



2026:AHC:208723

HIGH COURT OF JUDICATURE AT ALLAHABAD

SALES/TRADE TAX REVISION No. - 125 of 2026 (Leading Revision)

Sanjeev Kaushik

.....Revisionist(s)

Versus

Commissioner. Commercial Tax

.....Opposite
Party(s)

Counsel for Revisionist(s) : Manoj Srivastava, Pankaj Kumar Rai,
Shiv Bahadur Singh

Counsel for Opposite Party(s) :

with

**SALES/TRADE TAX REVISION No. - 123 of 2026 (Connected C1
Revision)**

Gaurav Gupta

.....Revisionist(s)

Versus

Commissioner, Commercial Tax

.....Opposite
Party(s)

Counsel for Revisionist(s) : Manoj Srivastava, Pankaj Kumar Rai,
Sandeep Kumar Srivastava

Counsel for Opposite Party(s) :

with

**SALES/TRADE TAX REVISION No. - 124 of 2026 (Connected C2
Revision)**

Arun Kumar

.....Revisionist(s)

Versus

Commissioner, Commercial Tax

.....Opposite
Party(s)

Counsel for Revisionist(s) : Manoj Srivastava, Pankaj Kumar Rai,
Sandeep Kumar Srivastava

Counsel for Opposite Party(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Sri Shiv Bahadur Singh along with Sri Manoj Srivastava, Sri Pankaj Kumar Rai along with Sri Sandeep Srivastava, learned counsel for the appellant-revisionist in the leading, connected C-1 and connected C-2 revisions and Shri B.K. Pandey, learned Additional Chief Standing Counsel for the opposite parties.

2. Since common question of facts and law are involved in the present revisions, thus, they are being decided by a consolidated order.

3. The facts to the leading Commercial Tax Revision purported to be under Section 58 of the U.P. Value Added Tax Act, 2008, (in short '2008 Act') are that the revisionist herein claims to be a railway container contractor and a forwarding agent / transporter of the goods from one railway station to destined railway station. An agreement to the said effect came to be executed between the Railways on one hand and the revisionist on the other hand. The revisionist also holds a Registration Certificate bearing Registration Certificate No. A-40 which was issued on 04.07.2011 titled as Registration Certificate for Lease Holders which came to be renewed from time to time. As per the revisionist on an information so received by the Special Investigation Branch of Commercial Tax Department from Chief Parcel Supervisor, Bareilly Railway Junction that for the Assessment Year 2010-11 for the period from April 2010 to January 2011, the revisionist had imported 17,599 packages of PVC goods, electrical goods, motor parts, stationary, haujari, bishatkhana/ cosmetics and hardware which came to be transported from Delhi to Bareilly Railway Junction.

4. On the basis of the said information, the Assessing Officer passed an *ex-parte* order dated 31.03.2014 holding that in the year 2010, the revisionist had imported certain goods and determined the value of the goods to be Rs. 176,00,000/- and the liability of the tax was assessed to Rs. 20,02,000. The revisionist challenged the Assessment Order dated 31.03.2024 before the Additional Commissioner Grade-II by filing Appeal, bearing No. 17 of 2015 (Sanjeev Kaushik versus Deputy Commissioner Commercial). The said appeal came to be allowed on 16.04.2015 while setting aside the order dated 31.03.2014 and the matter came to be remitted back to be decided afresh. The revisionist challenged the remand order dated 16.04.2015 by filing a second appeal before Commercial Tax Tribunal, Ghaziabad which was registered as Appeal No. 259 of 2015 (Sanjeev Kaushik versus Commissioner, Commercial Tax U.P. Lucknow) which came to be allowed

on 04.03.2016 setting aside the order dated 16.04.2015 as well as the Assessment Order dated 31.03.2014. The Revenue (Commissioner of Commercial Tax) challenged the judgment and order dated 04.03.2016 passed by Commercial Tax Tribunal (Bench-1), Ghaziabad while filing Sales / Trade Tax Revision No. 233 of 2016 which came to be connected with Sales / Trade Tax Revision No. 234 of 2016 and 272 of 2016 which came to be allowed, remanding the matter back to the Tribunal to reconsider the matter afresh in the light of the observations made in the revision. Thereafter, now by virtue of the order dated 27.01.2016, the Commercial Tax Tribunal, Ghaziabad Bench-I, Ghaziabad proceeded to reject the Second Appeal No. 259 of 2015 (Sanjeev Kaushik versus Commissioner, Commercial Tax).

