## BEFORE THE COMMISSIONER STATE TAXES & EXCISE

## HIMACHAL PRADESH,

*(Block No. 30, SDA complex, SHIMLA- 171009)*

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| Appeal No. | : | 01/2021-22 |
| O.M. A. No. | : | 01&02/2021-22 in Appeal No. 01/2021-22 |
| Date of Institution | : | 30-06-2021 |
| Date of order | : | 15-06-2022 |

With:

| | | |
|---|---|---|
| Appeal No. | : | 02/2021-22 |
| O.M. A. No. | : | 03&04/2021-22 in Appeal No. 02/2021-22 |
| Date of Institution | : | 30-06-2021 |
| Date of order | : | 15-06-2022 |

With:

| | | |
|---|---|---|
| Appeal No. | : | 03/2021-22 |
| O.M. A. No. | : | 05&06/2021-22 in Appeal No. 03/2021-22 |
| Date of Institution | : | 30-06-2021 |
| Date of order | : | 15-06-2022 |

And:

| | | |
|---|---|---|
| Appeal No. | : | 04/2021-22 |
| O.M. A. No. | : | 07&08/2021-22 in Appeal No. 04/2021-22 |
| Date of Institution | : | 30-06-2021 |
| Date of order | : | 15-06-2022 |

**In the matter of:-**

M/s Bharti Filling Station,

Shoghi .........**Appellant**

**Vs**

Jt. Commissioner (ST&E),

South Enforcement Zone, Parwanoo, Solan......**Respondent**

**Parties represented by:--**

1. Shri Rakesh Kumar Sharma, Advocate for the Appellant.
2. Shri Sandeep Mandyal, Law Officer for the respondent.

## Order

## Appeal under section 45 (1) (b) of the Himachal Pradesh Value Added Tax Act, 2005

1. The above four appeals have been filed by M/s Bharti Filling Station, NH-72, Shoghi, District Shimla, a registered dealer vide TIN 02010300672 under the Himachal Pradesh Value Added Tax Act, 2005 (herein after referred to as the Act) and the Central Sales Tax Act, 1956. The Appellant dealer deals in the purchase and sale of petrol, diesel, lubricants etc. The Appellant is aggrieved by the order dated 13-12-2018 passed by the Jt. Commissioner (State Taxes & Excise) South Enforcement Zone, Parwanoo, (hereinafter referred to as the Respondent). In the course of discharge of his duties it was brought to the notice of the Respondent that the Appellant above had suppressed his gross turnover in respect of sale of goods during the years 2013-14, 2015-16, 2016-17 and 2017-18. Accordingly, the Respondent initiated the proceedings, under sections 16, 21 and 60 of the Act, against the Appellant and vide order dated 13-12-2018 imposed a total demand of ₹ 2, 29, 45, 508/- (tabulated below) as VAT and interest:

| S. No. | Assessment Year | Suppressed Turnover(₹) | Tax Due on suppressed Turnover(₹) | Interest (₹) | Total (₹) |
|---|---|---|---|---|---|
| 1. | 2013-14 | 3,02,23,396 | 44,80,014 | 39,64,813 | 84,44,826 |
| 2. | 2015-16 | 1,66,50,110 | 22,08,885 | 11,59,665 | 33,68,550 |
| 3. | 2016-17 | 1,80,34,025 | 34,66,228 | 11,95,849 | 46,62,077 |
| 4. | 2017-18 | 2,96,19,712 | 55,53,695 | 9,16,360 | 64,70,055 |
| 5. | Total | 9,45,27,243 | 1,57,08,822 | 72,36,687 | 2,29,45,508 |

Felt aggrieved by the order above, the Appellant has preferred the above four appeals in the matter. As the issues involved in all the four appeals, above, are similar, so all these appeals have been clubbed together and are being disposed by this single order.

