

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

**Present:**

Hon'ble Sri Rakesh Verma, Member

**SECOND APPEAL NO. 62 OF 2025**

**(Assessment Year 2014-15)**

(Arising under Section 53 of the Uttarakhand Value Added Tax Act, 2005,  
against reassessment made under Section 29(1) of the said Act)

**M/S K.S. Kapoor, Near Raghunath Mandir, Almora**

... Appellant (Dealer)

**Versus**

**Commissioner, State Tax, Uttarakhand**

... Respondent (Department)



**For the Appellant:** Sri Azhar Ali, Advocate

**For the Respondent:** Smt. Hemlata Shukla, Deputy Commissioner & State Representative

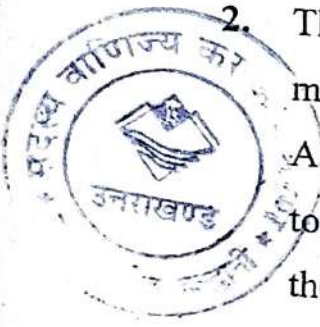
(Per: Sri Rakesh Verma, Member)

**I. INTRODUCTION**

1. This second appeal has been filed by M/S K.S. Kapoor, near Raghunath Mandir, Almora ("the appellant"), under Section 53 of the Uttarakhand Value Added Tax Act, 2005 ("the Act"). The appeal challenges the order dated 03.06.2025 passed by the Joint Commissioner (Appeal), State Tax, Haldwani, in First Appeal No. 35/2022 for Assessment Year 2014-15. By that order, the first appellate authority dismissed the appellant's appeal and upheld the reassessment order dated 26.07.2018 passed under Section 29(1) of the Act. The matter had earlier been remanded once. In the

reassessment order, the Assessing Authority added Rs. 13,62,158/- to the turnover declared by the appellant and determined tax of Rs. 20,25,338/- on total taxable turnover of Rs. 1,50,21,455/-, as against the declared turnover of Rs. 1,35,59,297/-.

## II. FACTS OF THE CASE

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2. The appellant is engaged in the business of purchase and sale of pan masala, tulsi, mouth freshener, jal jeera and similar goods. For Assessment Year 2014-15, the appellant filed his annual return declaring total sales of Rs. 1,35,59,297/-. In the same return, the appellant declared the closing stock at the end of the year as Nil.
  3. For Assessment Year 2014-15, the original assessment was made under Section 25(7) of the Act by order dated 22.07.2016. During those assessment proceedings, the appellant produced purchase bills, sale bills, the audit report and the trading account before the Assessing Authority.
  4. In the assessment for the previous year, namely Assessment Year 2013-14, the appellant's closing stock was determined at Rs. 13,62,158/-. On later examination of the record, the Assessing Authority found that this amount should have appeared as opening stock for Assessment Year 2014-15 and should have been reflected in the appellant's sales or turnover for that year. However, the appellant had declared turnover of Rs. 1,35,59,297/- for Assessment Year 2014-15 and had also shown the closing stock for that year as Nil. The Assessing Authority therefore found that the amount of Rs. 13,62,158/- had not been included in the declared turnover for Assessment Year 2014-15.
  5. The Assessing Authority treated the amount of Rs. 13,62,158/- as turnover which had escaped assessment. Proceedings were therefore

started under Section 29(1) of the Act. After giving the appellant an opportunity of hearing, the Assessing Authority passed a reassessment order on 26.07.2018 and added Rs. 13,62,158/- to the declared turnover. The taxable turnover was then re-determined at Rs. 1,50,21,455/-. This included sales of pan masala and allied goods of Rs. 1,49,91,355/-, taxable at 13.5%, with tax of Rs. 20,23,833/-, and sales of elaichi and allied goods of Rs. 30,100/-, taxable at 5%, with tax of Rs. 1,505/-. The total tax liability was accordingly determined at Rs. 20,25,338/-.

6. The appellant challenged the reassessment order dated 26.07.2018 by filing First Appeal No. 35/2022 before the Joint Commissioner (Appeal), State Tax, Haldwani. The case had already been remanded once earlier by the first appellate authority. The first appellate authority then considered the proviso inserted in Section 51(8) of the Act by Gazette Notification No. 103/XXXVI(3)/2016/15(1)/2016 dated 31.03.2016. This proviso states that, where an appeal is filed against a fresh order passed after an earlier remand, the matter should not be remanded again. For this reason, the first appellate authority did not remand the case a second time and decided the appeal on merits.

