2026:AHC:179067

Reserved On:21.08.2026
Delivered On:25.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

SALES/TRADE TAX REVISION No. - 109 of 2023

M/s B.T.C. Industries Pvt. Ltd.

.....Revisionist(s)

Versus

The Commissioner, Commercial Taxes

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Sanyukta Singh
Counsel for Opposite Party(s)	:	C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Ms. Sanyukta Singh, learned counsel for the revisionist and Shri B.K. Pandey, learned ACSC for the State – respondents.

2. The instant revision has been filed against the impugned order dated 22.05.2023 passed by the Commercial Tax Tribunal, Bareilly Division, Bareilly in Second Appeal No. 45/2021 for the Assessment Year 2007-08 arising out the proceedings under the UP VAT Act.

3. The above-noted revision was admitted by this Court vide order dated 28.08.2023 on the following questions of law:-

> *"A. Whether the Tribunal was justified in affirming the Reversal of Input Tax Credit on merits, even after recording the finding that the First Appellate Authority has failed to deal with the issue of RITC, though it having been specifically raised and argued by the applicant before the First Appellate Authority?*
>
> *B. Whether the Tribunal was justified in affirming the Reversal of Input Tax Credit merely on the basis of ex-party reports having been furnished by the assessing authorities of the 2 suppliers, stating that registration of one of the supplier was cancelled subsequently and it has not disclosed the sale in its return, and accepting ITC with regard to some of the invoices only, with respect to the other seller, merely on the basis of surmises and conjectures?*
>
> *C. Whether the Tribunal was justified in affirming the imposition of tax both upon the alleged undisclosed purchase and undisclosed sales made by the applicant, which is in teeth of the law declared by this Hon'ble court in the case of* ***Deep Murmura*** *(supra)?*
>
> *D. Whether the Tribunal was justified in rejecting the account books and enhancing the turnover without there being any iota of evidence regarding any undisclosed purchase or any undisclosed sales having been made by the applicant?"*

4. Learned counsel for the revisionist submits that while the goods were in transit, the same were detained and seized and on the very day, survey was conducted at the business premises of the revisionist. She further submits that no adverse material was found at the time of survey. Thereafter, the Assessing Authority passed the assessment order on 30.03.2018 rejecting the books of account and estimating the turnover on the basis of penalty having been imposed pursuant to the seizure made. She further submits that the ITC has wrongly been rejected and RITC has been done despite the purchases were made through registered dealers, namely; Kanheiya Trading Company, Mathura and Raj Trading Company, Meerut. The transactions were made through banking channel and of the selling dealers were duly registered at the time of transaction being undertaken. Aggrieved by the said order, the revisionist preferred first appeal, which was partly allowed vide order dated 27.08.2018. Still feeling aggrieved, the revisionist preferred second appeal before the Tribunal, which has been allowed partly vide impugned order dated 22.05.2023. Hence, this revision.

5. Learned counsel for the revisionist further submits that merely on the ground that the registrations of the selling dealers have subsequently been cancelled, the same cannot be used against the revisionist for RITC. She further submits that no adverse material has been placed on record for enhancing the turnover. The Tribunal, being the last court of fact and law, was not justified in not allowing the appeal in toto. She further submits that at best, the books of account can be rejected, but the enhancement must commensurate with the suppression found at the time of survey. She further submits that the Tribunal has specifically recorded a finding of fact in favour of the revisionist that five challans and invoices could not be verified, but on that basis, the assessing authority was not justified to enhance the turnover. Still, instead of allowing the appeal in toto, the Tribunal has only reduced the taxable turnover. She further submits that to the best of the knowledge of the revisionist, the Revenue has not challenged the order partly allowing the appeal. She further submits that the penalty proceedings, which were initiated against the revisionist have duly been quashed, which fact has duly been noticed in the impugned order by the Tribunal, but no weightage has been given to the same. She further submits that once the penalty proceedings have been dropped, no adverse inference can be drawn against the revisionist.

6. Per contra, learned ACSC supports the impugned order. He submits that the RITC has rightly been done as the revisionist has failed to prove genuineness of the transactions as registration of the selling dealers was cancelled. He further submits that the revisionist is found to be using duplicate books of account and therefore, the bills could not be verified. He further submits that the Tribunal, being the last court of fact and law, has rightly only partly allowed the appeal.

7. After hearing learned counsel for the parties, the Court has perused the record.

8. It is not in dispute that on 02.02.2008, the goods of the revisionist were seized. After seizure on the very day, the business premises of the revisionist was surveyed. At the time of survey, no business activity was found and it was recorded that the revisionist does not have any godown. So far as the penalty proceedings under section 54(1)(14) of the Act are concerned, the same have been dropped and no adverse material has been brought on record on behalf of the Revenue to show that the penalty order dropping the penalty proceedings has been reversed by the competent court or any proceedings are pending at higher court. Therefore, no adverse inference ought to have been drawn on the said premise.

9. Further, at the time of survey, it was found that no business activity was being conducted by the revisionist and no godown was there, but no adverse inference was drawn on the said fact.

10. Further, the Tribunal has recorded a finding of fact in favour of the revisionist that the seized documents with regard to all challans and bills were got verified by the assessing authority, but only 7 invoices could not be verified. On the said premise, it cannot be accepted of using duplicate books of account and as such, books of account could not be accepted, but the enhancement of turnover cannot be made on this ground. Enhancement must commensurate with the suppression found at the time of survey. No specific allegation has been made with regard to suppression found as no figures have been mentioned by the impugned order. Once the actual figure of suppression has not been pointed out or mentioned as to how much is the alleged suppression undertaken, the enhancement of turnover cannot be justified. On this count, the Tribunal's order cannot be sustained to that effect.

11. The next issue with regard to RITC is made against the purchases from two registered dealers, namely; Kanheiya Trading Company, Mathura and Raj Trading Company, Meerut. The record shows that RITC has been made only on the ground that selling dealers' registrations have been cancelled. The revisionist has brought on record material not only shows that at the time of transaction, the selling dealers were having valid registrations, but also the transactions have been made through banking channel and other papers brought on record shows actual physical movement of goods upto the place of the revisionist. Further, it is not in dispute that on the date of transaction, both selling dealers were duly registered.

12. Once it is not in dispute or any cogent material has been brought on record by the Revenue showing that the registrations of the selling dealers were cancelled after the date of transaction, benefit of ITC cannot be denied. In other words, on the date of transactions undertaken by the revisionist with the selling dealers were duly registered, the benefit cannot be denied to the revisionist.

13. This Court in the case of ***M/s Safecon Lifescience Private Limited Vs. Additional Commissioner, Grade – 2 & Another*** [Writ Tax No. 389/2023, decided on 09.09.2025], which has been confirmed by the Apex Court in ***Additional Commissioner, Grade – 2 & Another Vs. M/s Safecon Lifescience Private Limited*** [SLP (C) No. 23993/2026, decided on 17.07.2026], wherein, the proceedings under section 74 of the GST Act were challenged holding that ITC has wrongly been availed under the GST regime, has quashed the proceedings holding that the registration was valid on the date of transaction and therefore, the benefit cannot be denied.

14. In view of the aforesaid facts & circumstances of the case, the impugned order passed by the Tribunal cannot be sustained in law and the same is hereby set aside.

15. The revision is, accordingly, allowed.

16. The questions of law are, accordingly, answered.

(Piyush Agrawal,J.)

August 25, 2026
Amit Mishra