2. Shri Rakesh Sharma, Ld. Advocate for the Appellant submitted the following enumerated arguments in the matter:

1) The Appellant had duly appeared before the Respondent in case hearings. But, unfortunately, the Appellant who was going through the worst health position was diagnosed with stomach cancer and had to shift to Chandigarh for health treatment in August, 2018 itself. The Respondent Authority, while marking the presence of one Shri Lalit Sehgal, allegedly, accountant of the Appellant concerned, finalized the demand without affording the Appellant any opportunity to explain his position. The Appellant had never authorized Shri Lalit Sehgal to represent himself before the Respondent authority. Furthermore, above Shri Sehgal was never associated with the Appellant as accountant, neither, he was having any access to the record of the Appellant business.

2) The impugned orders are without jurisdiction and, therefore, void *ab initio*. The notice has been issued under sections 16, 21 and 60 of the H.P. Value Added Tax Act, 2005. Section 16 of the Act provides for payment of tax, filing of the returns, periodicity of returns and manner of tax payment. Section 21 provides for the framing of Assessment. Section 21(1) provides for deemed assessment where the returns furnished are found correct. Further, Section 60 provides for the scrutiny in special circumstances. The power under the aforesaid provisions exclusively vests with Assessing Authority defined within the provisions of the Act and Rules framed there under. Rule 2(e) of H.P. VAT Rules defines the Appropriate Assessing Authority as under :

> *"Appropriate Assessing Authority" in respect of any particular dealer means the Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer, within whose jurisdiction the dealer's place of business is situated, or if the dealer has more than one place of business in Himachal Pradesh, the Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer within whose jurisdiction the principal place of business in Himachal Pradesh of such business is situated, or such other person as may be appointed under section 3 of the Act and authorized by the State Government to make assessment in respect of such dealer within the meaning of clause (c) of section 2 of the Act;*

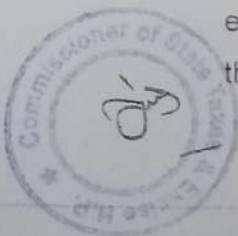
Thus, the phrasing in the statues *"within whose jurisdiction the principal place of business in Himachal Pradesh is situated"* is indicative enough that the assessment power only vests with the appropriate assessing authority within whose jurisdiction the principal place of business, in Himachal Pradesh, is situated. In the present case, the appellant was registered with the Cart Road Circle, and the Assistant Excise & Taxation Commissioner, Cart Road Circle; Shimla was the only competent authority to frame the assessment. The stepping into the shoes of appropriate assessing authority by the Respondent authority is a clear violation of jurisdictional provisions given in the Act. The entire assessment proceedings are, thus, without sanctity of the law and, therefore, liable to be quashed and set aside in the interest of law and justice.

3) The assessments framed by the Respondent are purely on estimation basis as the same are based on the details of alleged import of goods attributed to the Appellant. The details of import of goods have been derived from the data available from the official website of the department. It is pertinent to mention here that the declarations, in form VAT-XXVI-A, in the present case were made by the transporter. The Appellant was not, in any manner, responsible for the declarations made by the third party. The Appellant was legally entitled to present his version before the Respondent. The appellant in due course of its business was maintaining his business accounts and getting them, duly, audited from certified Chartered Accountant. The assessment of the taxes is always based on the sales shown by the dealer. The purchases are added to stocks only and the dealers are only liable for payment of taxes when the sales are made. The Respondent Authority, in an utter haste and bye-passing the standards of the assessment, determined the suppressed turnover on the basis of assumption and speculation. The Respondent authority was not having a single piece of paper or evidence while framing the assessments and determining the tax. The Hon'ble Supreme Court in the case of *State Of Kerala V. C. Velukutty, 1966-(017)-STC-0465 -SC* held that there was no material before the assessing authority, relevant to the assessment, and the

impugned assessments were arbitrarily framed by applying a ratio between disclosed and concealed turnover in one shop to another shop of the assessee. It was only a capricious surmise, unsupported by any relevant material.

4) The Respondent authority proceeded to assess tax on assumption basis, guess work and self devised procedure which is against the settled position of law. The Hon'ble High Court of Madras in the matter of *Hotel Vallator [2008] 15 VST 516* held estimation of turnover on the basis of one period for whole year as not justified.