7. By order dated 03.06.2025, the first appellate authority dismissed the appellant's appeal. It noted that, in the reassessment order, the Assessing Authority had recorded that the appellant declared sales of Rs. 1,35,59,297/- and Nil closing stock for Assessment Year 2014-15 but did not include the closing stock of Rs. 13,62,158/- determined for Assessment Year 2013-14. For this reason, that amount was added to the turnover of Assessment Year 2014-15. The first appellate authority also found that the appellant had not produced any evidence to show that the closing stock of the previous year was included in the declared sales of the relevant year. The appellant was asked at the time of hearing to

produce the balance sheet and VAT audit report for verification, but he did not produce them despite sufficient time. In the absence of such evidence, the first appellate authority held that the tax levied on the closing stock of the previous year was justified and confirmed the reassessment order.

8. The appellant was not satisfied with the order of the first appellate authority. He has therefore filed the present second appeal before this Tribunal.
9. On the date fixed for hearing, Sri Azhar Ali, learned counsel for the appellant, appeared and relied upon the grounds taken in the memorandum of second appeal. He submitted that the order of the first appellate authority is unjust and prayed that the appeal be allowed. Smt. Hemlata Shukla, learned Deputy Commissioner and State Representative, appeared for the Department. She supported the order of the first appellate authority and prayed that it be confirmed. This Tribunal heard the arguments of both sides and perused the record and file made available.



### **III. SUBMISSIONS ON BEHALF OF THE APPELLANT**

Sri Azhar Ali, learned counsel for the appellant, has assailed the impugned order broadly on the following grounds:

10. The appellant submits that the order of the first appellate authority is unjust because the facts and grounds raised in the first appeal were not properly considered. According to the appellant, the first appellate authority wrongly held that, in the absence of the balance sheet and audit report, it could not be verified whether the closing stock of the previous year had been shown in the relevant year. The appellant says that, during

the original assessment for Assessment Year 2014-15, the Assessing Authority had already examined the purchase bills, sale bills, audit report and trading account. The assessment order dated 22.07.2016 under Section 25(7) also records that these documents were filed and examined. The appellant therefore submits that the opening stock of Rs. 13,62,158/- had already been shown and included in the declared sales, and that taxing the same amount again is unjustified.

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11. The appellant further submits that his opening stock was Rs. 13,62,158/- and the sales earlier declared were Rs. 1,35,29,197/-. According to him, the total of these two figures comes to Rs. 1,48,91,355/-, whereas the Assessing Authority adopted the figure of Rs. 1,49,91,355/-. On this basis, the appellant claims that there is an excess addition of Rs. 1,00,000/- to the turnover, resulting in excess tax.
  12. The appellant also submits that the reassessment is barred by limitation. According to him, under Section 29(2) of the Act, an assessment under Section 29(1) must be completed within three years from the end of the relevant assessment year. Since the reassessment order was passed beyond that period, the appellant says that it is time-barred.
  13. The appellant submits that Section 29(1) can be used only when some turnover has escaped assessment or has been under-assessed. According to him, the amount of Rs. 13,62,158/- had already been considered in the original assessment under Section 25(7). Therefore, the same amount could not be brought to tax again under Section 29(1), and the reassessment is without jurisdiction to that extent.
  14. The appellant finally submits that, in any case, the tax assessed is excessive and unjustified.

It is accordingly prayed that the appeal be allowed, the facts as declared by the appellant be accepted, and the appellant be relieved of the excess levy of tax.

**IV. SUBMISSIONS ON BEHALF OF THE RESPONDENT**  
**(DEPARTMENT)**

Smt. Hemlata Shukla, learned Deputy Commissioner and State Representative appearing for the Department, has supported the impugned order and has made, in substance, the following submissions:

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15. The Department submits that the first appellate authority gave the appellant a clear opportunity to produce the balance sheet and VAT audit report for Assessment Year 2014-15. Even after this opportunity, the appellant failed to produce any material to show that the closing stock of Rs. 13,62,158/- of Assessment Year 2013-14 was included in the sales of Rs. 1,35,59,297/- declared for Assessment Year 2014-15.
  16. The Department further submits that the order dated 22.07.2016 under Section 25(7) only states in general terms that the audit report and trading account were filed and examined. This by itself does not prove that the specific amount of Rs. 13,62,158/- was shown as opening stock and included in the declared sales of Rs. 1,35,59,297/-. According to the Department, this could be verified only from the appellant's own books, trading account and balance sheet for the relevant year, which the appellant did not produce before the first appellate authority.
  17. The Department submits that the burden was on the appellant to prove that the stock or turnover had already been included in his declared turnover. Since the relevant records were in the appellant's possession and he did not produce them despite opportunity, the burden was not discharged.

