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**IN THE COMMERCIAL TAX TRIBUNAL
UTTARAKHAND, DEHRADUN**

Present: Malik Mazhar Sultan, H.J.S President.

Second Appeal No. 18/2025

Assessment year – 2013-2014,

First Appeal No- 279/2023,

Amount of disputed penalty – Rs. 30,250/-

Commissioner- Commercial Tax, Uttarakhand, Dehradun. Appellant.

Versus

M/s. Mahakali Trading Copration, Gumani wala, Respondent.

For Appellant: Shri Bhuwan Chandra Pandey State-Representative.

For Respondent: Shri Jyoti Raj and Shri Alok Kumar Sharma Ld. Advocate.

J U D G M E N T

Malik Mazhar Sultan,

This appeal is filed against order dated 14.02.25 passed by Ld. Joint Commissioner (appeal) in the first appeal No. 279 of 2023. By means of impugned order the first appeal filed by the dealer/ respondent was allowed and it was directed by the first appellate authority that the amount deposited by the dealer/respondent as security/penalty be refunded to him.

2. Facts necessary for the disposal of this appeal are that the respondent is registered dealer doing the business of trading. On dated 25.11.2013, Vehicle No.- U.K. 7C 1291 transporting peanut was detained by the mobile squad. On inspection/enquiry it was found that the goods were being transported with the computer generated bill and the particulars as regard bill no, date and

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other description of goods were written by hand. Assuming it as the transportation of goods with the intention of evading tax a notice under section 43 of the Act was issued. In response to this notice one Harsht V. Chaulasia (representative of firm) appeared and requested in writing to release the goods after taking security. The goods were thereupon released after taking 40% security of the cost of goods. Despite notice none appeared on behalf of the respondent for hearing under Section 43 (5) of the Act. By means of order dated 23.07.2018 holding this transaction as violative of Section 43(5) and Section 60 of the Act a penalty of 40% of the cost of commodity was imposed by the Ld. Assessing authority. This order of assessing authority dated 23.07.2018 passed under section 43(5) was challenged by the dealer/respondent in the first appeal no. 279/2023. This first appeal was allowed and it was order by the first appellate authority that the amount of Rs. 30,250.00 deposited by the dealer as security be refunded to him. It was held by the first appellate authority that the final assessment of matter has been completed and no discrepancies were found in the sale and all the entries were recorded in the regular books of account. It was further held by the Ld. first appellate that release order and gate pass issued by Mandi Samiti were accompanied the consignment and the questioned transaction was duly recorded in the books of account. Aggrieved by the impugned order dated 14.02.2025 passed by first appellate authority this second appeal is filed by the department on the ground that the impugned order is against law and facts. The bill accompanying the consignment was not issued from the regular bill book. The consignment was intended to be sold out of record with a view to evade tax. The bill in question was not issued from the regular bill book. The dealer/respondent has never submitted his books of account for physical verification. The first appellate authority has not mentioned in his Judgment

that he ever verified the books of account of the respondent firm. Supporting the order of assessment authority it is also stated in memo of appeal that there is no finding in the impugned Judgment that the questioned bill was issued from the regular bill book.

3. Heard the Ld. State Representative and Ld. Counsel for the respondent and perused the appeal file and the assessment record.

4. Supporting the order of assessing authority passed under section 43 (5) of the Act Ld. State Representative reiterated the grounds described in the memo of appeal. It is argued on behalf of appellant that the goods in question were not being transported with the proper bill. If the consignment would not have been interrupted the dealer could have been succeeded to sale the commodity unrecorded in books of account. There is clear intention of dealer to evade tax. The books of account were never submitted for verification before assessing authority or first appellate authority. There is no finding in the impugned Judgment that the commodity was accounted for by the dealer in his account, register or other documents maintained in the course of business. There is no finding to the effect that the questioned bill was issued from the regular bill book. It is further argued that Ld. first appellate authority has wrongly held that the turnover of dealer was accepted by the assessing authority.

5. On the other hand Ld. Counsel for the respondent argued that the whole transaction is accounted for in the books of account. The turnover of the dealer had already been accepted by the assessment authority in regular assessment of the relevant year. Merely on the ground that the particulars of the printed bill were filled by hand writing it can not be assumed that the transaction is out of record. It is further argued that there was no intention to

evade the tax. Ld. Counsel for the respondent supported the order/Judgment passed by first appellate authority.

