

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

Appeal No. : 88 & 89/2017
Date of Institution : 04-12-2017
Date of order : 12-01-2024

In the matter of:

M/s Prontos Pvt. Ltd., 63-66, Sector-5, Industrial Area, Parwanoo, Distt. Solan
HP

.....Appellant

Vs

- i) Addl. CST&E-cum-Appellate Authority, SZ, Himachal Pradesh, Shimla.
- ii) Assessing Authority, -Cum- ETO, Flying Squad, SZ, Parwanoo (HP)

.....Respondents

Parties represented by:-

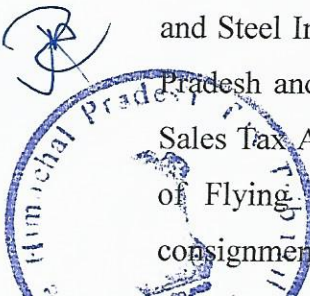
Shri R.N Sharma, Advocate for the Appellant.

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

**Appeal under Section 9(2) of the CST Act, 1956 read with Section 45 (2)
of the Himachal Pradesh, Value Added Tax Act, 2005**

Order

1. The present appeals have been filed against the order of The Addl. Commissioner State Taxes and Excise-cum- Appellate Authority, SZ, Himachal Pradesh, Shimla dated 20-05-2017 vide which tax of Rs. 28,88,569/- was levied and penalty of Rs. 57,11,431/- which was created for the assessment year 2010-11, by the Assessing Authority Flying Squad SZ Parwanoo vide order dated 27-06-2014 & 10-07-2014 against the appellant under the HP VAT Act, 2005 and the CST Act, 1956 was upheld.
2. The brief facts are that M/s Prontos Pvt. Ltd., 63-66, Sector-5, Industrial Area, Parwanoo, Distt. Solan HP (herein after refer to as 'Appellant') is a manufacturer and sale of 'Iron and Steel Ingots' etc. in its industrial unit located at Parwanoo, District Solan, Himachal Pradesh and is registered under the Himachal Pradesh VAT Act, 2005 and the Central Sales Tax Act, 1956 vide TIN No. 02020500021. On inspection of premises by the team of Flying Squad South Zone, Parwanoo loose record was founded where certain consignment of 138 vehicles were recorded. The five loose sheets contained details of



goods dispatched by the appellant and that out of 138 entries of vehicles mentioned in the loose sheets, only 44 vehicles/ consignments had been declared vide VAT-XXVI A Forms and the rest of 94 vehicles/ consignments were suppressed and not accounted for by the appellant. The goods had been transported during the period between 19-01-2014 to 11-03-2014. Aforesaid goods were subjected to tax and CST of Rs. 28,88,569/- was assessed vide order dated 27-06-2014. Further, a penalty of Rs. 57,11,431/- u/s 9(2) of the CST Act, 1956 read with section 16(8) of the HP VAT Act 2005 was levied vide order dated 10-07-2014. Thereafter, the Appellate Authority upheld the demand created by the Assessing Authority vide its order dated 20-05-2017 and appeals have been filed against this order.

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

- I. *That the imposition and demand of the impugned tax vide the Ld. Deputy Excise and Taxation Commissioner (FS) SZ, Parwanoo has extended the time for payment is illegal, arbitrary and without jurisdiction being patently contrary to the provisions of law contained in the Central sales Tax Act, 1956 read with the Himachal Pradesh Value Added Tax Act, 2005 and because the tax has been "assessed" in violation of statutory procedure of section 21 (4) without issuing notice, without affording "reasonable opportunity" of being heard, without disclosing the material used against the assessee and denying him adequate opportunity to explain and rebut the same, which vitiates entire proceedings.*
- II. *That section 21(4) of the Himachal Pradesh Value Added Tax Act, 2005 obliges that the "Assessing Authority shall serve... a notice" before embarking upon assessment but the said amount of tax has been quantified and assessed without issuing any notice, which vitiates assessment proceedings to the extent the Ld. Assessing Authority has determined the taxable turnover at Rs. 5,77,31,371/- and assessed CST of Rs. 28,88,569, which renders it liable to quashed and set aside.*
- III. *That the appellant has been paying tax on the full amount of the sales made during the relevant financial year, but the order of Assessing Authority speaks eloquently that the sums being demanded indisputably impose highly burdensome civil consequences upon the applicant which are obviously going to have catastrophic repercussions on eroding the business-capital of the appellant. As such demand for further deposit may kindly be stayed in the interests of justice.*

