THE COMMERCIAL TAX TRIBUNAL, UTTARAKHAND
HALDWANI BENCH

Present: Shri Gurubaksh Singh, H.J.S., Chairman

Shri Rakesh Verma, Member

SECOND APPEAL NOS. 06 OF 2025

Assessment Years: 2013–14

Under Section 25(7) of the Uttarakhand Value Added Tax Act, 2005

1- **M/s Lalkuan Stone Crusher Pvt. Ltd., Rudrapur**, Uttarakhand,

Appellant (Dealer)

Versus

Commissioner of Commercial Tax, Uttarakhand, Dehradun

Respondent (Department)

SECOND APPEAL NOS. 07 OF 2025

Assessment Years: 2013–14

Under Section 9(2) of the Central Sales Tax Act, 1956

2- **M/s Lalkuan Stone Crusher Pvt. Ltd., Rudrapur**, Uttarakhand,

Appellant (Dealer)

Versus

Commissioner of Commercial Tax, Uttarakhand, Dehradun

Respondent (Department)

SECOND APPEAL NOS. 08 OF 2025

Assessment Years: 2014–15

Under Section 25(7) of the Uttarakhand Value Added Tax Act, 2005

3- **M/s Lalkuan Stone Crusher Pvt. Ltd., Rudrapur**, Uttarakhand,

Appellant (Dealer)

Versus

s/d s/d-13.07.26

Verma | Gurubaksh Singh

Commissioner of Commercial Tax, Uttarakhand, Dehradun

Respondent (Department)

SECOND APPEAL NOS. 09 OF 2025

Assessment Years: 2014–15

Under Section 9(2) of the Central Sales Tax Act, 1956

4- M/s Lalkuan Stone Crusher Pvt. Ltd., Rudrapur, Uttarakhand,

Appellant (Dealer)

Versus

Commissioner of Commercial Tax, Uttarakhand, Dehradun

Respondent (Department)

For the Appellant: Shri D. P. Yadav, Ld. Advocate

For the Respondent: Smt. Hemlata Shukla, Deputy Commissioner and State Representative, Commercial Tax, Uttarakhand

JUDGMENT

Second Appeal Nos. 06, 07, 08 and 09 of 2025

Delivered by: **Rakesh Verma, Member**

I. Introduction

1. These are four second appeals concerning M/s Lalkuan Stone Crusher Pvt. Ltd., Rudrapur (hereinafter called "the Dealer" or "the Appellant") and the Commissioner, Commercial Tax, Uttarakhand, Dehradun (hereinafter called "the Department" or "the Respondent"). The appeals were preferred by the Dealer against orders passed by the Joint Commissioner (Appeal), State Tax, Haldwani, Uttarakhand (hereinafter called "the First Appellate Authority") rejecting the Dealer's first appeals and sustaining the levy of tax at the residual

rate of 13.5% on the disputed turnover. The four appeals and their details are as follows.

(a) Second Appeal No. 06 of 2025 — Filed on December 19, 2025, against the order dated October 10, 2025, in First Appeal No. 150/2024 (Assessment Year 2013-14, Uttarakhand VAT Act, 2005). Disputed tax: Rs. 24,64,104/-.

(b) Second Appeal No. 07 of 2025 — Filed on December 19, 2025, against the order dated October 10, 2025, in First Appeal No. 166/2024 (Assessment Year 2013-14, Central Sales Tax Act, 1956). Disputed tax: Rs. 4,27,717/-.

(c) Second Appeal No. 08 of 2025 — Filed on December 19, 2025, against the order dated October 3, 2025, in First Appeal No. 151/2024 (Assessment Year 2014-15, Uttarakhand VAT Act, 2005). Disputed tax: Rs. 36,30,400/-.

(d) Second Appeal No. 09 of 2025 — Filed on December 19, 2025, against the order dated October 13, 2025, in First Appeal No. 152/2024 (Assessment Year 2014-15, Central Sales Tax Act, 1956). Disputed tax: Rs. 1,06,944/-.

2. The aggregate disputed tax demand across all these four appeals is Rs. 66,29,165/-. Because all these four appeals involve the same dealer, the same commodity class, the same assessment years with minor differences, and a common question of law, they are heard and disposed of together by this common judgment. Where facts differ between the appeals, they are noted

separately in the judgment. The legal analysis and conclusions apply equally to all these four appeal cases.

3. The principal controversy common to all these four appeals arises from the rejection of the dealer's first appeals by the First Appellate Authority. The Dealer had specifically challenged the action of the Assessing Authority in treating crushed stone grit, stone dust, and the allied stone and riverbed materials forming part of the disputed pre-Schedule – II (C) turnovers as "unclassified goods" after the substitution of Entry No. 94 of Schedule- II(B) to the Uttarakhand Value Added Tax Act, 2005 by Notification No. 541/2013 dated May 2, 2013, and consequently levying tax at the residual rate of 13.5%.The Dealer's case was that the omission of those goods from the substituted entry did not alter their legal or commercial character as stone or allied riverbed material. However, the First Appellate Authority rejected this contention and upheld the assessment at 13.5%. This rejection and the legality of the resulting levy constitute the core issues in the present second appeals.

4. The legality of the rejection recorded by the First Appellate Authority must be tested in light of the binding pronouncements of the **Hon'ble Supreme Court of India, particularly in "Commissioner of Sales Tax, U.P. v. Lal Kunwa Stone Crusher (P) Ltd., (2000) 3 SCC 525"**, and **"State of Uttarakhand & Ors. v. Kumaon Stone Crusher, Civil Appeal No. 14874 of**

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2017, decided on September 15, 2017." These established principle of **Hon'ble Supreme Court** clearly state that the mechanical crushing of stone boulders into grit, chips, or dust does not create a new or distinct commercial commodity. The crushed output remains a stone in its legal and commercial identity. Therefore, the mere omission of crushed stone grit and stone dust from the substituted Entry No. 94 could not, by itself, justify their treatment as unclassified goods attracting the residual rate of tax.

5. Before this Tribunal, the learned State Representative appearing for the Department supported the approach adopted by the Assessing Authority and submitted that the disputed goods were rightly treated as unclassified goods after their omission from the substituted Entry No. 94. According to the Department, the levy of tax at the residual rate of 13.5% was legally justified. However, the submission must be examined in light of the binding decisions of the **Hon'ble Supreme Court** referred to above, which hold that the crushing of stone does not result in a new or distinct commercial commodity and that crushed grit, chips, and stone dust continue to retain their character as stones. It is in this background that the legality of the First Appellate Authority's rejection of the Dealer's challenge and the consequent levy of 13.5% is determined in these second appeals.

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6. Against this background, the Tribunal proceeds to examine the statutory scheme, the binding judicial precedents, and the principle of judicial discipline governing the dispute. The inquiry is confined not merely to whether the Assessing Authority was correct in applying the residual rate of 13.5%, but also to whether the First Appellate Authority was justified in rejecting the Dealer's challenge and in affirming that levy. The discussion that follows is therefore directed to determining whether, after the substitution of Entry No. 94, the disputed goods could lawfully be treated as unclassified goods for the purposes of tax.

II. Facts of the Case

7. The Dealer, M/s Lalkuan Stone Crusher Pvt. Ltd., is a company incorporated under the Companies Act and is engaged in the extraction, processing, crushing, and sale of stone and riverbed materials from its unit at Rudrapur, District Udham Singh Nagar, Uttarakhand. Its business activities include the procurement of raw boulders, shingles, and riverbed material under licences granted in terms of the Uttarakhand Minor Minerals (Concession) Rules, 2001, and the subsequent processing of such material into commercially saleable forms. The principal goods dealt with by the dealer include sand (reta), bajri, stone boulders, riverbed material (RBM), crushed stone grit (gitti), stone chips, and stone dust. The tax classification of the crushed stone grit and stone dust,

produced through the crushing process but asserted by the dealer to retain the character of stone, lies at the center of the present controversy. The Dealer is registered under both the Uttarakhand Value Added Tax Act, 2005 and the Central Sales Tax Act, 1956.

8. The Dealer sells the aforesaid goods within the State of Uttarakhand as well as in the course of inter-State trade. Its intra-State sales fall under the Uttarakhand Value Added Tax Act, 2005, while its inter-State sales are governed by the Central Sales Tax Act, 1956. The Dealer also undertakes stock transfers to its branches or agents against Form F, which are treated separately from taxable inter-State sales in accordance with the law. The transactions relevant to these appeals principally concern crushed stone grit and stone dust, along with allied stone and riverbed materials, which are used extensively in construction and infrastructure activities. The classification of these goods and the rate at which they were taxable during the relevant assessment years, therefore, directly affects both the VAT and CST liabilities under challenge in the present appeal.