18. The Department also submits that the plea relating to an alleged excess addition of Rs. 1,00,000/- was not raised before the Assessing Authority or before the first appellate authority. It is also based on the figure of Rs. 1,35,29,197/-, which does not match the turnover of Rs. 1,35,59,297/- declared by the appellant in his annual return. Since no books of account or working have been produced to support this plea, the Department submits that it cannot be raised for the first time in second appeal.
19. The Department submits that the plea of limitation is also not correct. According to the Department, the escaped turnover came to light only after the final assessment order for Assessment Year 2013-14, in which the closing stock was determined at Rs. 13,62,158/-. The Department relies on the proviso to Section 29(2), under which limitation is counted from the date when the escapement comes to the notice of the Assessing Authority. Since the reassessment order dated 26.07.2018 was passed within that period, the Department submits that it is not time-barred.
20. The Department submits that there is no double taxation. According to the Department, both authorities below found that the amount added under Section 29(1) had not been included in the sales declared for Assessment Year 2014-15. It was therefore turnover which had escaped assessment, and not an amount already taxed earlier.
21. The Department further submits that the tax has been correctly calculated by applying the rates of 13.5% and 5% to the relevant categories of goods on the re-determined turnover. Therefore, the tax cannot be said to be excessive or arbitrary.

It is accordingly prayed that the second appeal, being devoid of merit, be dismissed and the order of the first appellate authority be upheld.

## V. STATUTORY PROVISIONS

22. The provisions of the Act which are relevant for deciding this appeal are set out below. Each provision is briefly explained first, and the material part of the provision is then reproduced.

23. **Section 25(7) Assessment on return.** This provision applies when the Assessing Authority is satisfied that the dealer has filed a correct and complete return and has paid the tax due according to that return. In such a case, the tax is assessed on the basis of the return. The material part reads: *"If the Assessing Authority is satisfied that any dealer has submitted correct and complete return for any assessment year and has paid the tax due according to such return, it shall assess the amount of tax due from the dealer on the basis of such return."*

24. **Section 29(1) Escaped or under-assessed turnover.** This provision allows the Assessing Authority to assess or reassess turnover or tax if it has reason to believe that turnover or tax has escaped assessment, has been under-assessed, has been assessed at a lower rate, or that any exemption, deduction, rebate, concession or tax credit has been wrongly allowed. The authority must record reasons, issue notice to the dealer, give a reasonable opportunity of hearing, and then pass the assessment or reassessment according to law. The material part reads: *Where the Assessing Authority has reason to believe that the whole or any part of turnover or tax of the dealer has escaped assessment, been under-assessed, been assessed at a lower rate, or been wrongly allowed exemption, deduction, rebate, concession or tax credit, it shall, after recording reasons in writing, serve notice on the dealer and, after giving reasonable opportunity of hearing and making necessary enquiries, assess or reassess the turnover and tax according to law.*

25. **Section 29(2) Limitation for reassessment.** This provision fixes the normal time-limit for making an assessment or reassessment under Section 29(1). Except where the Act provides otherwise, such an order cannot be made after three years from the end of the relevant year. The material part reads: *"Except as otherwise provided in Section 28 or under this section, no order of assessment or reassessment shall be made under sub-section (1) after the expiry of three years from the end of the year in respect of which, or part of which, the tax is assessable."*

26. **Section 29(3) Extended time where notice is in time.** This provision allows a longer period for passing an assessment or reassessment order, provided the notice under Section 29 has been served within the prescribed time. The material part reads: *"Assessment or reassessment in respect of turnover escaped from assessment may be passed at any time within three years and nine months ending on 31st December after the expiry of the assessment year for which assessment is to be made, provided that notice under this section has been served within a period of three years and six months ending on 30th September after the expiry of the assessment year for which assessment is to be made."*

27. **Section 51(8) Powers of first appellate authority.** This provision gives the first appellate authority power to confirm, reduce, enhance or annul the assessment, penalty or other order. It may also set aside the assessment and direct a fresh order according to law. The material proviso is important here because it says that, where an appeal is filed against a fresh order passed after an earlier remand, the matter should not be remanded again. The material part reads: *"The appellate authority may, after calling for and examining the record and after giving the dealer and the officer concerned an opportunity of being heard, confirm, reduce, enhance or annul the assessment, penalty or other order, or set aside the*