5. Questioning this said order, the leading revision came to be preferred.

6. As regards, the connected revision is concerned, here also the revisionist is a railway contractor and a forwarding agent / transporter of the goods from one railway station to destined railway station. Here also the matter relates to the Assessment Year 2010-11 and on the basis of the information so received by Special Investigation Branch/ Commercial Tax Department from Chief Parcel Supervisor for the Assessment Year 2010-11, the goods came to be imported to the tune of Rs. 1,00,00,000/- and the liability of the tax was determined to be Rs. 10,10,000/-. The Assessing Officer passed an *ex parte* order on 31.03.2014 which was challenged by way of an appeal before the Additional Commissioner Grade-II by filing Appeal bearing No. 19 of 2015 which came to be partly allowed on 16.04.2015 setting aside the order dated 31.08.2014 and the matter was remitted back to pass a fresh order which was challenged by the revisionist while filing a Second Appeal before Commercial Tax Tribunal, Ghaziabad which was registered as Appeal No. 261 of 2015 which came to be allowed on 04.03.2016. The order dated 16.04.2015 was set aside and the Assessment Order was also set aside on 31.03.2016 which was subject matter of revision before this Court at the instance of the Revenue / Commissioner of Commercial Tax which came to be allowed on 31.03.2022 remitting the matter back to pass a fresh order and thereafter on 27.01.2016, an order came to be passed in the Second Appeal No. 261 of 2015 rejecting the appeal preferred by the revisionist.

7. As far as C-2 revision is concerned, the facts are broadly the same except a distinction that the value of the goods was Rs. 4,10,00,000/- and the tax

imposed was Rs. 46,63,750/-, date of the Assessment Order is the same, the date of the order in appeal is also the same and the Sales Tax Revision number is 272 of 2016 preferred by Revenue (Commissioner of Commercial Tax), the order passed therein is 31.03.2022 remanding the matter back and thereafter on 27.01.2026, the Second Appeal No. 260 of 2015 (Arun Kumar versus Commissioner of Commercial Tax) came to be dismissed, thus, in the leading, connected C-1 and C-2 revisions, orders passed by the Tribunal dated 27.01.2026 in the Second Appeal bearing respective numbers is under challenged.

8. Learned counsel for the revisionist has sought to argue that the orders dated 27.01.2026 passed by the Commercial Tax Tribunal, Ghaziabad Bench-I, Ghaziabad in Second Appeal No. 259 of 2015, 261 of 2015, 260 of 2015 cannot be sustained even for a single moment. Elaborating the said submission, it is contended that the revisionist do not answer the description of a dealer under Section 2(h)(ix) of the VAT Act, 2008. Argument is that once the revisionist do not answer the definition of dealer then the provisions contained under the VAT Act, 2008 would not apply. It is also contended that there happens to be incident of tax to be levied on the possession of taxable goods by the revisionist is upon the revenue and thus until and unless, the said burden is discharged by the revenue, no onus would lie upon the revisionist.

9. Attention has been drawn towards Section 2(h) clause (ix) so as to contend that though railway container contractor, an air cargo contractor, a courier service provider who fails to disclose the name and the complete address of the consignor and consignee or in case there is a disclosure of the name or the address of the consignor or consignee which is found bogus / false, not verifiable or the person-in-charge of the vehicle who obtains authorization for transit of goods from officer in-charge of entry check post but fails to deliver to the officer in-charge of the exit check post would become a dealer. But here in the present case, the said provision would not apply, particularly, when there happens to be a clause in the agreement being Clause 11.8 which deals with the manifest and in view of the said manifest, no onus or burden lies upon the revisionist, as the entire burden is upon the Revenue to prove that he happens to be the dealer who is exposed to penal action and penalty / taxation, in case, there is violation contained under the VAT Act. It is further contended that under the U.P. Value Added Tax Rules, 2008, (in short, 'VAT Rules'), there happens to be Rule 54 which talks

