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न्यायालय वाणिज्य कर अधिकरण, उत्तराखण्ड, खण्डपीठ, हल्द्वानी।

उपस्थित: मलिक मजहर सुलतान, एच0जे0एस0,.....अध्यक्ष।

विपिन चन्द्र,सदस्य।

अपील संख्या: 59/2025 (वर्ष 2017-18)(प्रथम तिमाही) धारा 52/सपठित धारा 9(2)

सर्वश्री सुन्दरम फास्टनर्स लि0, पन्तनगर, रूद्रपुर।

बनाम

कमिश्नर राज्य कर, उत्तराखण्ड।

व्यापारी की ओर से : श्री डी0पी0 यादव..... अधिवक्ता।

विभाग की ओर से : श्रीमती हेमलता शुक्लाराज्य प्रतिनिधि।

—::निर्णय::—

विपिन चन्द्र, सदस्य

उपरोक्त अपील उत्तराखण्ड मूल्यवर्धित कर अधिनियम 2005 (जिसे आगे अधिनियम कहा जायेगा) की धारा 53 के अन्तर्गत, सर्वश्री सुन्दरम फास्टनर्स लि0, पन्तनगर, रूद्रपुर (जिसे आगे व्यापारी कहा जाएगा) ने संयुक्त आयुक्त (कार्यपालक) राज्य कर, रूद्रपुर संभाग रूद्रपुर द्वारा धारा 52 के अन्तर्गत पारित आदेश दिनांक 22-02-2025 के विरुद्ध इस अधिकरण में दिनांक 17-06-2025 को दायर की गई है। प्रश्नगत वाद में संयुक्त आयुक्त (कार्यपालक) द्वारा कर निर्धारण आदेश दिनांक 25/02/2021 को पुनरीक्षित किया गया है। प्रस्तुत अपील में विवादित धनराशि रू0 11,11,335.00 निहित है।

2. अपील के तथ्य संक्षेप में इस प्रकार से हैं कि व्यापारी विभाग में ऑटो पार्ट्स फास्टनर्स के निर्माण एवं बिक्री हेतु पंजीकृत हैं। व्यापारी के वर्ष 2017-18 की प्रथम तिमाही (दिनांक 01/04/2017 से 30/06/2017 तक) के केंद्रीय वाद के संबंध में केंद्रीय विक्रय कर अधिनियम धारा 9(2) के अन्तर्गत दिनांक 25/02/2021 को पारित किया गया था। उक्त कर निर्धारण आदेश से कर निर्धारण अधिकारी द्वारा घोषित खरीद बिक्री को स्वीकार करते हुए अधिक जमा आईटीसी रू0 11,11,335.00 को व्यापारी के प्रार्थना पत्र पर वापस किये जाने के आदेश दिये गये हैं।

3. उक्त कर निर्धारण आदेश को संयुक्त आयुक्त (कार्यपालक) राज्य कर, रूद्रपुर संभाग रूद्रपुर द्वारा वाणिज्य कर अधिकरण उत्तराखण्ड द्विसदस्यीय पीठ द्वारा सर्वश्री बहल डिस्ट्रीब्यूटर राजपुर रोड़ देहरादून के मामले में दिये गये निर्णय दिनांक 14/05/2024 तथा

माननीय सर्वोच्च न्यायालय द्वारा M/s Graphite India Ltd. v/s State of Bihar के मामले में दिये गये निर्णय दिनांक 17/01/2025 के परिप्रेक्ष्य में निर्धारण आदेश दिनांक 25/02/2021 से अधिक आईटीसी रु0 11,11,335.00 को रिफण्ड किये जाने के आदेश को वैध न मानते हुए व्यापारी को धारा 52 के अन्तर्गत नोटिस जारी किया गया। उक्त नोटिस के अनुपालन में व्यापारी द्वारा दिये गये स्पष्टीकरण कि वैट अधिनियम की धारा 6(13) के अन्तर्गत आईटीसी वापस किये जाने का प्रावधान है, जिसके तहत आईटीसी को वापस किया गया है, को संतोष जनक न मानते हुए संदर्भित कर निर्धारण आदेश को धारा 52 के अन्तर्गत पुनरीक्षित किया गया है। धारा 52 के अन्तर्गत पारित आदेश में पुनरीक्षण अधिकारी संयुक्त आयुक्त (कार्यपालक) राज्य कर, रूद्रपुर संभाग रूद्रपुर द्वारा उत्तराखण्ड मूल्य वर्धित कर अधिनियम 2005 की धारा 6(3), 6(8) तथा 6(16) का संज्ञान लेते हुए निम्न प्रकार मत व्यक्त किया गया है—

“वाद के संदर्भ में धारा 6(3), 6(8) तथा 6(16) के अन्तर्गत निहित विधिक प्रावधान निम्न प्रकार अवलोकनीय है:—

