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By Nidhi, Advocate



Judgment No.: 165
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Judgment Deals With

Section 35(3) prohibits proceedings under Section 130 for alleged excess stock found during the survey. Proceedings should have been initiated under Sections 73 & 74 for excess stock.

Section/Rule	Section 35/ 130/ 74
Authority	Allahabad High Court
Case Name	Dinesh Kumar Pradeep Kumar VS Additional Commissioner Grade 2
Dated	25 th July, 2024
Citation	WRIT TAX No. - 1082 of 2022

Brief facts of the case:

On 24.08.2018, petitioner's business premises have been surveyed and only on the basis of eye measurement, it was held that the stock was excess and the goods were confiscated. Thereafter, notice was issued and the ex-parte impugned order was passed on 23.02.2019 u/s 130 of CGST Act, 2017; against which the petitioner preferred an appeal, which was also dismissed by the impugned order dated 24.03.2022.

Contention of the Petitioner:

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. As per Section 35(3), proceedings under Section 130 of the UPGST Act are not permissible. Section 35(6) provides that in the event the person fails to keep their accounts for the goods or the services, the proper officer is empowered to determine the amount of tax payable on the goods or the services which are unaccounted for as if such goods or services had been supplied by such person and the provisions of Section 73 or 74 shall mutatis mutandis apply for determination of the said tax. Although in terms of the provisions of Section 35(6), the unaccounted goods are "deemed to be supplied" however, determination and quantification of the tax on the said "deemed supply" has to be done in accordance with Section 73 or Section 74 of the Act. Even if excess stock is found, the proceedings under section 130 of the UPGST Act cannot be initiated.

Findings & Decision of the Court:

The held that if the excess stock was found then the proceedings under Sections 73 & 74 of the UPGST Act will come into play and not proceedings under Section 130 read with Rule 122 of the Act. As the entire tax has been determined and the penalty has been levied only on the basis of a survey by taking recourse under Section 130 of the GST Act and not taking recourse to Section 74, the order impugned is clearly unsustainable.

Thus, the impugned order cannot sustain in the eyes of law and the same was set aside.

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