COMMERCIAL TAX TRIBUNAL, UTTARAKHAND, DEHRADUN

Present:

Gurubaksh Singh, H.J.S., Chairman

Second Appeal No. 74/2024

Assessment Year: 2014–15

Under Section 26 read with Section 31 of the Uttarakhand Value Added Tax Act, 2005

Commissioner, State Tax, Uttarakhand, Dehradun — Appellant-Department

Versus

M/s Baleshwari Devi w/o late Shri Teerath Singh, Village Albalpur, Laksar, Haridwar — Respondent-Dealer

For the Appellant-Department: Shri Bhuwan Chandra Pandey, Deputy Commissioner (State Tax), State Representative

For the Respondent-Dealer: Shri Dheeraj Chandok and Deepak Kumar Vishnoi, learned Advocate

JUDGEMENT

INTRODUCTION

1. The present second appeal, being Second Appeal No. 74 of 2024, has been preferred by the Commissioner, State Tax, Uttarakhand, Dehradun, against the order dated 31.08.2024 passed by the learned First Appellate Authority, Joint

S/D-25-07-2026
(GurubakshSingh)

Commissioner (Appeals), Dehradun, in First Appeal No. 158 of 2022, relating to assessment year 2014–15. The said first appeal arose from the assessment order dated 12.12.2017 passed by the Assessing Authority under Section 26 read with Section 31 of the Uttarakhand Value Added Tax Act, 2005. The appellant shall hereinafter be referred to as the appellant-Department and M/s Baleshwari Devi w/o late Shri Teerath Singh, Village Albalpur, Laksar, Haridwar, shall hereinafter be referred to as the respondent-dealer.

2. By the impugned order dated 31.08.2024, the learned First Appellate Authority set aside the assessment order dated 12.12.2017 and granted relief to the respondent-dealer. The grievance of the appellant-Department is that the First Appellate Authority erred in interfering with the assessment order despite the material collected from the Mining Department and other official records, on the basis of which the Assessing Authority had determined the taxable turnover and consequential tax liability of the respondent-dealer.

FACTS OF THE CASE

3. The factual background, as emerging from the material collected by the Department, is that the respondent-dealer had obtained permission from the District Magistrate, Haridwar, vide Order No. 83/Mining/2013–14 dated 21.01.2014, for collection and sale of sand, boulders, bajri and other minor minerals from the specified lease area for a period of five years. The permission related to Village Rampur, Raighatti and Murahatkam, Laksar, Haridwar, in respect of Khasra Nos. 140, 141, 143, 144/5, 145/1, 155/2, 163/10, 218/6, 328, 49/12 and 42. On the basis of the said permission and the information obtained from the Mining Department, the respondent-dealer was treated as having carried on mining-related business during assessment year 2014–15 under the Uttarakhand Value Added Tax Act, 2005.

4. In continuation of the aforesaid mining permission, the Mining Department reported that, during assessment year 2014–15, the respondent-dealer extracted a total quantity of 728 cubic metres of minor minerals from the said lease area. For regulating the removal of the minerals, five Form MM-11 books and one cheque book were issued to the respondent-dealer. Out of the five Form MM-11 books, four books, covering serial numbers 1 to 100, were utilised for transportation/removal of the aforesaid quantity of 728 cubic metres, while one unused book was returned and deposited in the office of the Mining Department. It was further recorded that the respondent-dealer deposited Rs.1,16,156/- per month towards monthly instalments for four months and also deposited Rs.4,64,642/- under the mineral account head. Subsequently, the Mining Department issued a notice for recovery of the alleged outstanding amount of Rs.40,01,630/- which was received by the respondent-dealer on 25.01.2024.

5. On the basis of the quantity of 728 cubic metres certified by the Mining Department and the rate furnished by the office of the Superintending Engineer, Civil, Public Works Department, Devpura, Haridwar, the Assessing Authority proceeded to determine the sale value of the minor minerals extracted by the respondent-dealer during assessment year 2014–15. Since the respondent-dealer did not produce sale bills or other reliable evidence to establish the actual sale consideration, the Assessing Authority adopted the rate of Rs.820/- per cubic metre as reflected in the said official communication. Accordingly, the sale value was determined at Rs.5,96,960/- and tax amounting to Rs.80,590/- was imposed thereon. It was also recorded that the respondent-dealer had not filed any effective objection to the said determination before the Assessing Authority.

6.On the basis of the aforesaid material, the Assessing Authority completed the assessment proceedings under Section 26 read with Section 31 of the Uttarakhand Value Added Tax Act, 2005 and passed the assessment order dated 12.12.2017 against the respondent-dealer. Aggrieved by the said assessment order, the respondent-dealer preferred First Appeal No. 158 of 2022 before the learned First Appellate Authority, Joint Commissioner (Appeals), Dehradun. By the impugned order dated 31.08.2024, the learned First Appellate Authority allowed the appeal and granted relief to the respondent-dealer. Being aggrieved by the said appellate order, the appellant-Department has preferred the present Second Appeal No. 74 of 2024 before this Tribunal.

