

**BEFORE THE COMMISSIONER OF STATE TAXES & EXCISE
-CUM-REVISIONAL AUTHORITY, HIMACHAL PRADESH**

Revision No. 01/2020-21

Date of Institution: 23-03-2021

Date of order: 17-06-2022

In the matter of:

M/s Vallabh Strips, Sadhaura, Kala Amb,
District Sirmour (HP)

.....Respondent

Parties represented by:-

1. Shri Rakesh Rana, Deputy Director (Legal) for the Department.
2. Shri Vishal Mohan, Advocate, for the respondent.

ORDER

**(Proceedings under Section 46 of the Himachal Pradesh Value
Added Tax Act, 2005)**

1. This order shall dispose of the present Revision Petition initiated to examine the legality and the propriety of the Order dated 27-06-2019 passed by the Assessing Authority (hereinafter referred to as the "AA") Kala Amb, District Sirmour (HP).
2. The facts giving rise to the present proceedings are that the Dealer/Respondent was assessed for the years 2009-10 and 2010-11 vide order dated 27-06-2019 whereby the stock transfers/consignment sale worth ₹ 12, 00, 38, 021/- for the AY 2009-10 and ₹ 12, 68, 71, 939/- for the Assessment Year 2010-11 were allowed by the AA. It was specifically mentioned in the aforesaid Order that after verification of "FORM-F" the aforesaid amount of the respective consignment sales are allowed.
3. The perusal of the record shows that before the passing of the Assessment Orders dated 27-06-2019 for the Assessment Years 2009-2010 & 2010-2011, respectively, the AA vide his office letter No. STE-AA-KA-I-2019-20/ 294, Dated 17-04-2019 has sought verification of as many as Thirteen "F" Forms from the Commissioner, the Department of Trade & Taxes New Delhi. Similar verification of as



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many as Eight "F" Forms was also sought from the Commercial Tax Officer Jodhpur, Rajasthan vide another letter No. STE-AA-KA-I-2019-20/ 295, Dated 17-04-2019 in respect of Respondent- firm.

4. Since, the verification of the "F" Forms sought by the AA vide his aforesaid letter dated 17-04-2019 was not verified either for want of issuance of the said "F" Forms by the dealers Or the TIN No. of the dealer in question being already cancelled. Not only this, several "F" Forms qua the State of Rajasthan were not verified from their Official records and despite of that fact the benefits of those "F" Forms being already given by the AA, therefore the Deputy Commissioner State Taxes & Excise, Nahan, Distt. Sirmour vide his letter dated 01-07-2020 requested to exercise the powers of revision conferred under Section 46(1) and Rule 80 of the VAT Act, 2005. Thereafter, the Respondent also vide his letter dated 23-10-2020 requested to grant permission to take up the Suo-Moto revision at the earliest possible.
5. Thereafter, my predecessor in order to satisfy himself about the legality and propriety of the order dated 17-06-2019, and after perusing the record primarily found that the ETO-cum-Assessing Authority Kala Amb, District Sirmour vide order dated 27-06-2019 while scrutinizing returns, as envisaged vide Rule 44 of the HP VAT Rules, 2005 read with section 60 of the HP VAT Act, 2005, issued notices to the Respondent-Firm u/s 21 and 32 of the HP VAT Act, 2005. After issuance of notices above, assessment, for the years 2009-10 and 2010-11 was finalized by the Assessing Authority on 27-06-2019. Perusal of assessment proceedings of the assessment order revealed that:
- (a) For the year 2009-10, the Respondent shown consignment sales amounting to Rs. 11, 88, 20, 809/-, which have been allowed by the AA. The same was stated to have been allowed after verification.
 - (b) For the year 2010-11, consignment sales worth Rs.12, 68, 71, 939/- claimed by the Respondent on the strength Form



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"F" have also been allowed by the AA. The same was stated to have been allowed after verification.

(c) Assessing Authority Kala Amb vide his office letter No. STE-AA-KA-I-2019-20/ 294, Dated 17-04-2019 has endorsed a letter to the Commissioner, the Department of Trade & Taxes New Delhi seeking verification of Thirteen 'F' Forms; similarly, a letter vide No. STE-AA-KA-I-2019-20/ 295, Dated 17-04-2019 to the Commercial Tax Officer Jodhpur, Rajasthan was also endorsed by the AA Kala Amb seeking verification of Eight "F" Forms in respect of Respondent-firm.