6. On the reveal contention of the parties the point of determination involved in this appeal are as under.

(I) Whether it is established on record that the questioned consignment was accounted for by the dealer in the books of account maintained in the ordinary course of business?

(II) Whether the questioned consignment was wilfully omitted from being shown in the accounts, register and other documents maintained by the dealer in the ordinary course of business?

Both the above mentioned issues are interrelated so they are being decided together.

7. Section 42 of the VAT Act empowers the officer empowered by the State Government in this behalf to require any dealer to produce before him any book, document or account relating to his business and according to this section such officer has the authority to inspect, examine and copy such books etc. Section 43 (1) of VAT Act empower authorised officer to seize any goods which are found in the dealer's place of business or vehicle but not accounted for by the dealer in his accounts, registers or other documents maintained in the course of his business. Sub-Section (5) of Section 43 of the Act empower such officer to impose penalty, if after taking into consideration the explanation, of any such dealer and giving him an opportunity of being heard, he is satisfied that the said goods were wilfully omitted from being shown in the accounts, register or other documents.

8. In the instant matter, as is clear from the perusal of record, despite service of notice the dealer never appeared before the assessing authority. Originally, order under section 43(5) was passed *exparte* on dated 06.01.2014. This order dated 06.01.2014 was challenged in first appeal no 157/2017. This appeal was allowed and the matter was remanded for hearing afresh. Again, the dealer not appeared before assessing authority for getting the genuineness of the bill in question verified from the books of account. The relevant portion of the order of assessing authority is as fallow-

“सचल दल अधिकारी इकाई-ए वाणिज्य कर देहरादून द्वारा उत्तराखण्ड वैट अधिनियम की धारा 43 के अन्तर्गत जारी किए गये कारण बताओं नोटिस के प्रत्युत्तर में करदाता द्वारा उपस्थित होकर भी बिक्री बिल की सत्यता की जांच लेखों से नहीं करायी गयी एवं स्वयं करापवंचन स्वीकार करते हुए उचित कीमत पर माल की जमानत जमा करा कर माल छोड़ने का अनुरोध किया गया था। जो यह माने जाने का प्रबल आधार है कि करदाता द्वारा माल का परिवहन करापवंचन की उद्देश्य से लेखों से बाहर किया जा रहा था।

सचल दल इकाई ए देहरादून द्वारा कर योग्य माल ₹ 75,600/- पर 40 प्रतिशत की दर से ₹ 30,250/- जमानत जमा कराये गये हैं। उपरोक्त के परिपेक्ष्य में कर दाता द्वारा करापवंचन की उद्देश्य से माल के आयात किए जाने के क्रम में उनके द्वारा की गयी कार्यवाही उचित है।”

9. Ld. first appellate authority quashed the penalty order on the ground that the dealer submitted sale register on asking of the assessing authority during the period of assessment proceeding and it was noticed that the questioned invoice was entered into the regular book of account hence on the final assessment the respondent admitted the sale of the dealer. The finding to this effect is described in the fourth para of second last page of impugned Judgment as fallow-

“In the present case, the appellant submitted the Sales Register on asking of the respondent during the period of assessment proceedings and it was noticed that the question invoice was entered into the regular books of account hence on the final assessment the respondent admitted the sales of the dealer.”

10. Further it is also mentioned in the impugned Judgment that gate pass and release order issued by the Mandi Samiti were accompanying the consignment which were lawfully shown in the regular book of account of dealer. The relevant para of the impugned Judgment is as follows-

“यहाँ यह भी उल्लेखनीय है कि अपीलकर्ता द्वारा मंडी समिति का रिलीज ऑर्डर और गेट पास खेप के साथ था और इसे व्यापारी की नियमित खाता बही में विधिवत दिखाया गया है। अपीलकर्ता द्वारा कम्प्यूटर द्वारा जनरेट बिल में करदाता द्वारा हाथ से माल विवरण क्रमांक व दिनांक भरे होने पर करापंचन के उद्देश्य से आयात किये जाने के फलस्वरूप सचलदल इकाई द्वारा कर योग्य माल के मूल्य रु0 75,600/- पर 40 प्रतिशत की दर से रु0 30,250/- अर्थदण्ड आरोपित किया जाने का कोई औचित्य नहीं बनता।”