about establishment of Check Post and once the said provision is in-existence, then again the burden is upon the revenue, and further the only work assigned to the revisionist as a railway container contractor is to facilitate the logistical aspect relating to movement of goods, like uploading the goods in the train at a particular place and to lift it from the train at a different place, that is destination point. Further submission is that there is nothing on record to show that the Revenue had proved beyond doubt that the goods were found in the possession/ custody of the revisionist. It is lastly contended that the reliance and the reference so placed upon by the Tribunal upon the judgement in Sales / Trade Tax Revision No. 234, 272 and 233 of 2016 decided on 31.03.2022 is only misconceived, beside being out of context, particularly, when the said judgement does not take into ambit and considers the provisions contained under Rule 54 of the VAT Rules. Thus, it is prayed that the judgement and the order of the Tribunal be set aside and the revisions be allowed *in toto*.

10. Countering the submissions made by the learned counsel for the revisionist, Shri B.K. Pandey, learned Additional Chief Standing Counsel, submits that the revisionist happened to be the dealer within the meaning of Section 2(h)(ix) is no more *res integra* as they have been declared to be dealer in terms of the judgement and the order dated 31.03.2022 in the Sales / Trade Tax Revision No. 234, 272 and 233 of 2016 which is *inter se* binding between the parties and the said order has attained finality. He submits that it is not open for the revisionist to question the correctness of the said judgement, particularly, when the said judgement is still in existence and has attained finality, thus, any finding recorded therein which would obviously be the revisionist herein.

11. In nutshell, submission is that even post remand before the Tribunal, though the revisionist appeared but they did not produce any documents relating to the details of consignor and consignee and in absence of furnishing of any document, the Tribunal was justified in drawing adverse inference against the revisionist. It is, thus, prayed that the revisions be dismissed.

12. I have heard the submissions so made across the Bar and perused the record carefully.

13. Facts are not an issue. It is not in dispute that the revisionist happened to

be the railway container contractors who have been issued registration certificate by the railways. An agreement came to be entered into between the Railways on one hand and the revisionist on the other hand and for the sake of illustration, Clause 11.8 of the agreement with respect to the leading revision is quoted here-in-under:

"11.8 Each 'Manifest' will be prepared in 4 copies to be used as follows:

- (1) 1st copy to be retained by the leaseholder as his 'record'.*
- (ii) 2nd copy to be retained by parcel office of loading station as 'record'.*
- (ii) 3rd and 4th copies will be kept in the leased parcel space near the door, preferably in a transparent polythene folder/bag.*
- (iv) 3rd copy to be retained by parcel office of unloading station as record'.*
- (v) 4th copy to be returned back to the leaseholder signed and stamped by the parcel staff of the unloading station. This will serve as an authority to remove consignments at destination station."*

14. Apparently, Assessment Orders came to be passed against the revisionist pursuant to information / investigation conducted by Special Investigation Branch of Commercial Tax Department from the inputs received from Chief Supervisor. Assailing the Assessment Orders, appeals came to be preferred before the Additional Commissioner which was allowed on 16.04.2015 while setting aside the assessment orders, remanding the matter back which was subject matter of challenge in second appeal before the Commercial Tax Tribunal, Ghaziabad which was allowed on 04.03.2016 setting aside the order of the Additional Commissioner Grade-II as well as the assessment order which was subject matter of challenge at the instance of the Revenue before this Court by means of Sales / Trade Tax Revision in particular with respect to leading revision, Sales / Trade Tax Revision No. 233 of 2016, connected C-1, Sales / Trade Tax Revision No. 234 of 2016 and C-2, Sales / Trade Tax Revision No. 272 of 2016 and on 31.03.2022, this Court proceeded to pass the following orders:

- "1. Heard Shri A.C. Tripathi, learned Standing Counsel for the revisionist and Shri Naveen Chandra Gupta, learned counsel for the opposite party.*
- 2. These revisions have been filed against the judgements & orders dated*

04.03.2016 passed by the Commercial Tax Tribunal (Bench-I), Ghaziabad in Second Appeal Nos. 261, 259 & 260 of 2015 for the assessment year 2010-11, in which following common question of law has been framed:-

"Whether on the facts & in the circumstances of the case, Commercial Tax Tribunal was legally justified in holding that the opposite party is not a dealer and not liable for payment of tax under the provisions of the U.P. Value Added Tax Act?"

