

**IN THE COMMERCIAL TAX TRIBUNAL, UTTARAKHAND,  
HALDWANI, (SINGLE MEMBER BENCH)**

**Present:** Shri Rakesh Verma, Member

Appeal No. 57 of 2025 (A.Y. 2011-12)

**(Under Section 43(5) of the Uttarakhand Value Added Tax Act, 2005)**

COMMISSIONER, COMMERCIAL TAX, UTTARAKHAND

...APPELLANT

VERSUS

M/S ULTRA-TECH SUSPENSION PVT. LTD., PANTNAGAR, RUDRAPUR

...RESPONDENT

- **For the Appellant (Department):** Smt. Hemlata Shukla, Deputy Commissioner (Commercial Tax) & State Representative
- **For the Respondent (Dealer):** Shri Akshay Agrawal, Advocate

**JUDGMENT**

**Introduction**

This second appeal has been filed by the Commercial Tax Department under Section 53 of the Uttarakhand Value Added Tax Act, 2005. The Department challenges Order No. 26 dated 04.02.2025, passed by the Joint Commissioner (Appeals), Commercial Tax, Haldwani.

By that order, the Joint Commissioner (Appeals) allowed the dealer's first appeal and set aside the penalty imposed under Section 43(5) of the Act.

Earlier, the Assessing Authority had passed a penalty order on 19.02.2013, imposing a penalty of Rs. 67,080/-, which was 40% of the estimated value of the goods.

The main dispute in this appeal is whether the penalty imposed for alleged wilful omission of goods from accounts during transportation was legal and justified.

### **Facts of the Case**

M/s Ultra-Tech Suspension Pvt. Ltd., Pantnagar, Rudrapur (hereafter called “the dealer”) is a registered dealer under the VAT Act.

On 20.08.2011, an Assistant Commissioner, Commercial Tax (Check-post), Rudrapur intercepted a vehicle bearing number MP-07G-0584. On checking, it was found that turning scrap and used empty drums were being transported without valid tax invoices, bilty, or other required documents.

Because of the absence of documents, a show-cause notice dated 20.08.2011 was issued to the dealer. As the explanation given was not found satisfactory, a seizure order was passed on the same day.

The goods were provisionally valued at Rs.1,67,700/-, and the dealer was directed to deposit a security amount of Rs.67,080/- (40%). The dealer deposited this amount on 23.08.2011, after which the goods were released.

Later, based on information received from the Joint Commissioner (Executive), Commercial Tax, Kashipur Division, a penalty notice dated 11.02.2013 was issued. This resulted in a penalty order dated 19.02.2013, imposing a penalty of Rs.67,080/- under Section 43(5), by adjusting the security amount already deposited.

The Assessing Authority observed that the goods were transported without statutory documents. The accounting entry regarding transportation was made after interception. Despite opportunity, the dealer failed to produce books of accounts and supporting records.

Holding that the goods were wilfully omitted from accounts at the time of transportation, the Assessing Authority imposed a penalty of Rs. 67,080/- under Section 43(5) by order dated 19.02.2013, adjusting the security amount already deposited towards the penalty.

Aggrieved by the order of the Assessing Authority, the dealer filed a first appeal, which was allowed by the Joint Commissioner (Appeals) on 04.02.2025.

The Appellate Authority held that the goods were covered by Invoice No. U-918 dated 20.08.2011. The dealer explained that the vehicle was proceeding to Rudrapur weighbridge as weighing facilities were not available at the factory. The transaction was duly recorded in the regular books of accounts. Mere absence of documents during transit does not automatically prove an intention to evade tax.

Reliance was placed on the judgment of the Hon'ble Supreme Court in *Hindustan Steel Ltd. v. State of Orissa* [1970 (25) STC 211 (SC)], which lays down that penalty proceedings are quasi-criminal and penalty should not be imposed unless deliberate defiance of law or dishonest conduct is proved.

Accordingly, the penalty order dated 19.02.2013 was set aside and refund of the deposited amount was directed.

#### **Submission of the Appellant (Department)**

The Department has filed this second appeal against Order No. 26 dated 04.02.2025 passed by the Joint Commissioner (Appeals), Commercial Tax, Haldwani, which set aside the penalty under Section 43(5) of the Uttarakhand

Value Added Tax Act, 2005 ("the Act"). The Department requests that the appellate order be set aside and the penalty order be restored.

As recorded above, on 20.08.2011 the Assistant Commissioner, Commercial Tax (Check-post), Rudrapur intercepted vehicle no. MP-07G-0584 and found that turning scrap and used empty drums were being transported without valid tax invoices, bilty, or other required documents. A show-cause notice dated 20.08.2011 was issued and, the explanation having been found unsatisfactory, a seizure order was passed the same day. The goods were provisionally valued at Rs.1,67,700/-, and security of Rs.67,080/- (40%) was deposited on 23.08.2011, after which the goods were released.