Section 6(3):- *Input tax credit shall be allowed for the goods purchased within the State of Uttaranchal, from a registered dealer holding a valid certificate of registration under Section 15 or Section 16, for the purpose of &*

(a) sale in Uttaranchal; or

(b) sale in the course of inter-state trade and commerce; or

(c) sale in the course of export out of the territory of India; or

(d) use as [raw material and consumables, in manufacturing of processing of goods (other than those specified in Schedule I or Schedule III) and containers or other packing material used for packing of such manufactured goods, for sale or resale within the State or in the course of inter-state trade or commerce;

(e) use as [raw material and consumables] in manufacturing of processing of any goods (other than those specified in Schedule III) and containers and other packing materials used for packing of such manufactured goods, for sale in the course of export of goods out of the territory of India:

[Provided that with reference to clause (d) above, in case such manufactured goods are dispatched outside the state other than by way of sale, a partial amount of input tax credit shall be allowed in respect of tax paid in excess of 2 percent on the raw material used directly in the manufacture of such goods.]

Provided further *that partial input tax credit shall be allowed in respect of tax paid in excess of 2%] on petroleum products used as fuel (other than Petrol Aviation Turbine Fuel, Natural Gas and Diesel) and other fuels used in production of taxable goods or captive power, but excluding fuel when used a fuel in motor vehicles.*

Section 6(8) :- *No input tax credit shall be allowed on purchase of goods, other than the Capital Goods, when-*

(a) Goods not connected with the business of the dealer; or

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- (b) Goods purchased from an un-registered dealer or a dealer whose Certificate of Registration has been cancelled ; or
- (c) Goods purchased from outside the State; or
- (d) Goods the sale of which is exempted under this Act or the goods used in manufacture, processing or packing of such goods; or
- (e) Goods whether goods as such or constituents of finished or semi finished goods which remain unsold in stock at the time of closure of business due to discontinuance by the dealer or cancellation of his registration or his being declared non-taxable under the provisions of this Act; or
- (f) Goods transferred outside the State, otherwise than by way of sale; or
- (g) In respect of raw material used in manufacture or processing of goods where the finished products are dispatched outside the State other than by way of sales; or
- (h) Goods purchased from a registered dealer who has given an option to pay Presumptive tax at a percentage of turnover of sales under sub-section(1) of Section 7 and a lump sum amount in lieu of tax on sale and, or purchase of such goods by way of composition under sub-section (2) of section7; or
- (i) Goods that are stolen or lost or destroyed or disposed of in any manner other than in ordinary course of business or goods distributed by way of free sample or gift; or
- (j) Goods leased under an agreement of transfer of right to use any goods (whether for a specified period or not) for any purpose; or
- (k) Goods sold by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, or
- (l) Goods on which tax being payable under this Act or under the Uttaranchal (The Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 has not been paid on any earlier sale or purchase of such goods; or
- (m) Special Category Goods specified in Schedule III or the goods except molasses used in manufacture, processing or packing of such goods; or
- (n) Goods are used in generation of energy/power including captive power;
[**provided** that in respect of transactions falling under [item (g)], a partial amount of input tax credit shall be allowed in respect of tax paid in excess of 3 percent on the raw material used goods]
provided further that if input tax credit on purchase of goods in the circumstances referred to in [item(g)] above, has been claimed by a dealer, the same shall stand reversed.

Section 6(16) Reverse tax credit: If Goods purchased for use specified under sub-section(3) are subsequently used, fully or partly for purposes other than those specified under the said sub-section, the input tax credit there on shall be calculated and be reduced from the tax credit for the tax period during which the said utilization otherwise has taken place:

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Provided that if part of purchased goods are utilized otherwise, the amount of reverse tax credit shall be proportionately calculated;

उक्त के क्रम में आपके क०नि० आदेश की जांच में पाया कि उपरोक्त शर्तों को पालन नहीं किया गया है। अतः उक्त बिन्दु स्वीकार योग्य नहीं है।

इसके अतिरिक्त व्यापारी द्वारा [2024] 164 taxmann.com 561 (Gujarat) [02-052024] High Court of Gujarat M/S Shree Navneet Coptton Cop. v/s State of Gujarat. का उल्लेख किया गया है, परन्तु यह आदेश गुजरात राज्य से सम्बन्धित है जिसके तथ्य प्रश्नगत वाद के तथ्यों से भिन्न होने के कारण यहां लागू नहीं होते हैं व्यापारी द्वारा M/S Graphite India Ltd. V/S State of Bihar का वाद प्रश्नगत वाद पर न लागू होने का उल्लेख किया गया है। परन्तु यहां यह उल्लेखनीय है कि मा० न्यायालय, वाणिज्य कर अपील अधिकरण, उत्तराखण्ड, द्विसदस्यीय पीठ— देहरादून द्वारा सर्वश्री बहल डिस्ट्रीब्यूटर, राजपुर रोड़, देहरादून के सम्बन्ध में आदेश दिनांक 14-05-2024 का वाद उत्तराखण्ड वैट अधिनियम 2005 से सम्बन्धित है, जिसमें भी अवशेष आई०टी०सी० रिफण्ड न दिये जाने का उल्लेख है। अतः व्यापारी द्वारा दाखिल उत्तर स्वीकार योग्य न होने के कारण अस्वीकार किया जाता है।

