

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

Appeal No. : 12/2021
OMA No. : 11/2021
Date of Institution : 31-05-2021
Date of order : 18-06-2021

With

Appeal No. : 13/2021
OMA No. : 12/2021
Date of Institution : 31-05-2021
Date of order : 18-06-2021

And

Appeal No. : 14/2021
OMA No. : 13/2021
Date of Institution : 31-05-2021
Date of order : 18-06-2021

In the matter of:

M/s Omen Electrical and Gas Appliances,
Parwanoo, District Solan (HP)

.....Appellant

Vs

- i) Addl. CST&E-cum-Appellate Authority, SZ, Himachal Pradesh, Shimla-09
- ii) Assessing Authority, Parwanoo-1, Circle, Distt. Solan (HP)

.....Respondents

Parties represented by:-

Shri Goverdhan Sharma, Advocate for the Appellant

Shri Rakesh Rana, Dy Director, (Law) for the Respondent

**Appeal under Section 9 (2) of the CST Act, 1956 read with Section 45 (1) (a)
of the Himachal Pradesh, Value Added Tax Act, 2005**

Order

These appeals have been filed against the orders of the Ld. Addl. Commissioner State Taxes and Excise (Appellate Authority) (South Zone) HP dated 11.01.2021 vide which the appeals filed by the Appellant for the years 2012-13, 2013-14 and 2014-15 against the orders of the Ld. Assessing Authority, Parwanoo-I (Respondent No.2) were dismissed by the Ld. Appellate Authority on the ground that the appeals were not filed within sixty days from the date of communication of the orders appealed against and it was held that as a consequence, the application dated 11-01-2021 filed by the appellant for condonation of delay does not succeed and accordingly dismissed alongwith main appeal(s).

2. The brief facts of the case are that M/s Omen Electrical and Gas appliances, Parwanoo Distt. Solan (HP) was registered as dealer under the HP VAT act, 2005 and CST Act 1956. Before



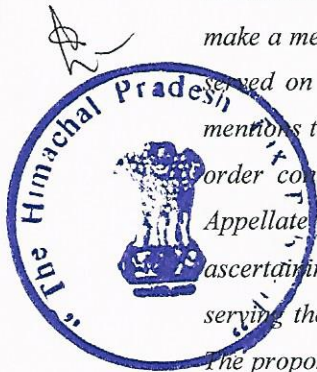
closure of its business in 2015, the Appellant was engaged in manufacture and trading of home appliances and parts thereof. The Ld. Assessing Authority had assessed the Appellant for the years 2012-13, 2013-14 and 2014-15 and created additional demands of Rs. 2,77,97,180/-, Rs. 2,84,07,152/-, and Rs. 58,40,548/- for the year 2014-15 respectively against the appellant under the Central Sales Tax Act, 1956 and HP Value Added Tax Act, 2005. Since the appellant failed to produce C-Forms, for inter-State sales of Rs. 6,70,79,256/-, Rs. 8,51,50,309/- and Rs. 2,07,43,565/- for the years 2012-13, 2013-14 and 2014-15 respectively, the Ld. Assessing Authority assessed sales at full rate of tax, and besides tax also imposed interest and penalty.

3. Feeling aggrieved by the order of Appellate Authority the appellant has filed these appeals on following grounds:-

i) *That the appellant was registered as a dealer under the provisions of HP VAT Act, 2005 under TIN: 02020500652 and filing its quarterly and annual returns under the provisions of the HP VAT Act, 2005 and the CST Act, 1956 within the stipulated time.*

ii) *That the Ld. Appellate Authority rejecting the appeal on the sole ground of limitation confirming the order of assessment are arbitrary, unlawful and are violative of the principles of natural justice.*

iii) *That the ex-parte order passed by the Respondent NO.2 confirmed by the Ld. Appellate Authority creating additional demand is not tenable in law. The appellant was never served the notice for assessment in the manner prescribe under rule 84 of the HP VAT Rules, 2005. The appellant had closed the manufacturing unit at Parwanoo in March, 2005 and thereafter there was no authorized employee of the appellant firm to receive the notices and other documents from the department. The Assessing Authority has failed to make a mention for the fact that the notice/notices and the order of assessment were ever served on some authorized agent of the appellant firm. The order assessment neither mentions the name of the employee on whom the notices and orders were served nor the order contains any reference as to the authorization in respect of that person. The Appellate Authority has also erred in law and facts and given finding without ascertaining in the impugned order that the person on whom the Department had been serving the notices etc. was authorized person or not and came to a wrong conclusion. The proposed assessment as well as the ex-parte assessment orders therefore, were never serve on the appellant. The appellant came to know about the ex-parte order only when he visited the office to submit C-Forms. He thereafter some applied for the certified copy of the order which was received on 26-09-2020 and soon thereafter the appeals were filed with a delay of only 6 days, which ought to have been condoned in view of COVID restrictions. Moreover, there exists a precedent which has been followed by the Appellate Authority and C-Forms and other statutory forms were not received. In such cases the appeals were accepted involving even delay for more than a number of years and the cases were remanded after accepting the appeals after condonation of delay. In the instant case, as the appellant dealer now possesses all the C-forms, the appeals should have been accepted and the cases remanded to the Assessing Authority for acceptance of*