7. Thus, the controversy in the present second appeal is confined to. "whether the Assessing Authority was justified in treating the respondent-dealer as liable to assessment under Section 26 read with Section 31 of the Uttarakhand Value Added Tax Act, 2005, on the basis of the mining permission, quantity of minor minerals extracted, official rate adopted for valuation, and the material collected from the Mining Department and other public authorities," or "whether the learned First Appellate Authority was correct in setting aside the assessment order dated 12.12.2017 and granting relief to the respondent-dealer."

SUBMISSIONS OF THE APPELLANT-DEPARTMENT

8. Learned State Representative for the appellant-Department submitted that the learned First Appellate Authority erred in setting aside the assessment order dated 12.12.2017, which was based on official material obtained from the Mining Department and other public authorities. It was argued that the respondent-dealer had mining permission, had extracted 728 cubic metres of minor minerals during assessment year 2014–15, and was rightly assessed under Section 26 read with Section 31 of the Uttarakhand Value Added Tax Act, 2005.

S/D-25-07-2026

(GurubakshSingh)

9. It was further submitted that, as the respondent-dealer failed to produce complete sale bills, books of account or reliable evidence of actual sale consideration, the Assessing Authority was justified in relying upon the quantity certified by the Mining Department and the rate furnished by the Superintending Engineer, Public Works Department, Devpura, Haridwar, for determining taxable turnover on a best judgment basis.

10. It was lastly submitted that the First Appellate Authority discarded the official material without cogent reasons, though the respondent-dealer had not effectively rebutted the certified quantity or valuation material. The appellant-Department therefore prayed that the impugned order dated 31.08.2024 be set aside and the assessment order dated 12.12.2017 be restored.

SUBMISSIONS OF THE RESPONDENT-DEALER

11. Per contra, learned counsel for the respondent-dealer supported the impugned order dated 31.08.2024 and submitted that the learned First Appellate Authority rightly interfered with the assessment order dated 12.12.2017 after considering the sale bills, Form MM-11 records, royalty documents, environmental permissions and other material produced by the respondent-dealer. It was contended that the appellant-Department has failed to show any perversity, illegality or material error in the appellate findings.

12. It was submitted that the respondent-dealer had extracted and sold only 728 cubic metres of minor minerals during assessment year 2014–15 at the actual sale rate of Rs.185/- per cubic metre, resulting in sale value of Rs.1,34,680/- According to learned counsel, the said sale value was supported by sale bill books, Form MM-11 records and other documents produced before the learned First Appellate Authority.

13. Learned counsel further submitted that the PWD schedule rate of Rs.820/- per cubic metre was meant for departmental estimates and could not, by itself, be treated as the actual market price realised by the respondent-dealer. In the absence of independent material showing receipt of higher consideration, adoption of the said rate as actual sale value was stated to be arbitrary.

14. It was also urged that no purchaser statement, evidence of extra consideration, stock discrepancy, parallel account or other cogent material was brought on record to prove suppressed turnover. Learned counsel submitted that the burden to prove suppression lay upon the appellant-Department and the same was not discharged merely by estimation or presumption.

15. On these submissions, learned counsel prayed that the second appeal be dismissed and the impugned order dated 31.08.2024 passed by the learned First Appellate Authority be affirmed.

DISCUSSION AND FINDINGS

16. Having considered the rival submissions and the material available on record, this Tribunal is of the view that a best judgment assessment must be founded upon relevant material and a reasonable nexus with the facts of the case. In a case relating to collection and sale of minor minerals, the statutory concept of "purchase price" and the actual procurement cost, including royalty, Government fees, transportation charges and other inward expenses incurred before sale, are relevant factors for examining the correctness of the turnover disclosed by the dealer. At the same time, where the dealer fails to produce complete and reliable sale records, the Assessing Authority is entitled to rely upon official material, including the quantity certified by the Mining Department and the rate furnished by a competent public authority, for determining taxable turnover on a best judgment basis.

17. In the present case, the material collected by the Department shows that the respondent-dealer had obtained mining permission from the District Magistrate, Haridwar, for collection and sale of sand, boulders, bajri and other minor minerals from the specified lease area. The permission covered the relevant villages and khasra numbers and remained operative during assessment year 2014–15. The existence of such permission, coupled with the information received from the Mining Department, constituted relevant material for the Assessing Authority to examine whether the respondent-dealer was carrying on taxable business and whether liability under the Act had arisen.

18. The Mining Department further certified that 728 cubic metres of minor minerals had been extracted during the relevant assessment year. The issuance and utilisation of Form MM-11 books for transportation/removal of minerals also supported the fact that mineral activity had taken place. These records were not private estimates of the Department, but official records maintained by competent authorities in the ordinary course of regulation of mining activity. Therefore, the Assessing Authority could legitimately take these records into consideration for making the assessment.

19. Once the respondent-dealer failed to produce complete and reliable sale bills, books of account or other primary material before the Assessing Authority to establish the actual sale consideration, the Assessing Authority was not bound to accept the disclosed turnover mechanically. In such circumstances, recourse to best judgment assessment was permissible, provided the estimate was based on relevant material and was not arbitrary. The quantity certified by the Mining Department and the rate furnished by the office of the Superintending Engineer, Public Works Department, Devpura, Haridwar, supplied such material for determining the taxable turnover.