क०नि० पत्रावली में संगतवर्ष में क०नि० आदेश की जांच की गयी, जांच में प्रान्तीय वाद से आई०टी०सी० रू० 1115125.00 को केन्द्रीय वाद में समायोन हेतु अग्रसारित किया गया है। अतः उपरोक्त के आलोक में (प्रश्नगत वाद में संबन्ध में) मा० न्यायालय वाणिज्य कर अपील अधिकरण उत्तराखण्ड, द्विसदस्यीय पीठ—देहरादून द्वारा सर्वश्री बहल डिस्ट्रीब्यूटर, रापुर रोड़, देहरादून के सम्बन्ध में आदेश दिनांक 14-05-2024 एवं माननीय सर्वोच्च न्यायालय द्वारा M/S Graphite India Ltd. V/S State of Bihar के सम्बन्ध में आदेश (2025) 170 taxmann.com 646 (SC) दिनांक 17-01-2025 द्वारा दिये गये निर्णय के आलोक में वर्ष 2017-18 की प्रथम तिमाही के अवशेष आई०टी०सी० का रिफण्ड देय नहीं है। अतः माननीय उच्चतम न्यायालय/अधिकरण/वैट अधिनियम के प्राविधानों के अनुसार दिये गये निर्णय के अनुपालन में विधि विपरीत रिफण्ड रू० 1111335.00 वसूल किये जाने योग्य है। अतः व्यापारी को निर्देश दिये जाते हैं कि विधि विपरीत प्राप्त रिफण्ड को प्राप्ति की तिथि से जमा करते की तिथि तक 15 प्रतिशत वार्षिक ब्याज सहित राजकोष में जमा करना सुनिश्चित करेंगे।”

इस प्रकार उपरोक्त आधार पर पुनरीक्षण अधिकारी द्वारा कर निर्धारण आदेश दिनांक 25/02/2021 को पुनरीक्षित किया गया है।

4. धारा 52 के अन्तर्गत पारित उक्त आदेश से क्षुब्ध होकर व्यापारी द्वारा यह अपील प्रस्तुत की गयी है, जिसमें निम्न प्रकार अपना पक्ष रखा गया है—

“A. THAT THE REFUND OF Rs. 11,11,335/- HAS BEEN GRANTED IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN THE ACT, THEREFORE THE ORDER PASSED UNDER SECTION 52 OF THE ACT IS LIABLE TO BE QUASHED

A. THAT THE REFUND OF Rs. 11,11,335/- HAS BEEN GRANTED IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN THE ACT, THEREFORE THE ORDER PASSED UNDER SECTION 52 OF THE ACT IS LIABLE TO BE QUASHED

- A.1 *As is evident from the order passed under Section 52 of the Act, it can be seen that the learned Joint Commissioner of State Tax (Executive), Division Rudrapur, Rudrapur has reopened the assessment on account of the order from the VAT Tribunal in the case of Behl Distributors, Dehradun wherein it has been explicitly stated that the excess amount of input tax credit pertaining to the VAT regime can only be carried forward as transitional credit in the GST regime and the same cannot be claimed as refund under the provisions of the Act or Rules.*
- A.2 *In view of such express statement of the Honorable Tribunal regarding denial of refund in cash pertaining to excess amount of input tax credit, the appellant at the outset submits that the refund granted of Rs 11,11,335/- is not in respect of excess input credit but is with respect to the tax payment made by the appellant in cash. Having stated the fact that the refund does not pertain to excess input tax credit would not be sufficient unless the same is supported by way of provisions contained in section 6(10) of the Act.*
- A.3 *On perusal of section 6(10) of the Act it can be said that in case the input tax credit of a dealer exceeds the tax liability for that period, such excess amount shall first be adjusted against the tax liability under the CST Act, 1956 and then be adjusted against any outstanding demand of tax, penalty or interest under the UVAT Act, 2005 or the CST Act, 1956 and only the remaining amount shall be carried forward by the dealer to the succeeding tax period which shall be deemed to be input tax credit for that period. However, in the instant case the appellant does not have any excess input tax credit during the period April, 2017 to June, 2017 as the appellant has paid a sum of Rs 31,18,982/- through challans. Hence, it can be said that the refund sanctioned by the authority does not pertain to excess input tax credit but actually pertains to the tax amount paid by the appellant through challans. A copy of the challans is enclosed as Annexure I.*
- A.4 *Since the Joint Commissioner of State Tax (Executive), Division Rudrapur, Rudrapur has invoked section 52 of the Act therefore, it becomes imperative to discuss the provisions contained in section 52 of the Act with respect to the authority given under the said section. The said section as it stood during the relevant period is reproduced below:*
Section 52: Revision by Commissioner
(1) The commissioner or such other officer not below the rank of Joint Commissioner as may be authorized in this behalf by the State Government by notification may call for and examine the record relating to any order, (other than and order mentioned in section 56) passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect there to as he thinks fit.
- A.5 *A bare perusal of section 52 of the Act leads us to conclude that the commissioner or such other officer not below the rank of Joint Commissioner can call for and examine the record relating to any order passed by any officer*

