

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

Appeal No. : 8/2019
Date of Institution : 29-04-2019
Date of order : 08-12-2022

In the matter of:

M/s Narkanda Filling Station, Kumarsain, Distt. Shimla (H.P).

.....Appellant

Vs

The Commissioner State Taxes and Excise, Shimla, (HP)

&

The Deputy Excise and Taxation Commissioner-Cum-Assessing Authority
(FS) South zone, Parwanoo (HP).

.....Respondents

Parties represented by:-

Sh. Vishal Mohan and Sh. Praveen Sharma, Advocates for the Appellant.
Shri Sandeep Mandyal, Sr. Law Officer for the Respondent.

Appeal under Section 45(2) of the Himachal Pradesh, Value Added
Tax Act, 2005

Order

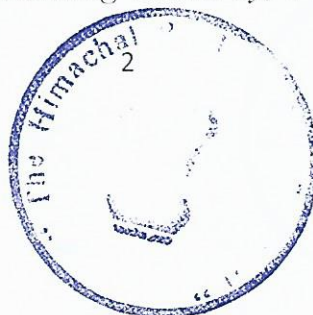
1. The present appeal has been filed by M/s Narkanda filling Station, Kumarsain, Distt. Shimla against the orders of Ld. Commissioner of State Taxes and Excise-Cum- Appellate Authority, Himachal Pradesh dated 29-03-2019 vide which the appeal filed by the Applicant for the year 2010-11 against the orders of Deputy Excise and Taxation Commissioner, the original Assessing Authority, (FS) (SZ) Parwanoo, (Respondent No. 2) was dismissed by the Ld. Appellate Authority on

the ground that the Assessing Authority has correctly assessed Appellant for the year 2010-11 since the applicant could not submit sufficient cause of not depositing the VAT and interest thereon on his own initiative. The Appellate Authority also upheld the penalty proceedings applied thereon. The order of the Assessing Authority dated 16-07-2016 creating demand of (VAT, Interest and Penalty) Rs. 3,39,17,083/- was also upheld.

2. The brief facts as stated in this Appeal are that M/s Narkanda filling Station, Kumarsain, Distt. Shimla is a registered dealer under the HP Vat Act, vide TIN 02010800113. The dealer deals in the sale of petrol, diesel, Lubricants and spray oil. The Deputy Excise and Taxation Commissioner Cum Assessing Authority, (FZ), (SZ), Parwanoo assessed the appellant under section 16 and 60 of the HP VAT Act for the year 2010-11 and noticed that the dealer has suppressed VAT amounting to Rs. 1,45,42,771/-. The appellant while appearing before the Assessing authority admitted the tax liability of Rs. 1,45,42,771/- which however he claimed was to be paid to the department not by him but by his relative who held the power of Attorney of running the business for the assessed period. During the proceedings of the case, the appellant paid 11,63,251/- as part payment of the VAT liability which was verified by the Assessing Authority. Finally, the DETC FS/SZ calculated the total liability at Rs. 2,72,27,323/- after levy of interest Rs. 1,38,47,803/- and adjustment of paid liability. A penalty of Rs. 66,89,760/- was also imposed vide separate order dated 16-07-2016. Thus, a total demand of Rs. 3,39,17,083/- was created vide order dated 16-07-2016. Thereafter, the Appellate Authority upheld the demand created by the Assessing Authority vide its order dated 29.03.2019 and appeal has been filed against this order.

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

1) That notice under Section 16 read with Section 60 was issued to the appellant by the Ld. Respondent being Deputy Excise and Taxation Commissioner-Cum-Assessing Authority, Flying Squad, Parwanoo. When



notice was issued to them, it came to the notice of the Learned respondent that the appellant had not deposited VAT into the Government exchequer and as per the audited balance sheet for the year ending on 31-03-2011, a sum of Rs. 1,45,42,771/- was shown as payable by the appellant himself.