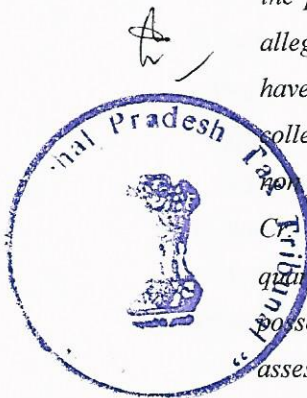
C forms and reconciliation of the accounts for any mismatch. The impugned orders of Appellate Authority and Assessing Authority deserve to be quashed.

iv) *That assuming but not conceding that the orders of assessment were served on the employee of the appellant firm, even in that case under rule 92 (1) of the HP VAT Rules, 2005, it was incumbent upon the Assessing Authority to supply a certified copy of the assessment order, which was not supplied by the Assessing Authority until the appellant dealer made a request and the same was supplied on 26-09-2020. Therefore, the delay in filing the appeals was only 6 days which deserved to be condoned and it was not 1 year 5 months and 20 days as wrongly determined by the Appellate Authority. Moreover due to pandemic spread some delay was caused. Even the High Court of Himachal Pradesh has held that the delay in such cases should be condoned. The impugned order of Appellate Authority, therefore deserve to be quashed and appeal allowed as the huge demand is only a paper demand without any basis when the appellant dealer possess all the C-Forms and also has accounted for all the purchases and sales and there cannot be any mismatch.*

v) *That the respondent No. 2 was well aware that the unit of the appellant firm was closed since 2015 and the appellant has been filing nil returns since April, 2015 which have been accepted by the respondent No. 2 himself as per Ex-parte order of assessment for the years 2015-16 to 2017-18, also made on 11-07-2019 and the cases were disposed of by imposing a penalty of Rs. 5000/- only under section 16(6) (A) for not filing the annual return for the year 2017-18. The main cause of the assessment orders not reaching the appellant firm was closure of the unit and there was a communication gap, otherwise the appellant dealer would have not obtained the ex-parte orders and would have attended the proceedings to produce the C-Forms as well settled the issue of the mismatch as alleged in the impugned assessment order. It was in the interest of the appellant dealer to have filed the appeals in time and not allowed the delay to be caused, when he had collected the C-forms from the purchasing dealers. The amount of demand on account of production of C-Forms is to the tune of Rs. 2.23 Cr. Out of total demand of Rs. 2.60 Cr. Because the appellant was not able to furnish C-Form at the time of filing the quarterly return and at the time of filing the annual return the appellant is now in the possession of the 'C' Forms issued by the purchasing dealer subsequent to the ex-parte assessment orders passed by the Assessing Authority tabulated detail of the 'C' Form procured which are in possession of the appellant and can be produced before the authorities and even before this Tribunal.*

vi) *The Appellate Authority has erred in facts and law therefore, in not accepting the appeals and by not allowing the C forms to be submitted and has acted the precedents followed earlier in other cases in which delays of several years had been condoned in a number of cases. In the interest of justice the short delay should have been condoned.*

vii) *That the authorities are bound to accept the C forms even at the Appellate stage and at the stage of revision as held by various High Courts. There are judgments in which the High Court has stated that the C forms can be produced even at the stage of the appeal. That the appellant was not in possession of C forms and having explained the sufficient*



cause for not being able to furnish C forms the Assessing Authority ought to have granted further time to produce the forms as per section 8 (4) of CST Act 1956 read with rule 12 (7) of central sales tax (Registration & Turnover rules) Reliance in this regard is placed upon the judgment of the R. S. Cotton Mills Versus State of Punjab C.W. P. 12246 of 2008 decided on 24-09-2008 where in Hon'ble Court held that for C form could be filed even after the filing of the return or at the Appellate stage.

