

**IN THE COMMERCIAL TAX TRIBUNAL,
UTTARAKHAND, DEHRADUN**

Present: Malik Mazhar Sultan, H.J.S President.

Anjali Benjwal..... Member.

Second Appeal No. 49 / 2024 {2015-2016.....}

M/s. Shiv Shakti Stone, Crusher, Laksar Road, Katarpur, Haridwar.

Appellant.

Versus

Commissioner- Commercial Tax, Uttarakhand, Dehradun.

Respondent.

For Appellant: Shri Akshay Agarwal

Ld. Advocate.

For Respondent: Shri Bhuwan Chandra Pandey

State-Representative.

Assessment year -

2015-16

First Appeal No-

209(i)/2018

Amount of disputed tax -

Rs. 7,11,229/-

J U D G M E N T

Malik Mazhar SultanPresident,

This appeal is filed against order dated 06.03.24 passed by Ld. Joint Commissioner (Appeal) in first appeal no 209(i) /2018, Assessment year 2015-16. Confirming the order of assessing authority dated 07.03.2018 the first appeal filed by the appellant/dealer was rejected.

2. The facts necessary for the disposal of this appeal are that the appellant firm is registered and carry out the business of production and sale of the stone grid. The firm was assessed for the relevant year of 2015-16. The assessee/appellant declared the purchase of 34,361/- cubic meter raw material (Boulder) at the rate of Rs 142.38 per cubic meter, the monetary value of the same was declared as Rs 48,92,486/-. The finished goods (stone grid) of 37,651/- cubic meter was declared to have been sold at the rate of Rs 600.17 per cubic meter, the monetary value of the same was declared as Rs. 2,25,97,009/-. Only on

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(Anjali Benjwal)

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sale price is not possible. It is further alleged that sale and purchase bills, purchase register, production register and all books of account were produced before the assessing authority and whole transaction is verified. Ld. assessing authority arbitrarily enhanced the turnover only on the basis of rate of stone grid fixed by Public Works Department. It is further stated that fixation of rate as such is against the principal of freedom of trade. There is no difference between sale described in form- L submitted in the office of District Magistrate and annual return submitted in the department. It is further stated that no sale was made to Public Works Department.

Heard the Ld. Counsel for the appellant and Ld. State representative and perused the record.

5. Challenging the impugned order as well as assessment order Ld. Counsel for the appellant reiterated the above mentioned grounds incorporated in the memo of appeal. It is argued on behalf of the appellant that the sale is verified from the books of account as well as Form-L submitted before the District Magistrate. It is vehemently argued that his cost of production is comparatively low due to low cost of boulder because transportation charges of boulder is low as his place of business is very much near to river. It is further argued that generally and in open market the rate of any product are determined on the basis of demand in market, keeping in view the competition in market and various other factors not on the basis of arbitrary fixation by any outer agency.

6. Supporting the impugned order as well as assessment order it is argued by Ld. State representative that analysing the demand of product in market the rate of product has rightly been fixed by Public Works Department. It is further argued that the assessee has not produced any document/bills etc in support of declared sale while according to Section 66 (1) of the Act it is the responsibility of the dealer to prove his declared sale. It is vehemently argued that assessing authority as well as first appellate authority has rightly come to the conclusion that the appellant/assessee has concealed the turn over by selling the stone grid on low price.

7. The only question which arises for determination in this appeal is that whether in the facts and circumstance of the matter the sale price declared by the assessee/appellant is legally acceptable or not. In another words whether the assessee has rightly declared his turnover for the relevant financial year.

8. In this matter the following facts are undisputed-

1. There is no dispute as regard quantity of goods sold by the assessee.
2. No sale was made to Public works department.
3. The rate of stone grid (furnished goods) as prescribed by P.W.D. is Rs. 950.00 per cubic meter.
4. The declared rate at which the furnished goods were sold is Rs 600.17 per cubic meter.

9. It is very much clear from the perusal of record that the product in question was not sold on loss instead it is sold on huge profit. It is pertinent to mention here that the competition in market as regard every product can not be ruled out. That is to say that competition in open market is one of the main factor for any trader fixing the rate of his product.

10. The contention of Ld. State Representative is that the assessee has not produced his account books for verification while the perusal of assessment order reveals that in response to the notice to assessee/appellant he produced his Profit and loss accounts, sale and purchase register, sale bills, which were not rejected by the assessing authority. According to assessing authority the only basis for the raised turnover is the letter of P.W.D. dated 07.01.2016 by which the rate of stone grid for the relevant year was prescribed. Further, the fact that bill books were produced before assessing authority for inspection is also described in the second last para of the impugned order. The contention of the Ld. State Representative that the transaction detail, bill book etc, were not produced by assessee is not acceptable.

