

Court No. - 10

Case :- WRIT TAX No. - 1415 of 2022

Petitioner :- M/S Gopal Trading Company

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Shri Gauransh Mishra, along with Shri Amit Yadav, learned counsel holding brief of Shri Pranjal Shukla, learned counsel for the petitioner and Shri Ravi Shankar Pandey, learned Additional Standing Counsel for the State - respondents.

2. The instant writ petition has been filed challenging the impugned order dated 19.06.2020 passed by the respondent no. 3, the first appellate authority, as well as the impugned order dated 20.07.2022 passed by the respondent no. 2.

3. Learned counsel for the petitioner submits that the petitioner is a Proprietorship concern and is engaged in the business of *paan masala*, tobacco, cigarette, match stick, etc. On 15.10.2019, an inspection/search under section 67 of the GST Act was conducted at the business premises of the petitioner by the SIB and the stock was assessed on the basis of eye measurement and it was held that excess stock was found. He further submits that the actual weighment of the stock was not done by the respondents - authorities. He further submits that the proceedings under section 130 of the GST Act could not have been initiated against the petitioner, rather, proceedings under sections 73/74 of the GST Act should have been initiated. In support of his submissions, he has placed reliance on 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] and ***S/s Dinesh Kumar Pradeep Kumar Vs. Additional Commissioner, Grade - 2 & Another*** [Writ Tax No. 1082 of 2022, decided on 25.07.2024]. He prays for allowing the writ petition.

4. Per contra, learned Additional Chief Standing Counsel for the State - respondents supports the impugned orders.

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

6. It is not in dispute that survey was conducted at the business premises of the petitioner on 15.10.2019. It is also not in dispute that excess stock was found, which triggered the initiation of the present proceedings against the petitioner. On various occasions, this Court has held that if excess stock is found, then proceedings under sections 73/74 of the GST Act should be pressed in service and

not proceedings under section 130 of the GST Act, read with rule 120 of the Rules framed under the Act. 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.

7. 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.

8. Further, section 35 of the GST Act prescribes about the maintenance of account and other records. Sub-section (6) thereof 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. 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.

9. In view of the above as well as the judgements of this Court in ***M/s Vijay Trading Company*** (supra), which has been affirmed by the Apex Court vide judgement dated 04.04.2025, the impugned order dated 19.06.2020 passed by the respondent no. 3, the first appellate authority, as well as the impugned order dated 20.07.2022 passed by the respondent no. 2 cannot be sustained in the eyes of law. The same are hereby quashed.

10. The writ petition succeeds and is allowed.

Order Date :- 7.5.2025
Amit Mishra