Later, based on information received from the Joint Commissioner (Executive), Commercial Tax, Kashipur Division, a penalty notice dated 11.02.2013 was issued and a penalty order dated 19.02.2013 was passed under Section 43(5), imposing penalty of Rs.67,080/- by adjusting the security amount already deposited. The Department says the Assessing Authority also recorded that the accounting entry relating to transportation was made after interception and that the dealer did not produce books of accounts and supporting records despite opportunity. According to the Department, producing documents later cannot correct the default at the time of transport, otherwise check-post checks will become meaningless. The Department further says the first appellate order did not properly deal with these findings and wrongly treated the matter as only a technical lapse. Therefore, the Department asks that this second appeal be allowed, Order No. 26 dated 04.02.2025 be set aside, and the penalty order dated 19.02.2013 be restored.

**Submission of the Respondent (Dealer)**

The Respondent/Dealer opposes the Department's second appeal and says the Joint Commissioner (Appeals) was right to cancel the penalty because the

Department did not prove the key requirement of Section 43(5): that the goods were wilfully (deliberately) omitted from the accounts to evade tax.

The dealer relies on the facts recorded in the case that on 20.08.2011 the Assistant Commissioner, Commercial Tax (Check-post), Rudrapur intercepted vehicle no. MP-07G-0584 carrying turning scrap and used empty drums and found that documents were not available with the vehicle; a show-cause notice dated 20.08.2011 was issued and a seizure order was passed the same day. The goods were released after the security amount of Rs.67,080/- was deposited on 23.08.2011, and later a penalty notice dated 11.02.2013 led to the penalty order dated 19.02.2013 under Section 43(5) by adjusting the security amount. In first appeal, it was accepted that the goods were covered by Invoice No. U-918 dated 20.08.2011 and the vehicle was proceeding to the Rudrapur weighbridge because weighing facilities were not available at the factory; the transaction was recorded in the regular books of account.

The dealer further says no discrepancy was found in the nature or quantity of goods, both consignor and consignee are registered dealers, and the Department has not shown any hidden sale or actual loss of revenue. According to the dealer, missing documents during transit, or making an entry after interception, may raise doubt but is not enough to prove a wilful omission under Section 43(5) without other strong evidence. The dealer relies on *Hindustan Steel Ltd. v. State of Orissa* [1970 (25) STC 211 (SC)], where the Supreme Court said penalty should not normally be imposed unless there is a deliberate breach of law or dishonest conduct. Therefore, the dealer asks that the Department's second appeal be dismissed, the order dated 04.02.2025 be upheld, the penalty order dated 19.02.2013 remain set aside, and any amount deposited/adjusted towards penalty be refunded as per law.

s/d  
(Rakesh Verma)

### **Points for Determination**

The principal issue that arises for consideration is:

**Whether, in the facts and circumstances of the case, the essential requirement of “wilful omission” under Section 43(5) of the Uttarakhand VAT Act stands established so as to justify imposition of penalty.**

### **Discussion and findings**

In this second appeal, the question is whether the facts established on record satisfy the statutory threshold of “wilful omission” under Section 43(5) so as to warrant penalty. Accordingly, the submissions of the parties, the contemporaneous interception/seizure material, and the subsequent documents relied upon by the dealer are examined to ascertain whether there was a deliberate omission indicative of an intention to evade tax, or only a procedural lapse.

Both sides were heard in detail. The records, written submissions, and relevant legal provisions were carefully examined.

It is undisputed that the goods were intercepted without documents. The dealer later produced invoice and accounting records. The goods were released on deposit of security. No discrepancy was found in the nature or quantity of goods. Both consignor and consignee were registered dealers.

The Department mainly argues that (1) the documents were not available when the vehicle was stopped and (2) the accounting entry was made after interception. The Department says these facts are enough to prove “wilful omission” under Section 43(5).

This Tribunal has considered both sides’ arguments and reviewed the record. For reference, the relevant part of Section 43(5) is reproduced below:

The Uttarakhand Value Added Tax Act, 2005, Section 43(5):  
Power to Seize Goods: *“If such officer, after taking into consideration the explanation, if any, of the dealer, or as the case may be, the person in-charge and giving him an opportunity of being heard, is satisfied that the said goods were wilfully omitted from being shown in the accounts, registers and other documents referred to in sub-section (1), it shall pass an order imposing a penalty not exceeding forty percent of the value of such goods as he deems fit.”*

Section 43(5) requires the authority to be satisfied that the goods were *wilfully omitted* from the accounts. This means there must be a conscious and deliberate act—an intention to evade tax—not merely a procedural lapse.

