

**BEFORE THE HIMACHAL PRADESH TAX TRIBUNAL, DHARAMSHALA, CAMP
AT SHIMLA**

Appeal No. : 20/2018
Date of Institution : 07-09-2018
Date of order : 12-01-2024

In the matter of:

M/s Krishan Lal Sant Ram, Vill Padyalag, Tehsil Ghumarwain, Distt. Bilaspur
.....Appellant

Vs

- i) Jt. CST&E-cum-Appellate Authority, Ram Nagar, CZ, Mandi, Himachal Pradesh.
 - ii) Assessing Authority, Ghumarwain, Distt. Bilaspur (HP)
-Respondents

Parties represented by:-

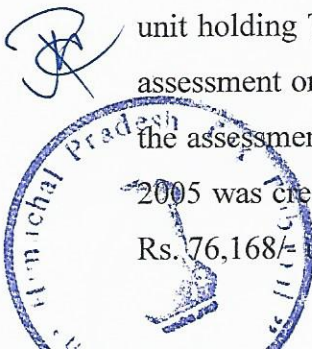
Shri S.K Awasthi, Advocate for the Appellant.

Shri Sandeep Mandyal, Sr. Law Officer, of the department for the Respondent.

**Appeal under Section 45 (2) of the Himachal Pradesh, Value Added Tax
Act, 2005**

Order

1. The present appeal has been filed against the order of The Jt. Commissioner State Taxes and Excise-cum-Appellate Authority, CZ, Mandi, Himachal Pradesh, Shimla dated 29-06-2018 vide which an additional demand of Rs. 3,18,940/- which was created for the assessment year 2014-15, by the Assessing Authority Ghumarwain, Distt. Bilaspur vide order dated 12-01-2017 against the appellant under the HP VAT Act, 2005 and the CST Act, 1956 was upheld.
2. The brief facts are that M/s Krishan Lal Sant Ram, Vill Padyalag, Tehsil Ghumarwain, Distt. Bilaspur, Himachal Pradesh (herein after refer to as 'Appellant') is an industrial unit holding TIN 02120301104 and is engaged in the business of general merchant. The assessment order was passed by the Assessing Authority Ghumarwain on 12-01-2017 for the assessment year 2014-15 in which demand of Rs. 3,18,940/- under the HP VAT Act, 2005 was created including Tax Rs. 2,41,772/- and Penalty of Rs. 1000/- with interest of Rs. 76,168/- under Section 50 and Section 19 of the HP VAT Act, 2005.



The Assessing Authority selected the case for scrutiny under Rule 66 of the HP VAT Act for the year 2014-15 and it was detected that two of the dealers from whom he had purchased the goods namely, M/s Goyal Traders, Baddi and M/s Himalayan Traders, Dharampur, have not shown the sales made by them to the appellant dealer in the list of sales in form LS-I annexed with the returns of sales filed by them. The Assessing Authority concluded that : "During the course of assessment under taken on 03-08-2016 you have submitted the photocopies of the original tax invoices issued by the above said dealers in support of your claim which were examined and matter was taken up with the Assessing Authorities of the seller for verification of ITC paid by you. As per on line data valuable the sellers have not shown sales to you in the LS-I's annexed with the returns. You could not prove the claim of ITC amounting to Rs. 2,41,812.00/- genuinely as required under section 13 of the HP VAT Act beyond doubt as adverse information is available on the system'.

Thereafter, the appellate authority upheld the demand created by the Assessing Authority vide its order dated 29-06-2018 and appeal has been filed against this order.

3. Aggrieved by the order of Ld. Appellate authority the appellant has filled the appeal before this Tribunal on the following grounds:-

I. *Under section 11 read with rule 20 of the HP VAT Act, and the rules there was no reason to reverse the ITC as the dealer was heaving original invoices of the selling dealer in his possession which is a condition under section 11 (5) of the HP VAT Act, 2005.*

II. *There is no condition prescribed under section 11 of the HP. VAT Act which is applicable in the present case where no ITC can be allowed to the dealer.*

III. *The claim of ITC was rejected by the Assessing Authority Ghumarwain simply in the ground that the seller has not reflected the sale made to the appellant in Local sales filed along with the return. The appellant cited the decision of division bench of Kerala High Court in Sadikali V/s CTO (Vat) VTH Circle Kozikode and others, (2010) 28 VST 82 (Kerala) and the decision of Division Bench of P&H High Court in M/s Gheru Lal Bal Chand v/s State of Haryana and another (2011) 40 PHT 145 (P&H) citing that it is the duty of Assessing Authority to obtain the necessary particular if any suspicion arises in any tax matter.*

The Assessing Authority Ghumarwain had not disputed the genuinely of the invoices produced by the appellant and the record of payments made to the selling

dealer; it was argued that the failure on the part of the selling dealer to reflect the sale in the return filed and nonpayment of tax by the selling dealer cannot be attributed to the appellant/ purchaser.

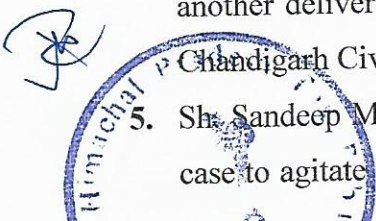
4. The Ld. Counsel for the Appellant prayed that the appeal be accepted and the impugned order be quashed.