II) During the course of proceedings under section 16 read with section 60 of the H.P. VAT Act, the appellant inter-alia made the following submissions:-

a) That liability of tax as aforementioned of Rs. 1,45,42,771/- shown in the balance sheet as on 31-03-2011 was in fact the sum payable for financial year 2009-10 and 2010-11. Bifurcation of the liability for the assessment year 2009-10 and 2010-11 detailed below for the kind perusal and ready reference of this Hon'ble Tribunal:-

Assessment Year	Amount.
2009-10	Rs. 7325912.00
2010-11	Rs. 7216859.00
	<hr/> Total: Rs. 1,45,42,771.00

It was further submitted before the Ld. Respondent that the liability proposed to be created entirely for assessment years 2010-11 is absolutely illegal as every year is independent. It was submitted that due to embezzlement made by the General Power of Attorney holder of the appellant, tax had not been deposited in the State exchequer.

b) It was further submitted that under Section 16 of the H.P. VAT Act scrutiny of returns is mandated and the limitation has been explicitly mentioned therein to be any time in the year, meaning thereby proceedings under Section 16 could only be initiated in the course of year for which scrutiny had taken place and as such it is submitted that since the first notice for the alleged action contemplated under Section 16 read with Section 60 of the H.P VAT Act, 2005 was taken on 16-05-2016, the same is hit by limitation.

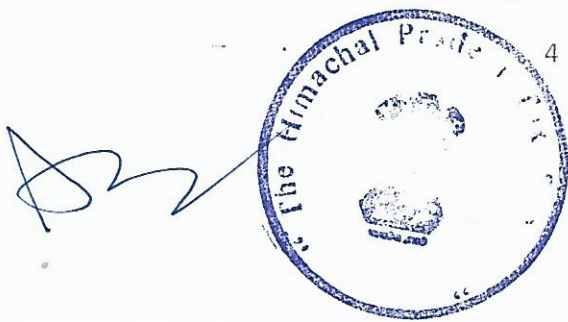


c) Even if the said action is taken to be as a proceeding under section 21 of the HP VAT Act, the same is also hit by limitations, as per the mandate of sub-section (6) of Section 21, such act ought to be taken within five years of such period and such period means expiry of the assessment not to be counted from the time duration mentioned for filing of the return. Notice in the instant case has been issued beyond the period of five years and as such the same is hit by limitation also.

d) Further, it has been submitted that regular assessment in the case of the appellant is being made by the Assessing Authority, Rampur Bushahr, District Shimla and as such Flying Squad-/ respondent had no jurisdiction to assess the appellant and in support of this submission the appellant has placed reliance upon the judgment of the High Court of Himachal Pradesh in the case of Manali Resort and John Raymond Bright, in which the High Court of Himachal Pradesh had held that persecutor cannot be prosecutor, meaning thereby that Flying Squad is only bestowed the power of investigation, whereas the assessment has to be made by the Assessing Authority.

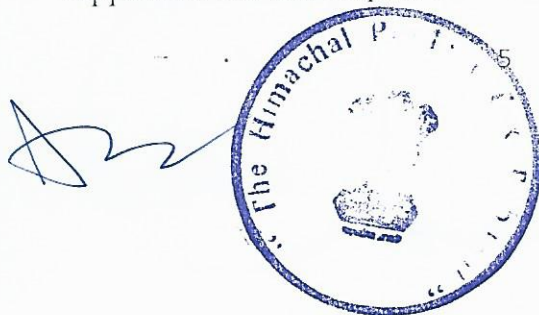
III) It has been averred that the Excise and Taxation Commissioner was not justified in upholding the creation for tax demand of Rs. 1,33,79,520/- and also upholding the charging of interest of penalty and under Sections 19 and 16(7) of the HP VAT Act.

4. The Ld. Counsel for the appellant prayed that the appeal be accepted and impugned order be quashed since the proprietor of the firm Sh. Madan Gopal Mehta had given the general power of Attorney in favour of Sh. Balbir Mehta, working as Manager of firm for taking all the decisions and to do day to day business for firm. He alleged that Mr. Balbir Singh Mehta did not deposit VAT in time and allowed VAT liability to accumulate for the year 2010-11 for which the proprietor had filed FIR against him in the Police Station Parwanoo on 19-12-2014. The Ld. Counsel further argued that the assessing authority while passing



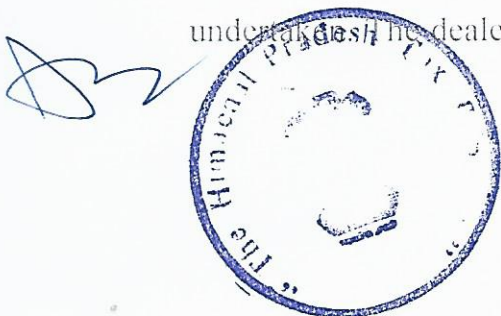
the order against outstanding demand of Rs. 1,45,42,771/- as shown in the balance sheet of the dealer for the year 2010-11, gave a credit of Rs. 11,63,251/- whereas the net VAT liability for the year 2010-11 was only Rs. 72,16,859/- balance pertaining to the year 2009-10 already assessed on 27-06-2013 and deposited. Thus, the Assessing Authority wrongly worked out the liability at Rs. 1,33,79,520/-(Rs. 1,45,42,771/- minus Rs. 11,63,251/-).