9. The original assessment orders for assessment years 2013-14 and 2014-15 under the VAT Act were passed on November 27, 2017, under Section 25(7), read with Section 30, of the Uttarakhand Value Added Tax Act, 2005. The Dealer preferred first appeals against these orders. In earlier appellate

proceedings, the First Appellate Authority set aside the assessments and remanded the matter to the Assessing Authority for fresh consideration. While doing so, it recorded material findings that no adverse information was available against the dealer for the relevant assessment years, no accepted adverse survey report formed part of the record, the declared figures for the preceding year had been accepted, and no material indicating suppression of turnover or evasion of tax had been brought on record. The remand was thus not an affirmation of the original assessments but a direction for fresh adjudication in accordance with the law and on the basis of material legally available in the record.

10. The remand confined the fresh proceedings to legally admissible material and the recorded finding that there was no adverse material showing suppression of turnover or tax evasion. Despite this, the Assessing Authority, by order dated March 18, 2024, taxed sales of crushed grit and stone dust after May 2, 2013, at 13.5%, treating them as unclassified goods solely because they were omitted from substituted Entry No. 94 by Notification No. 541/2013. This reassessment formed the immediate factual basis for the present dispute.

The Reassessment Order: Assessment Year 2013-14 (VAT) — Second Appeal No. 06 of 2025

11. Pursuant to the remand, the Assessing Authority passed a fresh order on March 18, 2024, determining the Dealer's tax liability for the assessment year

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2013-14 under the VAT Act. In that order, the sale of natural sand, natural grit, crushed grit, and dust up to May 1, 2013, on a turnover of **Rs. 1,25,04,561/-**, was taxed at 5%, resulting in a tax of **Rs. 6,25,228/-**, and that levy was not disputed. The sale of natural sand and natural grit from May 2, 2013, on a turnover of **Rs.12,10,79,723/-**, was also taxed at 5%, resulting in a tax of **Rs. 60,53,986/-**, and was accepted. The dispute arises only in respect of the sale of crushed grit and stone dust from May 2, 2013, on a turnover of Rs. 3,37,42,402/-, which the Assessing Authority treated as unclassified goods and taxed at 13.5%, resulting in a tax of Rs. 45,55,224/-. The sale of iron scrap, on a turnover of Rs. 59,61,865/-, was taxed at 5%, resulting in a tax of Rs. 2,98,093/-, and was accepted; miscellaneous scrap, on a turnover of Rs. 1,82,685/-, was taxed at 13.5%, resulting in a tax of Rs. 24,662/-. The aggregate turnover determined for the year was **Rs. 1,37,57,29,797/-** and the total tax determined was Rs. 7,16,70,122/-.

12. Therefore, the reassessment order clearly shows that the Dealer did not dispute the levy of tax at 5% on natural sand and natural grit from May 2, 2013, the levy on natural and crushed grit and dust up to May 1, 2013, or the levy at 5% on iron scrap. These components are accepted and are not the subject of the present controversy. The controversy in Second Appeal No. 06 of 2025 is confined to the levy of tax at 13.5% on the turnover of Rs. 3,37,42,402/-

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representing sales of crushed grit and stone dust from May 2, 2013. The levy resulted in a tax of Rs. 45,55,224/-, out of which the disputed tax carried in the present second appeal is **Rs. 24,64,104/-**, the remaining component having been dealt with in the first appellate proceedings.

The Reassessment Order: Assessment Year 2013-14 (CST) — Second Appeal No. 07 of 2025

13. Under the reassessment order dated March 18, 2024, for assessment year 2013-14 under the CST Act, Form C inter-State sales of Rs. 3,93,15,928/- were taxed at 2%, and Form F stock transfers of Rs. 28,72,90,698/- were treated as non-taxable; both components were accepted. The dispute in Second Appeal No. 07 of 2025 is confined to non-Form C inter-State sales of crushed stone grit and stone dust amounting to Rs. 49,96,673/-, taxed at 13.5% on the same residual-classification basis adopted in the VAT reassessment. The Dealer did not claim the 2% concessional rate under Section 8(1) of the CST Act but contended that Section 8(2) required application of the Uttarakhand State rate for the same goods, since they remained classifiable as stone. The disputed tax component is Rs. 4,27,717/-.

The Reassessment Order: Assessment Year 2014-15 (VAT) — Second Appeal No. 08 of 2025

14. For the assessment year 2014-15, the dealer's liability under the VAT Act was determined by the Assessing Authority in an order dated March 18, 2024. For the period April 1, 2014, to December 11, 2014, sales of natural sand, bajri, and stone, on a turnover of **Rs. 9,02,13,129/-**, were taxed at 5%, resulting in a tax of **Rs. 45,10,656/-**, and that component was accepted. For the same period, sales of crushed stone, grit, and stone dust, on a turnover of Rs. 3,70,57,419/-, were treated as unclassified goods and taxed at 13.5%, resulting in a tax of Rs. 50,02,752/-, which is disputed by the Dealer. For the transitional period from December 12, 2014, to December 16, 2014, sales of natural or crushed sand, bajri, and stone, on a turnover of Rs. 56,53,156/-, were also taxed at 13.5%, resulting in a tax of Rs. 7,63,176/-, which is also disputed. For the period from December 17, 2014, to March 31, 2015, sales of natural or crushed sand, bajri, and stone, on a turnover of Rs. 27,48,98,862/-, were taxed at 9%, resulting in a tax of Rs. 2,47,40,898/-, and that component was accepted by the Dealer. The sale of iron scrap, with a turnover of Rs. 52,55,063/-, was taxed at 5%, resulting in a tax of Rs. 2,62,753/-. The aggregate turnover determined for the year was Rs. 1,22,49,95,796/-, and the total tax determined was Rs. 7,58,76,143/-.

15. The dispute in Second Appeal No. 08 of 2025 is therefore confined to two components of the VAT assessment for the assessment year 2014-15. **The first concern is** the sale of crushed stone, grit, and stone dust amounting to Rs. 3,70,57,419/- for the period from April 1, 2014, to December 11, 2014, which were treated as unclassified goods and taxed at 13.5%. **The second concern was** the sale of natural or crushed sand, bajri, and stone amounting to Rs. 56,53,156/- for the transitional period from December 12, 2014, to December 16, 2014, which were also taxed at 13.5%. The Dealer contends that neither component could lawfully attract the residual rate, since the goods retained their character as stone and remained classifiable during the relevant period. However, the Dealer accepted the levy at 9% on sales for the period from December 17, 2014, to March 31, 2015, under the subsequently applicable Schedule- II(C) entry. The disputed tax component carried in this appeal is Rs. 36,30,400/-.

The Reassessment Order: Assessment Year 2014-15 (CST) — Second Appeal No. 09 of 2025

16. For assessment year 2014-15 under the CST Act, the reassessment order dated March 18, 2024, taxed Form C inter-State sales of Rs. 2,97,07,373/- at 2% and treated Form F stock transfers of Rs. 29,74,47,933/- as non-taxable; both components were accepted. The disputed components are limited to Form C

sales of Rs. 2,07,962/- taxed at 9% and non-Form C inter-State sales of Rs. 12,58,173/- taxed at 13.5%. The aggregate CST turnover was determined at Rs. 32,86,21,441/-, with a total tax of Rs. 7,82,717/-.

17. Thus, Second Appeal No. 09 of 2025 concerns only whether the two disputed turnovers, both relating to the period before December 17, 2014, could lawfully be taxed at 9% and 13.5%, respectively. The Dealer contended that the goods remained classifiable as stone and that the applicable State rate was 5%. The disputed tax component is Rs. 1,06,944/-.