In this case, the Department has not produced any strong evidence to show that the dealer deliberately suppressed the transaction or intended to evade tax. Mere absence of documents during transit is not enough.

There is no evidence of tax evasion. At most, the lapse is technical. The transaction was recorded in the regular books. The Department did not prove deliberate suppression. Hence, the essential condition for invoking Section 43(5) is not satisfied.

There was no discrepancy in the goods. Both parties were registered dealers. There is no evidence of illegal or secret movement of goods. The Department has not shown any actual loss of revenue.

The fact that the accounting entry was made after interception, by itself, does not prove intentional concealment unless there is other supporting evidence. The dealer’s explanation that the vehicle was going to a weighbridge because

weighing facilities were not available at the factory has not been shown to be false, and the Department has not placed material on record to rebut it.

*Hindustan Steel Ltd. v. State of Orissa* [1970 (25) STC 211 (SC)] reiterates that imposition of penalty is discretionary and ordinarily not warranted for a mere technical or venial breach; it is justified where the conduct reflects deliberate defiance of law, contumacious conduct, or a dishonest intention. This principle supports a strict reading of “wilfully omitted” in Section 43(5).

In the context of the Uttarakhand Value Added Tax Act, 2005, the Hon’ble Uttarakhand High Court has, in Commercial Tax Revision jurisdiction, reiterated that penalty for movement-related defaults is not automatic and the surrounding circumstances must indicate evasion or a deliberate infraction. Reference may be made to *M/s Brij Lal and Sons v. Commissioner, Commercial Tax, Uttarakhand* [Commercial Tax Revision No. 26 of 2013, decided on 01.07.2022] (*intent/evasion required*), *M/s Birla Tires v. Commissioner, Commercial Tax, Uttarakhand* [Commercial Tax Revision Nos. 13 & 14 of 2015, decided on 07.08.2024] (*intent/evasion required*) and *M/s Satyahari Rice Industries v. Commissioner, Commercial Tax, Uttarakhand* [Commercial Tax Revision No. 04 of 2016; 2024:UHC:6081-DB, decided on 27.08.2024] (*intent/evasion required*). These decisions examine penalties imposed in check-post/mobile-squad matters by testing them against the presence (or absence) of material indicating tax evasion. The same standard necessarily informs the meaning of “wilfully omitted” in Section 43(5).

This principle—that penalty is not to be levied for a mere technical or venial breach and ordinarily requires contumacious or dishonest conduct—has been consistently applied while examining statutory penalty provisions. The language of Section 43(5) itself reinforces this requirement by making the officer’s satisfaction contingent on a finding that the goods were “wilfully omitted” from the prescribed accounts/documents.

The Joint Commissioner (Appeals) considered the dealer's explanation, the documents produced, and the legal principles governing penalties before setting aside the penalty. These findings are supported by the record. The Department has not shown any clear legal mistake or serious factual error requiring interference in second appeal.

Overall, the Department has not produced clear material to prove deliberate suppression or an intention to evade tax. If there was any lapse, it appears to be technical or procedural due to missing documents during transit. Without proof of intention, the main requirement of Section 43(5) is not satisfied.

**Answer to the main question:** On the facts proved, the Department has failed to establish that the dealer wilfully omitted the goods from its accounts with an intention to evade tax. Though the goods were found without documents at interception, the dealer subsequently produced the invoice and records; there was no discrepancy in the goods, both consignor and consignee are registered dealers, and no hidden sale or actual loss of revenue has been shown. Consequently, the requirement of "wilful omission" under Section 43(5) is not satisfied and the penalty is unsustainable.

### **Conclusion**

In view of the foregoing discussion, the Department has failed to establish the essential ingredient of "wilful omission" as contemplated under Section 43(5) of the Uttarakhand Value Added Tax Act, 2005. The mere absence of documents at the time of interception, in the absence of any cogent material indicating a deliberate intention to evade tax, is insufficient to sustain the penalty.

Accordingly, the Department's second appeal is dismissed. Order No. 26 dated 04.02.2025 passed by the Joint Commissioner (Appeals), Commercial Tax, Haldwani is upheld, and the penalty order dated 19.02.2013 passed by the Assessing Authority remains set aside

**ORDER**

The second appeal filed by the Department is dismissed. Order No. 26 dated 04.02.2025 passed by the Joint Commissioner (Appeals), Commercial Tax, Haldwani is affirmed, and the penalty order dated 19.02.2013 passed by the Assessing Authority is set aside. If any amount stands deposited/adjusted by the dealer towards the said penalty, the same shall be refunded in accordance with law.

s/d

**(Rakesh Verma)**

**Member**

**Commercial Tax Tribunal,**

**Uttarakhand**

**Date:**24-04-2026

**Place:** Haldwani.