5) That the demand for the various years has been created without taking into accounts the details about the dealer available with the regular assessing authority. The dealer was regularly filing his returns with its regular assessing authority. The Respondent authority did not care to take the comments or inputs from the regular Assessing Authority before concluding the suppression of turnover based on declaration submitted by the third party i.e. transporter. The Respondent authority did not take into consideration the consignments which got cancelled after e-declaration due to payment issue or vehicle breakdown etc. The cases of multiple records in respect of single transactions are very common in portal. The finding were essentially needed to be corroborated with other evidences like purchase account or payments made by the appellant to the selling dealer. In the matter of **State of Kerala V. K. T. Shaduli Yusuff. 1977-(039)-STC -0478 -SC, the** court held that in view of the language in which the Rules are couched, it seems to us that a determinative issue arises in this case. The department taking the stand that the returns filed by the assessee are incorrect and incomplete, whereas, the assessee contends that their returns are correct and that the accounts of the wholesale dealers, which formed the basis of the information of the sales tax authorities, were wrong and incorrect. Such an issue can only be determined after examination of the accounts of both the parties and after affording the assessee the right to cross-examine the wholesale dealers



concerned, particularly when the assessee makes a specific prayer to this effect.

6) The Respondent, further, has imposed huge interest liability on the determined tax. The Respondent did not appreciate the genuine hardship of the Appellant and proceeded to create the impugned demand without affording the Appellant ample opportunity of being heard. The huge interest has been charged without issuing the mandatory notice. The appellant was not afforded ample opportunity of being heard before charging the interest. Even the interest rates were not applied in accordance with the rates prescribed under the statue. Further, the calculation has not been done properly. The order charging the interest is illegal, arbitrary and unjust.

7) It was the Jt. Commissioner (State Taxes & Excise), South Enforcement Zone, Parwanoo who detected the case and also adjudicated the matter against the principles of Natural Justice. One cannot be a judge for his own cause. Moreover, the Jt. C. (ST&E) SEZ, the Respondent, is not the appropriate Assessing Authority to frame the assessment in the matter submitted ld. Counsel for the appellant.

8) The Respondent authority did not assess the Appellant for the year 2014-15 as in this year the sales were on higher side than the purchases. Stock in hand for the year 2013-14 was sold in the year 2014-15. So, the Respondent authority is not justified to assess the Appellant whimsically for the years 2013-14, 2015-16, 2016-17 and 2017-18 by inflating the sale quantum.

3. Shri Sandeep Mandyal, Ld. Law Officer, for the Respondent, submitted that the appellant was suppressing its sale/turnover and was not paying the due and entire VAT liabilities to the Government. It was for this reason that the Assistant Commissioner (ST&E)-cum-Assessing Authority, South Enforcement Zone Parwanoo, issued a notice, dated 14.06.2018, under Sections 16, 21 & 60 of the HP VAT Act, 2005 to the Appellant/dealer. Ample opportunity of being heard was provided to the

Appellant by the Respondent No.-1 and hearing of the matter was duly attended by proprietor and his accountant Sh. Lalit Sehgal. Ld. Counsel further submitted that before passing a final order, dated 13-12-2018, in the matter, a proposed demand notice dated 10-09-2018 was also issued to the Appellant to which no objection was filed by the Appellant. Therefore, it is wrong on the part of the Appellant to allege that ample opportunity of being heard was not afforded to him or that the Appellant never authorized Shri Lalit Sehgal to represent his case before the Respondent authority.