3. Learned Standing Counsel submits that it is admitted case between the parties that the opposite party has taken SLR on lease in the passenger train run by the Northern Railways for transporting/carrying goods of other dealer(s)/person(s) from the station of origin to the station of destination, on which the persons, whose goods are transported, paid the money for such transport. In other words, the opposite party was treated as Railway Container Contractor. Once this fact is admitted between the parties, the opposite party was treated as Railway Container Contractor, then the provisions as provided under the Act and the Rules were required to be fulfilled, i.e., the Railway Container Contractors were required to get themselves registered and follow the procedure for maintaining books of account, relevant forms, as prescribed therein, were required to be filled up and maintained, but the opposite party had, at no stage during the assessment or at the appellate stage, produced any document to discharge its liability. Once the dealer has failed to discharge its liability as provided under the Act, the Tribunal was not justified in accepting the version of the dealer and allowing the appeal by deleting heavy tax imposed upon the opposite party. He prays for allowing the revision.

4. Per contra, learned counsel for the opposite party supports the orders passed by the Tribunal and submits that there is no iota of evidence to show that any taxable goods were found in possession of the dealer so that levy of tax can be justified. At this juncture, he further refers to section 3(8) of the VAT Act providing incident of tax to be levied on possession of taxable goods by the opposite party. He further submits that the primary burden has not been discharged by the Department. Therefore, levy of tax upon the opposite party cannot be justified. He further submits that as per rule 63(4) of the U.P. VAT Rules, records were summoned. On perusal of the records by the Tribunal, no material was found and therefore, the Tribunal has rightly allowed the appeal of the dealer and discharged the liability of tax. He further submits that the Tribunal has rightly interpreted the provisions of the Act and deleted the tax. In support of his submissions, he has placed reliance on the judgement of the Hon'ble Supreme Court in *State of Haryana & Others*

Vs. Sant Lal & Another reported in (1993) 4 SCC 380 (paragraph no. 19) and prays for dismissal of the revision.

5. Heard learned counsel for the parties and perused the records.

6. Admittedly, all the respondents in these revisions have taken SLR's on lease in the Passenger Trains from Northern Railways for transporting/carrying the goods of the person(s) or dealer(s) from the station of origin to the station of destination and charged transportation charges. It is also admitted between the parties that the said activity of the respondents fall or can be classifiable as a Railway Container Contractor as described under section 2(h)(ix) of the U.P. VAT Act as "dealer", as person, who carries on in Uttar Pradesh, a business of distributing goods, directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration. Section 17 of the VAT Act provides for registration of dealers. Sub-section 6(a) thereof, provides that no Railway Container Contractor shall operate its business of taxable goods in the State without being registered with the registering authority in such manner as may be prescribed.

7. Admittedly, in the normal course of business, the respondents were transporting goods for and on behalf of the person, who sends its goods through SLR of the respondents, from the station of origin to the station of destination. Certain provisions of the UP VAT Act as well as UP VAT Rules, which are relevant for consideration of the issue involved in the present revisions, are quoted herein-below:-

"Section 2(h): "dealer" means any person who carries on in Uttar Pradesh (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration and includes,

(ix) a railway container contractor, an air cargo operator, a courier service provider, who fails to disclose the name and complete address of consigner or consignee or if discloses such name or address of consigner or consignee is found bogus, forged or not verifiable, or the owner or person in-charge of a vehicle who obtained authorization for transit of goods from the officer in-charge of entry check post but failed to deliver the same to the officer in -charge of the exit check post;

17. Registration of dealers:

(6) (a) No railway container contractor, air cargo operator, courier service provider, or owner or person in-charge of a godown, cold storage or warehouse other than transporter who stores commercial goods, shall operate its business of taxable goods in the State without being registered with the registering authority in such manner as may be prescribed. Any operator of such business shall apply within prescribed period for his

registration to the registering authority in the prescribed manner;

Rule 38: Registration of railway container contractor, an air cargo operator, a courier service operator, owner or person incharge of godown or cold storage or warehouse other than transporter:

8(a): Where a railway container contractor, an air cargo operator or a courier service provider, receives any goods from any person for carrying to any destination, he shall require the person to submit a declaration in Form XVII and like wise where a railway container contractor, an air cargo operator or a courier service provider receives any good for delivery he shall obtain declaration in Form XVIII from the person to whom goods are delivered;

Rule 38(9): Every a railway container contractor, an air cargo operator or a courier service provider or an owner or person incharge of godown or cold storage or warehouse other than transporter or carrier shall preserve all records maintained by him for a period of 8 years after the expiry of the assessment year to which they belong."

