BEFORE THE COMMISSIONER OF STATE TAXES AND EXCISE HIMACHAL PRADESH, SHIMLA-171009

Appeal No.: 43/2015-16
Date of Institution: 12-06-2015
Date of Order: 12-05-2022

In the matter of: -

M/s Aditya Industries,
Rampur Jattan, Kala Amb, District Sirmour.....**Appellant**

Versus

Deputy Excise and Taxation Commissioner-cum-
Assessing Authority, Flying Squad, South Zone,
Parwanoo, District Solan, (HP). .....**Respondent**

Present: -

1) Ms Narvada, Advocate, for the Appellant.
2) Sh. Rakesh Rana, Deputy Director (Legal) for the Respondent.

Appeal under Section 45 (1) (b) of the Himachal Pradesh Value Added Tax Act, 2005

Order

1. The instant appeal has been filed by the Appellant M/s Aditya Industries, Rampur Jattan, Kala Amb, District Sirmour, (HP), against the orders dated 29-04-2015, passed by the Deputy Excise and Taxation Commissioner-cum-Assessing Authority, Flying Squad, South Zone at Parwanoo, District Solan, (HP). A demand of Rs. 11, 85, 682/-, on account of VAT, ₹1, 00, 783/- on account of interest, and ₹ 19, 13, 535/- on account of penalty {a total demand of ₹ 32, 00, 000/- (Thirty Two Lakhs) only } was created against the Appellant under section 16 (8) and section 19 of the HPVAT Act, 2005 vide impugned orders above. Felt aggrieved by the orders above, the Appellant has filed the present appeal.

2. Briefly stated, the Appellant is a partnership firm registered under the Himachal Pradesh Value Added Tax Act, 2005. The firm is engaged in the business of manufacturing and trading of steel and steel products at

Rampur Jattan, Kala Amb District Sirmour. The Appellant firm was inspected on 18-09-2014 by the staff of Deputy Excise & Taxation Commissioner, Flying Squad South Zone, Parwanoo, District Solan. During the course of inspection above the team led by DETC FS/SZ seized some documents and found that the Appellant had not e-declared certain vehicles carrying goods in the course of business and had thus violated the provisions of section 34 of the HP VAT Act, read with Rules 61A and/or 61B (subject to applicability) of the HPVAT Rules, 2005. Scrutiny of seized record and data, collected during the inspection, led the Respondent to believe that these goods, in violation of provisions of the HP VAT Act, 2005, have not been declared and payment of due VAT has, thus, been avoided. Accordingly, the Respondent initiated proceedings against the Appellant under section 16 (8) and 19 (1) of the HP VAT Act, 2005 and vide order dated 29-04-2015 created a total additional demand of Rs. Thirty-two lakh on account of VAT, interest and penalty against the Appellant. The Appellant is in appeal against the orders above.

3. Submitting her arguments in writing in the matter Ms Narvada, Advocate for the Appellant pleaded that paper sheets which were taken in possession by the inspecting staff did not belong to the Appellant. Ld. Advocate submitted that the Appellant did not evade any VAT.

4. Ld. Advocate also argued that, moreover, no notice was served upon the Appellant before creating the demand above. Ld Advocate also expressed her doubts about the jurisdiction of the Respondent to frame the assessment.

5. The learned Advocate also argued that the authority raiding the premises of the Appellant, himself, acted as judge in the case.

6. Another grievance in the matter, expressed by the Advocate, was that penalty and interest have been imposed on conjectures and surmises basis. Ld. Advocate argued that no notice was served to the Appellant.

She also argued the Appellant was not given any opportunity of being heard.

7. Ld. Advocate for the Appellant affirmed that every sale made has been accounted for as per the provisions of the Act and due VAT stands paid; the GTO determined by the Respondent is, thus, without supporting evidence. As per contention of the Appellant, the inference drawn by the Respondent that out of 487 vehicles only 247 vehicles were declared is also not supported by any evidence as well.