(d) The Department of Trade & Taxes New Delhi vide office of the AVATO/GST Officer (Ward-35) letter No. F1/GSTOW-35/Misc/2019, dated 05-12-2019, has replied that Ten "F" Forms pertaining to his Ward were not issued to the dealer. Not only this, the GSTO, Ward 32, vide his office letter No. W-32/2019-20/148-149 dated 19-12-2019 has reported that the above said 'F' Forms as per DVAT Module were not issued to the Respondent firm by the dealer.

(e) The Commercial Tax Department Rajasthan, O/o ACTO, Ward-V, Circle A Jodhpur, vide letter No. ACTO/A-V/JOD/2019-20/05 dated 01-08-2019 replying to the request of verification of Form F has reported that the forms mentioned for verification thereof, vide letter No. STE-AA-KA-I-2019-20/295, dated 17-04-2019 are not verified.

In this background, my predecessor came to the conclusion that the proceedings/orders conducted/passed by the AA appeared not to be legal and proper and as such the same requires to be revised under sub-section (1) of Section 46 of the HP VAT Act, 2005.

6. Accordingly, the show cause notice dated 23-03-2021 has been issued to the Respondent Firm wherein the Respondent was afforded an opportunity of being heard as to why the requisite Order under section 46(1) should not be passed.



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7. On 27-10-2021 Ld. Counsel appearing on behalf of the Respondent-Firm initially raised two issues in the matter:-

First, the request by the Assessing Authority, itself, cannot be the basis for suo moto revision, and

Second, the additional information, received after having passed the original order (being taken into revision), cannot be the base for taking the matter for revision.

After hearing the parties, the case was ordered to be fixed for decision on 10-11-2021 on the above said two preliminary issues.

8. Thereafter, on 10-11-2021 this Court passed the following Order:

"10-11-2021. Present Shri Rakesh Rana, Deputy Director (Legal) for the Department. Shri Ashwani K. Lall, Advocate is present for the Noticee. Learned Advocate for the Noticee during the hearing on previous date i.e. 27-10-2021 had raised the two issues in the matter. First issue was whether the request of the Assessing Authority, itself, for taking the orders of the very authority for revision would tantamount to suo moto revision under the provisions of the HP VAT Act, 2005, and, second, whether the additional information, received, after the passing of the order (being taken to revision) can be the base for taking the matter for revision? Section 46 (1) of the HPVAT Act, 2005 itself answers both the queries raised by the Noticee:

46. (1) The Commissioner may, of his own motion, call for the record of any proceedings which are pending before, or have been disposed of by, any Authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and, on finding the proceedings or the orders prejudicial to the interest of revenue, may pass such order in relation thereto as he may think fit:

Based on information available with me in respect of facts mentioned in the impugned order dated 27-06-2019, passed by the Assessing Authority, I am of the considered opinion that it has become necessary to pass an appropriate order under section 46 (1) of the HP VAT Act, 2005, in the matter, State Of Kerala vs K. M. Charia Abdullah & Co 1965, AIR 1585. In view of above, the preliminary contentions and issues raised by the learned Counsel for the appellant are not sustainable." Thereafter, the case was ordered to be listed for arguments on merits.

9. It was argued on behalf of the Respondent-Firm that in the instant case, proceedings have been initiated on the written request made by the learned Assessing Officer who had framed assessment under section 21 of the Himachal Pradesh Value Added Tax Act, 2005, read



with section 8 of the CST Act, 1956. He contended that proceedings cannot be initiated on the written request of the Assessing Officer who himself had assessed the case.

10. The above contention of the Id. Advocate was countered by the State relying on the citation in the matter of *Hotel Mountview Vs Assessing Authority U.T. Chandigarh* where the Hon'ble Court was pleased to hold as under:

"Under Section 21 of the Punjab General Sales Tax Act, 1948, the Commissioner can exercise the power of revision, suo moto, whenever he receives any information about any illegality or impropriety committed by any of his subordinate authorities. This information may come from any source whether it be the department or any other person including an assessee. Where he decides to initiate action even though he has received information from the assessee or from any other source, he will nevertheless be acting of his own motion and his action will not be allowed to be called in question merely because he received information for proceeding in the matter through an application from an assessee.