4. Ld. Departmental Counsel replying to the arguments that GTO has been determined on surmises, submitted that the Appellant himself has reflected less GTO in his returns than the purchases, as has been captured by the Respondent from Form VAT XV-As (Annual Retrns) uploaded by the Appellant, himself, on HimTAS. Despite having directed to do so by the Respondent, the dealer did not submit the separate quantum of sales pertaining to motor Spirit (Petrol), High Speed Diesel and other items taxable @ 13.75%, the same had to be worked out by the Respondent-cum-Assessing Authority on the basis of the quantum of sales returned during these years. In view of the fact that during the course of hearing before the Respondent, the Appellant did not file any objection to the proposed demand notice dated 10-09-2018, therefore, the final order dated 13-12-2018 passed, on the best judgment basis, by the Respondent is proper, legal, valid and may be upheld, pleaded Ld. Law Officer for the Respondent.

5. Ld. Counsel for the Respondent, further, submitted that the Respondent had statutory jurisdiction over the Appellant firm as the Appellant was having its business premises in District Shimla under the jurisdiction of South Enforcement Zone, Parwanoo, headed by Respondent No.1. Referring to Section 3(4) of the HP VAT Act, 2005 and Notification No. EXN-F(10)-5/81 dated 28.09.2004, Ld. Counsel for the Respondent Department submitted that the Respondent authority being Dy. Excise & Taxation Commissioner (now re-designated as Jt. Commissioner State Taxes & Excise) was a duly authorized person to exercise the powers and perform the duties/functions of the Assessing

Authority, within the meaning of clause (a) of Section 2 of the erstwhile HP General Sales Tax Act, 1968. The aforesaid HPGST Act, though, has been repealed; however, by virtue of Section 64(2) (a) of the HPVAT Act, 2005, the notification dated 28th Sept., 2004 is still in force and operative. Therefore, the Respondent authority, being Dy. Excise and Taxation Commissioner, is a duly appointed authority with jurisdiction over South Zone, encompassing within his jurisdiction the Districts of Kinnaur, Shimla, Solan, Sirmour and Spiti area of Lahaul & Spiti district. The Respondent is duly authorized to perform the functions and duties of Assessing Authority by virtue of the powers vested in him under Section 3 (3) of HP VAT Act, 2005 which provides that:

> *"The commissioner and other persons appointed under THE HIMACHAL PRADESH VALUE ADDED TAX ACT, 2005 sub-section (1) shall perform such functions and duties as may be required by or under this Act or as may be conferred, by the State Government, by notification..."*

Thus, the contention of the Appellant that the impugned order has been passed without jurisdiction is not legally sustainable affirmed the Counsel for the Department concluding his reply to the arguments in the matter.

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6. I have heard the arguments and replies of the concerned parties in the matter. I have also, carefully, gone through the record files for the respective years in the matter, provisions of the Act and Notifications referred to in the matter above. Written submissions of the parties have also been taken into consideration.

7. The first grievance of the Appellant in the matter is that he had never authorized Shri Lalit Sehgal to represent him in the matter, nor he was having any access to the Appellant record. On the contrary, perusal of the proceedings before passing of final order in the matter reveals that the Appellant was issued notice dated 14-06-2018 u/s 16, 21 and 60 of the Act. In response to notice above, the Appellant had appeared before the Assistant Commissioner (State Taxes & Excise), SEZ, Parwanoo on 26-06-2018 and had requested to fix the matter on next

date, the request of the Appellant was allowed. After the transfer of the ACST&E above, the case on transfer was listed before the Respondent. The Appellant along with his accountant Sh. Lalit Sehgal appeared before the Respondent on next fixed date of hearing i.e. 20-07-2018. Thereafter, Shri Sehgal appeared in the matter before the Respondent on 16-08-2018 and 25-09-2018. The Appellant and accountant again put in their presence before the Respondent on 15-10-2018, and finally Shri Sehgal appeared before the Respondent on 13-12-2018. The appearances above are in addition to adjournments sought by the Appellant and his representative. The Appellant, during the case proceedings before the Respondent, did not raise any objection to the presence of Shri Lalit Sehgal on dated 16-08-2018 and 25-08-2018, wherein Shri Sehgal had appeared for the Appellant; so, raising this objection, now, is only an afterthought and is neither tenable nor meritorious. Issue of hardship faced by the Appellant, as has been raised during arguments in the present matter, is not worth consideration for the fact that the gross turn over (GTO) of the Appellant has only increased for the successive years. The Appellant was statutorily bound to deposit the collected VAT as per provisions of the section 16 (4) of the Act.