11. The instant appeal is filed mainly on the ground that the questioned bill was not issued from the regular bill book maintained in the ordinary course of business. Had it been issued from regular bill book the dealer would have got it verified from the books of account. Despite sufficient opportunity the dealer did not produce the books of account for verification. The other ground of appeal is that the first appellate authority committed the factual mistake. It has wrongly been stated in the impugned order that the dealer produced his sale register at the time of assessment proceeding and in final assessment the turnover of the dealer was accepted. It has further been wrongly stated that at the time of interruption gate pass and release order issued by Mandi Samiti were accompanying the consignment. It is vehemently argued on behalf of Ld. State Representative that it is not clear from the impugned Judgment that how the Ld. first appellate authority came to the conclusion that the questioned transaction is recorded in the books of accounts while the same was never produced for inspection before Ld. assessing authority or before the first appellate authority and not even during the proceeding of final assessment.

12. During the course of argument Ld. Counsel for the respondent supported the impugned order on the ground that the respondent came and requested to release the goods without security. The appellant (department) admitted the turnover in the final assessment. Penalty order was passed without giving proper opportunity of hearing.

13. So far as the opportunity of hearing before imposing penalty is concerned it is evidently clear from the record that sufficient opportunities were provided to the dealer by assessing authority but he did not appear before the assessing authority. Even the books of account were not produced before the first appellate authority. It is also pertinent to mention here that when the consignment was interrupted a letter was written by the representative of respondent requesting to release the goods on taking security. At this stage he may claim to produce their books of account or at least he may state that the transaction is recorded in books of account. In this regard the contention of Ld. State Representative that the regular bill book was never produced to establish that the questioned bill is genuine is acceptable.

14. It is asserted by the Ld. Counsel for the respondent/dealer that the turn over at the respondent firm was accepted in the assessment proceeding of the same year while Ld. State Representative submitted that in final assessment proceeding the books of account were not produced by the respondent firm and the declared Sale could not have been verified. So in the absence of verification the declared sale was rejected. I have gone through the final assessment order of the relevant year which is available in the summoned file of assessment. This final assessment order was passed on 03.10.2017 and the order under section 43(5) was passed on 23.07.2018. In this respect the contention of Ld. Counsel for the respondent is not correct, instead it is

evident on record that the turnover of the respondent firm was never accepted in any proceeding. I wonder how and on which basis Ld. first appellate authority came to the conclusion that the whole transaction is recorded in the books of account. Further, it is also stated by the Ld. first appellate authority in the impugned order that gate pass and release order issued by Mandi Samiti were accompanying the consignment. I have gone through the original record. There is nothing on record to show that the above mentioned document were with the consignment at the time of interruption, instead when the consignment was interrupted the respondent firm requested in writing to release the goods after taking security. On the basis of above discussion I am of the opinion that the contention of the Ld. State Representative that Ld. first appellate authority has committed factual and legal mistake is acceptable.

15. On the basis of above discussion I am of the considered opinion that in the facts and circumstances of the matter there were sufficient ground for the satisfaction of the assessing authority that the said consignment were wilfully omitted from being shown in the accounts, register and other documents maintained in the course of business of respondent/dealer. The assessing authority was absolutely justified in imposing the penalty upon the respondent under section 43(5) of the Act. The first appellate authority has materially erred in holding that the gate pass and release order was accompanying the consignment, the turnover of the respondent firm was accepted by the assessing authority, whole transaction was recorded in the books of account maintained in the ordinary course of business. Accordingly, the impugned judgment/order is unsustainable and liable to be set aside. The order passed by assessing authority under section 43(5) of the Act is legally and factually sound. Consequently, the instant appeal deserve to be allowed.

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ORDER

The instant appeal No. 18/2025 presented by the department through Commissioner is allowed and the impugned judgement /orders dated 14.02.25 passed in first appeal no. 279/2023 is here by set aside.

Let the file be consigned.

S/d- 07.02.2026

(Malik Mazhar Sultan)

President,

Commercial Tax tribunal

Uttarakhand, Dehradun

Dated : 7 February, 2026