IN THE COMMERCIAL TAX TRIBUNAL, UTTARAKHAND, HALDWANI

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

Rakesh Verma .....Member

Second Appeal No. 4 of 2025 (2006–07)

Under Section 9(2) of the CST Act

Commissioner Commercial Tax, Uttarakhand, Dehradun

Appellant/Department

Versus

M/s. Buland Minerals, Rampur Road, Haldwani

Respondent/Dealer

For the Appellant: Smt. Hemlata Shukla, Deputy Commissioner (State Tax), State Representative.

For the Respondent: Shri Joginder Singh, learned Advocate.

Assessment year	**2006–07**
First Appeal No.	**440/2010**
Amount of disputed tax	**Rs 3,74,598/-**

JUDGMENT

Rakesh Verma ..... Member

Introduction

This Second Appeal has been preferred by the Department, calling in question the order dated 19.11.2024 passed by the First Appellate Authority, whereby the respondent-dealer has been held entitled to avail a concessional rate of tax on inter-State sales and the Department's objection to such entitlement have been rejected.

The principal issue that arises for consideration is whether, upon the enforcement of the VAT Act, the Department was justified in denying the aforesaid fiscal concession flowing from Notification No. 288 dated 01.03.2005, issued by the State Government in exercise of powers under Section 8(5) of the CST Act; and whether the said notification, and the benefit accruing thereunder, stood saved by virtue of Section 80(3) of the VAT Act until its rescission by Notification No. 859 dated 09.11.2006.

Facts of the Case

The respondent-dealer, M/s Buland Minerals, Rampur Road, Haldwani, is engaged in the purchase and sale of stone lumps (soapstone) and in the manufacture and sale of soapstone powder. It also makes inter-State sales governed by the CST Act.

For the assessment year 2006–07, assessment proceedings were completed under Section 9(2) of the CST Act by order dated 26.02.2010. The Assessing Authority determined the CST liability at Rs 7,47,939/-.

During assessment, certain inter-State sales of manufactured soapstone powder were taxed at a higher rate. The Assessing Authority denied the concessional rate claimed by the respondent-dealer under the relevant notification and raised an additional tax demand.

The respondent-dealer filed a first appeal before the Joint Commissioner (Appeals), State Tax, Haldwani. By order dated 19.11.2024, the First Appellate Authority partly allowed the appeal and held that the respondent-dealer was entitled to concessional rates under the notification issued under Section 8(5) of the CST Act, subject to fulfilment of the prescribed conditions.

The First Appellate Authority reduced the tax liability to Rs 3,73,341/-, granting relief of Rs 3,74,598/-. It also issued directions regarding adjustment of input tax credit and interest.

The Department has filed the present Second Appeal against the said order.

Department's Submissions

Learned counsel for the Department assailed the order dated 19.11.2024 passed by the First Appellate Authority, contending that it is contrary to law and to the facts on record and, consequently, is liable to be set aside.

It was urged that Notification No. 288 dated 01.03.2005, on which the respondent-dealer places reliance for claiming a concessional rate of tax, was issued during the regime of the U.P. Trade Tax Act, 1948 and that it became inoperative upon enforcement of the VAT Act (even prior to its rescission). It was further contended that, upon introduction of VAT, the scheme of taxation for inter-State sales underwent a material change, including in relation to adjustment of input tax credit, and therefore the earlier notification could not be pressed into service.

It was further submitted that the concessional rate could not be extended during the VAT regime on the strength of the said notification, as the same was, according to the Department, inconsistent with the provisions of the VAT Act. It was contended that Section 80(3) of the VAT Act saves only such notifications as are consistent with the VAT Act, and that the notification in question does not satisfy the said statutory requirement.

The Department submitted that the notification belonged to the Trade Tax scheme and, if applied under VAT, would give an unintended fiscal benefit not contemplated by the legislature.

It was submitted that the Assessing Authority rightly denied the concessional rate and levied tax at the higher applicable rate, and that the First Appellate Authority erred in reducing the tax liability.

On these grounds, it was prayed that the order dated 19.11.2024 be set aside and the assessment order dated 26.02.2010 be restored.

Submissions on Behalf of the Respondent (Dealer)

Learned counsel for the respondent-dealer supported the order dated 19.11.2024 and submitted that it is legal, valid, and based on a correct appreciation of facts and law; therefore, it does not call for interference in the present Second Appeal.