The First Appellate Orders

18. Aggrieved by the reassessment order dated March 18, 2024, the Dealer preferred first appeals before the First Appellate Authority. During the course of those appellate proceedings, the First Appellate Authority called for a report from the Deputy Commissioner (Assessment), State Tax Sector-II, Rudrapur, with reference to the basis on which the reassessment was completed. The report placed before the First Appellate Authority stated that the Assessing Authority had passed the reassessment order after examining the Dealer's books and records and after referring to the earlier decisions of this Tribunal in M/s New Tarai Stone Crusher, Haldwani, M/s Sagar Stone Crusher Pvt. Ltd., Haldwani, and M/s Uttarakhand Stone Products Pvt. Ltd., Haldwani, as well as

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the decision of the **Hon'ble Supreme Court in State of Uttarakhand & Ors. v/s. Kumaon Stone Crusher (supra)**. The report further expressed the view that the levy of tax at 13.5% for financial years 2013-14 and 2014-15 was legally proper. Thus, the report substantially supported the Assessing Authority's treatment of the disputed goods as unclassified and its application of the residual rate.

19. Relying substantially on the report placed before it and the earlier tribunal decisions referred to therein, the First Appellate Authority rejected the dealer's first appeals by orders dated October 3, 2025, October 10, 2025, and October 13, 2025. It upheld the treatment of crushed grit and stone dust as unclassified goods for the disputed periods and sustained the levy of tax at a residual rate of 13.5%. The First Appellate Authority thus affirmed the core reasoning of the Assessing Authority, namely, that the omission of the disputed goods from the substituted Entry No. 94 was sufficient to bring them within the purview of Section 7(3) of the VAT Act. These orders of rejection and the legality of the resulting levy are the subject matter of the present all four second appeals preferred by the dealer.

20. Aggrieved by the rejection of its first appeals and the affirmation of the 13.5% levy, the Dealer has preferred the present four second appeals before this Tribunal. The challenge is directed principally against the finding that the

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omission of crushed stone grit and stone dust from substituted Entry No. 94 was sufficient to render those goods unclassified under Section 7(3) of the VAT Act. The Dealer contended that the First Appellate Authority failed to give due effect to the binding decisions of the Hon'ble Supreme Court, particularly **Lal Kunwa Stone Crusher and Kumaon Stone Crusher(supra)**, and wrongly sustained the residual rate levy despite the settled position that crushing does not bring into existence a new commercial commodity. **Therefore, the present these appeals require this Tribunal to examine whether the appellate rejection can stand in law and whether the disputed goods could be validly subjected to tax at 13.5% for the periods in question.**

III. Submissions of the Appellant

21. Shri D. P. Yadav, learned Advocate appearing for the Appellant-Dealer, assailed the orders of the First Appellate Authority and submitted that the rejection of the Dealer's first appeals was legally unsustainable. He contended that the authorities below erred in treating crushed stone grit, stone chips, stone dust, sand, bajri, and allied crusher output as unclassified goods merely because of their omission from the substituted Entry No. 94, and in sustaining the levy of tax at the residual rate of 13.5%. The central submission of the Appellant was that sand, bajri, grit, stone, and stone dust processed through a stone crusher do

not lose their original identity and do not become distinct commercial commodities taxable at a higher residual rate. Reliance was placed on earlier judicial pronouncements, including **CST v. Haldwani Stone Co., 1992 UPTC 1322**, and subsequent proceedings before the Tribunal, the Hon'ble High Court, and the Hon'ble Supreme Court, to contend that breaking boulders into smaller sizes does not create a new commodity and that stone, gitti, kankar, ballast, and similar articles remain within the broader meaning of "stone." The Appellant further submitted that after the VAT Act came into force on October 1, 2005, Entry No. 94 of Schedule - II(B) continued to prescribe the classified rate for river sand, bajri, grit, and boulders, and that the amendment effective from May 2, 2013, could not, by itself, convert processed riverbed material purchased through the Forest Corporation into an unclassified good. By analogy, it was urged that just as pulses do not cease to be pulses merely because they are processed by machines, stone and allied riverbed materials do not cease to be stone or riverbed material merely because they are crushed. The Appellant also relied on litigation relating to transit fees, in which the State itself had maintained, and the Hon'ble Supreme Court had accepted that processing in a stone crusher does not alter the basic character of the material. Submissions advanced on behalf of the dealer are considered under the following heads:

22. Elaborating on this submission, the learned counsel urged that the decisive test is not the size, shape, or commercial convenience of the material after

crushing, but whether the process brings into existence a commodity known in the market as something commercially distinct from the stone. In that test, it was submitted that crushed stone grit, stone chips, stone dust, gitti, kankar, ballast, sand, and bajri remain forms of the same stone or riverbed material from which they originated. The crushing process merely reduces larger boulders and riverbed material into smaller usable sizes for construction purposes; it does not alter their essential mineral character, commercial identity, or legal classification. Therefore, the Appellant submitted that the disputed goods could not be shifted into the residual category under Section 7(3) merely because of their omission from the substituted Entry No. 94.

23. The second submission of appellant was directed to the legal consequence of Notification No. 541/2013 dated May 2, 2013, whereby Entry No. 94 of Schedule -II(B) was substituted and confined to river sand and river bazri. The learned counsel of appellant submitted that the omission of crushed grit, stone chips, and stone dust from the substituted entry did not, as a matter of law, amount to a legislative declaration that those goods had ceased to be stone or had become unclassified goods within the meaning of Section 7(3). A notification amending a Schedule entry may prescribe, vary, or restructure the rate applicable to goods, but it cannot be construed as altering the intrinsic legal and commercial identity of a commodity, where that identity has already been

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settled by a binding judicial authority. The residual provision in Section 7(3) can only apply where goods are genuinely not specified or classifiable under any Schedule; it cannot be invoked merely because a particular form of a classified commodity is omitted from a substituted entry. Since the Hon'ble Supreme Court has authoritatively held that crushed grit, chips, and stone dust continue to be stone and do not constitute a new commercial commodity, the learned counsel of Appellant submitted that Notification No. 541/2013 could not lawfully be read as converting those goods into residual goods taxable at 13.5% merely because of their omission from Entry No. 94.

24. The third submission was based on the State's own stand before the Hon'ble Supreme Court in State of Uttarakhand & Ors. v/s. Kumaon Stone Crusher(supra). Learned counsel of appellant submitted that, in those proceedings; the State had expressly maintained that the process of crushing does not alter the essential character of the stone and that, even after conversion into grit, chips, or dust, the material continues to remain as stone. Having secured a decision from the Hon'ble Supreme Court on that basis, the Department could not, in proceedings under the VAT Act and the CST Act, adopt the contrary position that the very same crushed material is an unclassified commodity liable to a tax of 13.5%. Such a shift, it was submitted, was barred by the principle that a party, including the State, cannot approbate and reprobate in respect of the same legal position, particularly where the earlier

position has been accepted by the Hon'ble Supreme Court and forms part of the binding law governing the field.

25. In support of the aforesaid submissions, the Appellant relied on a consistent line of authority governing commodity identity, manufacture, and the effect of crushing stones. Particular reliance was placed on judgement of **Hon'ble Supreme court Commissioner of Sales Tax, U.P. v. Lal Kunwa Stone Crusher (P) Ltd., (2000) 3 SCC 525, State of Uttarakhand & Ors. v/s. Kumaon Stone Crusher, Civil Appeal No. 14874 of 2017, decided on September 15, 2017, State of Maharashtra v. Mahalaxmi Stores, (2003) 129 STC 79 and Union of India v. Delhi Cloth and General Mills Co. Ltd., AIR 1963 SC 791.** The learned counsel submitted that these decisions collectively establish that a process amounts to manufacture, or gives rise to a new taxable commodity, only when the original material is transformed into an article having a distinct name, character, and use in a commercial sense. Based on this principle, crushing stone boulders into gitti, chips, ballast, or dust does not produce a new commodity; the resulting material remains as stone. Reliance was also placed on New Tarai Stone Crusher v. State of Uttarakhand, Writ Petition (M/S) No. 854 of 2013, decided by the Hon'ble Uttarakhand High Court on October 30, 2018, and Kumar Stone Works v/s. State of U.P., decided by the Hon'ble Allahabad High Court on April 27, 2005, to submit that the

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same principle had been applied in the context of stone crusher output and that the authorities below were bound to give effect to it.

26. On the strength of the aforesaid submissions, the Appellant prayed that the present second appeals be allowed, the orders of the First Appellate Authority rejecting the Dealer's first appeals be set aside, and the disputed levy of tax at 13.5% be held unsustainable in law. It was further prayed that the tax liability for the disputed turnovers be recomputed by applying the rate properly chargeable to the goods as classifiable stone goods, with consequential relief in respect of tax, interest, and any excess demand already raised or recovered.

