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Judgment No.: 188
Dt.:16-01-2025



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Judgment Deals With

The Department can proceed under Section 35(6) or 73 or 74 of the UPGST Act instead of Section 130 of the UPGST Act, for excess stock of material on the basis of eye estimation during inspection.

Section/Rule	Section 130
Authority	Allahabad High Court
Case Name	M/s. Dee Control And Electric Private Ltd VS Additional Commissioner Grade-2
Dated	07 th January, 2025
Citation	Writ Tax No. - 1376 of 2024

Brief facts of the case:

The petitioner is engaged in the business of manufacturing, trading and services of transformer as well as other electric parts and primarily, the supply of the petitioner is to the government sector. The business premises of the petitioner was surveyed/inspected under Section 67 of the UPGST Act on 25.10.2018 by Special Investigation Branch (S.I.B.) and on the basis of eye estimation, it was alleged that the excess stock of material was found and on the said basis, proceedings were initiated under Section 130 of the U.P.G.S.T. Act.

Contention of the Petitioner:

The proceedings under section 130 are not permissible against the registered dealer. The authorities ought to have proceeded under Section 35(6) or 73 or 74 of the UPGST Act instead of Section 130 of the UPGST Act.

Findings and Decision of the Court:

It is not in dispute that the survey was made on the business premises of the petitioner by the S.I.B. on 25.10.2018 and on the said survey, it was alleged that the excess stock was found, pursuant to which the proceedings were initiated.

The Court on the various occasions has held that if the excess stock is found, the proceedings under Section 73 or 74 of the UPGST Act will come into play rather than under Section 130 of UPGST Act read with Rule 122 of UPGST Rule, 2017.

This Court has specifically held that even if excess stock is found, the proceedings under section 130 of the UPGST Act cannot be initiated. Thus, the impugned order cannot sustain in the eyes of law and the same was set aside.

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