subordinate to him for the purpose of satisfying the legality or propriety of such order. However, the power under section 52 of the Act is given to the commissioner or any other officer not below the rank of Joint Commissioner by virtue of notification issued by the State Government in this behalf. In the instant case the State Government in this behalf. In the instant case the State Government has not issued any notification till date authorizing the Commissioner or any other officer not below the rank of Joint Commissioner to act as revision authority. Therefore, the order passed under section 52 by the learned Joint Commissioner of State Tax (Executive), Division Rudrapur, Rudrapur is without proper authority and is liable to be quashed.

A.6 *In order to further clarify my stand on the issue of Joint Commissioner not having the power to act as revisional authority, I would like to draw your attention to section 6(1) of the State Goods and Services Tax Act, 2017 wherein similar condition of issuance of notification is given for the purpose of cross empowerment and in the absence of notification by the government, cross empowerment powers cannot be excised. In the following cases, it was held by the Madras High Court that the absence of notification issued for cross empowerment, the authorities from the counterpart department cannot initiate proceedings where an assessee is assigned to the counterpart.*

Ram Agencies vs. Assistant Commissioner of Central Tax reported at 2024- TIL-835-HC-MAD-GST

TVL Vardhan Infrastructure vs. The Special Secretary reported at 2024- TIL-505-HC-MAD-GST

A.7 *Without prejudice to what is stated above with respect to the authority of the Joint Commissioner of State Tax (Executive), Division Rudrapur, Rudrapur I would also like to draw your attention to the words legality or propriety as given in section 52 of the Act. These words hold too much relevance as the concerned officer in order to satisfy himself with respect to the legality or propriety of the order passed by subordinate authorities has invoked the provisions contained in section 52 of the Act. Therefore, we first need to know the meaning of these two words namely legality and propriety:*

Law lexicon defines legality as follows : Lawful, that is, something effectual and proper and which the courts of judicature of the country will recognize and enforce; allowed or authorized by law.

Law lexicon defines propriety as follows : Fitness; Suitability; Conformity with requirement, rule or principle.

A.8 *Now in order to conclude whether the order passed by the learned Deputy Commissioner to State Tax, Sector-3, Rudrapur was lawful and in conformity with the requirement and for the time being considering the fact that the refund has arisen as a result of excess input tax credit available with the appellant, we need to interpret the relevant sections of the Uttarakhand Value Added Tax Act,*

2005 and the State Goods and Services Tax Act, 2017. Therefore, the relevant sections are being reproduced below as it stood during the relevant period:

Section 6(13) of the Uttarakhand Value Added Tax Act, 2005 provides as under:

Notwithstanding anything contained in sub section (10), sub section(11) or sub section (12), the Assessing Authority shall determine the amount of input tax credit paid by the dealer in excess of his tax liability at the time of final assessment for the relevant assessment year under section 25 or section 26, and if any amount is found refundable, the same shall be refunded or adjusted under the provisions of section 36.

Section 142(8)(b) of the State Goods and Services Tax Act, 2017 provides as under:

Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, and the amount rejected if any, shall not be admissible as input tax credit under this Act.

A.9 Thus, a conjoint reading of section 6(13) of the UVAT Act, 2005 and section 142(8)(b) of the SGST Act, 2017 it can be said that for the purpose of granting refund in case the input tax credit is in excess of the tax liability at the time of final assessment for the relevant assessment year such excess input tax credit shall be refunded to him in cash under the erstwhile law. Therefore, in view of such explicit provisions contained in the UVAT Act, 2005 and SGST Act, 2017 and also in the light of the meaning of the words legality and propriety it can be said that the learned Deputy Commissioner of State Tax, Sector-3, Rudrapur while passing the order under section 9(2) of the Act has granted the refund in accordance with the provisions contained in the Act which in no way hinders the legality or propriety of the order. In the absence of hindrance to the legality or propriety of the order, the revision proceedings are bound to fail.