8. Replying to the arguments of the Appellant Shri Rakesh Rana, Deputy Director (Legal) submitted on behalf of the Respondent that:

   1) The members of the Flying Squad (South Zone) Parwanoo inspected the business premises of the Appellant on 18-9-2014 and seized certain documents lying near the weighing machine. The seized documents solely belonged to the Appellant as these were found from the Appellant firm itself. The inspecting Flying Squad found that the Appellant, though, had weighed certain vehicles on the weighing machine, but had neither declared these vehicles nor shown the transactions in respect of these goods anywhere in his books of accounts. The Respondent collected above information from the details contained in un-accounted lose paper-sheets pertaining to the Appellant and it was found that declarations in form XXVI/XXVI-A were not filed in respect of a specific number of transactions.
   2) Shri Ashish Aggarwal, Chartered Accountant, appeared before the Respondent on behalf of the Appellant to try to explain the above irregularities in the matter. Hearing proceedings, in the matter, were conducted on 28.10.2014, 12.11.2014, 14.11.2014, 03.12.2014, 17.12.2014, 07.01.2015, 20.01.2015 and 27.02.2015. After hearing the Appellant, in detail, final order in the matter was passed on 29-04-2015. The appearances above by the Appellant could not have been possible without the notice and knowledge of the Appellant, meaning thereby that the matter was in the notice of the Appellant, he had duly appeared in the matter and was heard

nine times on different dates in a span of six months; thus, due opportunity of being heard has been provided to the Appellant.

3) The order has been passed by the Respondent with full application of mind and every query of the Appellant-dealer was properly addressed as per various provisions of the HPVAT Act, 2005. The office of the DETC Flying Squad Parwanoo worked out the details of transactions from **HIMTAS, an official portal,** and it was found that out of 487 vehicles, the Appellant had declared only 247 vehicles in Form XXVI or XXVI A; the remaining 240 vehicles, the details regarding which were, otherwise, available at the weighing machine, were not declared at all. Above suppression of transactions was with the intention to evade the tax on these transactions. Out of the total 240 un-declared vehicles, 69 vehicles were found to be carrying finished goods.

4) Gross turn over (GTO), in the matter has been determined by the Respondent on the basis of data recovered from the weighing scale during the inspection by the members of the Flying Squad and loose un-accounted papers were seized from the business premises of the Appellant. During the case disposal proceedings, the Respondent, first, duly supplied to the Appellant a list of 487 vehicles weighed on the machine, with further directions to submit the statutory forms of declaration (VAT–XXVI/XXVIA) in respect of these vehicles. The Appellant could submit declaration forms (VAT XXVI/XXVIA) in respect of 247 vehicles only instead of 487. These forms were duly considered and verified by the Respondent on the basis of data/declaration available on HIMTAS. The Appellant could not give any satisfactory account and answer regarding the remaining un-declared 240 vehicles, for this reason GTO in respect of these vehicles was, accordingly determined by the Respondent. Escaped VAT liability was, therefore, rightly determined on this concealed sale. It was for concealing his sales that penal provisions as per section 16(8) were invoked against the Appellant. For willful suppression of VAT, interest under Section 19(1) of the HPVAT

Commissioner of State Tax

Act, 2005 was rightly charged by the Respondent. Before charging of interest, the Appellant was duly heard in detail during the course of the case proceedings and, therefore, the contention of the Appellant that interest has been levied without prior notice is contrary to evidence available on record.

5) The Appellant could not give any account and evidence to counter the charges of attempts to evade payment of VAT on account of non-declaration of goods (iron & steel), record and evidences vis-à-vis were found in the very premises of the Appellant firm. During the case proceedings the Appellant only pleaded to take lenient view of the mistake committed by him. E-declaration by the manufacturers and dealers of iron and steel goods is mandated under the provisions of the H.P. VAT Act and Rules, the Appellant miserably failed to abide by the said provisions of the Act, {Section 34 (2) and Rule (61-B)}, and was rightly charged with VAT and levied interest.

6) Penalty has been imposed on the dealer after giving him ample opportunities of being heard.

7) The Respondent, in view of offences committed by the Appellant under section 16 (8), rightly created the demand of Rs. 32 lakh including VAT, interest and penalty under section 16 (8) and section 19 of the HP VAT Act. The action of the Respondent is within the ambit of law and provisions of the HP VAT Act and is legally sustainable.

