

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

PRESENT: HON'BLE MALIK MAZHAR SULTAN, H.J.S. PRESIDENT

SHRI RAKESH VERMA .. MEMBER

APPEAL NO.31 OF 2025 (A.Y.2015-16)

(Under Section 25(7) of the Uttarakhand Value Added Tax Act, 2005)

Commissioner, State Tax, Uttarakhand

... Appellant

Versus

**M/s Delta Power Solution (India) Pvt. Ltd.,
Pantnagar, Rudrapur**

... Respondent / Dealer

For the Department: Mrs. Hemlata Shukla, Deputy Commissioner and
State Representative

For the Dealer: Shri Ashish Agrawal,Advocate

JUDGMENT

Shri Rakesh Verma, Member

Background of the Appeal

This second appeal No.31 dated 15-04-205 has been filed by the Department under Section 53 of the Uttarakhand Value Added Tax Act, 2005, challenging the order No.240 dated 26.12.2024 passed by Ld. Joint Commissioner (Appeal), State Tax, Haldwani (hereinafter referred to as the First Appellate Authority).

The First Appellate Authority partly allowed the appeal filed by the dealer against the assessment order No.305 dated 29.06.2019 passed by the Deputy Commissioner Assessment, Rudrapur (Third) under section 25(7) of the Uttarakhand Value Added Tax Act,2005("hereafter referred to as the Uk Vat Act,2005") , and reduced the additional tax imposed at Rs.5,40,000/-. The Department, being aggrieved by this relief, has preferred the present second appeal.

Facts of the Case

M/s Delta Power Solution (India) Pvt. Ltd., Pantnagar, Rudrapur (here in after referred to as the dealer) is a registered dealer under the Uttarakhand VAT Act.

engaged in business of manufacturing and sale of telecom power system and UPS.

On 04.01.2016, a consignment of taxable goods was being transported through vehicle no. HR55M-7031. Upon inspection by the Mobile Squad, Rudrapur (Unit-A), it was found that the goods were being transported without proper and prescribed documents. Consequently, the goods were seized. The value of the goods was assessed at Rs.7,55,072.90, and a security amount of Rs.3,05,805/- was demanded and deposited for release of goods.

Aggrieved by the seizure order, the dealer filed an application under Section 48(10) of the Act before the Joint Commissioner (Enforcement), Commercial Tax, Kumaon Zone, Rudrapur. Vide order dated 14.08.2015, the said application was rejected, and thereafter the dealer deposited the security amount of Rs.3,05,805.00, upon which the goods were released.

Subsequently, the Assessing Authority passed a penalty order under Section 48(8) of the Act on 04.01.2016, holding that the goods were transported with a clear intention to evade tax. A penalty equivalent to 40.5% of the goods value, amounting to Rs.3,05,805.00 was imposed.

Assessment Proceedings

During assessment proceedings, the dealer was confronted with the above facts. However, the explanation furnished by the dealer was found unsatisfactory and unacceptable.

As a result, the Assessing Authority rejected the books of accounts and determined suppressed sales of Rs.40,00,000/-, and levied tax at 13.5%, amounting to Rs.5,40,000/- vide assessment order dated 29.06.2019.

First Appeal and Prior Litigation History

The dealer filed a first appeal against the assessment order dated 29.06.2019. The First Appellate Authority, vide order dated 26.12.2024, partly allowed the appeal.

It is significant to note that against the penalty order dated 04.01.2016 passed under Section 48(8), the dealer had earlier filed an appeal before the Joint Commissioner (Appeal), who vide order dated 07.06.2019, set aside the penalty order and directed refund of the deposited amount.

The Department challenged this appellate order before the Commercial Tax Tribunal, Uttarakhand, Haldwani in Second Appeal No. 71 of 2019. The Tribunal, vide judgment dated 24.01.2020, dismissed the Department's appeal and affirmed the order dated 07.06.2019.

Thus, it stands conclusively established that the penalty order dated 04.01.2016 under Section 48(8) was not legally sustainable.

Accordingly, the First Appellate Authority modified the assessment order.

Grounds Raised in Second Appeal by the Department

The Department has challenged the order of the First Appellate Authority on the following grounds:

1. The order dated 26.12.2024 passed by the Joint Commissioner (Appeal), State Tax, Haldwani is illegal and improper.
2. The goods were found being transported on 04.01.2016 through vehicle no. HR55M-7031 without valid documents.
3. The Assessing Authority rightly rejected the books of accounts and determined suppressed sales of Rs.40,00,000/- and imposed tax of Rs.5,40,000/- at 13.5%, which was legally justified.
4. The First Appellate Authority erred in reducing the additional tax of Rs.5,40,000/- imposed by the Assessing Authority.
5. Under Section 48(2)(c) of the Act, transportation of goods without an online Trip-Sheet creates a statutory presumption of intent to evade tax.