It was submitted that the impugned notification was issued under Section 8(5) of the CST Act and not under the U.P. Trade Tax Act, 1948, as erroneously assumed by the Department. On this premise, it was contended that the Department's challenge is misconceived.

Learned counsel contended that the CST Act continued to remain in force after enforcement of the VAT Act and that a notification issued under Section 8(5) does not lapse merely because VAT was introduced.

It was further submitted that Section 80(3) of the VAT Act expressly saves notifications, orders, and directions issued prior to VAT, so far as they are not inconsistent with the VAT Act. According to the respondent-dealer, the Department has not shown any such inconsistency in the present case.

Learned counsel argued that the respondent-dealer fulfilled the conditions of the notification and carried out inter-State transactions bona fide during the relevant assessment year. It was submitted that the benefit, once validly availed, crystallised as an accrued right and could not be withdrawn later.

It was emphasised that denial of the benefit for a period during which the notification remained in force would operate retrospectively, which is impermissible in law.

It was contended that the First Appellate Authority correctly applied the settled principles of the Hon'ble Supreme Court that fiscal benefits, once granted and acted upon, cannot be withdrawn retrospectively, particularly without express statutory authority.

It was submitted that accepting the Department's stand would create uncertainty and inconsistency in completed commercial transactions, which is contrary to settled principles of fiscal law.

It was argued that the First Appellate Authority passed the order after examining the record, statutory provisions, and relevant notifications, and recorded clear findings of fact and law, which do not require interference in second appeal.

On these grounds, it was prayed that the Second Appeal be dismissed and the order dated 19.11.2024 be affirmed.

Points for Determination

Upon consideration of the pleadings, submissions advanced by the parties, and the material on record, the following points arise for determination in the present Second Appeal:

1. Whether Notification No. 288 dated 01.03.2005 was issued under Section 8(5) of the CST Act and not under the U.P. Trade Tax Act, 1948, as contended by the Department?
2. Whether notifications issued under Section 8(5) of the CST Act continue to remain operative after enforcement of the VAT Act?
3. Whether such notifications are expressly saved and protected by sub-section (3) of Section 80 of the VAT Act, in the absence of any inconsistency with the provisions of the VAT Act?
4. Whether the Department is legally justified in denying the benefit of concessional rate by treating the impugned notification as having lapsed merely due to the enforcement of the VAT Act?
5. Whether denial of the concessional rate for the relevant assessment year amounts to retrospective withdrawal of an accrued benefit?
6. Whether retrospective withdrawal of fiscal benefit is permissible in the absence of express statutory authority, in light of the principles laid down by the Hon'ble Supreme Court on retrospectivity and prospectivity?

7. Whether the First Appellate Authority committed any legal or jurisdictional error in granting relief to the respondent-dealer by allowing the benefit of the notification?
8. Whether the Second Appeal filed by the Department raises any substantial question of law warranting interference with the impugned appellate order?

Discussion and Findings

Section 80(3) of the VAT Act provides that existing notifications, orders, and directions in force immediately before the commencement of the VAT Act shall continue to operate, so far as they are not inconsistent with the provisions of the VAT Act, until they are repealed, amended, or modified in accordance with law. The object is to maintain continuity of rights, liabilities, and benefits during the transition to VAT, and the saving provision must be given full effect within its statutory limits.

A material aspect, which goes to the root of the Department's case, is that the impugned notification was not issued under the U.P. Trade Tax Act, 1948; rather, it was issued in exercise of powers under Section 8(5) of the CST Act. Section 8(5) empowers the State Government, in public interest, to grant a reduction in, or exemption from, the rate of tax payable on inter-State sales, subject to conditions. The CST Act continued to remain in force even after the VAT Act came into operation and was not repealed thereby. Consequently, the Department's treatment of the notification as one issued under the Trade Tax enactment is legally misconceived and factually incorrect.

The argument that Section 80(3) applies only to notifications under the Trade Tax Act is without substance. Section 80(3) saves notifications, orders, and directions that were in force prior to VAT, so long as they are not inconsistent with the VAT Act.

