

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

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

Second Appeal No. 26 / 2025 {2015-2016}

Commissioner- Commercial Tax, Uttarakhand.

Appellant.

Versus

M/S. Bhavani Industries, Pantnagar, Rudrapur.

Respondent.

For Appellant: Smt. Hemlata Shukla

State-Representative.

For Respondent: Shri Gurumej singh

Ld.Advocate

Assessment year - 2015-16

First Appeal No- 29/2024

Amount of disputed tax - Rs. 60,966/-

J U D G M E N T

Malik Mazhar SultanPresident,

This appeal is filed against order dated 26.12.24 passed by Ld. Joint Commissioner (Appeal) in first appeal no 29/2024. Setting aside the order passed by Ld. Deputy Commissioner U/S 58 (1) (xi) of the Act Ld. first appellate authority allowed the first appeal filed by the dealer.

2. Facts necessary for the disposal of this appeal are that after examining the record of the dealer/assessee it was found by the assessing authority that the dealer has wrongly claimed an amount of Rs 20,322/- as input tax credit. Holding it as violation of Section 58 (1) (xi) of the Act a penalty of Rs. 60,966/- was imposed upon the dealer/ respondent.

3. This order of the assessing authority was challenged in first appeal. Setting aside the penalty order passed under section 58 (1) (xi) of the Act the first appeal preferred by the dealer was allowed. It was held by the first appellate authority that the dealer has shown the reversal of I.T.C in his annual return. The dealer has reversed the I.T.C on his own, in proportion of the stock transfer, which is in accordance with the provisions of the Act.

4. Aggrieved by the impugned order dated 26.12.2024 passed in first appeal this second appeal is filed by the department on the ground that the order passed by Ld. Joint Commissioner is against Law. The dealer has wrongly claimed I.T.C hence liable to pay the penalty as imposed upon him by assessing authority.

5. Heard the Ld. State Representative and Ld. Counsel for the respondent and perused the record-

Challenging the impugned order dated 26.12.2024 Ld. State Representative reiterated the above mentioned grounds interoperated in the memo of appeal. It is vehemently argued by Ld. State Representative that in monthly as well as yearly return filed by the dealer I.T.C is not shown to have been reversed by dealer.

6. On the other hand Ld. Counsel for the respondent argued that the respondent/dealer has sou moto reversed the I.T.C before assessment and the same is also shown in the returns filed by the respondent. It is further argued by the Ld. Counsel for the respondent that there is no violation of any provision of the Act, the I.T.C was reversed in accordance with Law. Ld. Counsel for the respondent supported the impugned order passed by first appellate authority.

7. In view of the rival contention of the parties the only question involved in this appeal is that whether the respondent dealer has violated the provision of Section 58 (1) (xi) of the Act by claiming I.T.C wrongly.

8. Ld. assessing authority mentioned in his order dated 18.12.2022 passed under section 58 (1) (xi) that it is found after examining the record that in the

relevant year the dealer has reversed the I.T.C. It is thus clear that I.T.C had been reversed by dealer before assessment. In this respect the relevant portion of the Judgement of first appellate authority is as fallows-

“इस सम्बन्ध में मेरे द्वारा भी अपीलार्थी व्यापारी द्वारा दाखिल वार्षिक विवरणी का अवलोकन किया गया जिसमें इस तथ्य को सही पाया गया कि अपीलकर्ता व्यापारी द्वारा वार्षिक विवरणी के कॉलम संख्या-33 ITC claimed के कॉलम में} में “Reverse Other reason Tax Credit due to “ के रूप में रू0 20322.00 की आई०टी०सी० स्वयं रिवर्स किया जाना प्रकाश में आता है, जिसे वार्षिक विवरणी में प्रदर्शित किया गया है।

इस प्रकार स्पष्ट है कि अपीलकर्ता व्यापारी द्वारा स्वयं अपनी वार्षिक विवरणी में किये गये स्टॉक ट्रान्सफर के अनुपात में आलोच्य वित्तीय वर्ष में रू0 20322.00 की आई०टी०सी० रिवर्स की गयी है एवं कर निर्धारण अधिकारी द्वारा भी मूल कर निर्धारण आदेश दिनांक 28.06.2019 के पृष्ठ संख्या-2 के पैरा संख्या-1 में रू0 20322.00 की आई०टी०सी० स्टॉक ट्रान्सफर के अनुपात में अस्वीकार/रिवर्स की गयी है। अतः स्पष्ट है कि अपीलकर्ता व्यापारी द्वारा मूल्यवर्धित कर अधिनियम में दिये गये विधिक प्राविधानों का अनुपालन करते हुए स्टॉक ट्रान्सफर के अनुपात में स्वयं से रू0 20322.00 की आई०टी०सी० रिवर्स की गयी है, जो अपीलकर्ता व्यापारी की बोना फाइडी को दर्शाता है।

उल्लेखनीय है कि अपीलार्थी द्वारा त्रैमासिक विवरणी में, किये गये स्टॉक ट्रान्सफर के अनुपात में, स्वयं से रू0 20322.00 की आई०टी०सी० रिवर्स की गयी है, जबकि मूल कर निर्धारण आदेश दिनांक 28.06.2019 में कर निर्धारण अधिकारी द्वारा रू0 20322.00 की आई०टी०सी०, स्टॉक ट्रान्सफर अनुपात में, रिवर्स की गयी है। इस प्रकार स्पष्ट है कि अपीलार्थी व्यापारी द्वारा स्वयं से रिवर्स की गयी आई०टी०सी० (रू0 20322.00), कर निर्धारण अधिकारी द्वारा मूल कर निर्धारण आदेश में रिवर्स की गयी आई०टी०सी० (रू0 20322.00) की तुलना में, बराबर ही है”

9. It is thus clear that the I.T.C was reversed by the dealer sou moto and the same was shown in the return filed by him.

10. Rule 16(6) of U.K. VAT Rules permit the dealer to reverse the excess I.T.C if the same has been claimed by him on the basis of intended use of goods for different purpose. Rule 16 (6) reads as under-

“16. Determination of Input Tax Credit-

(6) *The Input Tax Credit may be claimed by the dealer in the return for the relevant tax period on the basis of intended use of goods for different purposes:*

Provided *that the dealer shall, after the end of the financial year, prepare a statement of the revised calculation of claim of Input Tax Credit in respect of the entire goods used during the financial year on the basis of actual use of goods for different purposes, and shall file the same with the return for the tax period ending on 31st March each year, within the time and in the manner prescribed for the purpose of filing the return under Rule 11, and if any amount of Input Tax Credit*

claimed on the basis of intended use of goods in the returns for the tax periods is in excess of the amount admitted to be due as per revised calculation on the basis of actual use of goods, the same shall be deposited with the return for the tax period ending 31st March, and if the amount has been paid in excess, the same shall be carried forward to the next financial year.”

11. On basis of above discussion I am of the considered view that there is no violation of section 58 (1) (xi) of the Act. In the facts and circumstances of the matter respondent is not liable to any penalty. Ld. first appellate authority has rightly set aside the penalty order. This appeal has no force hence liable to be dismissed.

Order

The instant appeal no 26/2025 is hereby dismissed and the impugned order dated 26.12.24 passed in first appeal No. 29/2024 is hereby confirmed.

Let the file be consigned.

S/d-02.01.2026
(Malik Mazhar Sultan)
President,
Commercial Tax tribunal,
Uttarakhand, Dehradun

Dated : 2 January, 2026.



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