20. The respondent-dealer's contention that the actual sale price was Rs.185/- per cubic metre is required to be examined in the light of the entire material on record and not in isolation. In a mining transaction, royalty, Government fees, monthly instalments, mineral-account payments, transportation charges and other inward expenses incurred for obtaining the right to extract, remove and sell minerals are material components of the procurement cost and are relevant for testing the correctness of the declared turnover. In the present case, the record shows that the respondent-dealer deposited Rs.4,64,642/- under the mineral account head. This payment, being connected with the mining activity, was a relevant circumstance for examining whether the turnover declared at the rate of Rs.185/- per cubic metre was commercially and factually supported by the books of account.

21. Once such substantial mining-related payments were shown from the official record, the evidentiary burden lay upon the respondent-dealer to substantiate the lower sale rate by producing complete and reliable material, including regular books of account, sale invoices, purchaser details, payment receipts and stock/transport records. If the declared sale value did not bear a rational relationship with the admitted procurement-related outgoings, it was necessary for the respondent-dealer to explain the same through contemporaneous records. In the absence of such corroboration, the Assessing Authority was justified in treating the disclosed turnover as unreliable and in drawing a reasonable inference from the official material while making the best judgment assessment.

22. The Form MM-11 records also have significance in the present matter. In mining transactions, such forms connect the quantity extracted, the movement of minerals and the lawful removal of goods from the lease area. Their issuance and utilisation support the quantity certified by the Mining Department. Therefore, if the respondent-dealer disputed the valuation flowing from such official records, it was required to place on record a complete and reliable chain of contrary evidence by reconciling sale bills with MM-11 forms, quantities removed, payments received and mining dues deposited. A mere claim of sale at a lower rate, without such reconciliation, was not sufficient to displace the official material relied upon by the Assessing Authority.

23. The objection of the respondent-dealer that the rate of Rs.820/- per cubic metre furnished by the Public Works Department was only an estimate rate deserves consideration, but it cannot be accepted as a ground to discard the assessment altogether. The said rate may not, by itself, conclusively establish the exact sale price actually realised by the respondent-dealer; however, in the absence of complete books of account, reliable sale bills, purchaser-wise details and proof of actual receipts, it constituted relevant official material for the purpose of making a best judgment assessment. The Assessing Authority was therefore entitled to use the said rate as one of the bases for estimation, particularly when it was read along with the certified quantity of 728 cubic metres, the Form MM-11 records, the mineral-account payment of Rs.4,64,642/- and the absence of dependable contrary evidence from the respondent-dealer. Thus, the estimate cannot be termed arbitrary merely because the PWD rate was not direct evidence of the actual sale consideration.

24. The learned First Appellate Authority, while examining the assessment order, was required to consider whether the estimate made by the Assessing Authority was based on relevant material and whether the respondent-dealer had produced reliable evidence to rebut that material. Since the assessment was founded upon official mining records, the certified quantity of extraction, Form MM-11 records, the PWD rate communication and the mineral-account payment of Rs.4,64,642/- the same could not be set aside merely on the ground that estimation was involved. If the learned First Appellate Authority intended to accept the respondent-dealer's declared sale rate of Rs.185/- per cubic metre, it was necessary to record clear reasons showing how that rate was proved from complete books of account, sale bills, receipts and other supporting records, and why the official material relied upon by the Assessing Authority was not acceptable. The impugned order does not contain such analysis and, therefore, does not disclose adequate reasons for preferring the respondent-dealer's declared turnover over the official records.

25. In view of the material discussed above, this Tribunal finds that the assessment order was founded upon relevant and objective material, namely the mining permission, certified extraction of 728 cubic metres, Form MM-11 records, mineral-account payment and the rate communication furnished by the Public Works Department. These materials had a direct connection with the mining activity carried on by the respondent-dealer and provided a reasonable basis for estimating the taxable turnover in the absence of complete and reliable books of account. The learned First Appellate Authority, while setting aside the assessment, did not adequately examine the evidentiary value of these official records, nor did it record sufficient reasons for accepting the declared sale rate of Rs.185/- per cubic metre despite the substantial mining-related payments reflected from the record. Consequently, the interference made with the assessment order dated 12.12.2017 cannot be sustained.

ORDER

26. For the reasons recorded hereinabove, this Tribunal is of the considered view that the present Second Appeal No. 74 of 2024 filed by the appellant-Department deserves to be allowed and is accordingly allowed. The impugned order dated

S/D-25-07-2026
(GurubakshSingh)

31.08.2024 passed by the learned First Appellate Authority, Joint Commissioner (Appeals), Dehradun, in First Appeal No. 158 of 2022 stands set aside. The assessment order dated 12.12.2017 passed by the Assessing Authority under Section 26 read with Section 31 of the Uttarakhand Value Added Tax Act, 2005 stands restored. There shall be no order as to costs.

S/D-25-07-2026

(Gurubaksh Singh)
Chairman,
Commercial Tax Tribunal,
Uttarakhand, Dehradun

Dated: 25-07-2026