8. Section 2(h)(ix) of the VAT Act provides the and at the person operating as a Railway Container Contractor shall be deemed to be a dealer and is obliged to provide complete details and address of the consignor and consignee name and address, etc. Further, as per the provision of section 17 of the VAT Act, the Railway Container Contractor is required to get itself registered under the Act, failing which shall not operate its business within the State. Rule 38(7) of the VAT Rules prescribes for maintenance of record. Rule 38(7)(a) of the Rules further provides register in respect of all consignment and goods received by the Railway Container Contractor for transportation and storage is required to be maintained and before receiving the goods, require to obtain declaration in Form - XVIII and before delivery is required to obtain declaration in Form - XX from the owner of the goods. Further, Rule 38(9) of the VAT Rules provides to preserve all records maintained by the Railway Container Contractor for a period of 8 years after expiry of the assessment order, to which they belong.

9. From the perusal of the aforesaid provisions, it is amply clear that the Railway Container Contractor is deemed to be a dealer and is required to get itself registered within the State for transporting the goods. Further, the provisions provide for disclosure of various details, failing which it should be deemed to be the dealer and is liable to be taxed for transportation of goods. Section 3(8)(1) of the Act is quoted below:-

"Section 3: Incidence and levy of tax:-

(3) 8(i) A railway container contractor, an air cargo operator, a courier service provider, who fails to disclose the name and complete address of consigner or consignee or if discloses such name or address of consigner

or consignee is found bogus, forged or not verifiable; or the owner or person in-charge of a vehicle who obtained authorization for transit of goods from the officer in-charge of entry check post but failed to deliver the same to the officer in-charge of the exit check post."

10. The aforesaid provision provides for incidence and levy of tax, who fails to disclose the name and complete address of consigner or consignee or if discloses such name or address of consigner or consignee is found bogus, forged or not verifiable.

11. It is nobody's case that the goods during the disputed period/year have not been transported through SLR taken on lease by the respondents. Once this fact is admitted between the parties, the first appellate authority has remanded the matter to the assessing authority empowering to provide an opportunity to the respondents to clarify their position on facts as the assessment order was passed ex parte. The Tribunal, against the remand order, has just allowed the appeal of the respondents by just referring to the provisions of the Act. Further, the Tribunal has observed that on record, there is no information of transport of goods by SLR and therefore, deleted the levy of tax. Once a fact is admitted by the respondents that SLR was taken on lease for transporting the goods, as per the provision was required to take registration and further all the details of the person(s) for whom the goods were transported from the station of origin to the station of destination were required to be maintained by the respondents. The Tribunal ought to have called for the records of the respondents and should & must have recorded a finding of fact after due verification of the books of account. The Tribunal, before passing the final order, should/must have called for the report from the Assessing Authority of the respective dealer on the books of account produced in support of the claim by the respondents. The Tribunal has failed to do so and just calling for the record of the Department and making certain observations cannot be sustained in the eyes of law.

12. It is not the case of the respondents that the SLR was neither taken on lease nor any transportation in the disputed year has been undertaken by them. The Tribunal has shifted the burden on the Revenue in the impugned order and has held that the Revenue has failed to bring on record any taxable goods being transported through SLR taken on lease by the respondents. This observation of the Tribunal is perverse and liable to be set aside.

13. The Tribunal should have kept in mind that the present proceedings are regular proceedings and not reassessment proceedings for which the burden is upon the Revenue for placing materials for escapement of assessment. Since it is a regular assessment for non-payment of tax or

there is not liability of tax, it is incumbent upon the dealers to produce such material/such record or other evidence to support their claim.

14. In the event of failure on the part of the dealer to produce such evidence, the assessment order cannot be set aside by merely referring the provision of the Act, which, otherwise, supports the claim of the Revenue. In other words, the language of the provision is very clear and straight.

15. The person, who is doing/operating as a Railway Container Contractor has to follow and abide its activity as per the provision of the U.P. VAT Act, which was enforced in the relevant disputed years. Once the provisions of the VAT Act are applicable upon the respondents to claim any benefit or non-taxable, the respondents are required to produce all the documents, forms, books of account, etc. as prescribed under the Act.

