

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

Appeal No. : 22/2022  
Date of Institution : 25-07-2022  
Date of order : 30-12-2022

**In the matter of:**

M/s Kumar Maini and Harmesh Maini, Hajipur, Tehsil Mukerian, Distt.  
Hoshiarpur,(P.B).

.....Appellant

*Vs*

1. Assessing Authority-Cum- Dy. CST&E Una., (HP)  
&
2. Sh. Satish Kumar Malhotra, House No.- EG-962, Mohalla Govindgarh,  
Jalandhar.

.....Respondents

**Parties represented by:-**

1. Sh. Suneel Awasthi, Advocates for the Appellant.
2. Shri Sandeep Mandyal, Sr. Law Officer for the Respondent Number 1
3. Sh. Prince Tayal, Advocate and Sh. Satish Kumar Malhotra for the  
Respondent Number 2.

**Appeal under Section 30 of the Himachal Pradesh General Sales Tax  
Act, 1968**

**Order**

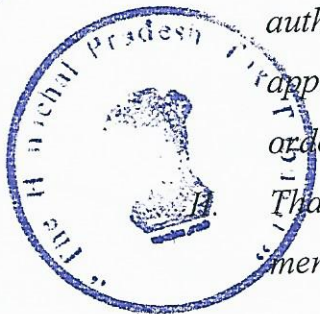
1. The present appeal has been filed by Mr. Kumar Maini and Mr Harmesh Maini,  
Sh. Purshotam Lal Maini, Resident of Village Hajipur, Tehsil Mukerian,  
District Hoshiarpur, (PB) against the orders of Joint Commissioner of State Taxes  
and Excise-Cum- Appellate Authority, NZ, Palampur Himachal Pradesh dated 13-  
06-2022 vide which the appeal filed by the applicant against the orders of  
Assessing Authority-cum-Dy. DCST&E Una dated 29.11.2022 for the assessment

years 1984-85 to 1987-88 whereby they were asked to pay the tax liability 9,74,880/- of the brick kiln- M/s Parbatiya Khadi Mandal Udyog at Kuneran Gagret , was dismissed The order of Dy. CST&E dated 29.11.2022 was challenged before JCST&E-cum-Appellate Authority who has upheld the order of the Assessing Authority on the ground that the Assessing Authority –cum-Dy. CST&E, Una has passed the order after due appreciation of the evidence and material facts available on the record, after giving due opportunity to all the parties.

2. The brief facts as stated in this appeal are that M/s Parbatiya Mandal Khadi Udyog was assessed by the Assessing Authority Una for the Financial year 1984-85 to 1987-88 who ordered creation of tax liability of Rs. 9,74,880/- in year 1991. The order was challenged number of times by the present respondent number 2 over a period of time. In 2021, the High Court in CWP-3277/2011 vide its order dated 19-07-2021 ordered Dy. CST&E Una to hold a fresh enquiry regarding tax liability for the said period. In compliance to the High Court order, Dy. CST&E Una held a detailed enquiry and prepared report after associating both the parties and by order dated 29-11-2021 Dy. CST&E Una fixed the onus to pay the tax liability amounting to Rs. 9,74,880/- upon the present appellants. The order of the Dy. CST&E, Una was further challenged before the Appellate authority. The Appellate authority upheld the demand created by the Assessing Authority in its order dated 13-06-2022 and the present appeal is filed against this order.

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

- I. *That the impugned order dated 13-06-2022 passed by the appellate authority is non speaking order. The perusal of the order will show that the appellate authority has not given independent reasoning in affirming the order 29-11-2021 passed by the Dy. CST&E Una, District Una.*
- That the order passed by the appellate authority is not sustainable as mere mentioning the ground of appeal and reply by the respondents is not*



sufficient to decide the appeal. The valuable right of the appellant has been dealt in a cursory manner without assigning any reasons

III. That the the Ld. Assessing Authority had conducted a detailed comprehensive inquiry into the mater while assessing the tax liability in 1991 and came to the correct conclusion that the brick kiln namely M/s Parbatiya Khadi Mandal Udyog, Kuneran (Gagret) is owned by Sh. Satish Kumar Malhotra as a sole Prop./Partner/Incharge of the brick kiln .In the appeal application it has been averred that the assessments order liability is required to be fixing on either M/s Parbatiya Khadi Mandal Udyog, Kuneran (Reg. Under 1133/1152 or from respondent No. 3 Sh. Satish Kumar Malhotra. It is further mentioned that the imposition of tax liability upon the appellants after the lapse of 30 years have caused grave miscarriage of justice.

4. The Ld. Counsel for the appellant prayed that the appeal be accepted and the impugned order be quashed since the assessment orders which were passed against Sh. Satish Kumar Malhotra i.e. respondent Number 2 by Assessing Authority Una in 1991 for the assessment years 1984-85 to 1987-88 for Rs. 9,74,880/- were right as the Ld. Assessing Authority had conducted a detailed enquiry and held that Brick kiln namely M/s Parbatiya Mandal Udyog Gagret was owned by Sh. Satish Kumar Malhotra as sole proprietor. He alleged that Mr. Satish Kumar Malhotra did not deposit his tax liability in time and approached various courts over the period of time for mere shifting his liability over to his client.