8) The Respondent has framed the assessment of the Appellant as per the provisions of the HP VAT Act, 2005 and is legally competent to frame the assessment vide Notification No. EXN-F (10)-5/81 dated 28th September, 2004. The notification above has been saved and is applicable under the HP VAT Act, 2005 by virtue of below quoted section 64 (2) (a) of the HP VAT Act:

> ***Repeal and Savings. 24 of 1968:***
> *64. (1) The Himachal Pradesh General Sales Tax Act, 1968, (hereinafter in this section called the _aforesaid Act') is hereby repealed from the date of coming into force of this Act:*
> *(2) Unless it is otherwise expressly provided— (a) anything done or any action taken (including any appointment,* ***notification,*** *notice, order or rule or use of any form or*

declaration) in the exercise of ***any power conferred by or under the aforesaid Act shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force*** *and be deemed to have been done or taken in the exercise of the powers conferred by or under the provisions of this Act as if this Act were in force on the date on which such thing was done or such action was taken unless and until it is superseded by or under this Act and all arrears of tax and other amount due under the aforesaid Act, at the commencement of this Act may be recovered as if they had accrued under this Act;"(emphasis supplied).*

9) Therefore the contention of the Appellant that the officer of the flying squad has no jurisdiction to frame the assessment and decide detection cases is incorrect.

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9. I have carefully gone through submissions of both the parties and perused the case record in the matter. A careful perusal of the entire case record reveals that during the inspection of Appellant business premises certain documents, placed near the weighing machine were seized by the South Zone Flying Squad. Regarding ownership of the seized documents, the Appellant has asserted that the paper sheets taken in possession by the Flying Squad did not belong to the Appellant. However, record in the matter reveals that the Appellant, himself has declared, in Form VAT XXVI-A, more than half of the vehicles mentioned in these loose sheets, while others have not been declared at all. The Appellant was bound to tender suitable explanations for above aberration. The assertion of the Appellant that these documents did not belong to him is contradictory in itself in view of above fact that the documents were found in his very premises. As the documents in the form of sheets were found in his business premises, it was for the Appellant and not the Respondent to prove that these did not pertain to the Appellant. Thus, the Appellant has failed to sustainably establish the ownership of the seized sheets otherwise.

10. There is enough documentary evidence in the form of paper sheets, which were found in the premises of the Appellant itself, that the Appellant had not maintained proper and true accounts of his business.

On this account, the argument of the Appellant that the inference drawn by the Respondent that out of 487 vehicles only 247 vehicles were declared is not supported by any evidence is not convincingly advocated by the Appellant.

11. One of the major and repeated contention of the Appellant in the matter was that he was not afforded reasonable opportunity of being heard in the matter, whereas, record perusal in the matter reveals that the matter was listed for hearing on **nine** occasions and the Appellant had duly put in his presence on these occasions. So, the grievance put forth by the Appellant, clearly, is contrary to what is apparent on the face of record. The Appellant, during the case proceedings before the Respondent, has admitted his fault and even requested the Respondent to take a lenient view of the violations of the provisions of the HP VAT Act, 2005. In view of the fact that a number of hearings were given in the matter to the Appellant by the Respondent, the assertion of the Appellant to the extent that enough opportunity of being heard was not given to him is not sustainable.

12. The Appellant also argued that interest has been levied without giving notice to him. However, as has been discussed in the preceding para, perusal of the case proceeding before the Respondent, reveal that the Appellant was heard nine times in the matter. Provisions of section 19 (1) of the HP VAT Act provide for automatic levy of interest if any dealer fails to pay the amount of tax due from him under this Act:

> ***19. (1) If any dealer fails to pay the amount of tax due from him under this Act except to the extent mentioned in sub-section (2), he shall, in addition to the amount of tax, be liable to pay simple interest on the amount of tax due and payable by him at the rate of one percentum per month, from the date immediately following the last date on which the dealer should have either filed the return or paid the tax under this Act, for a period of one month and thereafter at the rate of one and a half per centum per month till the default continues.***

Commissioner of State Taxes Shimla H.P.

13. It is clear that the Appellant has failed to keep proper accounts in respect of his business, and had failed to account for the transactions mentioned in the loose sheets found from his premises during inspection above. So, again, there is no acceptable and plausible explanation from the Appellant to give true and reliable explanations to the fact that certain transactions, as have been enumerated above, were found to be non-accounted with an attempt to evade VAT under the HP VAT Act 2005. The Appellant could not submit any plausible or cogent reason for not attracting penalty; and, every detail and aspect of the case stands recorded by the Respondent in the case. Perusal of the record, further, reveals that the proceeding/order sheet was duly signed by representative of the Appellant. Therefore, penalty and interest, for the below given provisions of the Act, was rightly imposed under Section 16(8) of the HPVAT Act, 2005:

> ***"If a dealer has maintained false or incorrect accounts with a view to suppressing his sale, purchases or has furnished to, or produced before, any Authority under this Act or the rules made there under any account, return or information which is false or incorrect in any material particular, the Commissioner or any person appointed to assist him under sub-Section (1) of Section 3 may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, an amount up to twice the amount of tax but which shall not be less than one hundred per centum of such tax amount to which he is assessed or is liable to be assessed."***

14. The Appellant has also raised the issue of the impugned order being passed by the member of the inspecting team. The member of the inspecting team, by virtue of his rank and due authorization in this behalf, as has been enshrined, itself, under the HP VAT Act and Rules, 2005 (quoted below), is fully empowered to decide the matter, so the Appellant is not right to raise the issue of matter being decided by the member of the inspecting team.

> ***Taxing authorities.***
>
> ***3. (1) For carrying out the purposes of this Act, the State Government may, by notification, appoint a person to be the***

Commissioner and such other persons with such designations, as it thinks fit.

(2) The State Government may, by notification, appoint as many Assessing Authorities as it may think fit.

(3) The Commissioner and other persons appointed under THE HIMACHAL PRADESH VALUE ADDED TAX ACT, 2005 sub-section (1) shall perform such functions and duties as may be required by or under this Act or as may be conferred, by the State Government, by notification. (4) The jurisdiction of the Commissioner and other officers posted at the State Headquarters shall extend to the whole of the State of Himachal Pradesh, and the jurisdiction of other officers or officials shall, unless the State Government otherwise directs, by notification, extend to the districts or the areas of the districts for which they are for the time being posted.

15. Another contention of the Counsel in the matter is based on the citations in **CWP No. 178 of 2001, titled as M/s Manali Resorts Vs. State of Himachal Pradesh and others.** In this particular case the Hon'ble Court has laid the law that the authority who raided and inspected the premises cannot, himself decide the matter. The above citation is not applicable to the present case for two reasons; first, the above judgment has been passed by the Hon'ble High Court while interpreting the provisions under the Himachal Pradesh Luxuries (In Hotels & Lodging Houses) Act, 1979. The Hon'ble Court has rightly given the above ruling because as per provisions of Rule 2 (b) of the Himachal Pradesh Luxuries (In Hotels & Lodging Houses) Rules, 1979, the DETC was not an 'assessing authority'; hence he could not have assessed the case. However, it is respectfully submitted that in the present case the Respondent is a duly notified appropriate 'assessing authority' under the HP VAT Act, 2005 and CST Act, 1956. Second, tax authorities do not deliver judgments under the HP VAT Act, but frame assessments. The assessments become final only if not challenged within five years of passing of the assessments orders. The Respondent, on the basis of inspection and strength of documents seized, assessed the evaded liabilities by the Appellant, therefore, it was only an 'assessment' of escaped tax, interest liabilities and order to this effect and not a judgment. The authority, in his jurisdiction (South Zone), was authorized by the law (quoted in para 8 (8) above by the counsel for the Respondent and para 14 above) to exercise the

power to assess as assessing/detecting authority and has been done so within statute. If the above contention of the Appellant is allowed then none of the cases assessed/detected by the assessing authorities could be termed as legal, because the assessing/detecting/inspecting authorities, within areas of their jurisdiction, collect the information made available by the assessee and other sources as well including spot inspection. Same is the case here. Certain information was gathered, compared and cross-verified vis-a-vis its correctness. The orders of the Respondent are in the authority of Assessing Authority and not as an Adjudicating Authority. The difference between judging and assessing is eminent. Any assessment framed is always subject and prone to be re-assessed, appealed against and/or reviewed by the higher authorities in the hierarchy.

16. By virtue of the powers vested on him, the Respondent is not only authorized to inspect the business premises of any dealer with his jurisdiction and seek any information and demand any document, he is also authorized and duly powered to make any assessment under the Act. The designation, rank and jurisdiction of the Respondent duly authorized him to assess the Appellant as he has done in the present case.

