.4. The Appellant further contends that the Department's reliance on Krishna Kumar Sharma & Others v. State of U.P. (Allahabad High Court, 28.10.1998) and UPPCB pollution-control guidelines is wholly misplaced, as the former was a non-revenue matter merely recording a factual statement by kiln owners under environmental laws, while the latter are resource-consumption estimates rather than statutory measures of supply under the CGST/UPGST Act.

3.5. Emphasizing that GST is a levy on actual supply rather than presumed production, the Appellant submits that the demand rests purely on conjecture without any corroborative evidence of clandestine removal, stock discrepancy, unaccounted cash, or buyer/transporter statements, and relies on the Patna High Court ruling in Rounak Int Udyog v. State of Bihar (CWJC No. 7580 of 2025, decided 19.08.2025), which set aside a similar mechanical coal-based demand for lack of technical yardsticks and record reconciliation.

3.6. Finally, the Appellant alleges a violation of the principles of natural justice, submitting that all adjudication and appellate notices were uploaded solely on the GST portal without service via registered or speed post under Section 169 of the CGST Act, resulting in non-receipt due to an outdated

e-mail ID on record (rectified immediately on 26.08.2025) and an ex-parte order without a real opportunity of hearing, thereby rendering the principal demand as well as the consequential interest and penalty under Section 73 unsustainable in law.

4. Submissions of the Respondent-department;

4.1. The learned Departmental Representative supported the impugned Order-in-Appeal dated 24.03.2025 as well as the Order-in-Original dated 24.04.2024 passed under Section 73(9) of the CGST/UPGST Act, and prayed for the dismissal of the appeal.

4.2. It was argued that during the scrutiny of returns for the financial year 2018-19, the adjudicating authority detected a substantial discrepancy between the outward supply of Rs. 1,17,66,983.00 declared by the Appellant in GSTR-3B and the estimated sale value of bricks of Rs. 1,81,34,333.33 corresponding to 544 tonnes of coal imported/purchased through e-way bills, thereby revealing an unexplained differential turnover of Rs. 63,67,350.33 on which due tax had not been paid. Consequently, a notice under Section 61 dated 12.04.2023 followed by a Show Cause Notice under Section 73 dated 16.12.2023 and three subsequent reminders dated 19.02.2024, 28.02.2024, and 13.03.2024 were duly issued to the Appellant to furnish stock registers, purchase-sale registers, bank statements, and an explanation. However, the Appellant neither uploaded any reply on the GST portal nor appeared for personal hearing, leaving the adjudicating authority with no option but to conclude the time-barring proceedings on the basis of available portal data and confirm the demand of Rs. 6,62,482/- (comprising CGST and SGST of Rs. 1,59,184/- each, interest of Rs. 1,56,139/- each, and penalty of Rs. 15,918/- each).

4.3. The Department further contended that even at the first appellate stage, ample opportunities of personal hearing were granted to the Appellant on 28.10.2024, 10.12.2024, and a final opportunity on 16.01.2025, yet the Appellant consistently failed to appear, file any adjournment request, or place any documentary evidence on record to rebut the suppression of turnover. Since the Appellant failed to discharge the burden of proof by producing books of account or stock records either before the

assessing authority or the First Appellate Authority despite repeated opportunities, the lower authorities were fully justified in drawing and confirming the tax, interest, and penalty.

5. Discussion and Findings,

5.1. I have carefully and meticulously considered the submissions advanced by both sides and thoroughly examined the entire record, including Form GST DRC-01 dated 16.12.2023, the Order-in-Original dated 24.04.2024, Form GST DRC-07, and the Order-in-Appeal dated 22.03.2025.

5.2. At the outset, on examining the jurisdictional validity of the adjudication order vis-à-vis the Show Cause Notice, we find substantial force in the Appellant's contention regarding **Section 75(7) of the Act**. Section 75(7) mandates that *"the amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."* A side-by-side comparison of the SCN dated 16.12.2023 and the Order-in-Original dated 24.04.2024 reveals two distinct departures:

a) The SCN made no allegation regarding wrongful availment or utilization of Input Tax Credit (ITC), whereas the operative portion of the Order-in-Original confirms the demand specifically on account of *"excess ITC claimed and short tax paid."*

b) The interest confirmed in the Order-in-Original (**Rs. 3,12,278.00/-**) exceeds the interest proposed in the SCN (**Rs. 2,93,596.00/-**) by Rs. 18,682.00/-.