He averred that during the year 2014-15, the appellant had made purchases from various dealers in Himachal Pradesh amounting to Rs. 1,90,24,106/- against tax invoices and VAT amounting to Rs. 1,90,24,106/- against tax invoices and VAT amounting to Rs. 21,68,892/- had been paid to these dealers. The dealer produced all the original Tax invoices in respect of all the purchases made during the year before the Assessing Authority in order to put up his claim for the input tax credit (ITC) as per section 11 of the HP VAT Act, 2005 (the Act) read with rule 20 of the HP VAT Rules, 2005 (the Rules) and had maintained the accounts in the proper chronological order required under rule 20 of the Rules. Thus the appellant dealer discharged his onus under section 13 of the Act to prove that he is eligible for the ITC claimed by him since he fulfilled the conditions laid down under section 11 of the Act and rule 20 of the Rules in this regard. As nothing was conveyed by the Assessing Authorities of the above mentioned sellers regarding the verification claim of ITC even after lapse of this much time. The case is required to be finalized within the stipulated time provided in the statute. The accountant of the firm was asked to explain that why not the ITC of Rs. 2,41,812.00/- may not be reversed along with penalty and interest. He stated that they have not suppressed the turnover and reported the true purchases. After taking into account the facts of the case and pleadings of the accountant the ITC of Rs. 2,41,812.00/- is levied as the tax on value addition has been already paid by the dealer.

The Ld. Counsel reiterated that the seller has not shown his sales made to the appellant in LS-I HIMTAS Portal filed along with the return. It is noteworthy to mention that under section 11 of HP VAT Act it is not clearly stated that until and unless the seller has not reflected the sales in his returns the ITC will not be granted. Hence, the aforesaid grounds hold right and just. In support of the arguments the Ld. Counsel relied upon the judgment in the matters of M/s Gheru Lal Bal Chand V/s The State of Haryana and another delivered on 23rd September, 2011 in the High Court of Punjab and Haryana at

Chandigarh Civil Writ Petition No. 6573 of 2007.

5. Sh. Sandeep Mandyal Sr. Law officer of the department stated that the petitioner has no case to agitate before this Tribunal as the issue arising herein is already addressed by the



authority below and he prayed that his order dated 29-06-2018 may be upheld. He argued that on verification of ITC for Assessment Year 2014-15 it was revealed that the local purchases from M/s Goyal Traders Baddi and M/s Himalayan Traders Dharampur were shown in its LP-I but selling dealers has not filed any quarterly and annual return for the above said period. He further submitted a copy of judgment delivered by Hon'ble Supreme Court in the case of the State of Karnataka V/s M/s Ecom Gill Coffee Trading Pvt. Ltd. Company (2023) Civil Appeal Number 230, 231, 232 of 2023 decided on March 13, 2023, stating that the above said judgment directly false in line with the present case.

6. **I have heard the arguments** of both the parties, perused the record and the law on the subject. Accordingly I am convinced that the Ld. Assessing Authority has rightly assessed the appellant for the said financial year 2014-15 by rejecting the claim of ITC of the appellant dealer.

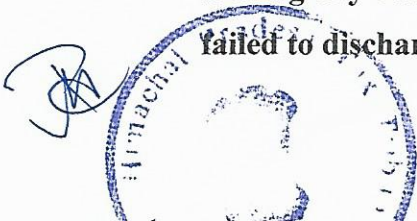
Section 11(15) of the HP VAT Act provides that:

“Where a registered dealer without entering into a transaction of sale, issue to another registered dealer a tax invoice, retail invoice, bill or cash memorandum with the intention to defraud the State Government revenue or with the intention that the State Government may be defrauded of its revenue, the Commissioner or any person appointed under section 3 may, after making such inquiry as he thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer issuing or accepting such tax invoice, retail invoice, bill or cash memorandum or other invoice either prospectively or retrospectively from such date as he may fix”.

Similarly, proviso to Section 13 also provides that:

“**Burden of Proof:** In respect of any sale or purchase affected by a dealer the burden of proving that he is not liable to pay tax under Section 6 or section 8 or that he is eligible to input tax credit under Section 11 shall be on him.”

The collateral reading of the above stated provisions clearly shows that the burden of proof lies upon the Appellant to prove the sales and purchase for seeking any concessional rate and not on the Respondent. The Appellant miserably failed to discharge his burden of proof in the present case.



The observation enunciated by the Hon'ble Supreme Court in the case of the State of Karnataka V/s M/s Ecom Gill Coffee Trading Pvt. Ltd. Company (2023) Civil Appeal Number 230, 231, 232 of 2023 also holds true:-

'...in absence of any further cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and the actual physical movement of the goods by producing the cogent materials, the Assessing Officer was absolutely justified in denying the ITC....the concerned purchasing dealer failed to prove the genuineness of the transaction and failed to discharge the burden of proof'.

In view of the discussions made hereinabove, I found no merit in the appeal and the same is liable to be dismissed and is accordingly dismissed.

7. For the aforesaid reasons, the appeal does not merit consideration and is dismissed. The impugned order of the Assessing Authority dated 12-01-2017 and the order of the Appellate Authority 29-06-2018 are upheld.
8. Copy of this order is sent to the parties concerned. File after due completion be consigned to the record room.

Priyatu Mandal

Chairman,

HP Tax Tribunal, Dharamshala,
Block No. 30, SDA Complex Shimla-9

Endst. No. HPTT/CS/2024 - 7 to 11

Dated: 13/01/2024

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. Assessing Authority, Ghumarwain, District Bilaspur (HP)
3. M/s Krishan Lal Sant Ram, Vill Padyalag, Tehsil Ghumarwain, Distt. Bilaspur.
4. Sh. S.K Awasthi, Advocate for the appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.

Reader

HP Tax Tribunal
HP Tax Tribunal, Dharamshala,
Block No. 30, SDA Complex Shimla-9