A.10 It is stated that the Honorable Tribunal in its order in the case of Behl Distributors, Dehradun has held that the excess input tax credit was required to be carried forward as transitional credit under the Goods and Services Tax Act. However, this statement as mentioned in the order by the Honorable Tribunal is incorrect in facts as well as in law. Therefore, the appellant would also like to draw your attention to the provisions contained in section 140(1) of the State Goods and Services Tax Act, 2017

Section 140(1) of the State Goods and Services Tax Act, 2017 provides as under:

A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:-

- (i) Where the said amount of credit is not admissible as input tax credit under this Act: or*
- (ii) Where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.*

Provided Further that so much of the said credit as is attributable to any claim related to section 3, sub section (3) of section 5, section 6, section 6A or sub section (8) of section 8 of the Central Sales Tax Act, 1956 which is not substantiated in the manner and within the period, prescribed in Rule 12 of the Central Sales tax Rules, 1957 shall not be eligible to be credited to the electronic credit ledger.

Provided also that an amount equivalent to the credit specified in the second provision shall be refunded under the existing law when the said claims are substantiated in the manner prescribed in Rule 12 of the Central Sales Tax Rules, 1957.

A.11 A bare reading of the provisions contained in section 140(1) of the SGST Act, 2017 leads us to conclude that the registered person is entitled to take in his electronic credit ledger, credit of the amount of Value Added Tax as carried forward in the return relating to the period ending with the day immediately preceding the appointed day provided the details of declaration (i.e. Form C, Form F, Form E-I, Form-II, Form-H, Form 11) are submitted within the time prescribed in Rule 12 of the Central Sales Tax Rules, 1957.

It is further provided in the third proviso to section 140(1) of the SGST Act that in case the declaration in prescribed form are not submitted within the prescribed time as mentioned in Rule 12 then refund shall be granted under the existing law when the declaration in prescribed form is substantiated.

A.12 In the instant case, the appellant had not received Form C, Form 11, Form E till the due date of filing TRAN-1 and therefore would not have carried forward the input tax credit in their electronic credit ledger in the GST regime by the due date prescribed in the GST Rules, 2017. It is also pertinent to mention here that the CBIC vide Circular no. 180/12/2022- GST dated 09.09.2022 allowed filing of revised TRAN-1 in compliance with the order of the Apex Court in the case of Union of India vs. Filco Trade Centre Private Limited giving one last opportunity during the period 01.10.2022 to 30.11.2022. However, by the time the last opportunity was given to the assessee's the refund has already been disbursed to the appellant (i.e. 26.03.2021). Therefore, due to the peculiarity of the case the appellant had no other option but to claim the refund in cash which is sanctioned as per the provisions of the Act.

A.13 In the light of the above submission it can be said that the provisions contained in section 140(1) of SGST Act, 2017 are explicitly clear and the grant of refund of

Rs. 11,11,335/- in cash to the appellant is in accordance with the provisions contained in the Act or Rules.

- A.14 I would further like to draw your attention to the instruction pertaining to the VAT regime which provides for approval of the Joint Commissioner of State Tax (Executive) in case of sanction of refund in excess of Rs. 10,00,000/-. In the instant case since the refund amount of the appellant exceeds Rs. 10,00,000/- prior approval would have been taken by the Joint Commissioner of State Tax (Executive) before sanctioning refund in view of the instruction. In view of the above facts, it can be said that the revision of order under section 52 of the Act by the Joint Commissioner of State Tax (Executive) is bad in law as no officer can review his/her own order.
- A.15 It is also stated that the Deputy Commissioner of State Tax, Sector- 3, Rudrapur and Joint Commissioner of State Tax (Executive) while granting refund has taken all the relevant facts into consideration. It is only after verifying all the facts and by conducting necessary enquiries and examination has taken a prudent, judicious and reasonable view that the appellant is entitled to refund by virtue of an order passed under section 9(2) of the CST Act, 1956. Thus, it can be said that after taking all the facts into consideration the order passed under section 9(2) of the CST Act, 1956 cannot be treated as unlawful or prejudicial to the interest of revenue so as to attract the rigors of section 52 of the Act.
- A.16 The Supreme Court in the case of Malabar Industrial Company Limited vs. CIT reported at 2002-TIOL-491-SC-IT has held that the provision of revision cannot be invoked to correct each and every type of mistake or error committed by the assessing officer; it is only when an order is erroneous as also prejudicial to revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the revenue. For example, if AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by AO is totally unsustainable in law.

Also kindly refer another decision from the Supreme Court in the case of CIT vs. Max India Limited reported at 2007-TIOL-203-SC-IT wherein it is held that "The phrase "prejudicial to the interests of the revenue" in the section 263 of the Income Tax Act, 1961 has to be read in conjunction with the expression "erroneous" order passed by the assessing officer. Every loss of revenue as a consequence of an order of the assessing officer cannot be treated as prejudicial to the interest of the revenue. For example, when the assessing officer adopts one

of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the assessing officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by assessing officer is unsustainable in law.