IV. Submissions of the Respondent — Department

27. Smt. Hemlata Shukla, learned Deputy Commissioner and State Representative, appeared on behalf of the Respondent Department and supported the orders passed by the Assessing Authority and affirmed by the First Appellate Authority. The respondent submitted that the disputed levy at the residual rate of 13.5% was founded on the substitution of Entry No. 94 by Notification No. 541/2013 and the consequent omission of crushed grit, stone chips, and stone dust from that entry. The submissions advanced on behalf of the Department are categorized as follows:

28. The first submission of the Respondent was that once Entry No. 94 of Schedule - II(B) was substituted by Notification No. 541/2013 dated May 2,

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2013, and restricted to river sand and river bazri, the goods omitted from that entry could no longer claim the benefit of the classified rate prescribed therein. According to the Department, crushed grit, stone chips, and stone dust were not specifically mentioned in any Schedule during the disputed period; therefore, the Assessing Authority was justified in invoking Section 7(3) of the VAT Act and applying the residual rate of 13.5% to them. It was submitted that the First Appellate Authority rightly accepted this view and rejected the dealer's challenge to the assessments.

29. On the core question of commodity identity, the Respondent did not dispute that the judgments of the Hon'ble Higher courts are binding and that the effect of those judgments must be considered while deciding whether sand, bajri, grit, and stone lose their identity merely because the material is subjected to crushing. The learned State Representative fairly accepted that, in State of Uttarakhand & Ors. v/s. Kumaon Stone Crusher, decided by the Hon'ble Supreme Court on September 15, 2017, the State had taken the position that stone, sand, and similar material retain their essential character even after processing in a stone crusher. Simultaneously, the Department maintained that the omission from Entry No. 94 and the earlier Tribunal decisions justified these assessments. Therefore, the Tribunal proceeds to decide the issue based on the statutory scheme and the binding law declared by the Hon'ble Supreme Court,

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rather than on any concession as to the final rate liability.

30. With respect to the Central Sales Tax assessments for both assessment years, the Respondent submitted that the absence of Form C would disentitle the Dealer from the concessional rate of 2% under Section 8(1) of the CST Act. Nevertheless, the Department accepted that the rate under Section 8(2) had to be determined by reference to the rate chargeable on the sale of the same goods inside the State of Uttarakhand under the VAT Act. Thus, the CST rate depends on the correct state classification and rate applicable to disputed goods. If the goods are not residual or unclassified under the VAT Act, the CST rate cannot be independently fixed at 13.5% merely because Form C was not furnished.

31. The Respondent also fairly submitted that the liability towards interest, if any, would necessarily be consequential upon the correct determination of the tax. Since the Assessing Authority had calculated interest on the assumption that the disputed turnover was liable to tax at 13.5%, any correction of the applicable rate would require a corresponding recomputation of the interest. Therefore, if this Tribunal holds that the disputed goods were taxable at the classified rate and not at the residual rate, the Assessing Authority may be directed to recompute the interest liability, if any, only on the tax lawfully payable after such correction.

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32. In view of the above submissions, the Respondent requested that the matter be decided in accordance with the statutory provisions and the binding law declared by the Hon'ble Supreme Court. While the Department supported the assessments and the orders of the First Appellate Authority on the basis of the substituted Entry No. 94 and earlier Tribunal decisions, it did not dispute that if this Tribunal holds the disputed goods to have retained their character as stone and to be taxable at a classified rate, the Assessing Authority would be required to recompute the tax and interest liability accordingly.

V. Relevant Statutory Provisions

33. For the proper adjudication of the controversy, it is necessary to notice the statutory scheme governing the levy of tax under the Uttarakhand Value Added Tax Act, 2005, and the rate mechanism under the Central Sales Tax Act, 1956. These provisions assume particular importance because the dispute does not turn on the occurrence of the transactions, which is largely undisputed, but on the legal classification of the goods and the rate applicable to them during the relevant period. The relevant provisions are set out below.

A. Uttarakhand Value Added Tax Act, 2005

Section 7 — Levy of Tax

Section 7(1): Subject to the provisions of this Act, every dealer whose turnover of sales or purchases during the previous year, or in the year of registration or in the current year, exceeds the taxable quantum, shall be liable to pay tax under this Act,

Section 7(2): The tax on the taxable turnover of a dealer shall be levied at rates specified in the schedules.

Section 7(3): Where any goods are not specified in any Schedule, the tax on the taxable turnover of such goods shall be levied at the rate of thirteen and a half per cent.

Section 7(3) is the provision that the Assessing Authority invoked to levy tax at 13.5% on the sale of crushed grit and stone dust after the 2013 notification substituted Entry No. 94 of Schedule -II(B). The **considerable question in these appeals** is whether, after the 2013 notification, crushed grit and stone dust truly became goods "not specified in any Schedule" within the meaning of Section 7(3), or whether they remained classifiable as stone dust under the authority of the Supreme Court.

Section 4 — Power to Amend Schedules

This provision empowered the State Government to issue the 2013 notification, substituting Entry No.94. However, the power to amend the Schedules must be exercised consistently with the Constitution and does not authorize the State

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Government to reclassify goods contrary to the commodity classification established by the binding judicial authority of the Hon'ble Supreme Court.

B. Schedule - II(B), Entry No. 94

Entry No. 94 before the 2013 substitution

Entry No. 94 as substituted by Notification No. 541/2013 dated May 2, 2013

Therefore, the entire content of Entry No. 94 was replaced. Crushed grit, stone chips, stone dust, gitti, kankar, and stone ballast were completely removed from the entries. Only river sand and river bazri remained at 5% rate. This substitution is at the heart of the current dispute. The question is whether the removal of those goods from Entry No. 94 made them unclassified goods under Section 7(3) or whether their character as stone, as declared by the Hon'ble Supreme Court, continued to govern their classification.

Schedule - II(C) entry effective from December 17, 2014

From December 17, 2014, the disputed goods were brought into a specific Schedule - II(C) entry taxable at 9%. That later rate is not challenged in the present appeals for turnover falling within that period.

Central Sales Tax Act, 1956

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Section 8 — Rate of Tax

Section 8(1): Every dealer who sells goods to a registered dealer shall be liable to pay tax under this Act at the rate of two percent, or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower, if such sale is covered by a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in Form C.

Section 8(2): The tax payable by any dealer on his turnover of inter-State sales not falling within sub-section (1) shall be levied at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

Section 8(2) is of critical importance in CST appeals in the present case. It provides that where inter-State sales are not covered by Form C (and hence do not qualify for the concessional 2% rate under Section 8(1)), the applicable rate is not the residual 13.5% but the rate applicable to those goods inside the appropriate State, which is Uttarakhand, under its sales tax/VAT law. Because crushed grit and stone dust cannot properly attract 13.5% within Uttarakhand (being classifiable goods), the Section 8(2) rate for CST purposes must also be the classified goods rate, not 13.5%.

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VI. Points for Determination

34. Having regard to the pleadings of the parties, the factual matrix emerging from the assessment and appellate orders, the statutory provisions noticed above, and the rival submissions advanced before this Tribunal, the following points arise for determination in these four connected second appeals:

Point (i): Whether the crushing of stone boulders into crushed stone grit (gitti), stone chips, and stone dust produces a new and distinct commercial commodity for the purposes of the Uttarakhand Value Added Tax Act, 2005, and the Central Sales Tax Act, 1956, or whether those goods retain the legal and commercial character of "stone" and must be classified accordingly.

Point (ii): Whether the substitution of Entry No. 94 of Schedule - II(B) by Notification No. 541/2013 dated May 2, 2013, which confined Entry No. 94 to "river sand and river bazri" and removed crushed grit, chips, and stone dust from the entry, had the effect in law of rendering those goods "unclassified goods" within the meaning of Section 7(3) of the VAT Act, attracting a residual rate of 13.5%.

Point (iii): Whether the Assessing Authority lawfully levied tax at 13.5% on the disputed sales of crushed grit, stone dust, and allied stone or riverbed

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materials forming part of the disputed pre-Schedule - II(C) turnovers during the assessment years 2013-14 and 2014-15, i.e., the period from May 2, 2013, to December 16, 2014, and whether such levy was consistent with the binding decisions of the Hon'ble Supreme Court of India.

Point (iv): Whether the First Appellate Authority committed an error of law in rejecting the Dealer's first appeals and sustaining the levy at the residual rate of 13.5%, and whether the Dealer's second appeals merit interference by this Tribunal.