16. In the event of failure by the respondents, the levy of tax cannot be said to be unjustified, but the Tribunal, in the case in hand, has just referred to the provisions and passed the impugned order deleting levy of tax upon the respondents without verifying any books of account or material.

17. In view of the aforesaid facts & circumstances of the case, the impugned orders passed by the Tribunal are set aside. The matter is remanded back to the Tribunal to reconsider the matter afresh in the light of the observations made above and decide the same in accordance with law.

18. The revisions are allowed. The question of law is answered accordingly.

19. It is expected that since the matter is very old, the Tribunal may take all possible effort to decide the same within a period of three months from the date of receipt of a copy of this order.

20. The revisionist undertakes to serve the copy of this order within a a month from today. In the event of failure on the part of the revisionist, the benefit of this order shall not be accorded to the revisionist."

15. A bare look of the judgement and the order dated 31.03.2022 as referred to above would reveal that the revisionists were held to be railway container contractors who were deemed to be dealers. Once a finding stood recorded against the revisionist that the revisionists are deemed to be dealers and the said judgement has attained finality, then it is not open for the revisionist to question the said finding which is against them before the coordinate of equal strength without assailing the said findings before higher forum. Even otherwise, once the finding relating to holding the revisionist as dealer is intact then by no stretch of imagination, a contrary view can be taken.

Further much reliance has been placed upon Rule 54 of the U.P. VAT Rules, 2008, the same is quoted here-in-under:

"54. Establishment of Check Posts --(1) (a) *The owner, driver or any other person-in-charge of the vehicle or vessel shall, in respect of such goods carried in the vehicle or the vessel as are notified under or referred to in sub-section (1) of section 50 and exceeding the quantity, measure or value specified in the notification therein, carry with him the following documents-*

(i) form of declaration for import in Form XXXVIII or certificate in Form XXXIX hereinafter in these rules referred to as declaration or certificate, as the case may be, in duplicate, duly filled and signed by the purchaser and seller of the goods or where goods are transferred otherwise than by way of sale, by consignor & consignee of the goods with status and address;

(ii) Cash memo, bill, invoice or challan;

(b) The owner, driver or any other person-in-charge of the vehicle or vessel shall in respect of all other goods carried in such vehicle or vessel carry such documents as may be prescribed by the Commissioner in duplicate.

(2) (a) A declaration or certificate -

(i) in respect of which a report has been made under sub-rule (9) or rule 56 or sub-rule (8) of rule 57, or

(ii) which is declared as obsolete and invalid by the Commissioner under sub-rule (13) of rule 56 or sub-rule (10) of rule 57, shall not be valid with effect from the date of the report or the date from which it is so declared, as the case may be, for the purpose of sub-rule (3).

(b) A certificate whose period of validity as specified in sub-rule (4) of rule 57 has expired shall not be valid for the purposes of sub-rule (3).

(3) The owner of the truck or vessel or the transport agency, forwarding agency or clearing agents, as the case may be, shall deliver to the consignee, while delivering the consigned goods, the duplicate copy of the declaration or certificate, as the case may be.

(4) The owner, driver or any other person-in-charge of the vehicle or vessel shall carry the trip sheet in Form XL in respect of goods referred to in clause (a) of sub-rule (1). Separate trip sheets shall be submitted for goods meant for different destinations.

(5) The commissioner may from time to time issue instructions with regard to the procedure to be followed regarding import of goods from out of State and submission of declaration or certificate before assessing authority."

16. Though the revisionist may canvass the argument that Rule 54 creates an

exception and it may help the revisionist in wriggling out from the obligations as set forth as a dealer but the said argument is not available, particularly, when there happens to be a judicial precedent that too in the case of the revisionist binding upon it holding it to be a deemed dealer. Even otherwise, there happens to be a categorical finding of fact recorded by the Tribunal that despite being asked to furnish the documents regarding details of the consignor and consignee, the revisionist failed to produce the same. The relevant extract of the revisional order dated 27.01.2026 is quoted here-in-under:

"वैट नियमावली के नियम-38(7) में जिन रजिस्टर, रसीदों एवं चालान/बिल्टी की ऑफिस कॉपी, डिलीवरी रजिस्टर का रखना निर्धारित है, उक्त अभिलेख अपीलार्थी द्वारा रखा जाना, द्वितीय अपील के स्तर पर भी न तो स्वीकार किया गया है और न ही उन्हें अधिकरण समक्ष प्रस्तुत किया गया है यद्यपि माननीय उच्च न्यायालय इलाहाबाद के निर्देशानुसार अधिकरण द्वारा अपीलार्थी को इस बारे में मौका दिया गया कि वह दस्तावेज प्रस्तुत कर सकते हैं अथवा यदि कोई दस्तावेज उन्होंने कर निर्धारण अधिकारी के समक्ष प्रस्तुत किये हैं तो वह अभिलेख अधिकरण द्वारा तलब किये जा सकते हैं, परन्तु सुनवाई के दौरान अपीलार्थी के विद्वान अधिवक्ता द्वारा इस बात से इन्कार किया गया कि उनके पास माल के सम्बन्ध में कोई दस्तावेज रिकार्ड में उपलब्ध नहीं है। इससे स्पष्ट है कि अपीलार्थी द्वारा नियम-38(7) का अनुपालन नहीं किया गया है जबकि माननीय उच्च न्यायालय इलाहाबाद द्वारा अधिकरण गाजियाबाद को प्रतिप्रेषित आदेश दिनांक 31-03-2022 में सी0सी0टी0 बनाम इरफान अली, नेहरू विहार, दिल्ली Sales/Trade Tax Revision No-405/2016 निर्णय दिनांक 17-02-2017 का सन्दर्भ देते हुए दी गयी विधि व्यवस्था में उक्त नियम का अनुपालन किया जाना अनिवार्य माना गया है। माननीय उच्च न्यायालय इलाहाबाद द्वारा कमिश्नर, कॉमर्शियल टैक्स बनाम मै0 सचिन कुमार जैन सेल्स/ट्रेड टैक्स रिवीजन संख्या-28/2024 दिनांकित 01-09-2025 में, हाल ही में, मै0 इरफान अली के वाद में दी गयी विधि व्यवस्था का समर्थन किया गया है। प्रश्नगत अपील में अपीलार्थी द्वारा मौका दिये जाने के बावजूद भी कोई दस्तावेज प्रस्तुत नहीं किये गये एवं अपीलार्थी के रिकार्ड में कोई दस्तावेज उपलब्ध होने से इन्कार किया है। अतः उक्त अभिलेख प्रस्तुत किये जाने के अभाव में अपीलार्थी को डीलर माना जायेगा। अतः कर निर्धारण अधिकारी द्वारा पारित कर निर्धारण आदेश में अपीलार्थी को जो डीलर माना गया है, वह सम्पुष्ट किये जाने योग्य है। तदनुसार अपीलार्थी द्वारा प्रस्तुत द्वितीय अपील बलहीन होने के कारण अस्वीकार किये जाने योग्य है।"

17. So far as the question of law framed in the leading revision is concerned, the same is as under:

"I. Whether the assessee can be treated as a dealer under section 2 (h) of the U.P. Value Added Tax Act, specially where no evidence of carries the business of buying selling, supplying or distributing goods.

II. Whether section 2(h)(ix) is applicable against the revisionist, without

failing the criteria provided therein, and if so, then whether the liability to prove the breach of the provision of section 2(h)(ix) of the U.P. Value Added Tax Act by the assessee, is incumbent upon the assessee.

III. Whether any liability of tax accrue on the revisionist, being contractor even without breach of the criteria provided under section (h) (ix) of the U.P. Value Added Tax Act.

IV. Whether any tax will be levied against the assessee under provision given under Table 8(i) provided under Section 3 of the Act even without recovery of any taxable goods found in the possession or custody of the

V. Whether the onus to prove that taxable goods were found in possession/custody of the taxable goods or sold by the assessee was over the authority.

VI. Whether the presumption of evasion of tax could be raised against such an agent, in absence of any material or evidence is being brought on record to establish that though the assessee was a transporter but had engaged in trading in goods."

18. None of the questions of law, warrant entertaining of revision and admission.

19. Viewing the case from the four corners of law, no ground is made out to interfere in the revisional jurisdiction. Accordingly, the revisions are **rejected**.

October 6, 2026
Ashu

(Vikas Budhwar,J.)