A.17 *It is in view of the case cited supra it can be said that the order passed by the Deputy Commissioner of State Tax, Sector-3, Rudrapur in no way militates against the provisions contained in the Act so as to attract the rigors of section 52 of the Act. It is only when the view taken by the Assessing Officer is totally unsustainable can the provisions of section 52 of the Act be invoked.*

A.18 *In view of the foregoing submissions it can be said that the grant of refund to the appellant by virtue of an order passed under section 9(2) of the CST Act, 1956 is permissible due to the following reasons:*

(a) The refund of Rs. 11,11,335/- is not on account of excess input tax credit but is on account of tax payment made through challans by the appellant.

(b) The power of revision under section 52 of the Act is not available to the Joint Commissioner of State Tax (Executive) as no notification giving authorization has been issued by the State Government in this regard till date. It is further stated that since the refund was sanctioned with the prior approval of the Joint Commissioner (Executive) Rudrapur, the reopening of assessment under section 52 of the UVAT Act, 2005 by the Joint Commissioner (Executive), Rudrapur would amount to reviewing his or her own order which is bad in law.

(c) Section 6(13) of the Uttarakhand Value Added Tax Act, 2005 explicitly provides for grant of refund in assessment proceedings subject to the provisions contained in section 36 of the Uttarakhand Value Added Tax Act, 2005.

(d) Section 142(8)(b) of the State Goods and Services Tax Act, 2017 explicitly provides for grant of refund in cash under the erstwhile law.

(e) Section 140(1) of the State Goods and Services Tax Act, 2017 also provides for grant of refund in cash in case the forms are not substantiated by the due date of filing of TRAN- under Rule 12 of the CST Rules, 1957 but are substantiated at the time of assessment proceedings.

Principal of Judicial Discipline

A.19 *It is hereby stated that all the case laws cited supra are applicable in the instant case. Therefore, any deviation from the settled law or non-adherence to the principle as set out in the case laws would amount to violation of the principle of judicial discipline.*

It is uncommon to see authorities passing adjudication orders contrary to law laid down to Higher Courts. The Apex Court has repeatedly stressed the need for judicial discipline and has observed that the orders of higher judicial authority should be implemented without demur and if the department feels aggrieved, they are at liberty to file an appeal before an appropriate forum. In spite of such clear-cut directions of the Apex Court, orders are passed even at the level of the

Commissioners, which do not stand even a cursory judicial scrutiny. At the very first stage of appeal, these orders are thrown out. However, this causes enormous amount of agony and expenditure to the assesses/ importers. A stern warning should be given that this type of attitude will not be tolerated and they should be made accountable for every order that is set aside, particularly where the orders are found to be vexatious. It is high time that the Rule of Law is established in taxation matters right from the original stage.

Further in the case Kamlakshi Finance Corporation Limited reported at 2002-TIOL-484-SC-CX-LB it was held that the conduct of the learned Commissioner amounts to clear indiscipline and irresponsible exercise of judicial function. Such exercise of adjudication powers is blatant violation of Apex Court's Judgment which requires to be censured as if allowed to go unchecked would lead to collapse of entire dispute resolution mechanism. Such adjudication orders burden not only the assessee who has to incur avoidable expenses on challenging such order before the courts/ tribunal but also impose clearly avoidable costs for the government as the tribunal/court's valuable time is also consumed in hearing appeal against such clearly erroneous and in disciplined orders which should never have been passed.

In view of the above, it is respectfully prayed that this Honorable Tribunal may be pleased to:

- (a) Set aside the impugned Order-in Original passed by the Joint Commissioner of State Tax (Executive), Division Rudrapur, Rudrapur to the extent it is prejudicial to the appellant and allow the appeal in full with consequential relief;*
- (b) Grant opportunity of persona hearing before a decision is taken in the above matter; and*
- (c) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case."*

इस प्रकार उपरोक्त आधारों पर व्यापारी द्वारा अपील स्वीकार किये जाने की प्रार्थना की गयी है।

5. सुनवाई हेतु नियत तिथि को विभाग की ओर से श्रीमती हेमलता शुक्ला विद्वान डिप्टी कमिश्नर एवं राज्य प्रतिनिधि उपस्थित हुई तथा उनके द्वारा धारा 52 के अन्तर्गत पारित आदेश को विधि सम्मत होना बताते हुए उक्त की पुष्टि किये जाने की प्रार्थना की गयी है। अपीलार्थी व्यापारी की ओर से विद्वान फर्म अधिवक्ता श्री डी0पी0 यादव एवं अधिकृत प्रतिनिधि श्री मोहित देव उपस्थित हुए तथा उनके द्वारा अपील आधारों में उल्लिखित तर्कों को दोहराते हुए प्रस्तुत अपील स्वीकार किये जाने की प्रार्थना की गयी।

6. वाद के तथ्यों के संदर्भ में प्रश्नगत वाद के निस्तारण हेतु अवधारण का बिन्दु (Point of determination) निम्न प्रकार निर्धारित किया जाता है—

“क्या वाद के तथ्यों एवं परिस्थितियों के दृष्टिगत प्रश्नगत वाद में वैधता या औचित्यता के बिन्दु पर केंद्रीय विक्रय कर अधिनियम की धारा 9(2) के अन्तर्गत पारित कर निर्धारण आदेश दिनांक 25/02/2021 को उत्तराखण्ड मूल्य वर्धित कर अधिनियम 2005 की धारा 52 के अन्तर्गत पुनरीक्षित किया जा सकता है अथवा नहीं ?”