VII. Discussion and Findings

The Legal Test: Does Crushing Stone Create a New Commodity

35. The first and foundational question for consideration is **whether the mechanical crushing of stone boulders into grit, chips, and stone dust creates a new and distinct commercial commodity or merely reduces the original stone into smaller and commercially usable forms without altering its essential legal and commercial identity.** The answer to this question is determinative of the principal controversy because the residual rate under Section 7(3) can be invoked only if the disputed goods are capable of being treated as goods distinct from stone and not otherwise classifiable under the statutory scheme.

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36. The governing test was authoritatively stated by the **Hon'ble Supreme Court in Union of India v. Delhi Cloth and General Mills Co. Ltd., AIR 1963 SC 791**. The Hon'ble Supreme Court held that manufacture necessarily involves change, but that every change in a commodity does not amount to manufacture. A process results in a new commercial commodity only when the original material is transformed into an article with a distinct name, character, and use. A mere change in form, size, shape, or convenience of use is insufficient unless the commodity that **emerges is commercially different from the commodity from which it was produced**. This "new and distinct commodity" test has consistently governed questions of manufacture and tax classification and provides a starting point for examining whether crushed grit, stone chips, and stone dust can be treated as goods different from stone.

37. The Hon'ble Supreme Court applied the aforesaid test directly to stone crusher output in **Commissioner of Sales Tax, U.P. v/s. Lal Kunwa Stone Crusher (P) Ltd., (2000) 3 SCC 525**. The Hon'ble Supreme Court first noticed the statutory entry under consideration, namely: "*Ramraj, geru, surkhi, sand, lime, bajri, marble-chips, moram, gitti, kankar, stone-ballast, stone and articles of stone except of glazed stone.*" It then recorded the nature of the dealer's activity in these words: "*The respondent is a dealer engaged in purchasing of stone boulders and crushing them into stone chips, gitti and dust for the purpose*

of further sale." The Hon'ble Supreme Court also noticed the dealer's contention that, at the time of purchase of boulders, sales tax had already been paid and, therefore, *"goods emerging out of the same as small stones, dust, etc. are not liable to be taxed again."* The Hon'ble Supreme Court further recorded that, even if the process adopted in converting boulders into the aforesaid goods may amount to manufacture in a broad sense, the dealer's case was that *"tax cannot be imposed as what has been produced by him is physically and chemically not different from the original goods."* The procedural background was also noticed by the Hon'ble Supreme Court: *"The assessing authority rejected the contention of the dealer."* However, on appeal, *"the Assistant Commissioner of Sales Tax noticed that the trader had neither manufactured gitti nor has sold it having crushed boulders into small stones and dust."* The Hon'ble Supreme Court further recorded that the Assistant Commissioner was *"of the view that tax was not attracted on both transactions,"* that the Tribunal, by majority, upheld that view, and that the Hon'ble High Court dismissed the Department's revision in a cryptic order. The precise question before the Hon'ble Supreme Court was framed thus: *"The question raised before us is whether gitti, stone chips and dust continue to be stone or on crushing stone boulders into gitti, stone chips and dust, different commercial goods emerge so as to attract tax on their sale."* The Department's contention was specifically noted. It was urged that the crushing process amounted to manufacture because,

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under Section 2(e-1) of the U.P. Sales Tax Act, 1948, manufacture was defined to mean *"producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adopting any goods."* On that basis, the Department submitted that *"every activity in relation to goods not only altering the same but also processing of the same has also been included."* The Hon'ble Supreme Court further noticed the Department's submission that, *"Here in the present case, the goods that are brought into taxation are enumerated in Entry 40 of the notification dated September 7, 1981 to which we have adverted to earlier."* The Hon'ble Supreme Court, however,

did not accept that the mere fact of processing or manufacture was sufficient to impose a fresh levy unless a separate commercial commodity emerged. Referring to the purpose of sales tax, the Hon'ble Supreme Court observed: *"The purpose of sales tax is to levy tax on sale of goods and not the sale of the substance out of which they may have been made."* It added the governing principle that *"As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods for purposes of sales tax."* In this context, the Hon'ble Supreme Court relied on the commercial-commodity principle stated in **State of Tamil Nadu v. Pyare Lal Malhotra,** namely that the taxable event depends on the emergence of a commodity commercially distinct from the original goods, and not on every process or

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physical change. The Court further noted the submission advanced for the dealer that *"the goods that are brought to tax under the notification are all enumerated in Entry 40 and are taxed at the point of sale to the consumer."* It was in this statutory setting that the Hon'ble Supreme Court examined whether the crushed products had ceased to be stones. Applying the commercial-identity test to stone crusher output, the Hon'ble Supreme Court held: *"Stone, as such, and gitti and articles of stones are all of similar nature though by size they may be different."* The Court further observed: *"Even if gitti, kankar, stone-ballast, etc. may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, yet it cannot be presumed that Entry 40 of the Notification is intended to describe the same as not stone at all."* Most significantly, the Hon'ble Supreme Court concluded: *"In fact the term 'stone' is wide enough to include the various forms such as gitti, kankar, stone ballast."* The Hon'ble Supreme Court accordingly affirmed the view that such goods *"continue to be stone"* and are not commercially different goods merely because the boulders have been crushed into smaller forms. These additional passages clarify that the Hon'ble Supreme Court rejected the Department's attempt to equate processing or manufacturing with the emergence of a separately taxable commodity. They established that crushing stone boulders into grit, chips, gitti, ballast, or dust does not create a commercially different commodity; the resulting material remains stone in law and trade and cannot be

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treated as goods distinct from stone merely because it has been mechanically reduced into smaller sizes.

38. The same principle was reaffirmed by the Hon'ble Supreme Court in **State of Maharashtra v. Mahalaxmi Stores, (2003) 129 STC 79.** The Hon'ble Supreme Court reiterated that the manufacture or production of a new commodity cannot be inferred merely from a change in the size, shape, form, or marketability of the original material. What is required is the emergence of an article commercially recognized as distinct from the material from which it is made, having a separate name, character, and use. Applying this test, the reduction of stone boulders into gitti or other smaller aggregates does not cross the threshold of manufacturing or commodity transformation. The material remains stone, although in a different size or form, and cannot be treated as a distinct taxable commodity for that reason alone.

39. The principle was applied with particular relevance to the **State of Uttarakhand in State of Uttarakhand & Ors. v. Kumaon Stone Crusher, Civil Appeal No. 14874 of 2017, decided on September 15, 2017** by the Hon'ble Supreme Court. Although that case arose in the context of transit fees under the Indian Forest Act, 1927, and the U.P. The Transit of Timber & Other Forest Produce Rules, 1978, as extended to Uttarakhand, the central question was the same in substance: whether stone boulders, after being crushed into

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grits, chips, or dust, lose their original character and become a new commodity. The Hon'ble Supreme Court opened the judgment by recording the nature of the dispute: *"This batch of cases relates to the levy of transit fee. Transit fee levied by three States, i.e., State of Uttar Pradesh, State of Uttarakhand and State of Madhya Pradesh is in question."* The Hon'ble Court noticed that the first group of appeals consisted of appeals by the State against judgments of the Hon'ble Uttarakhand High Court, by which writ petitions challenging the levy of transit fee had been allowed. In this context, the Hon'ble Supreme Court specifically recorded the State's submission in support of transit fee in these words:-

"boulders crushed into grits retain the same characteristic that is forest produce. By obtaining grits, stone chips and dust no new material is obtained."
The judgment further records the controversy arising from the writ petition filed by the stone crusher: *"M/s. Kumaon Stone Crusher filed writ petition praying for quashing the demand of transit fee upon the finished item of stone i.e. stone grits, stone chips etc. from the writ petitioner."* The Hon'ble Supreme Court further noticed the stone crusher's factual case: *"Petitioner's case was that its stone crusher collects the boulders from the bank of Sharda river and after crushing them into grits, chips etc., transports the same to different places."* The contention against the levy was that once boulders were crushed into smaller forms, *"a new commercial commodity had come into existence"* and therefore further transit fee on the finished material could not be demanded.