5. Shri Sandeep Mandyal, Sr. Law Officer and Mrs. Pappu Kumari, ASTEO, Kumarsain, for the respondent argued that the law of limitation does not apply in this case, as per Sections 16 and 60 of the HP VAT Act, scrutiny of the returns can be taken. As per incidence of Taxation under HP VAT Act, 2005 the dealer was liable to deposit of VAT into the Govt. Treasury despite having collected the same from the consumers. As per Section 16 of HP VAT Act, 2005 the appellant was under statutory obligation to furnish the correct entry in the tax returns which was not done. The case of the department is that 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 issue arising herein is already addressed by the Authority below and he prayed that his order dated 29-03-2019 may be upheld.
6. I have heard the Ld. Counsel and the Ld. Govt. Counsel for the respondents in detail and perused the record as well. The points for consideration raised by the appellant pertains to the issue of 'limitation'; 'jurisdiction clause' 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 following reasons:-
 - i) As per the admission of the appellant before the Respondent No.2, the appellant had admitted his VAT liabilities of Rs. 1,45,42,772/- minus Rs. 11,63,251/- (Credited into Govt. Account on 30-04-2011) i.e. Rs 1,33,79520/-. It means the appellant had not disputed the figure of VAT 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 incidence of taxation provided under section



4 of HP VAT Act, 2005 which the basis to determine VAT liability on the appellant.

- ii) The objection raised by the appellant that the order of Respondent no. 2 is time barred does not hold ground because the date of filing annual return for the assessment year 2010-11 was 31st December, 2011, accordingly five years limitation period would have applied after 31st December, 2016, but the notice in the matter was issued on 16-05-2016, therefore, the same has been passed within the prescribed time limit. Moreover, the case has been dealt under section 16 of the Act, wherein there is no such limitation as asserted by the Ld. Counsel for the appellant.
- iii) The perusal of the Notification dated 05th June, 2000 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 5th June, 2000, issued under erstwhile HPGST Act, 1968 which was carried forward by the 'saving clause' under HPVAT Act 2005, DETC's of Flying Squads are authorised and are competent for framing assessment.
- iv) Further, it is seen that the impugned order dated 29-03-2019 cannot be held to be a non speaking order. It is a very detailed order. 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 determined u/s 16(8) of the Act. Once liability on account of suppressed sale is assessed penalty equal to or upto double of the assessed tax amount is payable. The respondent no. 2, in the present case has found the appellant guilty of suppressing his VAT liability when the scrutiny of the returns u/s 60 of HP VAT Act was undertaken. The dealer had not deposited the tax liability amounting to Rs.



1,33,79,520/- for the year 2010-11 which he was liable to pay. Penalty and interest has been levied under the provisions of Section 16 and 19 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 V.O. P. Metals (2001) STC 611 (SC)** supports the imposition of penalty and hence the same is being relied upon. The law cited by the Ld. Sr. Law Officer in the cases of **Indodan Industries Ltd. v. State of U.P. and others (2010) 27 VST 1 (SC)**, **Hazi Lal Mohd. Biri Works V. State of UP. And Others (1973) 32 STC 496 (SC)**, **Royal Boot House V. State of Jammu and Kashmir (1984) 56 STC 212 (SC)** and **Khazan Chand v. State of Jammu and Kashmir and other (1984) 56 STC 214 (SC)** fully supports the case for imposition of interest and hence the same has been rightly ordered to be imposed upon the dealer.

7. For aforesaid reasons, the appeal does not merit any consideration and is dismissed. The impugned orders of the Assessing authority dated 16-07-2016 and order of the Appellate authority dated 29-03-2019 are upheld.
8. 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,
Camp at Shimla

Endst. No HPTT/CS/2022- 250 to 255

Dated 08/12/2022

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Jt. Excise and Taxation Commissioner FS SZ, Parwanoo, Solan, HP.
3. The Dy. Commissioner State Taxes and Excise, Shimla.
4. M/s Narkanda Filling Station, Kumarsain, Distt. Shimla, HP.
5. Sh. Sh. Vishal Mohan Advocate for the respondent.
6. The Sandeep Mandyal, Sr. Law officer, HQ.


Reader

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