7. उपरोक्तानुसार अवधारित बिन्दु के क्रम में वाद के तथ्यों तथा उभय पक्षों द्वारा अपने पक्ष में प्रस्तुत किये गये तर्कों/अभिलेखों का अवलोकन किया गया। अपील आधारों के क्रमांक A.2 पर निहित प्रथम तर्क कि प्रश्नगत वर्ष में रु० 11,11,335.00 की राशि जो उन्हें कर निर्धारण आदेश दिनांक 25/02/2021 से वापस किये जाने के निर्देश दिये गये हैं, उक्त राशि आईटीसी से संबंधित न होकर वस्तुतः चालान के माध्यम से कैश में जमा की गयी राशि से संबंधित है, के क्रम में सर्वप्रथम धारा 25(7) के अन्तर्गत पारित प्रांतीय वाद दिनांक 25/02/2021 का अवलोकन किया गया। उक्त कर निर्धारण आदेश से स्पष्ट है कि संगत वर्ष हेतु पारित प्रांतीय वाद में व्यापारी द्वारा स्वीकृत कर देयता रु० 54,66,553.00 के सापेक्ष रु० 37,97,543.00 की आईटीसी का दावा किया गया है, जिसे कर निर्धारण अधिकारी द्वारा अनुमन्य किया गया है। तत्पश्चात् प्रांतीय वाद में व्यापारी द्वारा विभिन्न चालानों के माध्यम से कुल रु० 17,93,959.00 कैश में जमा किया गया है। इस प्रकार प्रांतीय वाद हेतु स्वीकृत कर रु० 54,66,553.00 के सापेक्ष व्यापारी द्वारा कुल रु० 65,84,678.00 (अग्रसारित आईटीसी रु० 9,93,176.00 + आईटीसी रु० 37,97,543.00 + कैश में जमा कर रु० 17,93,959.00) जमा किया जाना प्रकाशित होता है, तदनुसार रु० 11,18,125.00 अधिक जमा पाये जाने के कारण उक्त राशि प्रांतीय वाद से केंद्रीय वाद हेतु अग्रसारित की गयी है। वैट अधिनियम के अन्तर्गत निहित प्रावधानों के अनुसार देय कर का समायोजन सर्वप्रथम अनुमन्य आईटीसी के विरुद्ध किया जाता है। आईटीसी के समायोजन के पश्चात् यदि कर देयता अवशेष रहती है, तो उक्त अवशेष कर को चालान के माध्यम से कैश में जमा किया जाता है। इस प्रकार संगत वर्ष में व्यापारी द्वारा दावाकृत आईटीसी से देय समस्त कर का समायोजन न होने के कारण व्यापारी द्वारा अवशेष कर देयता का समायोजन कैश में जमा किये गये कर से किया गया है। इस प्रकार संदर्भित प्रांतीय वाद हेतु देय कर से अधिक जो राशि केंद्रीय वाद हेतु अग्रसारित हुई