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However, the Hon'ble Supreme Court rejected this contention. It referred to the earlier decision in *Lal Kunwa Stone Crusher (supra)* and noticed that in that case the word *"stone"* had been treated as wide enough to include *"various forms such as gitti, kankar, stone ballast."* The Court also approved the contrary view taken by the Hon'ble Allahabad High Court in *Kumar Stone Works* and disapproved the Hon'ble Uttarakhand High Court's view in *Kumaon Stone Crusher* to the extent that it had treated the finished crusher products as outside the reach of the transit-fee regime. The most important conclusion of the Hon'ble Supreme Court is found in paragraph 215.1(a), which may be as follows: *"The crushing of stones, stone boulders into stone grits, stone chips, and stone dust does not result in a new commodity different from forest produce. The crushed materials continue to be stone and retain their nature of forest produce."* This final conclusion is decisive for the present appeal. It confirms, in express terms, that crushing *only changes the size and form of the stone; it does not create a new commodity different from stone*. Therefore, stone grits, stone chips, and stone dust remain forms of stone, and the Department cannot treat the same material as a residual or unclassified commodity merely because the stone has passed through a crusher.

40. Therefore, the Kumaon Stone Crusher ratio is not confined to the mechanics of transit fee liability; it rests upon a broader and binding determination of

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commodity identity. The Hon'ble Supreme Court expressly proceeded on the basis that stone boulders, when crushed into grits, chips, or dust, do not cease to be stone and do not become a new commodity. The Hon'ble Supreme Court reaffirmed the principle earlier stated in Lal Kunwa Stone Crusher (supra) and noted the Hon'ble Allahabad High Court's decision in Kumar Stone Works, thereby confirming a consistent judicial view that crushing is only a process of size reduction and not of commodity transformation. For the purposes of the present VAT and CST dispute, this ratio is decisive: the disputed goods retain their character as stone and cannot be treated as unclassified goods merely because they emerge from a stone crusher in smaller forms.

41. Applying the aforesaid authorities, this Tribunal has no hesitation in holding that the mechanical crushing of stone boulders into crushed stone grit, stone chips, or stone dust does not bring into existence a new or distinct commercial commodity. This process merely reduces the original stone into smaller forms suited for construction and allied uses; it does not alter the essential mineral character, legal identity, or commercial recognition of the material as stone. Therefore, disputed goods continue to be stones in law and trade. They cannot be treated as commodities different from stone merely because they are described by size, form, or trade expression, such as grit, chips, gitti, ballast, or dust.

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The Doctrine of Judicial Discipline

42. Before applying the above principles to the disputed levy, it is necessary to consider the doctrine of judicial discipline. Article 141 of the Constitution declares that the law laid down by the Hon'ble Supreme Court is binding on all courts within the territory of India, and Article 144 requires all civil and judicial authorities to act in aid of the Hon'ble Supreme Court to do so. These constitutional commands ensure certainty, uniformity, and hierarchical discipline in the administration of justice. Therefore, a Tribunal exercising statutory appellate jurisdiction is bound to apply the law declared by the Hon'ble Supreme Court and cannot reach a conclusion inconsistent with that law based on executive interpretation, departmental practice, or earlier decisions of coordinate or subordinate authorities.

43. The binding force of Article 141 extends not only to civil and criminal courts but also to tribunals and quasi-judicial authorities when they are called upon to decide on questions of law within their statutory jurisdiction. The Hon'ble Supreme Court in **State of Orissa v. Sudhansu Sekhar Misra, AIR 1968 SC 647**, emphasized that the law declared by it must be applied according to its true ratio and cannot be disregarded by subordinate adjudicatory bodies. This Tribunal, while exercising appellate jurisdiction under the Uttarakhand Value Added Tax Act, 2005, functions as a quasi-judicial authority and is

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therefore under a constitutional obligation to give full effect to the law declared by the Hon'ble Supreme Court. It cannot treat a binding pronouncement as merely persuasive, nor can it decline to apply the ratio of such a pronouncement on the ground that the earlier case arose under a different statutory setting, where the legal principle decided is directly applicable to the issue before it.

44. The Hon'ble Supreme Court further explained the importance of adherence to binding precedents in **Union of India v. Raghubir Singh, (1989) 2 SCC 754**. The Hon'ble Supreme Court emphasized that certainty, continuity, and uniformity in the administration of justice require that a proposition of law declared by the Hon'ble Supreme Court be treated as binding by all courts and authorities under its jurisdiction. Judicial discipline would be undermined if subordinate adjudicatory authorities were free to disregard such a declaration or prefer a contrary view based on their own interpretation. Consequently, where the Hon'ble Supreme Court has settled the legal character of a commodity, this tribunal is bound to apply that declaration faithfully and cannot sustain a levy founded on an interpretation that is inconsistent with it.

45. Therefore, the doctrine of judicial discipline requires this tribunal to apply the binding ratio of Hon'ble Supreme Court decisions and not to depart from it on artificial or technical distinctions. A precedent cannot be avoided merely by confining it to the statute under which it arose if the underlying legal principle

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decided by the Hon'ble Supreme Court directly governs the controversy before the tribunal. Nor can earlier decisions of this tribunal prevail if they are inconsistent with the principle declared by the Hon'ble Supreme Court. To the extent that earlier decisions of this tribunal in M/s New Tarai Stone Crusher , M/s Sagar Stone Crusher and M/s Uttarakhand Stone Products upheld the levy of 13.5% on the ground that crushed grit and stone dust were unclassified goods, they cannot be treated as binding in light of the Hon'ble Supreme Court's decisions in Lal Kunwa Stone Crusher (supra) and Kumaon Stone Crusher (supra). Accordingly, this Tribunal is bound to apply and does apply the principle declared by the Hon'ble Supreme Court.

46. The application of this principle to the present appeal is evident. In completing the reassessment, the Assessing Authority relied upon the earlier decisions of this Tribunal in New Tarai Stone Crusher, Sagar Stone Crusher, and Uttarakhand Stone Products as justification for applying the residual rate of 13.5%. Such reliance was legally misplaced to the extent that those decisions proceeded on a view inconsistent with the binding principle declared by the Hon'ble Supreme Court. Once the Hon'ble Supreme Court held that crushing stone does not result in a new commercial commodity and that crushed grit, chips, and stone dust continue to retain their character as stone, the Assessing Authority was bound to apply this declaration. Decisions of this tribunal or

reports founded upon them cannot prevail over the principle declared by the Hon'ble Supreme Court under Article 141. The reassessment, insofar as it rested on the contrary view expressed in those earlier tribunal decisions, therefore cannot be sustained.

47. Further consideration reinforces this conclusion. In Kumaon Stone Crusher, the State of Uttarakhand approached the Hon'ble Supreme Court on the premise that stone, sand, and similar materials do not lose their essential character merely because they are processed through a stone crusher. The State's position was that crushing does not create a new commodity but only changes the form or size of the original material. The Hon'ble Supreme Court accepted this approach while deciding the issue in favour of the State. Having taken that position before the highest Court, the State's tax administration cannot, in proceedings under the VAT Act or the CST Act, contend that the same process results in unclassified goods liable to the residual rate of 13.5%.

48. The doctrine of approbation and reprobation applies to such situations. A litigant, including the State, cannot be permitted to assert one legal position before the Hon'ble Supreme Court, obtain the benefit of a decision founded on that position, and thereafter adopt a contrary position in proceedings against its assesses when the same legal issue arises in a different fiscal context. This inconsistency is not merely procedural; it pertains to the substantive identity of

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the commodity. If, for the purpose of transit-fee proceedings, crushed stone was treated by the State as continuing to be stone, the same State cannot, through its tax administration, trade the very same crushed material as a new or unclassified commodity for the purpose of imposing the residual VAT rate on it. Such a departure would be contrary to the fairness, legal certainty, and discipline expected of the State as a litigant.

49. The same principle was applied by the Hon'ble **Supreme Court in "Commissioner of Central Excise v. Ballarpur Industries Ltd., (2007) 8 SCC 89**." The Hon'ble Supreme Court made it clear that the Government cannot take one stand before a court and then take the opposite stand when the same issue is raised by an assessee. This principle applies to the present case also. The State had earlier stated before the Hon'ble Supreme Court that crushed stone continues to remain stone. Therefore, the State cannot now say, through the tax department, that the same crushed stone is an unclassified good taxable at 13.5%. Such a stand would be contrary to the State's earlier position and would also go against fairness, consistency, and judicial discipline in tax matters.