Notifications issued under Section 8(5) of the CST Act have a direct bearing on tax liability and operate within the State's taxing framework; they therefore fall within the ambit of Section 80(3). The Department has failed to demonstrate any inconsistency between the notification issued under the CST Act and the provisions of the VAT Act. In the absence of repeal, modification, or inconsistency, such notifications stand saved and continue to be enforceable in accordance with law.

The Hon'ble Supreme Court in *CIT v. Vatika Township Pvt. Ltd.* (2015) 1 SCC 1 (Constitution Bench) held that a law which imposes a burden or takes away a

vested right is presumed to operate prospectively unless a contrary intention is clearly expressed. It also held that fiscal statutes must maintain certainty and predictability, especially in respect of completed transactions.

Applying the aforesaid principle, denial of the concessional rate for a period during which the notification remained in force would, in effect, operate retrospectively, which is impermissible.

It is settled that fiscal benefits once validly granted and acted upon cannot be withdrawn retrospectively. In *Pournami Oil Mills v. State of Kerala* (1986) 1 SCC 728, the Supreme Court held that a benefit once granted creates a legitimate expectation and cannot be withdrawn to the prejudice of the dealer for a past period. Similarly, in *State of Rajasthan v. Mahaveer Oil Industries* (1999) 4 SCC 357, it was held that retrospective withdrawal of exemption affecting completed transactions is arbitrary and unsustainable.

In the present case, the respondent-dealer acted bona fide, completed the relevant transactions, and complied with the statutory requirements. The Department seeks to withdraw the benefit after an inordinate lapse of time, which results in retrospective deprivation of an accrued benefit.

In *Kasinka Trading v. Union of India* (1995) 1 SCC 274, the Supreme Court drew a distinction between prospective withdrawal (permissible) and retrospective withdrawal (impermissible in the absence of statutory authority). No provision under the VAT Act authorises retrospective withdrawal of benefits granted under Section 8(5) of the CST Act.

Therefore, the Department's action lacks statutory backing and legal sanction.

Response to Points for Determination

Point No. 1

Whether Notification No. 288 dated 01.03.2005 was issued under Section 8(5) of the CST Act and not under the U.P. Trade Tax Act, 1948, as contended by the Department?

The Department's contention that the impugned notification was issued under the U.P. Trade Tax Act, 1948 is factually and legally untenable.

A plain reading of Notification No. 288 dated 01.03.2005 shows that it was issued in exercise of powers under sub-section (5) of Section 8 of the CST Act. That provision authorises the State Government to grant reduction in rate of tax on inter-State sales, in public interest, subject to conditions.

s/d- 17.04.2026
(Rakesh Verma)

s/d- 17.04.2026
(Malik Mazhar Sultan)

The notification governs inter-State sales, which are covered by the CST Act. The U.P. Trade Tax Act, 1948 did not govern such inter-State transactions. Therefore, the Department's description of the notification as a Trade Tax notification is misconceived.

Accordingly, this point is answered in favour of the respondent-dealer and against the Department.

Point No. 2

Whether notifications issued under Section 8(5) of the CST Act continue to remain operative after enforcement of the VAT Act?

The Central Sales Tax Act, 1956 was not repealed by the VAT Act. Inter-State sales continued to be governed by the CST Act after VAT came into force. Therefore, notifications issued under Section 8(5) of the CST Act do not lapse merely because VAT was introduced. Unless they are expressly withdrawn, rescinded, or made inoperative by law, such notifications continue to operate. There is no provision in the VAT Act that ends the operation of CST notifications merely due to a change in the tax regime.

Accordingly, this point is answered in favour of the respondent-dealer and against the Department.

Point No. 3

Whether such notifications are expressly saved and protected by sub-section (3) of Section 80 of the VAT Act, in the absence of any inconsistency with the provisions of the VAT Act?

Section 80(3) of the VAT Act is a saving clause meant to ensure continuity during transition to VAT. Its language is wide and saves all notifications that were in force immediately before VAT, so long as they are not inconsistent with the VAT Act. The Department has not shown any inconsistency between the notification issued under Section 8(5) of the CST Act and the VAT Act. Mere difference in tax structure does not by itself amount to inconsistency. Therefore, the notification stands expressly saved under Section 80(3).