*assessment and direct the Assessing Authority to pass a fresh order. Provided further that where an appeal is filed against a fresh order passed pursuant to a direction issued under clause (c), no further direction for a fresh order under the said clause shall be issued."*

## **VI. POINTS FOR DETERMINATION**

28. After considering the submissions of both sides, the following points arise for decision in this second appeal:

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- (i) Whether the reassessment order dated 26.07.2018 passed under Section 29(1) of the Act is barred by limitation under Section 29(2) of the Act?
  - (ii) Whether the addition of Rs. 13,62,158/- to the turnover of Assessment Year 2014-15 amounts to a re-taxation of an amount already assessed under Section 25(7), or represents turnover which escaped assessment within the meaning of Section 29(1)?
  - (iii) Whether the alleged arithmetical discrepancy of Rs. 1,00,000/-, raised for the first time in the memorandum of second appeal, can be entertained by this Tribunal, and, if so, whether it stands substantiated on the material on record?
  - (iv) Whether the concurrent findings of the Assessing Authority and the first appellate authority, that the appellant failed to establish inclusion of the closing stock of Assessment Year 2013-14 in the declared sales of Assessment Year 2014-15, call for interference by this Tribunal in second appeal?

## **VII. DISCUSSION AND FINDINGS**

**Point (i): Limitation under Section 29(2)**

29. A provision which allows a completed assessment to be reopened must be applied strictly. This is because reassessment may create a fresh tax liability against the appellant. The time-limit fixed for using such power is also important and must be followed. The Hon'ble Supreme Court, in *Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax, Nagpur*, AIR 1964 SC 766, considered the scope of provisions relating to escaped turnover under sales tax law and emphasized that the conditions and time-limits prescribed by the statute must be complied with. This Tribunal respectfully follows that principle.

30. However, the appellant cannot get the benefit of this principle in the present case. Section 29(2) itself provides an exception. If escaped turnover comes to the notice of the Assessing Authority because of an order relating to another assessment year, the limitation period is counted from the date on which the escapement comes to notice. It is not counted from the end of the year to which the escaped turnover relates. In this case, the disputed amount is the closing stock of Rs. 13,62,158/- determined for Assessment Year 2013-14. This fact came to the notice of the Assessing Authority only after the final assessment order for Assessment Year 2013-14 was passed. The appellant has not shown that three years from that date had expired before the reassessment order dated 26.07.2018 was passed. Therefore, the reassessment order is not barred by limitation.

**Point (ii): Whether the addition amounts to double taxation or represents escaped turnover**

31. The appellant argues that the amount of Rs. 13,62,158/- had already been taxed in the original assessment under Section 25(7), and that adding it

again in reassessment amounts to double taxation. This argument depends on whether the said amount was actually included in the sales of Rs. 1,35,59,297/- declared by the appellant for Assessment Year 2014-15. This is a question of fact. Both the Assessing Authority and the first appellate authority examined this issue and found against the appellant.

32. The burden was on the appellant to prove that the disputed stock or turnover had already been included in his return. The relevant books of account, trading account and balance sheet were in the appellant's own possession. A general statement that an audit report or accounts were examined is not enough unless the actual records are produced for verification. This view is consistent with the decision of the Hon'ble Supreme Court in *State of Karnataka v. M/s Ecom Gill Coffee Trading Pvt. Ltd.*, 2023 SCC OnLine SC 248, where it was held that a dealer who claims the benefit of entries in his own records must prove the claim by producing the relevant material before the authorities.

33. Applying the above principle, the mere reference in the assessment order dated 22.07.2016 to the audit report and trading account does not prove the appellant's case. To show that the closing stock of Rs. 13,62,158/- of the previous year was included in the declared sales of Rs. 1,35,59,297/- for Assessment Year 2014-15, the appellant had to produce the relevant balance sheet, VAT audit report, trading account and books of account. The first appellate authority specifically asked the appellant to produce these documents for verification, but the appellant did not do so, either before the first appellate authority or before this Tribunal. Therefore, the finding that the said stock was not shown to have been included in the declared sales, and that it represented escaped turnover, is based on the appellant's failure to produce the best evidence available to him. No interference is called for.

34. Therefore, the addition of Rs. 13,62,158/- cannot be treated as double taxation. The material on record shows that this amount was not proved to have been included in the original assessed turnover under Section 25(7). It was therefore turnover which had escaped assessment and was rightly brought to tax under Section 29(1).