Application of the Legal Test to Point (i)

50. **Point (i)** is accordingly answered in the negative and in favour of the

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Appellant. Crushing stone boulders into grit, gitti, chips, or dust does not bring into existence a new commercial commodity. The mechanical crushing of stone boulders into crushed stone grit (gitti), stone chips, or stone dust does not result in the emergence of a new or distinct commercial commodity for the purposes of the VAT Act or the CST Act. The obtained products remain in the form of stones with their essential mineral character, legal identity, and commercial recognition. The change brought about by crushing is confined to size and form; it does not satisfy the test of transformation into a commodity having a distinct name, character, and use, as laid down in the Hon'ble Supreme Court in Delhi Cloth and General Mills, Lal Kunwa Stone Crusher, Mahalaxmi Stores, and Kumaon Stone Crusher cases (supra). Therefore, the disputed goods continue to be stone for purposes of classification and rate determination under the VAT Act and the CST Act.

51. The crushing process is essentially a size reduction process. It does not change the chemical, mineralogical, or essential physical characteristics of the stone from which the crushed material was obtained. A stone boulder, when broken into smaller aggregates, grit, chips, or dust, remains the same mineral material, although it is adapted for different construction uses and commercial convenience. No new substance comes into existence, nor does the material acquire a distinct commercial identity separate from the stone. The conclusion that follows from the authorities discussed above is therefore clear: crushed grit,

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stone chips, and stone dust are not new commodities; they are forms of stone for the purposes of classification under the VAT Act and the CST Act.

Point (ii) — Did the 2013 Notification Render Crushed Grit "Unclassified Goods"?

52. **Point (ii)** concerns the legal consequence of Notification No. 541/2013 dated May 2, 2013, by which Entry No. 94 of Schedule - II(B) was substituted and confined to river sand and river bazri. The Assessing Authority proceeded on the footing that, once crushed grit and stone dust were no longer expressly mentioned in that entry, they became goods "not specified in any Schedule" within the meaning of Section 7(3) and were therefore liable to tax at the residual rate of 13.5%. However, that reasoning, although based on the omission of the goods from the substituted entry, cannot be accepted unless the omission also had the legal effect of altering the commodity identity of the goods or rendering them incapable of being classified as stone. For the reasons that follow, this Tribunal holds that the notification did not produce the legal consequences contended for by the Department.

53. **First**, Notification No. 541/2013 cannot change the legal character of the goods already settled by the Hon'ble Supreme Court. For tax purposes, goods must be classified according to their real legal and commercial identity. When

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the Hon'ble Supreme Court has declared that crushed grit and stone dust continue to be stone, that declaration is binding on all authorities under Article 141 of the Constitution of India. A notification may change a Schedule entry or prescribe a different rate, but it cannot, merely by omitting certain words, convert stone into something other than stone. The 2013 notification only replaced Entry No. 94 and limited it to river sand and river bazri taxable at 5%. It did not say that crushed grit and stone dust had ceased to be stone, nor did it say that they had become goods not specified in any Schedule under Section 7(3). Therefore, the mere omission of these goods from the substituted entry could not justify taxing them at the residual rate of 13.5%, especially when the Hon'ble Supreme Court decisions in Lal Kunwa Stone Crusher and Kumaon Stone Crusher (supra) hold that such goods remain stone.

54. **Second,** Section 7(3) is a residual charging provision for the last resort. Its function is not to draw goods into the highest rate of tax whenever a specific expression is omitted from a Schedule entry, but to provide a rate only for those goods which, on their true legal and commercial identity, are genuinely incapable of being classified under any schedule. Therefore, residual classification is exceptional and cannot be invoked by the process of exclusion. The expression "goods not specified in any Schedule" must be understood in the context of the commodity as it is known in law and trade. Where the commodity is stone and the statutory scheme has consistently dealt with stone, riverbed

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material, and allied stone products as classified goods, the omission of one form of stone from a substituted entry cannot automatically place that form outside the entire schedule structure. Section 7(3) applies only when classification fails altogether; it does not apply where the goods retain a settled classified identity but are temporarily or imperfectly described in the schedule entries. As crushed grit and stone dust retain the characteristics of stone, they cannot be treated as wholly unspecified goods to attract the residual rate under Section 7(3) of the Uttarakhand Value Added Tax Act, 2005.

55. **Third**, the omission effected by Notification No. 541/2013 operated only at the level of the text of Entry No. 94; it did not amount to a statutory declassification of the goods themselves. The substitution of that entry removed the express reference to crushed grit and stone dust from one Schedule entry, but it neither created a deeming provision nor enacted any legislative declaration that those goods had ceased to be stones. In the absence of such express statutory language and in view of the binding declaration of commodity identity by the Hon'ble Supreme Court, the omission cannot be treated as sufficient to displace the settled classification of goods. A residual provision, such as Section 7(3), cannot be invoked on the basis of a mere textual omission when the goods continue to fall within the class of stone based on their true legal and commercial character. Therefore, the proper inquiry is not whether the

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exact words "crushed grit" or "stone dust" appeared in the substituted Entry No. 94, but whether the goods, as a matter of law, remained classifiable by reference to their established identity as stones. In that inquiry, the answer is clear: the omission in the 2013 notification did not render crushed grit and stone dust residual goods liable to a 13.5% tax.

56. **Fourth,** the State's stand before the Hon'ble Supreme Court in Kumaon Stone Crusher (supra) has a material bearing on the construction of Section 7(3) in the present case. In those proceedings, the State did not contend that crushing altered the commodity identity of stone; on the contrary, it proceeded on the basis that stone, sand, and similar riverbed material retain their essential character notwithstanding processing through a stone crusher. This position was accepted while deciding the controversy before the Hon'ble Supreme Court. In the absence of any subsequent statutory provision expressly deeming crushed grit or stone dust to be a commodity distinct from stone, the State's tax administration cannot rely on a mere omission from Entry No. 94 to contend that the same goods became unclassified goods for the purposes of Section 7(3). The prior stand of the State, read with the binding declaration of principle in Kumaon Stone Crusher (supra), therefore reinforces the conclusion that crushed grit and stone dust continued to be stone in law and could not be brought within the residual rate of 13.5%.

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57. **Point (ii)** is accordingly answered in the negative and in favour of the Appellant. Notification No. 541/2013 did not declassify crushed grit, gitti, chips, or stone dust, nor did it render them goods not specified in any Schedule under Section 7(3) of the VAT Act. The substitution of Entry No. 94 of Schedule - II(B) by Notification No. 541/2013 dated May 2, 2013, did not, either expressly or by necessary implication, render crushed grit or stone dust as "goods not specified in any Schedule" within the meaning of Section 7(3). The notification operated only on the text of the Schedule entry and did not contain any deeming provision, charging fiction, or legislative declaration altering the settled commodity identity of the goods as stones. In the absence of such express statutory language and having regard to the binding law declared by the Hon'ble Supreme Court under Article 141, the omission of those goods from the substituted Entry No. 94 cannot be treated as a statutory declassification. Mere omission from Entry No. 94 could not justify the residual rate of 13.5%. Consequently, during the period from May 2, 2013, and before the subsequent specific entry came into force, the disputed goods continued to be classifiable by reference to their true legal and commercial identity as stone and could not be subjected to the residual rate of 13.5% merely on account of their omission from that entry.

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Point (iii) — Was the 13.5% Levy Lawful?

58. **Point (iii)** is therefore answered against the Department and in favour of the Appellant. The 13.5% levy on the disputed pre-Schedule - II(C) turnovers is unsustainable. The Hon'ble Supreme Court decisions in Lal Kunwa Stone Crusher (supra) and Kumaon Stone Crusher (supra) make it clear that crushed grit and stone dust continue to remain stone. The other disputed stone and riverbed materials also cannot be treated as unclassified goods only because they were omitted from Entry No. 94. Notification No. 541/2013 did not convert these goods into residual goods under Section 7(3). Hence, the assessment orders of these matters, so far as they levy tax at 13.5% on the disputed pre-Schedule - II(C) turnovers, are contrary to judicial discipline and cannot be sustained in law.

59. Therefore, the assessment orders dated March 18, 2024, cannot be upheld to the extent they taxed the disputed pre-Schedule - II(C) turnover at 13.5%. Section 7(3) could not be invoked for these goods. By applying the residual rate, the Assessing Authority acted beyond the power available under the statute. The First Appellate Authority also failed to correct this error and did not properly follow the binding effect of Articles 141 and 144 of the Constitution of India. For these reasons, the 13.5% levy on the disputed turnover is without jurisdiction, cannot be sustained in law, and must be set aside to that extent.

