

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No. 44119/2025

[Arising out of impugned final judgment and order dated 19-02-2025 in WT No. 1319/2024 passed by the High Court of Judicature at Allahabad]

ADDITIONAL COMMISSIONER GRADE-2 & ANR.

Petitioner(s)

VERSUS

M/S. DAYAL PRODUCT

Respondent(s)

(IA No. 206647/2025 - CONDONATION OF DELAY IN FILING and IA No. 206649/2025 - EXEMPTION FROM FILING O.T.)

Date : 01-09-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Petitioner(s) : Mr. Bhakti Vardhan Singh, AOR
Ms. Sthavi Asthana, Adv.
Mr. Sandeep Singh Somaria, Adv.

For Respondent(s) :

UPON hearing the counsel, the Court made the following
O R D E R

Delay condoned.

We are not inclined to interfere with the impugned judgment/order passed by the High Court.

The special leave petition is, accordingly, dismissed.

We, however, clarify that the impugned judgment/order and the dismissal of this special leave petition will not come in the way of the petitioners in taking recourse to appropriate remedies in accordance with law.

Pending application(s), if any, shall stand disposed of.

Signature Not Verified
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Deepak Guglani
Date: 2025.09.01
17:26:56 IST
Reason: []

(DEEPAK GUGLANI)
AR-cum-PS

(PREETI SAXENA)
COURT MASTER (NSH)

Court No. - 2

Case :- WRIT TAX No. - 1319 of 2024

Petitioner :- M/S Dayal Product

Respondent :- Additional Commissioner Grade-2 And Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

Heard Shri Aditya Pandey, learned counsel for the petitioner and learned ACSC for the State - respondents.

The instant writ petition has been filed against the impugned order dated 02.04.2024 passed by the Additional Commissioner, Grade - 2, Kanpur as well as the impugned order dated 10.09.2018 read with order dated 05.08.2020 passed by the respondent no. 2 under section 130 of the GST Act.

Learned counsel for the petitioner submits that the petitioner is engaged in the business of purchase and sale of hosiery goods. He further submits that on 29.05.2018, an inspection/search was carried out at the business premises of the petitioner by the Special Investigation Branch without any physical measurement and by eye measurement and on the basis of the aforesaid inspection, proceedings under section 130 of the GST Act were initiated, to which the petitioner submitted its reply. Thereafter, the respondent no. 2, by the impugned order dated 10.09.2018, imposed tax & penalty. Aggrieved by the said order, the petitioner preferred an appeal, which has been dismissed vide impugned order dated 02.04.2024.

Learned counsel for the petitioner further submits that that the survey, which was made under Section 67 of the UPGST Act, proceeded with the notice under Section 30 of the Act read with Rule 32. He next submits that even assuming without admitting that if the goods were found in excess, then the proceedings should have been initiated as per Sections 73 & 74 of the Act. He further submits that as per Section 35 (3) of the Act, proceedings under Section 130 of the UPGST Act are not permissible against a registered dealer. In support of his submissions, he has placed reliance on the judgements of this Court in *S/s Dinesh Kumar Pradeep Kumar Vs. Additional Commissioner, Grade - 2 & Another* [Writ Tax No. 1082/2022, decided on 25.07.2024], *M/s Maa Mahamaya Alloys Private Limited Vs. State of U.P. & Others* [Writ Tax No. 31/2021, decided on 23.03.2023] and *M/s Shree Om Steels Vs. Additional Commissioner, Grade - 2 & Another* [Writ Tax No. 1007/2022, decided on 19.07.2024].

Per contra, learned ACSC supports the impugned orders.

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

It is not in dispute that the survey was conducted at the business premises of the petitioner on 29.05.2018, in which the alleged discrepancy in stock was found. On the said basis, the proceedings were initiated against the petitioner under section 130 of the GST Act.

The issue in hand is no more *res integra*. This Court in various cases has held that at the time of survey, if some discrepancy in stock is found against the registered dealer, then the proceedings under sections 73/74 of the GST Act ought to have been initiated, instead of section 130 of the GST Act. Reference may be had to **S/s Dinesh Kumar Pradeep Kumar** (supra), **M/s Maa Mahamaya Alloys Private Limited** (supra) and **M/s Shree Om Steels** (supra).

Learned ACSC could not show any authority deviating the law laid down by this Court.

In view of the aforesaid facts & circumstances of the case, the impugned order dated 02.04.2024 passed by the Additional Commissioner, Grade - 2, Kanpur as well as the impugned order dated 10.09.2018 read with order dated 05.08.2020 passed by the respondent no. 2 under section 130 of the GST Act cannot be sustained in the eyes of law. The same are hereby quashed.

The writ petition succeeds and is allowed.

Order Date :- 19.2.2025

Amit Mishra