Accordingly, this point is answered in favour of the respondent-dealer and against the Department.

s/d- 17.04.2026 s/d- 17.04.2026

(Malik Mazhar Sultan)

Point No. 4

Whether the Department is legally justified in denying the benefit of concessional rate by treating the impugned notification as having lapsed merely due to the enforcement of the VAT Act?

The Department's stand has no legal basis. Neither the VAT Act nor any amendment provides that notifications issued under Section 8(5) of the CST Act stand annulled upon enforcement of VAT. Without express repeal or withdrawal, the Department cannot presume that the notification lapsed. Accepting such an argument would defeat Section 80(3). Therefore, the Department lacked authority to deny the concessional rate merely because VAT was enforced.

Accordingly, this point is answered in favour of the respondent-dealer and against the Department.

Point No. 5

Whether denial of the concessional rate for the relevant assessment year amounts to retrospective withdrawal of an accrued benefit?

The concessional rate under Notification No. 288 dated 01.03.2005 accrued to the respondent-dealer during the relevant assessment year while the notification was in force and its conditions were complied with. Its subsequent denial would unsettle concluded transactions and, in effect, amount to retrospective withdrawal of an accrued benefit.

Accordingly, this point is answered in favour of the respondent-dealer and against the Department.

Point No. 6

Whether retrospective withdrawal of fiscal benefit is permissible in the absence of express statutory authority, in light of the principles laid down by the Hon'ble Supreme Court on retrospectivity and prospectivity?

The law is settled that fiscal statutes are presumed to operate prospectively, vested or accrued rights cannot be taken away retrospectively, and delegated legislation cannot affect retrospective deprivation unless expressly authorised. Neither the VAT Act nor the CST Act authorises retrospective withdrawal of benefits granted under Section 8(5).

Therefore, the Department's action is legally impermissible and unsustainable in law.

Accordingly, this point is answered in favour of the respondent-dealer and against the Department.

s/d- 17.04.2026
(Rakesh Verma)

s/d- 17.04.2026
(Malik Mazhar Sultan)

Point No. 7

Whether the First Appellate Authority committed any legal or jurisdictional error in granting relief to the respondent-dealer by allowing the benefit of the notification?

The First Appellate Authority examined the source of the notification, the saving clause under Section 80(3), the continued applicability of the CST Act, and the settled law on retrospectivity. Its findings are reasoned and supported by law. No perversity, legal infirmity, or jurisdictional error is shown.

Accordingly, this point is answered in the negative, in favour of the respondent-dealer and against the Department.

Point No. 8

Whether the Second Appeal filed by the Department raises any substantial question of law warranting interference with the impugned appellate order?

The issues raised by the Department are concluded by the interpretation of Section 80(3), settled jurisprudence of the Supreme Court, and clear findings. The Department is seeking re-appreciation of matters already settled, which does not raise any substantial question of law.

Conclusion

For the reasons recorded above, the Second Appeal is devoid of merit.

Notification No. 288 dated 01.03.2005 was issued under Section 8(5) of the CST Act and, by virtue of Section 80(3) of the VAT Act, continued to operate until rescinded; no inconsistency with the VAT Act has been shown by the Department.

Denial of the concessional rate for the relevant period would, in substance, amount to retrospective withdrawal of an accrued fiscal benefit, which is impermissible in the absence of express statutory authority. The First Appellate Authority has correctly applied the law, and its order calls for no interference.

Accordingly, no ground is made out to interfere with the impugned order, and the Second Appeal is liable to be dismissed.

Order

In view of the discussion made hereinabove, it is held that Notification No. 288 dated 01.03.2005, issued under Section 8(5) of the CST Act, stood saved under Section 80(3) of the VAT Act, no inconsistency having been shown by the Department. Denial of the concessional rate for the relevant period would, in

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substance, amount to retrospective withdrawal of an accrued fiscal benefit, which is impermissible in the absence of express statutory authority.

Accordingly, the Second Appeal is dismissed and the order dated 19.11.2024 passed by the First Appellate Authority is affirmed.

s/d- 17.04.2026

(Rakesh Verma)
Member,
Commercial Tax Tribunal,
Haldwani.Uttarakhand

s/d- 17.04.2026

(Malik Mazhar Sultan)
President,
Commercial Tax Tribunal,
Dehradun Uttarakhand

Date: 17.04.2026