

THE COMMERCIAL TAX TRIBUNAL, UTTARAKHAND

Single Member Bench, Haldwani

Present: Shri Rakesh Verma, Member

Second Appeal No. 27/2026 (Year 2013-14)

(Under Section 25(7) of the U.K. VAT Act, 2005)

Commissioner, State Tax, Uttarakhand

...Appellant

Versus

M/s Delicious Cafe and Fast Food, Kalyani View, Rudrapur

...Respondent

For the Department (Appellant): Smt. Shailja Pathak, Deputy Commissioner and State Representative,
Commercial Tax, Uttarakhand.

For the Respondent: Shri Harish Chandra Sharma, Ld. Advocate.

J U D G M E N T

INTRODUCTION

1. This second appeal has been filed by the Commissioner, State Tax, Uttarakhand (the Department/Appellant) under Section 53 of the Uttarakhand Value Added Tax Act, 2005 (the Act), against the order dated 26-07-2025 passed by the Joint Commissioner (Appeal), State Tax, Dehradun in First Appeal No. 284/2018 relating to Assessment Year 2013-14.

2. By the impugned order, the First Appellate Authority allowed the appeal of M/s Delicious Cafe and Fast Food, Kalyani View, Rudrapur (the Respondent/Trader), set aside the assessment order dated 28-03-2017 passed under Section 25(7) of the Act, deleted the demand of Rs. 1,62,332/-, and treated the assessment year as tax-free.

3. The Department, being aggrieved, seeks restoration of the assessment order. Notices were issued to the Respondent, who entered appearance, and with the consent of the learned representatives for both sides, the appeal was heard finally on the basis of the material available on record.

FACTS OF THE CASE

4. The Respondent-Trader is a registered proprietary concern carrying on business at Kalyani View, Rudrapur, in the preparation and sale of cooked food, confectionery, cold drinks, and allied grocery items. For Assessment Year 2013-14, the assessing authority, by order dated 28-03-2017, framed a best-judgment assessment under Section 25(7) of the Act after rejecting the Trader's return on the ground that no manufacturing or stock register had been produced despite opportunity.

5. The dispute centres on opening stock valued at Rs. 6,48,938/-. The Trader claimed that the said stock had deteriorated and was destroyed because the business premises remained closed for a prolonged period owing to the serious illness of the proprietor's father. The assessing authority rejected this explanation, treated the opening stock as having been used in business, estimated taxable turnover, and raised an aggregate demand of Rs. 1,62,332/-.

6. In first appeal, the Trader supported the explanation of closure and destruction of stock by producing medical documents and an affidavit. The First

Appellate Authority accepted the explanation, observing that the Department had not produced any adverse material, survey report, inspection note, or independent verification to show that the opening stock had actually been sold as suppressed turnover.

7. Consequently, by order dated 26-07-2025, the First Appellate Authority set aside the assessment order dated 28-03-2017, deleted the demand of Rs. 1,62,332/-, and treated Assessment Year 2013-14 as tax-free. The Department, being aggrieved by the said order, has preferred the present second appeal under Section 53 of the Act.

SUBMISSIONS ON BEHALF OF THE APPELLANT (DEPARTMENT)

9. Smt. Shailja Pathak, learned Deputy Commissioner and State Representative for the Department, assailed the order of the First Appellate Authority and submitted that the relief granted to the Trader is contrary to the statutory scheme of the Act.

10. It was contended that the Respondent, being engaged in preparation and sale of cooked food, was a manufacturing trader and was required under Sections 59(1), 59(2), and 59(9) of the Act to maintain true accounts and proper stock records of raw material, finished goods, opening stock, closing stock, and stock at closure of business.

11. According to the Department, no manufacturing or stock register was produced despite opportunity. In the absence of such contemporaneous records, the Trader's plea that opening stock had deteriorated or been destroyed could not be verified as to quantity, nature, value, or actual destruction.
12. Reliance was also placed on Section 6(8) of the Act. It was submitted that, if input tax credit had been availed on the goods forming part of the opening stock, any claim that such goods were lost or destroyed would attract reversal of such credit, and such plea could not be accepted without strict proof.
13. It was further argued that the First Appellate Authority erred in accepting an affidavit and medical papers relating to illness in the family without any contemporaneous physical verification, survey, or reliable material proving prolonged closure and destruction of stock of the value claimed.
14. The Department submitted that considerations of hardship or sympathy could not override the express statutory requirement of maintaining prescribed records, nor justify acceptance of an unverifiable claim of destruction of stock.
15. On these grounds, it was urged that the order dated 26-07-2025 passed by the First Appellate Authority be set aside and the assessment order dated 28-03-2017 creating demand of Rs. 1,62,332/- be restored.

SUBMISSIONS ON BEHALF OF THE RESPONDENT (TRADER)

16. Shri Harish Chandra Sharma, learned counsel for the Respondent-Trader, opposed the appeal and supported the order of the First Appellate Authority.

