

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:193730

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 5577 of 2025

M/S Ganga Brick Field Umraipurwa / Gangamau

.....Petitioner(s)

Versus

Additional Commissioner Grade -2 And Another

.....Respondent(s)

Counsel for Petitioner(s)

:

Dileep Singh Yadav, Praveen Kumar

Counsel for Respondent(s)

:

C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard learned counsel for the petitioner and Shri Ravi Shankar Pandey, learned ACSC for the State - respondents.

2. The instant writ petition has been filed against the impugned order dated 31.7.2025 passed by the respondent no. 1 as well as the impugned order dated 15.10.2024 passed by the respondent no.2.

3. With the consent of the parties, the writ petition is being finally decided without exchange of affidavits.

4. Learned senior counsel for the petitioner submits that the business premises of the petitioner was surveyed on 27.5.2024 and on the basis of the said survey, proceedings under section 130, read with section 122 of the GST Act were initiated against the petitioner. He further submits that the authorities below ought to have proceeded under sections 73/74 of the GST Act and therefore, the instant proceedings are bad in law and liable to be set aside. He further submits that the issue in hand is squarely covered by the judgement of this Court in M/s Vijay Trading Company Vs. Additional Commissioner &

Another [Writ Tax No. 1278/2024, decided on 20.08.2024], which has been affirmed by the Apex Court in Additional Commissioner, Grade - 2 & Another Vs. M/s Vijay Trading Company [Special Leave Petition (Civil) Diary No. 5881/2025, decided on 04.04.2025]. He further submits that the aforesaid judgement has been followed by this Court in State of U.P. & Another Vs. Additional Commissioner & Another [Writ Tax No. 1116/2023, decided on 12.05.2025]. He further places reliance on another judgement of this Court in M/s PP Polyplast Private Limited Vs. Additional Commissioner & Another [Writ Tax No.1183/2024, decided on 30.07.2024], which has been affirmed by the Apex Court in judgement of the Apex Court in Additional Commissioner, Grade - 2 (Appeal) & Another Vs. M/s PP Polyplast Private Limited [Special Leave Petition (Civil) Diary No. 5880/2025, decided on 15.04.2025].

5. Per contra, learned ACSC could not dispute the aforesaid fact.

6. After hearing learned counsel for the parties, the Court has perused the record.

7. Admittedly, the business premises of the petitioner was surveyed, in which certain discrepancies were alleged to have been found and on the basis of the same, proceedings under section 130, read with section 122, of the GST Act were initiated against the petitioner.

8. Section 35 of the GST Act clearly provides that every registered persons are required to keep and maintain at the principal place of business true and correct account of things as specified in clauses (a) to (f). Sub-section (6) of section 35 of the GST Act contemplates that if the registered dealer fails to account for the goods in accordance with the provision of sub-section (1), the Proper Officer shall determine the amount of tax payable on such goods that are not accounted for by such person and the provision of sections 73/74 of the GST Act, as the case may be, shall mutatis mutandis apply for determination of such tax.

9. The GST Act is a complete Code in itself. A specific provision has been contemplated that if the goods are not recorded in the books of account, then the Proper Officer shall proceed as per the provision of Sections 73/74 of the GST Act. Once the Act specifically contemplates that action to be taken, then the provision of section 130 of the GST Act cannot be pressed into service.

10. The issue in hand is not res integra.

11. This Court in M/s Vijay Trading Company (supra) has categorically held that the proceedings under section 130 of the GST Act cannot be put to service in case excess stock is found at the time of survey. The said judgement of this Court has been affirmed by the Apex Court in Special Leave Petition (Civil) Diary No. 5881/2025 (Additional Commissioner, Grade - 2 & Another Vs. M/s Vijay Trading Company) vide judgement and order dated 04.04.2025. Further, in M/s PP Polyplast Private Limited (supra), the Apex Court has held that the law is clear on the subject that the proceedings under section 130 of the GST Act cannot be put to service if excess stock is found at the time of survey.

12. In view of the aforesaid facts & circumstances of the case, the impugned orders cannot

be sustained in the eyes of law. The same are hereby quashed.

13. The writ petition succeeds and is allowed.

14. Any amount deposited in pursuance of the impugned orders shall be refunded to the petitioner within a month from the date of production of certified copy of this order.

(Piyush Agrawal,J.)

November 4, 2025

Rahul Dwivedi/-