However this is not to be construed as giving a statutory right to the assessee to prefer a revision petition and if the Commissioner chooses not to act on that information the assessee will have no right to make a grievance of it before any higher authority."

11. I have heard both the parties in the matter and carefully perused the record of the case. The crux of the controversy involved is as to whether the AA is legally justified and in his propriety to pass an Assessment Orders dated 27-06-2019 by holding that the "F" Forms have been verified especially when at the same time the AA himself has already sent letters dated 17-04-2019 for verification of the "F" Forms which were later on not verified either for the want of issuance of the said "F" Forms by the concerned dealers Or the TIN No. of the dealer in question being already cancelled. Not only this, several "F" Forms qua the State of Rajasthan were not verified from their Official records.

12. The perusal of the record shows that even the show cause notice has been issued by my predecessor in order to satisfy himself as to the legality and propriety of the Order passed by the AA and that too after carefully examining the record.



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13. It is evident from the record itself that the AA on the one hand has specifically mentioned in the Assessment Orders dated 27-06-2019 that the "F" Forms have been verified and the benefit of the same was given to the Respondent-Firm and on the other hand, it is evident from the record that the AA, at the same time sought verification of the "F" forms from the Department of Trade & Taxes New Delhi as well as from the Commercial Tax Department Rajasthan. Therefore, the impugned orders under revision are contrary to the material available on record.
14. Furthermore, the suo moto proceedings are based on the contents of the impugned assessment orders as the proceedings have been initiated on the basis of contents given in the orders itself, whereby it was mentioned that 'F' Forms were verified, which in fact were not verified on the date (27-06-2019) of passing of the orders. This wrong mention and subsequent effect (of allowing the sale as consignment sales) has deprived the State of its due revenue accruable to the State on a cumulative (years 2009-10 and 2010-11) turnover of ₹ 24, 56, 92, 748/-. So the reliance of the Ld. Advocate on *Manepalli Venkatanarayana And Others V The State Of Andhra Pradesh And Others* is not applicable here as no fresh evidence has been created to initiate suo moto proceedings in the present matter.
15. On the issue of time limit to initiate revision proceedings the reliance of the Ld. Advocate on *Siemens India V State Of Maharashtra* is not applicable, here, as the revision proceedings in the matter have been initiated within the given limit of five years, the order being taken into revision is dated 27-06-2019 and revision proceedings in the matter have been initiated on 23-03-2021.
16. In view of the discussions made herein above, I am of the considered opinion that the present case is fit to exercise the powers of revision conferred under section 46(1) of the Vat Act, 2005. The Assessment Orders dated 27-06-2019 under revision is neither legal nor proper. Rather, these Orders are prejudicial to the interest of the revenue for want of verification of the "F" Forms. Even, the Order dated 10-11-2021 as to the maintainability of the revision proceedings passed by




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this court has not been assailed by Respondent-Firm and the same has now attained finality. Therefore, the Assessment Orders dated 27-06-2019 under revision are quashed and set aside with the direction to the Assessing Authority to decide the matter afresh within a period of six weeks in accordance with law. Let the copy of this order be supplied to all concerned. File after completion be consigned on record room.

Announced 17 Day of June, 2022

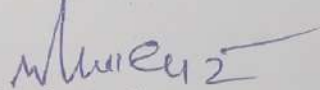



Commissioner of State Taxes &
Excise-cum-Revisional Authority
Himachal Pradesh, Shimla-09

Endst. No. STE/Rev'n- Auth./Reader/2022-23 - 17890-95 Dated 17-06-2022

Copy for information to:

1. M/s Vallabh Strips, Sadhaura Road, Kala Amb, District Sirmour, (HP).
2. Dy. Commissioner (ST&E), Sirmour at Nahan.
3. The Assistant Commissioner (State Taxes & Excise), Kala Amb, District Sirmour (HP) for compliance.
4. Shri Vishal Mohan, Ld. Advocate, 4, Argyle House, The Mall Shimla-01.
5. Shri Rakesh Rana, Deputy Director (Legal), Legal Cell, HQ.
6. IT Cell.

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Reader to the
Commissioner of State Taxes & Excise
-cum-Revisional Authority
Himachal Pradesh, Shimla-09.