



2025:AHC:197361

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 609 of 2024

State of U.P.

.....Petitioner(s)

Versus

Additional Commissioner Grade-2 Appeal-
Commercial Tax Aligarh And Another

.....Respondent(s)

Counsel for Petitioner(s)	:	Alok Kumar Tripathi, Rishi Kumar
Counsel for Respondent(s)	:	Vishwjit

With

WRIT TAX No. - 611 of 2024

State Of Up Through Deputy Commissioner

.....Petitioner(s)

Versus

Additional Commissioner Grade-2 Appeal-
Commercial Tax Aligarh And Another

.....Respondent(s)

With

WRIT TAX No. - 614 of 2024

State Of Up Through Deputy
Commissioner

.....Petitioner(s)

Versus

Additional Commissioner Grade-2
Appeal- Commercial Tax Aligarh
And Another

.....Respondent(s)

With

WRIT TAX No. - 618 of 2024

State Of Up Through Deputy

Commissioner

.....Petitioner(s)

Versus

Additional Commissioner Grade-2
Appeal- Commercial Tax Aligarh
And Another

.....Respondent(s)

With

WRIT TAX No. - 619 of 2024

State Of Up Through Deputy
Commissioner

.....Petitioner(s)

Versus

Additional Commissioner Grade-2
Appeal- Commercial Tax Aligarh
And Another

.....Respondent(s)

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Ravi Shankar Pandey, learned ACSC for the State - petitioner and Mr. Vishwjit, learned counsel for the respondents.
2. Similar controversy is involved in all the aforesaid writ petitions, therefore, with the consent of the parties, all the aforesaid writ petitions are being decided by a common order treating Writ Tax No. 609 of 2024 as leading case.
3. The instant writ petition has been filed against the impugned order dated 3.4.2023 passed by the respondent no. 1 as well as the impugned order dated 31.3.2023 passed by the respondent no.2.
4. With the consent of the parties, the writ petition is being finally decided without exchange of affidavits.
5. Learned counsel for the respondents submits that the business premises of the respondent was surveyed on 1.9.2022 and on the basis of the said survey, proceedings under section 130, read with section 122 of the GST Act were initiated. 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]**.

6. Learned ACSC for the petitioner could not dispute the legal proposition enumerated by this Court in the aforesaid judgements.

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

8. Admittedly, the business premises of the respondent 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 respondent.

9. 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.

10. 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.

11. The issue in hand is not *res integra*.

12. 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.

13. In view of the aforesaid facts & circumstances of the case, no interference is called for by this Court in the impugned orders passed in all the aforesaid writ petitions.

14. Any amount deposited by the respondents shall be refunded to the respondents within a month from the date of production of certified copy of this order.

15. All the writ petitions are **dismissed** accordingly.

November 10, 2025

Rahul Dwivedi/-

(Piyush Agrawal,J.)