है, वह आईटीसी से संबंधित न होकर कैश में जमा किये गये कर से संबंधित है, जबकि उक्त के संबंध प्रश्नगत केंद्रीय वाद जो धारा 52 के अन्तर्गत पुनरीक्षित किया गया है, में रु0 11,18,125.00 को आईटीसी लिखा गया है। केंद्रीय कर निर्धारण आदेश के अनुसार व्यापारी द्वारा संगत वर्ष की प्रथम तिमाही में कुल रु0 13,31,819.00 कर के रूप में जमा किया गया है। उपरोक्तानुसार प्रांतीय वाद से कर के रूप में अधिक जमा रु0 11,18,125.00 अग्रसारित हुये हैं। इस प्रकार केंद्रीय वाद में कुल रु0 24,49,944.00 कर के रूप में जमा हैं। केंद्रीय वाद हेतु व्यापारी द्वारा अपनी कर देयता रु0 13,38,609.00 मानी गयी है। उक्त के विरुद्ध जमा कर का समायोजन करने के पश्चात् रु0 11,11,335.00 अधिक बचते हैं, जो व्यापारी को कर निर्धारण अधिकारी द्वारा वापस किये गये हैं। इस संबंध में द्वितीय अपील के समय विद्वान राज्य प्रतिनिधि द्वारा अवगत कराया गया कि केंद्रीय वाद में व्यापारी द्वारा चालान के माध्यम से जमा करायी गयी राशि रु0 13,31,819.00 के स्थान पर रु0 13,20,344.00 है। उक्त के आधार पर केंद्रीय वाद हेतु कुल जमा कर रु0 24,38,469.00 बनते हैं। इस आधार पर केंद्रीय वाद में व्यापारी को रु0 10,99,860 ही वापसी योग्य हैं, जबकि कर निर्धारण अधिकारी द्वारा रु0 11,11,335.00 रिफण्ड किये गये हैं। इस प्रकार उक्त रिफण्ड में से रु0 11,475.00 व्यापारी से वसूल किये जाने योग्य पाये गये हैं, जो व्यापारी से नियमानुसार वसूल किये जाएंगे। प्रश्नगत वाद के संबंध में यह भी उल्लेखनीय है कि यदि केंद्रीय वाद हेतु प्रांतीय वाद से अग्रसारित रु0 11,18,125.00 को आईटीसी भी मान लिया जाए, तो भी केंद्रीय वाद हेतु निर्धारित कर रु0 13,38,609.00 के सापेक्ष उक्त आईटीसी का समायोजन करने के पश्चात् व्यापारी की कर देयता रु0 2,20,484.00 बनती है, जिसके विरुद्ध व्यापारी द्वारा रु0 13,20,344.00 चालान के माध्यम से कैश में जमा किये गये हैं। उक्त के आधार पर भी व्यापारी को रु0 10,99,860.00 रिफण्ड किये जाने योग्य बनते हैं। इस प्रकार व्यापारी के दावे कि उन्हें जो राशि कर निर्धारण अधिकारी द्वारा रिफण्ड की गयी है, वह आईटीसी से संबंधित न होकर कैश में जमा की गयी राशि से संबंधित है, के संबंध में विद्वान राज्य प्रतिनिधि द्वारा द्वितीय अपील में यह स्वीकार किया गया, कि रिफण्ड की गयी राशि वस्तुतः कैश में जमा किये गये कर से

संबंधित है। इस संबंध में विद्वान राज्य प्रतिनिधि द्वारा प्रांतीय तथा केंद्रीय वाद हेतु स्वहस्ताक्षरित चार्ट भी प्रस्तुत किया गया, जो पत्रावली पर उपलब्ध है।

8. उपरोक्त विवेचनानुसार यह स्पष्ट हो जाता है, कि जो अधिक जमा राशि कर निर्धारण अधिकारी द्वारा व्यापारी को रिफण्ड की गयी है, वह वस्तुतः कैश में जमा किये गये, अधिक कर से संबंधित है, न कि आईटीसी से। धारा 52 के अन्तर्गत पारित प्रश्नगत आदेश Excess ITC के दृष्टिगत पारित किया गया है, अतः उक्त आदेश का वाद के तथ्यों के आधार पर ही त्रुटिपूर्ण होना प्रकाश में आता है, तदनुसार पुनरीक्षण अधिकारी द्वारा जिन न्यायिक निर्णयों का संज्ञान अपने आदेश में लिया गया है, वह प्रश्नगत मामले में प्रासंगिक नहीं हैं। अतः निर्णयाधीन आदेश का समर्थन नहीं किया जा सकता है। चूंकि व्यापारी द्वारा प्रश्नगत वाद के संबंध में प्रस्तुत द्वितीय अपील आधारों में उल्लिखित प्रथम बिन्दु में निहित तर्क के आधार पर ही स्वीकार किये जाने योग्य है, अतः व्यापारी द्वारा अपने पक्ष में प्रस्तुत अन्य तर्कों पर विचार किये जाने की आवश्यकता नहीं रहती है। इस प्रकार उपरोक्त विवेचनानुसार व्यापारी द्वारा प्रस्तुत अपील में बल है, तदनुसार स्वीकार की जाती है।

—::आदेश::—

व्यापारी द्वारा प्रस्तुत अपील सं०— 59/2025 (वर्ष 2017-18)(प्रथम तिमाही) धारा 52/सपटित धारा 9(2) आंशिक रूप से स्वीकार की जाती है। व्यापारी को रु० 11,11,335.00 के स्थान पर केवल रु० 10,99,860.00 ही वापसी योग्य पाये गये हैं, अतः अधिक रिफण्ड की गयी राशि रु० 11,475.00 व्यापारी से नियमानुसार वसूल की जाएगी। पत्रावली दाखिल दफ्तर हो।

ह०/दि० 25.09.2025
(विपिन चन्द्र)
सदस्य,
वाणिज्य कर अधिकरण,
उत्तराखण्ड, हल्द्वानी पीठ,
कैम्प—देहरादून।

ह०/दि० 25.09.2025
(मलिक मजहर सुलतान)
अध्यक्ष,
वाणिज्य कर अधिकरण,
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