

BEFORE THE HIMACHAL PRADESH TAX TRIBUNAL, AT SHIMLA

Appeal Nos. : 11 & 12/2018
Date of Institution : 06-07-2018
Date of order : 18-01-2023

In the matter of:

M/s Bector Foods Specialties Ltd. Tahliwal, Distt. Una, HP

.....Appellant

Vs

- i) Jt. CST&E-cum-Appellate Authority, NZ, Himachal Pradesh, Palampur.
- ii) Assessing Authority, Una-1, Circle, Distt. Una (HP)

.....Respondents

Parties represented by:-

Shri J.S Bedi, Advocate for the Appellant

Shri Sandeep Mandyal, Sr. Law Officer, Law 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 Jt. Commissioner State Taxes and Excise-cum- Appellate Authority, NZ, Himachal Pradesh, Palampur dated 30-05-2018 vide which an Additional Demand of Rs. 25,61,565/- and Rs. 4,47,812/- which was created for the assessment year 2005-06, by the Assessing Authority Una-I vide order dated 23-09-2015, against the appellant under the HP VAT Act, 2005 and the CST Act, 1956 were upheld.
2. The brief facts are that M/s Bector Foods Specialties Ltd., Tahliwal Una Himachal Pradesh (herein after referred to as 'Appellant') is an industrial unit engaged in manufacturing of biscuits and sale thereof, both in inter State as well as intra State trade. The dealer availed the facility of deferred payment of tax scheme which was issued under Notification No. EXN-F(2)2/2004 dated 24-08-2005 for the financial year 2005-06. It is pertinent to mention that 'deferred payment of tax scheme' was available only on intra state sales. The order of the

Assessing Authority Una was further challenged before the Appellate authority. The Assessing authority Una assessed the appellant under HP VAT Act and CST Act for the year 2005-06 and disallowed the deferred payment of tax on the interstate sales because it was not allowed under the 'deferred payment of tax scheme' and created an additional demand for Rs. 25,61,565/- and Rs. 4,47,812/-.

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

- I. *That by virtue of this notification assessing authority is under an obligation to frame the assessment within a stipulated period but in the present case the same was not finalized within stipulated period hence the order passed is hit by limitation*
- II. *That the Joint commissioner State Taxes and Excise cum Appellate Authority has passed the order without issue of any notice and without affording any opportunity of hearing as in the present case, judgment was reserved by the then Ld. Deputy Excise and Taxation Commissioner late Sh. Shakti Chand Patial. That the previous Deputy Excise and Taxation Commissioner has not released the judgment which was reserved by him. That after the death of the previous Deputy Excise and Taxation Commissioner Mr. Dev Raj Sharma assumed the charge and passed the order on 30-05-2018 by marking the presence of Sh. J.S. Bedi and R.P. Sekhri Advocate for the appellant whereas no notice nor any intimation was given for appearance.*
- III. *That Ld. Joint Commissioner State Taxes and Excise cum Appellate Authority as well as Ld. Assistant Excise & Taxation commissioner has failed to appreciate the nature of transaction that in fact the delivery was given at Himachal Pradesh and full tax was charged by mistake the same was shown under the Central Sales Tax Act as transaction was completed in Himachal Pradesh but this fact was not discussed in the order and by virtue of this even if we accept the version of Ld. Assistant Excise & Taxation Commissioner then also there is no liability on the appellant. Even otherwise the observation of Assistant Excise, & Taxation Commissioner that the notification does not extend the benefit for the sales made under Central Sales Tax Act, 1956 is totally wrong as there is no specific bar by virtue of which Ld. Assistant Excise & Taxation Commissioner has arrived at this conclusion.*

Sh. Sandeep Mandyal Sr. Law officer for the respondent argued that as per incidence of taxation under HP VAT Act and CST Act, the dealer was liable to deposit VAT and CST into

the Govt. Treasury despite having collected the same from the consumer as per the provision of section 16 of the HP VAT Act, 2005 the appellant was under statutory obligation to furnish the correct entry in the tax return which was not done the case of the department is that plea of the dealer cannot be accepted at this stage. The senior law officer 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 30-05-2018 may be upheld.

5. I have heard the Ld. Counsel and the Ld. Govt. counsel for the respondent and perused the record. It is seen from Appellate Authority record that after the death of Sh. Shakti Chand Patiyal, the previous Dy. ETC, the successor Joint Commissioner did not hear fresh arguments before passing the impugned order dated 30.05.2018. This should have been done on grounds of natural justice. Also, the Ld. Appellate Authority may verify the appellants claims of payment of tax and returns under the deferred payments scheme and adjudicate upon the admissibility of the same in accordance with the provisions of Central Sales Tax Act, 1956 and HP VAT Act, 2005 and the rules made there under and also consider and decide upon the question 'levy of tax', after hearing the concerned parties. Accordingly, the case is remanded back to the appellate authority with the direction that the appellant will appear before the Respondent No. 1 on or before 17-02-2023 for the said purposes. The Ld. Appellate authority shall thereafter pass necessary orders.
6. Copy of this order be sent to the parties concerned. File after due completion be consigned to the record room.



Akshay Sood
Chairman,

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

Endst. No. HPTT/CS/2023 87012

Dated: 18-01-2023

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Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Addl. CST&E-cum- Appellate Authority, NZ, Himachal Pradesh, Palampur.
3. Assessing Authority, Una-1, District Una (HP)
4. M/s Bector Food Specialties Ltd., Tahliwal, Distt. Una (HP)
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



Reader

HP Tax Tribunal

Dharamshala

H P Tax Tribunal Camp at Shimla,
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