11. The relevant portion of assessment order is as follows-

"जहां तक व्यापारी द्वारा घोषित बिक्री की दरें एवं लोक निर्माण विभाग द्वारा निर्धारित बिक्री की दरों का प्रश्न है, इस सम्बन्ध में मेरे द्वारा भी लोक निर्माण विभाग के अधिकारियों से बात की गई। उनके द्वारा बताया गया कि लोक निर्माण विभाग सीधे कोई निर्माण सामग्री की खरीद/बिक्री नहीं करता है और ना ही कोई निर्माण कार्य करता है। समस्त निर्माण कार्य ठेकेदारों के माध्यम से कराये जाते हैं। ठेकेदारों को निर्माण कार्यों के एवज में भुगतान किये जाने हेतु निर्माण सामग्री की अधिकतम दरें निर्धारित की गई है। इनसे अधिक दर पर ठेकेदारों को भुगतान नहीं किया जा सकता है। उनके द्वारा यह भी बताया गया कि खरीद/बिक्री की दरें खरीद स्थल से कार्यस्थल की दूरी के हिसाब से परिवर्तित हो सकती हैं। व्यापारी द्वारा प्रस्तुत बिल बुक की जांच पर पाया गया कि बिलों पर केवल माल की कीमत व कर की राशि ही अंकित की गई। भाड़े का उल्लेख बिल पर नहीं किया गया है। व्यापारी द्वारा तैयार माल की बिक्री अपने व्यापार स्थल से ही की गई है। यदपि व्यापारी द्वारा अपने तैयार की माल की बिक्री अपने व्यापार स्थल से भी

की गई है तब भी लोक निर्माण विभाग द्वारा निर्धारित दरें एवं व्यापारी द्वारा घोषित बिक्री की दरों में काफी अंतर है। प्रचलित बाजार दरें भी व्यापारी द्वारा घोषित बिक्री की दर से अधिक रही है।

संगत वर्ष में कर निर्धारण पत्रावली पर कोई प्रतिकूल सूचना एवं कर-अपवंचन से सम्बन्धित कोई साक्ष्य उपलब्ध नहीं है।”

12. Ld. assessing authority has himself stated in the assessment order that no product was purchased by the Public Works Department. Maximum rate is determined only for the purpose of making payment to the contractor for construction work. The sale price may vary on the basis of distance of the working place from river and place of sale. The product is sold from the work place itself.

13. It is also pertinent to mention here that undisputedly no supply of impugned product was made to P.W.D. The product is generally sold to contractors who again sold to petty contractors and contractor again supply it to different department or to retailer on higher price keeping his margins of profit. No doubt the price/rate of impugned product is prescribed by P.W.D. and the same can be adhered if the supply would have been made to P.W.D itself. In view of competition in market, immediate need of money etc. such determination of price can not preclude the dealer to sell the product on lower price to any other customer.

14. Ld. first appellate authority relied upon the Judgement of this tribunal passed in second appeal no. 194/2017(assessment year 2014-15) M/s Jai Durga Stone Mills V. Commissioner of tax, dated 12.06.2020., wherein on the basis of rate provided by Public Works Department the tribunal approved the rate of stone grids as Rs 850 per cubic meter. In this regard we are of the view that the facts of each case are different. Having regard to the competition in market, quality of product and various other factors the sale price of different producers may vary. In the present matter the sale is verified from books of account and Form-L. There is nothing to show any discrepancies in books of account, bills etc. Imposition of tax on the basis of rate prescribed by third agency is not proper. The appellant is not bound to sale his product on the rate prescribed by Public Works Department. There is no other ground to show that the appellant has concealed his turn over.

15. On the basis of above discussion we are of the considered opinion that in view of the facts and circumstances of the matter the assessing authority and the

first appellant authority has committed illegality in determining the sale price of the product in question merely on the basis of rate prescribed by public Works Department. The impugned order is liable to be set aside and the appeal deserved to be allowed.

Order accordingly.

ORDER

The instant appeal no. 49/2024 is hereby allowed and the impugned Judgement/order dated 06.03.24 passed in first appeal no. 209(i)/2018 is set aside.

Let the file be consigned.

S/d- 30/01/2026

(Anjali Benjwal)

Member,

**Commercial Tax Tribunal,
Uttarakhand, Dehradun.**

S/d- 30/01/2026

(Malik Mazhar Sultan)

President,

**Commercial Tax Tribunal,
Uttarakhand, Dehradun.**

Dated : 30 January, 2026.



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