Sh. Prince Tayal, Advocate alongwith Sh. Pankaj Shiva Malhotra and Sh. Satish Kumar Malhotra for the respondent Number 2 argued that the Dy. CST&E-cum-Assessing Authority has rightly imposed the tax liability of Rs. 9,74,880/- upon the appellants by order dated 29-11-2021 being legal heirs of Late Sh. Purshotam Lal Maini after appreciating the evidence and material facts available on record.

6. Shri Sandeep Mandyal, Sr. Law Officer for the respondent no.1 argued that as per incidence of Taxation, the dealer was liable to deposit of tax into the Govt. Treasury despite having collected the same from the consumer. The appellant was

under statutory obligation to furnish the correct entry in the tax returns and to deposit tax accordingly. The plea of the dealer cannot be accepted at this stage. The Sr. Law Officer stated that the petitioner has no case to agitate before this Tribunal as the issues raised here are already addressed by the Authorities below and he prayed that their action may be upheld.

7. I have heard the Ld. Counsel for the Appellant, Ld. Govt. Counsel for the respondent number 1 and Ld. Counsel alongwith Sh. Satish Kumar Malhotra for respondent number 2 in detail and perused the record as well. The point for consideration raised by the appellant pertains to the issue of 'Levy of Tax', 'Burden of Proof' and 'payment of tax and returns'. I have given considerable thought to the issues involved and I hold that the present appeal should be rejected for the following reasons:-

i. The appellant had admitted his tax liability assessed by assessing authority for the period 1984-85 to 1887-88 of Rs. 9,74,880/-, but disputes the burden of payment and prays that it should be paid by respondent Number 2. It means that the appellant had not disputed the figure of tax liability determined by the Assessing Authority which shows that there is merit in the action of Assessing Authority. Moreover, in the appeal, the appellant has not disputed the incident of taxation rather main dispute is that tax liability should be paid by Mr. Satish Kumar Malhotra, who was running the business of the M/s Parbatiya Khadi Mandal Udyog at that time and not by them.

ii. Further, it is seen that the Assessment order dated 29.11.2022 cannot be said to be a non speaking order. It is a very detailed order. The enquiry report/order dated 29-11-2021 of Dy. CST&E, Una has given detailed reasons why legal heirs of Sh. Purshotam Lal Maini are liable to deposit the tax liability. The enquiry report has established that Sh. Satish Kumar Malhotra was only working as the employee of said Brick Kiln and deceased Sh. Purshotam Lal Maini, was the real owner of Brick Kiln who

was father of present appellants who have inherited his sole property being his legal heirs including Brick Kiln owned by him. The appellants have failed to discharge the Burden of Proof against Sh Satish Kumar Malhotra before the assessing authority –cum- Dy. CST&E, Una.

- iii. Moreover, the objection raised by the appellant that the tax liability has been imposed upon the appellants after the lapse of 30 years is not true as the enquiry was initiated after the High Court order in writ petition CWP No. 3277/2011 dated 19-07-2021.
- iv. The objection raised by the appellant that the appellate authority has not framed any specific issue does not hold ground because the order of appellate authority has relied on the detailed enquiry report prepared by Dy. CST&E, Una which included the cross examination of both the parties. I have gone into the enquiry done by Dy CST&E; he has examined several witnesses whose evidence has been discussed in the enquiry report cum the assessment order. He has further discussed the statement of each witness in the enquiry report and then given his findings. It is apparent from the report that the appellants have made self contradictory statements and expressed ignorance on material questions, as such oral version goes contrary to contents of the documents. Thus, it is concluded that the responsibility to pay tax liability imposed on brick kiln at Kuneran in the name of Parvitya Khadi Mandal is solely upon the appellants being the legal heirs and beneficiary of the property left by Sh. Purshottam Lal Maini. Sh. Satish Kumar Malhotra only in-charge of the said brick kiln on behalf of Sh. Purshottam Lal Maini is not the proprietor and cannot be held liable to deposit the tax liability of the said bricks kiln.

8. For the aforesaid reasons, the appeal does not merit any consideration and is dismissed. The impugned order of the Assessing Authority dated 29-11-2021 and the order of the Appellate Authority 13-06-2022 are upheld.

9. Copy of this order is sent to the parties concerned. File after due completion be consigned to the record room.



(Akshay Sood)  
Chairman,  
HP Tax Tribunal,  
Camp at Shimla

Dated: 30-12-2022

Endst. No HPTT/CS/2022- 256 to 261

Copy to: 256 to 261

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Dy. Commissioner of State Taxes & Excise, Una, District Una, HP.
3. Sh. Kumar Maini and Harmesh Maini, S/o Late Sh. Purshotam Lal Maini , Resident of Village Hajipur, Tehsil Mukerian, District Hoshiarpur, PB.
4. Sh. Satish Kumar Malhotra S/o Late Sh. Jai Chand Malhotra, R/o House No. - EG-926, Mohalla Govindgarh, Jalandhar city, PB.
5. Sh. Suneel Awasthi, Advocate, Chamber No. 163, near High Court, Shimla, HP.
6. The Sandeep Mandyal, Sr. Law officer, HQ.



Reader

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