Arguments Heard

On the date fixed for hearing, Mrs. Hemlata Shukla, Deputy Commissioner and State Representative, appeared for the Department and reiterated the grounds of appeal, praying for restoration of the assessment order.

On behalf of the dealer, Shri Ashish Agrawal, Advocate, appeared and supported the order passed by the First Appellate Authority, contending that the earlier penalty proceedings having failed up to the Tribunal level, no addition could legally survive in assessment on the same facts.

Findings and Decision

We have carefully considered the rival submissions, perused the records, and examined the material available on file. It is undisputed that the penalty order

dated 04.01.2016 under Section 48(8) was set aside by the First Appellate Authority and that order was affirmed by this Tribunal on 24.01.2020. Thus, the finding that the goods were transported with intent to evade tax no longer survives. It was brought on record that the penalty order dated 04.01.2016 under Section 48(8) had already been set aside by the First Appellate Authority on 07.06.2019, and the deposited amount was ordered to be refunded. The Department's second appeal against that order was also dismissed by the Commercial Tax Tribunal, Uttarakhand, Haldwani on 24.01.2020, thereby affirming that the penalty under Section 48(8) was unsustainable.

Relying on the above findings, the First Appellate Authority held that once the penalty proceedings under Section 48(8) were quashed and attained finality, the same incident could not be made the basis for estimating suppressed turnover.

The Assessing Authority has not brought any independent material or corroborative evidence on record to justify estimation of suppressed turnover of Rs.40,00,000/-, except relying upon the very incident which already stood neutralized in earlier proceedings.

Once the foundation of tax evasion based on the alleged illegal transportation has been held to be unsustainable, the same set of facts cannot be reused to estimate suppressed turnover under Section 25(7).

Once the penalty order itself has been annulled and upheld up to the Tribunal level, the Assessing Authority could not legally rely upon the same incident to estimate suppressed sales of Rs. 40,00,000/- and impose additional tax of Rs. 5,40,000/- in the assessment order dated 29.06.2019.

Therefore, the First Appellate Authority was fully justified in modifying the assessment order and granting relief to the dealer.

Mere pendency of a similar issue before the Hon'ble High Court in another matter does not dilute the binding effect of final findings in the present case. The First Appellate Authority has therefore correctly applied the principle that assessment cannot survive when its very basis is extinguished.

The Assessing Authority has not brought any independent material or corroborative evidence on record to justify estimation of suppressed turnover of Rs.40,00,000/-, except relying upon the very incident which already stood neutralized in earlier proceedings.

Once the foundation of tax evasion based on the alleged illegal transportation has been held to be unsustainable, the same set of facts cannot be reused to estimate suppressed turnover under Section 25(7).

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We find no illegality, impropriety, or perversity in the order dated 26.12.2024 passed by the Joint Commissioner (Appeal), State Tax, Haldwani. The appeal has no force and liable to be dismissed.

Order

The second appeal no. 31/2025 filed by the Department is dismissed. The order of the First Appellate Authority dated 26.12.2024 passed in first appeal no. 240/2024 is confirmed. Let the file be consigned.

s/d

(Rakesh Verma)
Member,
Commercial Tax Tribunal,
Uttarakhand

s/d- 24-03-26

(Malik Mazhar Sultan)
President,
Commercial Tax Tribunal,
Uttarakhand

Date: 24-03-2026
Place: Haldwani.

engaged in business of manufacturing and sale of telecom power system and UPS.

On 14.02.2017, a consignment of taxable goods was being transported through vehicle no. UP21AN-3089. Upon inspection by the Mobile Squad, Bajpur, it was found that the goods were being transported without proper and prescribed documents. Consequently, the goods were seized. The value of the goods was assessed at Rs. 2,41,317/- and a security amount of Rs. 1,04,973/- was demanded and deposited for release of goods.

Subsequently, the Assessing Authority passed a penalty order under Section 48(8) of the Act on 26.08.2017, holding that the goods were transported with a clear intention to evade tax. A penalty equivalent to 43.5% of the goods value, amounting to Rs.1,04,973.00 was imposed.

Assessment Proceedings

During assessment proceedings, the dealer was confronted with the above facts. However, the explanation furnished by the dealer was found unsatisfactory and unacceptable.

As a result, the Assessing Authority rejected the books of accounts and determined suppressed sales of Rs.15,00,000/-, and levied tax at 14.5%, amounting to Rs.2,17,500/- vide assessment order dated 28.02.2020.

First Appeal and Prior Litigation History

The dealer filed a first appeal against the assessment order dated 28.02.2020. The First Appellate Authority, vide order dated 26.12.2024, partly allowed the appeal.

It is significant to note that against the penalty order dated 26.08.2017 passed under Section 48(8), the dealer had earlier filed an appeal before the Joint Commissioner (Appeal), who vide order dated 19.03.2020, set aside the penalty order and directed refund of the deposited amount.