4. The Ld. Counsel for the Appellant prayed that the appeals be accepted and the impugned order be quashed. He has submitted that the matter is covered by the judgment of the coordinate Bench of this Hon'ble Tribunal dated 31-03-2022 in application No. 3/2017 in the matter titled as Sandeep Jewelers, Lower Bazaar, Shimla V. The Addl. Taxation Commissioner (SZ)-Cum Appellate Authority, Shimla and Assessing Authority-cum-Excise and Taxation Officer-cum-FS, SZ, Parwanoo, HP. That in support of the applications, reliance is placed on decisions in-

- i) STR NO. 8 of 2009 in M/s John Raymond Bright V. the Additional Excise and Taxation Commissioner HP;
- ii) Judgment of Hon'ble High Court of HP in CWP No. 178 of 2001 in Manali Resorts V. State of Himachal Pradesh dated 24th April, 2007.
- iii) Jain Tube & Co. V. State of UP (1991) 80 STC 40(All.) (DB);
- iv) Ganpat Ram Cotton Ginning & Processing Factory V. State of Punjab (1973)31 STC 250; and
- v) Judgment of the Hon'ble Supreme Court reported in (2008) 14 SCC 171 (2JJ), which have been duly considered and applied in the aforesaid judgment dated 31-03-2022.

That it is, therefore, prayed that applications may kindly be allowed in the interests of justice.

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 20-05-2017 may be upheld.

6. I have heard the Ld. Counsel and the Ld. Govt. Counsel for the respondent in detail and perused the record as well.

- i) The perusal of the notification dated 28th Sept., 2004 produced by the Ld. Sr. Law Officer before the court shows that the Taxation department has conferred the powers of assessment to DETC's of FS/SZ of all the zones within the respective jurisdiction. Hence, by virtue of the Notification No. EXN-F (10)5/81 dated 28th Sept., 2004, issued under erstwhile HPGST Act, 1968 which was carried forward by the 'saving clause' Section 64 A under HPVAT Act, 2005 DETC's of Flying Squads are authorized and are competent for framing assessment.

The appellants contention that a notice u/s 21 of the HP VAT Act was not been conveyed to him does not hold ground as the present case was a detection case rather than the regular assessment order. After detection of some particular

consignments the notices under respective CST and VAT Act were issued to the respective dealer. The proceeding were initiated under Section 9(2) of CST Act, 1956, read with Section 16(8) of HP VAT Act, 2005. It is also clear from the orders of respondent Number 2 that the ample opportunity were given to the appellant in respect of hearing in this case.

iii) It would be pertinent to mention section 16 of the HP VAT Act, 2005. Plain reading of the section shows that penalty is payable on the amount of the tax assessed where there is suppression of sales/ tax liability. The tax liability in respect of suppressed sale or purchases has to be determined u/s 9(2) of the CST, Act. Once liability on account of suppressed sale is assessed, penalty equal to or up to double of the assessed tax amount is payable. The respondent no.2, in the present case has found the appellant guilty of suppressing his Tax liability when the scrutiny of the record was undertaken. The dealer had not deposited the CST liability amounting to Rs. 28,88,569/- which was assessed vide order dated 27-06-2014. Further, he was liable to pay penalty which has been levied under the provisions of Section 16 of the HP VAT act, which are binding for the tax assessing authority for the same to be collected from the tax evaders whenever the Assessing Authority has identified the dealer who has not paid the tax, prescribed under the act. There is no discretion with this authority or the lower authority to consider any such concession/ waiver of interest and penalty the law enunciated by the Hon'ble Supreme Court in the case of **State of Rajasthan and another Vs. D.P. Metals (2001) STC 5085 (SC)** supports the imposition of penalty and hence the same is being relied upon.

7. For the aforesaid reasons, the appeals do not merit consideration and are dismissed. The impugned order of the Assessing Authority dated 27-06-2014 & 10-06-2014 and the order of the Appellate Authority 20-05-2017 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,
HP Tax Tribunal Camp at Shimla,
Block No 30, SDA Complex Shimla-9

Endst. No. HPTT/CS/2024-2 to 6

Dated: 13/01/2024

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. Jt. CST&E, Assessing Authority, FS, SZ, Parwanoo, District Solan (HP)
3. M/s Prontos Pvt. Ltd. 63-66, Sector 5, Industrial Area Parwanoo, (HP)
4. Sh. R.N. Sharma, Advocate for the appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



Reader

HP Tax Tribunal
H P Tax Tribunal Complex at Ghatmura,
Block No 30, SDA Complex Shimla-9