8. The other grievance of the Appellant is that the findings concluded and demand raised by the Respondent is on the basis of purchase details extracted from VAT-XXVI-A Forms, whereas the VAT was payable on sales only. The declarations above, as per Appellant, have been made by the transporter and not by the Appellant and such declarations are not the true account of purchases of the goods as some consignments may be cancelled mid way or repeated as well. This assertion for the Appellant is not true as the purchases, as is revealed from the impugned orders, have been shown by the Appellant, himself, in his annual returns for the years 2013-14, 2015-16, 2016-17 and 2017-18. The above annual returns have been filed and uploaded by the Appellant, himself; so, the claim of the Appellant that declarations made by the third party cannot be the basis for creating demand is not based on facts apparent on record. No doubt that the declarations made at the barriers are, also, part of the Assessment/demand proceedings but

these have been appended as the additional proof only and not as the only basis of creating the impugned demand. So, the contention of the Appellant to the extent that declarations made by a third party have been made the basis for framing assessment is not true and this contention of the Appellant cannot be upheld for the above stated reason. Also, the Appellant during the course of arguments in the matter failed to show any proof of cancellation or repeat of any consignment.

9. Another argument in the matter on behalf of the Appellant, and an oft repeated argument in similar cases as in the present appeals, is that the impugned order has been passed without jurisdiction. This argument of the Appellant-Counsel is contrary to what has explicitly been provided in section 3 (4) of the HPVAT Act:

   *"**Taxing authorities.***
   *3. (4) The jurisdiction of the Commissioner and other officers posted at the State Headquarters shall extend to the whole of the State of Himachal Pradesh, and the jurisdiction of other officers or officials shall, unless the State Government otherwise directs, by notification, extend to the districts* ***or the areas of the districts for which they are for the time being posted.****"*

   In view of above express provision and by virtue of Notification No. EXN-F(10)-5/81 dt. 28th September, 2004, the Respondent authority being Deputy Excise & Taxation Commissioner (now re-designated as Jt. Commissioner State Taxes & Excise) was a duly appointed and posted **assessing authority** with jurisdiction of Flying Squad, South Enforcement Zone, Parwanoo, encompassing within his jurisdiction the Districts of Kinnaur, Shimla, Solan, Sirmour and Spiti area of Lahaul & Spiti District. By virtue of below quoted powers vested in him under section 3 (3) of the HP VAT Act:

   *The Commissioner and* ***other persons appointed under THE HIMACHAL PRADESH VALUE ADDED TAX ACT, 2005 sub-section (1) shall perform such functions and duties as may be required by or under this Act or as may be conferred, by the State Government, by notification…***

   the Respondent being Deputy Excise and Taxation Commissioner (now Jt. Commissioner State Taxes & Excise) had statutory

jurisdiction over the Appellant, the latter having his business in Sirmour District. Ld. Advocate has argued that the DETCs had the powers of Assessing Authority only under the repealed HP GST Act, 1968. But, even after the repeal of HPGST Act, 1968, when the HPVAT Act, 2005 came into force w.e.f. 31-03-2005, section 64 of the Act, under the "Repeal and Savings" clause provided that:

> ***'the repeal of the HPGST Act, 1968 shall not affect the previous operation of the aforesaid Act or anything duly done or suffered there under.'***

As such, the notification issued under the above repealed Act, which notified the DETC as the competent Authority for framing assessment, has been saved as such under the HP VAT Act, 2005 also. Hence, by virtue of the above said notification and express provisions under Rule 2 (c) of the HP VAT Rules, 2005, DETCs (Flying Squads) are authorized and competent assessing authorities for framing assessments and demands under the Act.