17. As a matter of fact, only the jurisdictional authorities of the rank of Assistant Excise and Taxation Officer and above are empowered to make any assessment under the Act and none else is empowered to visit, inspect, raid premises and/or seize any business/ trade related document under the HPVAT Act; the inspecting, enquiring and assessing authorities may be the same (S. 34 (7) of the VAT Act), while in civil and criminal matters the investigating and adjudicating authorities always need to be, are accordingly, separate. This is a remarkable contrasting distinction and cannot be compared with any other Act. Furthermore, an assessment order, passed under the HPVAT Act, attains finality only after five years of communication of the order passed. If any assessee feels aggrieved by any order/assessment passed by any Assessing Authority, he can appeal

before any appellate authority under the Act, as the assessee/Appellant has done in the present case. Also, Revision Authority under section 46 of the HPVAT Act, 2005 is competent to take any order under revision, within five years of passing such order by the authorities below. In view of discussion above in this para, it is clear that citations **STR 8 of 2009 and CWP No. 178 of 2001** are not *pari materia* and are not applicable to the present case.

18. The Appellant, while raising the issue of jurisdiction of the Respondent in the case, has not submitted any documents in support of this argument. On the contrary, the Government vide Notification No. EXN-F (10)-5/81, dated Shimla the 28th of September 2004 has duly authorized the Respondent to decide the detection cases falling under his jurisdiction (i.e. South Zone) comprising of districts of Kinnaur, Shimla, Sirmour, Solan, Revenue District BBN.

19. There is another objection on behalf of the Appellant regarding charging of interest without prior notice. But provisions of the HP VAT Act, 2005 provide that every person who is liable to pay tax, but fails to pay the same, the liability to pay interest under Section 19 (1), is a statutory obligation which such registered persons are required to comply with on their own accord:

> **(1) If any dealer fails to pay the amount of tax due from him under this Act except to the extent mentioned in sub-section (2), he shall, in addition to the amount of tax, be liable to pay simple interest on the amount of tax due and payable by him at the rate of one percentum per month, from the date immediately following the last date on which the dealer should have either filed the return or paid the tax under this Act, for a period of one month and thereafter at the rate of one and a half per centum per month till the default continues.**

20. Certain citations have also been quoted by the Appellant in the matter. But, as discussed above in para 8, the inspecting team was duly empowered under the Act to inspect the goods and documents related thereto. The Appellant, in the present case, has been afforded reasonable opportunity of being heard in the matter. Perusal of the order

Commissioner of State Taxes

sheet also reveals the fact that during the course of the case hearing before the Respondent, there was a request from the Appellant to take a lenient view while imposing the penalty. This further goes to prove that there was an attempt to furnish false information with the intention to evade tax, therefore, the citations quoted and relied upon by the Appellant are neither relevant nor applicable to present case.

21. Also, from the arguments of the Appellant it appears that it was for the Respondent to prove that the Appellant was liable to pay tax in relation to certain un-accounted documents seized from the Appellant premises, whereas, as per provisions of Section 13 of the HP VAT Act, the burden of proving that he is not liable to pay tax under section 6 or section 8 of the Act is on the dealer/Appellant:

Burden of proof.

13. In respect of any sale or purchase effected 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.

22. In view of discussion above, it is clear that none of the assertions of the Appellant is supported by evidence and documented proof, therefore, the same, being devoid of merits is rejected. The orders of the Respondent being legal, proper and just, are, accordingly, upheld.

23. All the grievances raised by the Appellant in the matter stand redressed as above. No other issue was raised by the Appellant in the matter.

24. Inform the parties accordingly. Files be consigned to records. Record requisitioned in the matter from the office of the Respondent authority be returned.

Yunus, I.A.S.
Commissioner of State Taxes & Excise
Himachal Pradesh

M/s Aditya Industries, Kala Amb Vs DETC (FS/SZ), Parwanoo,

No. 43/2015-16

Endst. No: STE-Reader/CST&E/2022-23 **Dated: 12-05-2022**

Copy is forwarded to:-

1) M/s Aditya Industries, Kala-Amb District Sirmour through its Advocate Ms Narvada, Chamber No. 226, HP High Court, Shimla-01..
2) Deputy Excise and Taxation Commissioner-cum- Assessing Authority, FS/SZ at Parwanoo, District Solan.
3) Dy. Commissioner (ST&E), Sirmour at Nahan, District Sirmour, (HP).
4) Ms Narvada, Advocate, Chamber No. 226, HP High Court, Shimla-01.
5) Shri Rakesh Rana, Deputy Director (Legal), Legal Cell, HQ.
6) IT Cell.

Reader to the
Commissioner State Taxes & Excise
Himachal Pradesh