17. It was submitted that best-judgment assessment under Section 25(7), though permissible where accounts are rejected, must be based on relevant material and reasonable inference, not on conjecture or mere disbelief of the Trader's explanation.

18. Learned counsel submitted that no local or inter-State purchases or fresh manufacturing activity were found during the year. The only stock was the opening stock, which, according to the Trader, perished during prolonged closure of business caused by the illness of the proprietor's father, and this explanation was supported by medical papers and an affidavit.

19. It was urged that the Department neither conducted any survey or inspection nor brought any independent material to prove that the opening stock was sold as suppressed turnover; therefore, the explanation could not be rejected solely for want of a separate stock register.

20. It was further submitted that no adverse material was disclosed to the Trader because no such material was gathered, and the assessment was therefore based on surmise rather than a fair material-based process.

21. As to Section 6(8), learned counsel submitted that it deals only with reversal of input tax credit on goods lost, destroyed, or otherwise disposed of, and cannot be used as proof of sale or suppression of turnover.

22. It was argued that the First Appellate Authority examined the record, accepted the Trader's explanation in the absence of contrary evidence, and recorded a finding of fact which has not been shown to be perverse or contrary to the record.

23. On these submissions, it was prayed that the Department's second appeal be dismissed and the order dated 26-07-2025 passed by the First Appellate Authority be upheld.

STATUTORY PROVISIONS

24. The following provisions of the Act are relevant for adjudicating the controversy involved in the present second appeal and may be noticed at the outset:

(i) Section 59(1) requires every dealer liable to pay tax under the Act to maintain true and complete accounts in respect of his business. Section 59(2) additionally requires a manufacturer liable to pay tax to maintain stock books in respect of raw material and finished products.

(ii) Section 59(9) requires every dealer liable to tax to prepare and maintain a list, with purchase price, of goods held in opening stock on the date of

becoming liable to tax, goods held in closing stock at the end of each financial year, goods held in opening stock in the year of cancellation of registration, and goods held in stock at the time of closure of business; the proviso extends this requirement to manufactured and semi-manufactured goods and to inputs, fuel, consumables, lubricants and packing material used in manufacture.

(iii) Section 6(8) provides that where goods on which input tax credit has been availed are subsequently stolen, lost, destroyed, or disposed of otherwise than by way of sale in the ordinary course of business, or distributed as free samples or gifts, the input tax credit attributable to such goods is liable to be reversed in the manner prescribed.

(iv) The Act also confers on the assessing and other authorities power to survey and inspect places of business, to call for and examine accounts and stock, and to record statements, so as to verify the correctness of the returns and explanations furnished by a dealer. It is the availability and non-exercise of this very power in the facts of the present case that assumes significance in the discussion that follows.

POINTS FOR DETERMINATION

25. In the light of the pleadings, the impugned order, and the rival submissions advanced by the learned representatives of the parties, the following points arise for determination in this second appeal:

- (i) Whether the assessment order dated 28-03-2017, rejecting the Trader's explanation regarding destruction of opening stock and treating the value thereof as suppressed turnover, was passed in due and substantial compliance with the statutory scheme of best-judgment assessment under Section 25(7) of the Act, and with the requirements of Sections 59(2) and 59(9) thereof.
- (ii) Whether, in the facts and circumstances found by the First Appellate Authority, the Trader was liable to reversal of input tax credit under Section 6(8) of the Act on the opening stock claimed to have been destroyed.
- (iii) Whether the First Appellate Authority was justified in setting aside the assessment order and declaring the assessment year 2013-14 to be tax-free.
- (iv) Whether the second appeal filed by the Department deserves to be allowed or is liable to be dismissed.

DISCUSSION AND FINDINGS

26. The principles governing best-judgment assessment are well settled. Although the assessing authority is vested with wide discretion where the return filed by a dealer is found to be incorrect, incomplete, or otherwise unacceptable, such discretion is not arbitrary. The estimate must be founded on some material available on record and must bear a reasonable nexus to the facts and circumstances of the case. In *State of Kerala v. C. Velukutty*, AIR 1966 SC 1614 : (1966) 17 STC 465 (SC), the Hon'ble Supreme Court held that, while an

element of estimation is inherent in a best-judgment assessment, **the estimate must be an honest and rational estimate and not a wild or capricious guess.**

The same principle was reiterated in *Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali*, (1973) 2 SCC 137 :AIR 1973 SC 2266 : (1973) 32 STC 77 (SC), wherein the Hon'ble Supreme Court held that mathematical precision is not required in a best-judgment assessment, but the estimate must nevertheless rest upon relevant material and reasonable inference.