viii) That even otherwise the impugned order of assessment is hit by limitation on two counts which renders it as otiose. The present case pertains to the assessment year 202-13. Section 21 of the HP VAT Act, 2005 deals with assessment of tax. Section 21 (5) of Section 21 spells the period of limitation in cases where returns have been filed by the dealer, as in the present case. The Assessing Authority under sub section (5) has been given the power to proceed to frame the assessment to the best of his judgment within five years in case the dealer does not comply with the notice of assessment issued under sub section (2) or subsection (4) of section 21. The reason for highlighting the aforesaid provisions is that the legislature has given a maximum period of five years to the assessing authority to proceed to frame best judgment/assessments. In the instant case the Assessing Authority has travelled beyond the authority vested u/s 21(5). It was incumbent upon the authority to issue the notice of assessment within 5 years to frame assessment which in the present case expired on 31-03-2013. However, the notice for assessment as per para 6 of the impugned order passed in appeal was issued on 21-11-2018 i.e. after the period of 5 years had lapsed as on 31-03-2018 and as such the Assessing Authority has not proceeded to frame the best judgment assessment within a period of 5 years. Therefore the impugned order of assessment is illegal, bad in law and liable to be quashed on this ground also alongwith the order passed in appeal.

ix) That secondly, the Assessing Authority was bound to complete the assessment within 3 months from the date of notice, but he had no completed the assessment within the prescribed period as per rule 67 (2) of the Hp VAT Rules and therefore the impugned order of assessment deserves to be set aside.

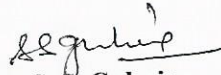
x) That the assessing authority has not passed a speaking order while deciding the issue of mismatch ex-parte. The impugned order of assessment does not contain any specific information as to on what are the details of mismatch and from whom the goods were purchased or to whom the goods were sold, the dates on which the transactions took place, and the values of the transactions. The impugned order of assessment therefore deserved to be quashed on this count alone.

xi) That because the assessing authority has finalized the assessment without affording a reasonable opportunity of being heard, the assessing authority has made additional demand on the basis of mis-match in Form VAT XXVI-A pertaining to interstate purchases and interstate sales shown in the returns without confronting the appellant with the books of accounts. Had the appellant been afforded an opportunity to produce the books of account the appellant could have settled the issue of mismatch of interstate purchase and sales transactions with the Barrier Record. The appellant possesses all the

documents to satisfy the authorities that there was no mismatch as he has been scrupulously entering all the transactions in the account books.

xii) That the levy of interest as well as imposition of penalties on various counts under various sections of the HP VAT Act, 2005 and also read with the CST Act, 1956, are not tenable in the eyes of law in view of the explanation rendered as above and deserved to be quashed alongwith the VAT and the CST assessed.

4. The Ld. Counsel for the appellant prayed that the appeals be accepted and impugned orders be quashed, alongwith the additional demands created against the appellant, and the appellant be granted opportunity to furnish the C-Forms procured from various purchasing dealers. The matter may be remanded to the Assessing Authority to finalize the assessment afresh after considering 'C' Forms obtained by the appellant which are in his possession. The appellant may also be granted opportunity to respond to the mismatch in the check-post or barrier record.
5. The Ld. Dy Director, (Law) Sh. Rakesh Rana has stated that the appellant failed to produce the C Forms for the assessment years 2012-13, 2013-14 and 2014-15 respectively. Moreover, the appellant had not filed the appeals within the prescribed period of limitation and no cause for delay has been established by the appellant. Therefore the petitioner has no case to agitate before this Hon'ble Court as the issue raise herein already been addressed by the authorities below and their action may be upheld.
6. I have heard the arguments of both the parties, perused the record and the law on the subject. Accordingly, I am convinced that the Ld. Assessing Authority needs to hear the Appellant and take on record the C Forms admitted to be in the possession of the Appellant and adjudicate upon the admissibility of the same in accordance with the provisions of the Central Sales Tax Act, 1956 and the rules made thereunder and also consider and decide upon the questioned Form-26 (A) mismatch, after hearing the Appellant. **Accordingly, the case is remanded back to the Assessing Authority with the directions that the appellant shall appear before the Respondent No. 2 on or before 19-07-2021 for the said purposes. The Ld. Assessing Authority shall thereafter pass the necessary consequential orders and cause a copy of consequential orders thus passed to be placed on the record of this Tribunal within one week after passing an order.**
7. Copy of this order be sent to the parties concerned. File after due completion be consigned to the record room.


Dr. S. S. Guleria
Chairman,
HP Tax Tribunal, Dharamshala,
Camp at Shimla

Endst. No. HPTT/CS/2021 - 127 - 131

Dated: 19-06-2021

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Addl. CST&E-cum- Appellate Authority, SZ, Himachal Pradesh, Shimla-09.
3. Assessing Authority, Parwanoo-I, Circle, District Solan (HP)

4. M/s Omen Electrical and Gas Appliances, Parwanoo Distt. Solan **Through** Shri Goverdhan Sharma,
Advocate, 120, Vidhi Nikunj, H. P. High Court Complex, Shimla (HP)
5. The Dy Director, (Law)

Suej Sharma
Reader
HP Tax Tribunal
Dharamshala