5.2.1. I find that the Order-in-Original suffers from patent non-application of mind regarding the Appellant's statutory status under the **Composition Scheme**. It is undisputed on record that for FY 2018–19, the Appellant was registered under Section 10 of the Act. A composition taxpayer is statutorily prohibited from availing ITC; hence, confirming a demand for *"excess ITC claimed"* against a composition dealer is a legal impossibility. Moreover, while calculating tax on the alleged differential turnover of Rs. 63,67,350.33, the Adjudicating Authority applied a tax rate of **5%** (resulting in Rs.

3,18,368.00) instead of the applicable **1%** composition rate, without recording any finding or passing any order holding that the Appellant had contravened the conditions of Section 10 of the Act.

5.3. I find that, both the Order-in-Original and the Order-in-Appeal fail the test of being reasoned and speaking orders. These orders don't disclose the mathematical formula, the coal-to-brick conversion ratio, the assumed brick yield, or the per-brick sale rate used to arrive at the estimated turnover of Rs. 1,81,34,333.33/- during the FY 2018-19. In brick kiln operations, the amount of coal required to bake bricks is never fixed, as it changes depending on weather conditions, coal quality, and kiln efficiency. Moreover, a single batch of baked bricks does not yield uniform first-class bricks, it inevitably includes second- and third-class bricks as well as under-burnt, over-burnt, and broken rejects that sell at much lower prices.

5.4. While the infirmities noted above render the impugned orders legally unsustainable, I cannot lose sight of the fact that both proceedings below culminated *ex-parte* due to the non-appearance of the Appellant. Consequently, the Appellant's books of account, coal purchase invoices, stock and production registers, grade-wise brick sale records, and closing stock statements have never been scrutinized or verified by the proper officer. Without factual verification of primary accounting records, this Tribunal cannot record a conclusive finding on the quantitative reconciliation between the 544 tonnes of coal purchased and the turnover declared in GSTR-3B.

5.5. In this regard, we find that the decision of the *Hon'ble Patna High Court in Rounak Int Udyog v. State of Bihar (CWJC No. 7580 of 2025, decided on 19.08.2025),* wherein an identical demand of tax, interest, and penalty raised under Section 73 solely on the basis of coal purchases without adopting a scientific coal-to-brick conversion yardstick or reconciling the taxpayer's records was set aside. The Hon'ble High Court observed that fuel consumption varies considerably depending on technical and operational factors (noting that coal required per tonne of bricks typically ranges between 100 kg and 250 kg), and held that before drawing any adverse inference of suppressed turnover, the Revenue must establish a concrete technical yardstick and examine actual brick production alongside the taxpayer's

purchase and accounting records after affording a proper opportunity of hearing. The ratio of the said judgment applies with full force to the facts of the present case.

5.6. In view of these cumulative procedural, jurisdictional, and evidentiary gaps, I am of the opinion that the ends of justice would be best served by setting aside both impugned orders and **remanding the matter back to the Adjudicating Authority** for a fresh, *de novo* adjudication within the statutory framework of Sections 73 and 75(7) of the Act.

Order

6. For the findings recorded hereinabove, I pass the following order:

- The impugned Order-in-Appeal No. ZD090325165121N dated 24.03.2025 (Appeal No. 509/2024 dated 22.03.2025) passed by the First Appellate Authority and the Order-in-Original No. ZD090424346372D dated 24.04.2024 passed by the Adjudicating Authority are hereby **set aside**.
- The matter is **remanded back to the Adjudicating Authority** (Assistant Commissioner, State Tax, Sector-2, Sitapur) for *de novo* adjudication.
- The appeal is **allowed by way of remand** in the aforesaid terms.

(Santosh Kumar Srivastava)

Dated: 23.11.2026