



2025:AHC:149888

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 1484 of 2022

M/S Harilaxmi Alloys Private Limited

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Vishwjit
Counsel for Respondent(s)	:	C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Vishwjit learned counsel for the petitioner and Mr. Ravi Shanker Pandey, learned ACSC for the State-respondent.
2. By means of present petition, the petitioner is assailing the order dated 30.11.2021 passed by respondent no. 2.
3. Learned counsel for the petitioner submits that business premises of the petitioner was surveyed on 11.12.2018 and stock was measured on eye measurement instead of actual weightment of the goods on the basis of which the proceedings under Section 130 of the Act read with Section 122 of the Act was initiated in which tax and penalty has been imposed vide order dated 23.6.2020. The petitioner has challenged the said order in appeal, which has also been dismissed vide order dated 30.11.2021.
4. He 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.
5. In support of his submissions, he has placed reliance on the judgement of this Court in **M/s Vijay Trading Company Vs. Additional Commissioner, Grade - 2 & Another [Writ Tax No. 1278 of 2024, decided on 20.8.2024]**, which has been affirmed by the Apex Court in **Special Leave Petition (Civil) Diary No. 5881 of 2025**. He prays for allowing the writ petition.
6. Per contra, learned Additional Standing Counsel for the State -

respondents supports the impugned orders.

7. After hearing learned counsel for the parties, the Court has perused the record.
8. It is not in dispute that survey was conducted at the business premises of the petitioner on 11.12.2018. 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 CGST Act, read with rule 120 of the Rules framed under the Act.
9. The issue is not res integra. This Court in the case of **S/s Dinesh Kumar Pradeep Kumar (Writ Tax No. 1082 of 2022 decided on 25.7.2024)** has held 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.
10. In view of the facts of the case as well as law laid down by this Court as referred herein above, impugned order dated 30.11.201 cannot be sustained in the eyes of law and same is hereby quashed.
11. The writ petition is allowed accordingly.
12. Any amount deposited by the petitioner shall be refunded to him in accordance with law.

(Piyush Agrawal,J.)

August 27, 2025

Rahul Dwivedi/-