27. It is equally well settled that material collected or relied upon by the assessing authority must be disclosed to the dealer if such material is proposed to be used against him. In *Raghubar Mandal Harihar Mandal v. State of Bihar*, AIR 1957 SC 810 : (1957) 8 STC 770 (SC), the Hon'ble Supreme Court held that where an assessing authority proposes to disregard the evidence produced by the assessee and make an estimate on other material, fairness requires that **such material be disclosed and an opportunity be afforded to meet it.** The same principle was reiterated in *KishinchandChellaram v. Commissioner of Income Tax, Bombay City II*, (1980) 4 SCC 660 : AIR 1980 SC 2117 : (1980) 125 ITR 713 (SC). In *State of Kerala v. K.T. Shaduli Yusuff*, (1977) 2 SCC 777 : AIR 1977 SC 1627 : (1977) 39 STC 478 (SC), the Hon'ble Supreme Court further emphasised that a dealer must be given a reasonable and effective opportunity to establish the correctness of his return and **to rebut the material proposed to be relied upon by the assessing authority.**

28. Examined in the light of the above principles, the assessment order dated 28-03-2017 lacks the necessary evidentiary foundation. The First Appellate Authority found that no local or inter-State purchases and no fresh manufacturing activity were detected during the year. The addition was based mainly on rejection of the Trader's explanation that the opening stock had perished due to prolonged closure caused by the illness of the proprietor's father, though such explanation was supported by medical papers and an affidavit. No survey, spot inspection, third-party verification, or other positive material was brought on record to show that the opening stock was actually sold as suppressed turnover. Mere non-production of a separate stock register, though relevant, could not by itself justify treating the entire opening stock as clandestinely sold.

29. This Tribunal accepts the Department's submission to the limited extent that Sections 59(2) and 59(9) of the Act impose statutory obligations upon a manufacturing trader to maintain proper stock records, and failure to maintain such records may justify rejection of the book results or drawing of an adverse inference. However, such default does not relieve the assessing authority of its obligation to make a fair and reasoned best-judgment assessment based on some material having a nexus with the estimated turnover. Absence of a prescribed stock register may create doubt regarding the Trader's explanation, but it cannot, without corroborative material, be converted into conclusive proof that opening

stock valued at Rs. 6,48,938/- was sold during the year. To hold otherwise would amount to converting a record-keeping lapse into an irrebuttable presumption of tax evasion, which is not contemplated by Section 25(7) of the Act.

30. The Department's reliance on Section 6(8) of the Act is also misconceived. The assessment order proceeds on the premise that the opening stock valued at Rs. 6,48,938/- was sold and, therefore, formed suppressed turnover. Section 6(8), however, applies on a different footing, namely where goods on which input tax credit has been availed are stolen, lost, destroyed, or otherwise disposed of, resulting in reversal of such credit. The Department cannot sustain the same addition by taking these contrary stands in respect of the same stock. If the stock was treated as sold, there had to be material showing sale or suppression; if it was treated as destroyed or lost, the matter had to be examined under Section 6(8) after recording the required foundational findings. No finding has been recorded that input tax credit was actually availed on the stock, nor was any inquiry made to establish the circumstances contemplated by Section 6(8). Thus, the said provision cannot be used either to presume a taxable sale or to cure the defect in the assessment order.

31. The Department's contention that the First Appellate Authority was influenced by hardship or sympathy is without merit. The illness of the proprietor's father and the consequent closure of business were considered only

as part of the Trader's explanation for destruction of stock. The relief was granted not on sympathy, but because the Department failed to produce any survey report, inspection note, third-party information, or other positive material showing that the opening stock had actually been sold as suppressed turnover. Mere disbelief of the Trader's explanation, in the absence of such material, could not justify the addition. The finding recorded by the First Appellate Authority is based on appreciation of evidence and has not been shown to be perverse or contrary to the record; hence, it calls for no interference in second appeal.

32. On the material available, the assessment order dated 28-03-2017 cannot be sustained. The addition rests on rejection of the Trader's explanation, without any positive evidence of sale, suppression of turnover, or verification of the stock position. The Department also failed to establish the foundational facts required for invoking Section 6(8). A best-judgment assessment may involve estimation, but it cannot be based on conjecture or inconsistent assumptions. The First Appellate Authority, therefore, committed no legal error in granting relief to the Trader.

33. Accordingly, points for determination (i), (ii), and (iii) are answered against the Department and in favour of the Trader. Point for determination (iv) is answered by holding that the present second appeal is devoid of merit and is liable to be dismissed.

ORDER

34. In view of the discussion and findings recorded hereinabove, the second appeal filed by the Commissioner, State Tax, Uttarakhand, is dismissed. The judgment and order dated 26-07-2025 passed by the Joint Commissioner (Appeal), State Tax, Dehradun, Uttarakhand, in First Appeal No. 284/2018 relating to Assessment Year 2013-14, is upheld and confirmed.

S/D
(**Rakesh Verma**)
Member
Commercial Tax Tribunal,
Uttarakhand

Place: Haldwani
Dated :09-09-2026