**Point (iii): The alleged arithmetical discrepancy of Rs. 1,00,000/-**

35. The appellant's second ground relates to an alleged arithmetical difference of Rs. 1,00,000/-. According to the appellant, if the opening stock of Rs. 13,62,158/- is added to the sales figure of Rs. 1,35,29,197/-, the total comes to Rs. 1,48,91,355/-. The Assessing Authority, however, adopted the figure of Rs. 1,49,91,355/-. The appellant therefore claims that Rs. 1,00,000/- was wrongly added to the turnover. This plea was not raised before the Assessing Authority or before the first appellate authority. It has been raised for the first time before this Tribunal. A new ground may be considered at the appellate stage only when it is based on facts already available on record and does not require fresh verification. This principle is supported by the decision of the Hon'ble Supreme Court in *National Thermal Power Co. Ltd. v. Commissioner of Income Tax*, (1998) 229 ITR 383 (SC).

36. Even otherwise, the figure of Rs. 1,35,29,197/- relied upon by the appellant does not match the turnover of Rs. 1,35,59,297/- declared by him in his annual return and recorded in the assessment and first appellate proceedings. The appellant has not filed any trading account, worksheet or reconciliation statement to explain this difference. Therefore, the alleged arithmetical discrepancy cannot be accepted merely on assertion.

**Point (iv): Scope of interference with concurrent findings of fact in second appeal**

37. Whether a particular stock or turnover was included in the appellant's return is mainly a question of fact. Such a finding has to be based on the books of account and other material produced by the appellant. When both the Assessing Authority and the first appellate authority have examined the same question and have recorded the same finding against the appellant, this Tribunal, in second appeal, should not interfere merely because another view may be possible. Interference is justified only if the finding is perverse, based on no evidence, or suffers from a clear error of law. This approach is consistent with the principle stated by the Hon'ble Supreme Court in *Raghubar Mandal Harihar Mandal v. State of Bihar*, AIR 1957 SC 810, that an assessment should have a rational basis and should not be arbitrary, but it should not be disturbed merely on the appellant's assertion unless the error is shown by material on record.

38. In this case, this Tribunal finds no perversity, lack of evidence, or legal error in the findings recorded by the Assessing Authority and the first appellate authority. Both authorities proceeded on the same basic fact, namely that closing stock of Rs. 13,62,158/- was determined in the final assessment for Assessment Year 2013-14. They also found that, despite being given full opportunity, the appellant did not prove that this amount was included in the sales declared for Assessment Year 2014-15. Therefore, there is no reason for this Tribunal to interfere with the concurrent finding of fact.

39. This Tribunal also agrees with the first appellate authority in not remanding the matter a second time. By Gazette Notification No. 103/XXXVI(3)/2016/15(1)/2016 dated 31.03.2016, a further proviso was inserted in Section 51(8) of the Act. This proviso shows that, once a matter has already been remanded and a fresh order has been passed, the matter should not ordinarily be remanded again. The purpose is to bring



assessment proceedings to an end and to avoid repeated remands. In the present case, the appellant had already been given sufficient opportunity to produce his account books and other records. He did not produce the required material before the first appellate authority, nor has he produced any fresh material before this Tribunal. Therefore, no useful purpose would be served by remanding the matter again.

40. For the reasons given above, this Tribunal holds that the reassessment order dated 26.07.2018 is not barred by limitation. The addition of Rs. 13,62,158/- is turnover which escaped assessment and is not double taxation, because the appellant failed to prove that this amount was already included in the declared sales. The alleged arithmetical difference of Rs. 1,00,000/- has also not been proved and cannot be accepted. The concurrent findings recorded by the authorities below do not call for interference. The second appeal is therefore without merit.

### VIII. ORDER

41. For the reasons recorded above, the second appeal is dismissed. The order dated 03.06.2025 of the first appellate authority and the reassessment order dated 26.07.2018 passed under Section 29(1) of the Act are confirmed. The disputed tax of Rs. 1,97,391/- shall remain payable by the appellant, together with interest, if any, as admissible under the Act.

रक्षक प्रतिनिधि



सदस्य, अपील नं. 62/2025  
व्यवस्थापक, अपील नं. 62/2025  
उत्तराखण्ड प्रत्यक्ष कर विभाग  
हल्द्वानी, उत्तराखण्ड

आवेदन प्रेषित किया.....  
दिनांक.....  
राजस्थान सरकार का प्रमुख, राजस्थान  
जयपुर

S/D

Rakesh Verma

Member

Commercial Tax Tribunal, Uttarakhand,  
Haldwani

Date: 09-09-2026

Place- Haldwani

S/D

Rakesh Verma