The Department challenged this appellate order before the Commercial Tax Tribunal, Uttarakhand, Haldwani in Second Appeal No. 01 of 2020. The Tribunal, vide judgment dated 27.01.2021, dismissed the Department's appeal and affirmed the order dated 19.03.2020.

Thus, it stands conclusively established that the penalty order dated 26.08.2017 under Section 48(8) was not legally sustainable.

Accordingly, the First Appellate Authority modified the assessment order.

Grounds Raised in Second Appeal by the Department

The Department has challenged the order of the First Appellate Authority on the following grounds:

1. The order dated 26.12.2024 passed by the Joint Commissioner (Appeal), State Tax, Haldwani is illegal and improper.
2. The goods were found being transported on 14.02.2017 through vehicle no. UP21AN-3089 without valid documents.
3. The Assessing Authority rightly rejected the books of accounts and determined suppressed sales of Rs.15,00,000/- and imposed tax of Rs. 2,17,500/- at 14.5%, which was legally justified.
4. The First Appellate Authority erred in reducing the additional tax of Rs.2,17,500/- imposed by the Assessing Authority.
5. Under Section 48(2)(c) of the Act, transportation of goods without an online Trip-Sheet creates a statutory presumption of intent to evade tax.

Arguments Heard

On the date fixed for hearing, Mrs. Hemlata Shukla, Deputy Commissioner and State Representative, appeared for the Department and reiterated the grounds of appeal, praying for restoration of the assessment order.

On behalf of the dealer, Shri Ashish Agrawal, Advocate, appeared and supported the order passed by the First Appellate Authority, contending that the earlier penalty proceedings having failed up to the Tribunal level, no addition could legally survive in assessment on the same facts.

Findings and Decision

We have carefully considered the rival submissions, perused the records, and examined the material available on file. It is undisputed that the penalty order dated 26.08.2017 under Section 48(8) was set aside by the First Appellate Authority and that order was affirmed by this Tribunal on 27.01.2021. Thus, the finding that the goods were transported with intent to evade tax no longer survives. It was brought on record that the penalty order dated 26.08.2017 under Section 48(8) had already been set aside by the First Appellate Authority on

19.03.2020, and the deposited amount was ordered to be refunded. The Department's second appeal against that order was also dismissed by the Commercial Tax Tribunal, Uttarakhand, Haldwani on 27.01.2021, thereby affirming that the penalty under Section 48(8) was unsustainable.

Relying on the above findings, the First Appellate Authority held that once the penalty proceedings under Section 48(8) were quashed and attained finality, the same incident could not be made the basis for estimating suppressed turnover.

The Assessing Authority has not brought any independent material or corroborative evidence on record to justify estimation of suppressed turnover of Rs.15,00,000/-, except relying upon the very incident which already stood neutralized in earlier proceedings.

Once the foundation of tax evasion based on the alleged illegal transportation has been held to be unsustainable, the same set of facts cannot be reused to estimate suppressed turnover under Section 25(7).

Once the penalty order itself has been annulled and upheld up to the Tribunal level, the Assessing Authority could not legally rely upon the same incident to estimate suppressed sales of Rs. 15,00,000/- and impose additional tax of Rs. 2,17,500/- in the assessment order dated 28.02.2020.

Therefore, the First Appellate Authority was fully justified in modifying the assessment order and granting relief to the dealer.

Mere pendency of a similar issue before the Hon'ble High Court in another matter does not dilute the binding effect of final findings in the present case. The First Appellate Authority has therefore correctly applied the principle that assessment cannot survive when its very basis is extinguished.

The Assessing Authority has not brought any independent material or corroborative evidence on record to justify estimation of suppressed turnover of Rs.15,00,000/-, except relying upon the very incident which already stood neutralized in earlier proceedings.

Once the foundation of tax evasion based on the alleged illegal transportation has been held to be unsustainable, the same set of facts cannot be reused to estimate suppressed turnover under Section 25(7).

We find no illegality, impropriety, or perversity in the order dated 26.12.2024 passed by the Joint Commissioner (Appeal), State Tax, Haldwani. The appeal has no force and liable to be dismissed.

s/d.

(Rakesh Verma)

s/d-24-03-26

(Malik Mazhar Sultan)

Order

The second appeal no. 32/2025 filed by the Department is dismissed. The order of the First Appellate Authority dated 26.12.2024 passed in first appeal no. 243/2020 is confirmed. Let the file be consigned.

s/d.
(Rakesh Verma)
Member,
Commercial Tax Tribunal,
Uttarakhand

s/d- 24-03-26
(Malik Mazhar Sultan)
President,
Commercial Tax Tribunal,
Uttarakhand

Date: 24-03-2026
Place: Haldwani.