10. Perusal of the record and notice issued to the Appellant reveals that the Appellant had failed to pay full amount of tax due from him under the Act as was required under section 16 (4) of the Act:

> ***(4) Before a registered dealer furnishes the return required by sub-section (3), he shall, in the prescribed manner, pay [manually or electronically] into a Government Treasury or the Scheduled Bank which is a treasury bank, or at the office of the Assistant Excise and Taxation Commissioner or Excise and Taxation Officer-in-charge of the District, the full amount of tax due from him under the Act according to such returns and shall furnish along with the returns a receipt from such treasury, bank or office of the Assistant Excise and Taxation Commissioner or Excise and Taxation Officer-in-charge of the District showing the payment of such amount:***

The Appellant, thus, rendered himself liable for proceedings as provided under section 16 (8) of the Act:

> ***(8) If a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stocks of goods, or has concealed any particulars of his sales or purchases or has furnished to, or produced before, any Authority under this Act or the rules made thereunder***

> *any account, return or information which is false or incorrect in any material particular, the Commissioner or any person appointed to assist him under subsection (1) of section 3 may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, an amount [upto twice the amount of tax but which shall not be less than one hundred percentum of such tax amount] to which he is assessed or is liable to be assessed .*

The returns filed by the Appellant were scrutinized by the Respondent as per section 21 (2) of the Act:

> *(2) The State Government may prescribe the manner of selection of cases for scrutiny of returns filed by the dealers specified in sub-section (1) and the Assessing Authority shall, in respect of each selected case, serve on the dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or cause to be produced any evidence on which such dealer may rely in support of the returns filed by him under sub-section (1) and after hearing the dealer and considering the evidence produced by him assess the amount of tax, if any, due from him.*

When the Respondent found that the Appellant has shown sales disproportionate to imports as reflected by him in the Annual Returns filed in Form VAT XV-A for the years 2013-14, 2015-16 to 2017-18, the Respondent, rightly and lawfully, issued a notice under sections 60 (2) read with sections 16 and 21 of the Act:

> ***(2) If any mistake is detected as a result of such scrutiny made as per the provisions of sub-section (1), the Assessing Authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax, penalty and interest.***

The assertion of the Appellant that the demand has been created on assumptions basis is belied on the face of the fact that the Appellant himself had shown sales much less than the purchases for the above years and the goods being flammable, the question of closing stock in crores does not arise at all. The citation in the case of *State Of Kerala V. C. Velukutty 1966-(017)-STC -0465 –SC is* not applicable to the present appeals as *the Respondent* had with him the very information provided by the Appellant, himself, in his Annual returns for the Assessment years 2013-14, 2015-16, 2016-17 and 2017-18, above.

11. It is also revealed from the impugned order proceedings that it was for the want of initiative from the Appellant that the demand was been created on best judgment basis. Demand has been created and derived from the data available from the Annual returns filed by the Appellant. So, the grievance of the Appellant that the impugned demand has been framed on assumption and surmises basis is again not fact-based. The Appellant, at any time, did not object to any of the assertions of the Respondent made at the time of case proceedings and finalization thereof. It is apparent from case record that the Respondent had proceeded to create demand for above years on non-defiable evidence and credentials uploaded on the official website of the Department by the Appellant himself. For the above reason, the citation of *Hotel Vallator [2008] 15 VST* 516 would not help the Appellant as far as the present Appeals are concerned. The need of seeking record and report from the Circle Authority was not there as the required and necessary record was itself available on the portal. The Appellant could not convince the Respondent during the case proceedings that returns filed by him were correct and the demand being created was wrong. During the case proceedings, the Appellant even deposited part of the demand which implied that he had not reflected true accounts in the submitted returns. In view of discussion above in this para the reliance of the Appellant in the matter of **State Of Kerala V. K. T. Shaduli Yusuff. 1977-(039)-STC-0478-SC** does not fit in the frame of present case and argument to this extent fail, as well.