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Assessment of the First Appellate Authority's Orders — Point (iv)

60. In view of the findings recorded on Points (i) to (iii), Point (iv) requires consideration of the legality of the orders passed by the First Appellate Authority rejecting the Dealer's first appeals and affirming the levy of tax at the residual rate of 13.5%. Once it has been held that crushed grit and stone dust retain their legal and commercial identity as stone, and that their omission from the substituted Entry No. 94 did not render them unclassified goods within the meaning of Section 7(3) of the Uttarakhand Value Added Tax Act, 2005, the very foundation of the appellate orders stands displaced. The First Appellate Authority was required to examine the assessments in the light of the binding pronouncements of the Hon'ble Supreme Court and the limited scope of the residual charging provision. Instead, it proceeded on the erroneous premise that omission from one Schedule entry was, by itself, sufficient to attract the residual rate. Such an approach constitutes an error in law in the application of Section 7(3), and not merely an error in quantification of tax. Consequently, the orders of the First Appellate Authority cannot be sustained to the extent they affirm the residual classification of the disputed goods and uphold the levy of tax at 13.5% on the disputed turnover.

61. The same result follows from the way the First Appellate Authority considered the Dealer's challenge. The main question before it was whether

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crushed grit and stone dust had legally stopped being stone, whether any law treated them as a different commodity, and whether Section 7(3) could be applied despite the binding decisions of the Hon'ble Supreme Court. The First Appellate Authority did not examine the matter in this correct manner. It mainly relied on the fact that the disputed goods were omitted from the substituted Entry No. 94 and on earlier Tribunal decisions. It did not properly apply the established principle of the Hon'ble Supreme Court in Lal Kunwa Stone Crusher(supra) and Kumaon Stone Crusher(supra) cases. Because of this, it did not correct the error in the assessment orders and instead continued the same legal mistake. Therefore, the approval of the 13.5% levy cannot be upheld, because it was based on the wrong assumption that the goods were residual goods, which was not permitted by the statute or by the principle declared by the Hon'ble Supreme Court.

62. The mistake in the appellate orders was not only about choosing the wrong tax rate. The real mistake was in applying Section 7(3) when that provision could not be used at all. Section 7(3) can be applied only when the goods are not specified or classifiable under any Schedule. That condition was not met here because the disputed goods continued to be stone in law and in trade. Once the Hon'ble Supreme Court decisions make this position clear, the First Appellate Authority could not uphold the assessments only because the goods were omitted from the substituted Entry No. 94. Since the very basis for

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applying Section 7(3) fails, the 13.5% levy also cannot survive. Therefore, the appellate orders must be set aside to the extent they rejected the Dealer's challenge to the residual classification and upheld the 13.5% tax. The only remaining step is to recalculate the disputed turnovers at the lawful rate fixed in this judgment.

63. For these reasons, interference in the present all these second appeals is necessary on a question of law. The Dealer has shown that the First Appellate Authority upheld the residual classification without first deciding whether Section 7(3) could legally be applied. It also failed to give proper effect to the binding law that the disputed goods continue to remain stone. This tribunal is not re-examining disputed facts or replacing the Assessing Authority's discretion with its own view. The error is in the legal basis of the levy itself. The appellate authority treated omission from the substituted Entry No. 94 as enough to create liability at the residual rate, even though the statute and the Hon'ble Supreme Court decisions did not permit that result. This error affects jurisdiction and must therefore be corrected in these second appeals. Point (iv) is answered in favour of the Appellant. The First Appellate Authority erred in law in sustaining the residual classification and 13.5% levy. The impugned appellate orders are set aside to that extent, and the matters shall proceed only for consequential recomputation, adjustment, interest and refund, if any, in

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accordance with law. The Assessing Authority shall now carry out only the consequential recomputation of the disputed turnover at the lawful rate directed in this judgment.

64. In continuation of the finding on Point (iv), it is necessary to give clear guidance to the assessing and appellate authorities under the Uttarakhand Value Added Tax Act, 2005. The question whether crushed grit, stone chips, and stone dust cease to be stone after crushing is no longer open for separate departmental decision contrary to the Hon'ble Supreme Court judgments. Those judgments make it clear that these goods continue to remain stone even after crushing. Therefore, the residual rate under Section 7(3) cannot be applied only because these words were omitted from the substituted Entry No. 94.

65. For the reasons recorded in the Discussion and Findings section, this tribunal holds that the disputed levy at the residual rate of 13.5% cannot be sustained. Crushed grit, stone chips, and stone dust continue to retain their legal and commercial identity as stone, and the omission of those expressions from substituted Entry No. 94 by Notification No. 541/2013 did not amount to statutory declassification or justify the invocation of Section 7(3) of the Uttarakhand Value Added Tax Act, 2005. The all these four second appeals are therefore liable to be allowed, and the impugned first appellate orders are liable to be set aside to the extent they sustained the residual classification and 13.5%

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levy, with consequential recomputation of tax, interest, adjustment, and refund, if any, in accordance with law.

Order

66. For the reasons recorded above, Second Appeal Nos. 06, 07, 08 and 09 of 2025 are allowed to the extent indicated below. The impugned first appellate orders shall stand set aside insofar as they sustain residual classification and levy at 13.5% on the disputed turnovers. The Assessing Authority is directed to give consequential effect to this judgment by recomputing only the disputed turnovers identified herein, strictly at the rates and in the manner directed in the succeeding paragraphs, without reopening any accepted or undisputed component.

67. Second Appeal No. 06 of 2025 is allowed. The order dated October 10, 2025, in First Appeal No. 150/2024, A.Y. 2013-14 under the Uttarakhand VAT Act, 2005, is set aside to the extent it sustains tax at 13.5% on the disputed turnover of Rs.3,37,42,402/-. The Assessing Authority shall recompute this turnover at 5% and grant consequential relief against the disputed tax of Rs. 24,64,104/-.

68. Second Appeal No. 07 of 2025 is allowed. The order dated October 10,

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2025, in First Appeal No. 166/2024, A.Y. 2013-14 under the Central Sales Tax Act, 1956, is set aside to the extent it sustains tax at 13.5% on non-Form C inter-State sales of Rs.49,96,673/-. The Assessing Authority shall recompute this turnover at 5% under Section 8(2) of the CST Act and grant consequential relief against the disputed tax of Rs. 4,27,717/-.

69. Second Appeal No. 08 of 2025 is allowed. The order dated October 3, 2025, in First Appeal No. 151/2024, A.Y. 2014-15 under the Uttarakhand VAT Act, 2005, is set aside to the extent it sustains tax at 13.5% on disputed VAT turnovers of Rs. 3,70,57,419/- and Rs. 56,53,156/- prior to December 17, 2014. These turnovers shall be recomputed at 5%; the accepted 9% levy from December 17, 2014 to March 31, 2015, shall remain undisturbed. Consequential relief shall be granted against the disputed tax of Rs. 36,30,400/-.

70. Second Appeal No. 09 of 2025 is allowed. The order dated October 13, 2025, in First Appeal No. 152/2024, A.Y. 2014-15 under the Central Sales Tax Act, 1956, is set aside to the extent it sustains higher rates on disputed inter-State turnovers prior to December 17, 2014. The Assessing Authority shall segregate the turnovers by date of sale and recompute the non-Form C turnover of Rs. 12,58,173/- and Form C turnover of Rs. 2,07,962/-, to the extent relatable to that period, at 5%. Consequential relief shall be granted against the disputed tax of Rs. 1,06,944/-.

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71. Recomputation shall be confined to the disputed turnovers identified in paragraphs 67 to 70. Accepted turnover, accepted Form C sales, Form F stock transfers, Schedule - II(C)- period turnover, and all other undisputed components shall not be reopened.

72. Revised demand, adjustment, or refund orders shall be issued within 90 days. Interest, if any, shall be recalculated only on the revised lawful tax liability. Any excess amount paid or recovered shall be adjusted or refunded in accordance with law, with statutory interest wherever admissible.

73. Certified copies of this judgment shall be supplied to the parties as per law. A copy shall also be sent to the Assessing Authority for compliance and kept on the record of each connected appeal. With these directions, Second Appeal Nos. 06, 07, 08 and 09 of 2025 stand finally disposed of.

S/D
(Rakesh Verma)
Member,
Commercial Tax Tribunal,
Uttarakhand, Haldwani Bench.

S/D- 13.07.2026
(Gurubaksh Singh, H.J.S.)
Chairman,
Commercial Tax Tribunal,
Uttarakhand, Haldwani Bench.

Date: 13-07-2026 Place: Haldwani