12. Regarding the issue of interest, the Appellant argued that interest has been levied without giving notice to him. However, as per discussions in the preceding paras, the Appellant was duly heard in the matter. Notwithstanding the discussion above, provisions of section 19 (1) of the HP VAT Act provide for automatic levy of interest, if any dealer fails to pay the amount of tax due from him under this Act:

***19. (1) If any dealer fails to pay the amount of tax due from him under this Act except to the extent mentioned in sub-section (2), he shall, in addition to the amount of tax, be liable to pay simple interest on the amount of tax due and***

***payable by him at the rate of one percentum per month, from the date immediately following the last date on which the dealer should have either filed the return or paid the tax under this Act, for a period of one month and thereafter at the rate of one and a half per centum per month till the default continues.***

The Appellant, during the case proceedings before the Respondent failed to raise any objection to the proposed demand, raised against him, including interest, therein. Also, in view of the above given provisions of the Act, the argument of the Appellant that huge interest has been charged without issuing the mandatory notice and without affording ample opportunity of being heard before charging the interest is without support from law and is, thus, rejected.

13. It has also been argued by the Appellant that the Jt. Commissioner (State Taxes & Excise) South Enforcement Zone, Parwanoo who detected the case, himself adjudicated the matter against the established principles of Natural Justice: *One cannot be a judge for his own cause*. However, perusal of the order Sheet in the matter reveals that notice in the matter was issued on dated 14-06-2018 by the Assistant Commissioner State Taxes & Excise, SEZ, Parwanoo. It was on transfer of this authority that vide order dated 12-07-2018, the case proceedings were transferred further to the Respondent. So, this argument of the Appellant is not fact based and is dismissed, accordingly.

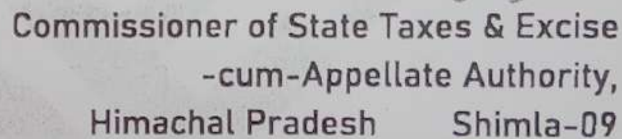
14. Last argument for the Appellant is that the Respondent authority did not assess the Appellant for the year 2014-15 as in this year the sales were on higher side than the purchases. In my considered opinion the Respondent authority, rightly, did not assess the Appellant for this year as the accounts (purchase and sale of goods) for this particular year, as is revealed from the record, have been maintained by the Appellant in normal and acceptable course of business, sale quantum being proportionate to purchases made during the year.

15. In view of the discussion above, I find no infirmity, illegality in the impugned order dated 13-12-2018 passed by the Respondent. The

Appellant has failed to convince this Court on the facts of the case. None of the assertions of the Appellant has support of the law. Arguments of the Appellant are contrary to the facts, law and enactments; therefore, the same, being devoid of conviction are rejected. The orders of the Respondent being legal, proper and just, are, accordingly, upheld.

16. This order shall also dispose of any other miscellaneous application(s) (OMA) filed in the matter.

17. Inform the parties accordingly. Files be consigned to records. Record requisitioned in the matter from the office of the Respondent authority be returned.



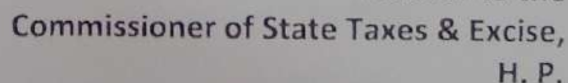
**Commissioner of State Taxes & Excise**
**-cum-Appellate Authority,**
**Himachal Pradesh Shimla-09**

**Endorsement No.ST&E/CoST&E/Appeals/Reader/2022-23-**17504-509 **Dated:** 15-06-2022

**Copy for information and necessary action to:**

1. Ms Bharti Filling Station, NH-72, Shoghi, District Shimla.
2. Jt. Commissioner State Taxes & Excise, FS/SEZ, Parwanoo.
3. Dy. Commissioner State Taxes and Excise, District Shimla.
4. Assistant Commissioner State Taxes and Excise, Cart Road Shimla.
5. Shri Rakesh Sharma, Advocate, Anand Vas, Ground Floor, Khalini, Shimla-171002.
6. Shri Sandeep Mandyal, Sr. Law Officer (Legal Cell), HQ.

✓ IT Cell



**Reader to the**
**Commissioner of State Taxes & Excise,**
**H. P.**