

**BEFORE THE COMMISSIONER OF STATE TAXES AND EXCISE-CUM-  
REVISIONAL AUTHORITY**

**HIMACHAL PRADESH**

(BLOCK NO. 30, SDA COMPLEX, SHIMLA-09)

Revision Petition No. 01 /2023

Date of Institution: 22-02-2023

Date of Order: 03-08-2023

**In the matter of:**

- (I) M/s Lakhwinder Singh Stone Crusher and Screening Plant,  
(Unit I, Village Polian Beet, Unit-II Village Kungrat etc.),  
Tehsil Haroli, District Una, Himachal Pradesh

.....Petitioner

**Versus**

1. The Assessing Authority  
(-cum-Joint Commissioner of State  
Taxes and Excise), CEZ, Una,  
District Una, Himachal Pradesh.

2. The Appellate Authority  
(-cum-Joint Commissioner of State  
Taxes and Excise), North Zone,  
Palampur, Himachal Pradesh

.....Respondents.

**WITH**

Revision Petition No. 02 /2023

Date of Institution: 22-02-2023

Date of Order: 03-08-2023

- (II) M/s Lakhwinder Singh Stone Crusher and Screening Plant,  
(Unit I, Village Polian Beet, Unit-II Village Kungrat etc.),  
Tehsil Haroli, District Una, Himachal Pradesh

.....Petitioner

**Versus**

1. The Assessing Authority  
(-cum-Joint Commissioner of State  
Taxes and Excise), CEZ, Una,  
District Una, Himachal Pradesh

2. The Appellate Authority  
(-cum-Joint Commissioner of State  
Taxes and Excise), North Zone,  
Palampur, Himachal Pradesh

.....Respondents





**Parties Represented by:**

1. Shri R. N. Sharma, Advocate for the Petitioner.
2. Shri Sandeep Mandyal, Senior Law Officer for the Respondents.

**ORDER**

1. The instant Revision petition(s) have been filed by M/s Lakhwinder Singh Stone Crusher and Screening Plant, (Unit I, Village Polian Beet, Unit-II Village Kungrat etc.), Tehsil Haroli, District Una, Himachal Pradesh against the following Orders:

- a. The common order dated 12-08-2022 passed by the Respondent No.1 whereby the penalty (not exceeding twice the amount of tax payable under Section 4-A (3) i.e. ₹ 1, 53, 98, 440/- for the Year 2020-21 and ₹ 2, 12, 60, 608/- for the year 2021-22 has been imposed on the petitioner. In fact, as per Section 4-A (3) of the Himachal Pradesh Taxation (on Certain Goods Carried by Road) Act, 1999 (hereinafter referred to as "the CGCR Act") *vis-a-vis* the present case implies that tax evaded amounting to ₹ 76, 99, 220/- (for the year 2020-21) and ₹ 1, 06, 30, 304/- (for the year 2021-22) and not collected and deposited, was penalized respectively with twice the payment of the tax. Therefore, the petitioner firm was directed to deposit the total amount of ₹ 3,66,59,048/-

**AND**

- b. The order dated 01-12-2022 passed by the Respondent No. 2 whereby the Respondent No. 2 directed the petitioner firm to deposit 25% of the total additional demand as conditional amount for the years under appeal i.e. 2020-21 & 2021-22.
2. Since, both the Revisions petitions have been filed against the common order dated 12-08-2022 and 01-12-2022 therefore, they are being decided by the common order as the common facts and the law point are involved in both the revision petitions.





3. The facts giving rise to the present revision petition(s) are that the petitioner, vide Notification No. EXN-F (10)3/2003-II dated 21.6.2011, was authorized to collect the amount of CGCR tax payable under the Act from the person in-charge of the mechanical vehicle or cart in or on which the goods are to be carried or the person-in-charge of the goods, as the case may be, in the manner prescribed under sub section (1) of section 4-A of the Act ibid and to make payment of the amount so collected into the Government Treasury.
4. On dated 04-12-2021, during the course of on-road checking under the various enactments administered by the Department, two trucks bearing Registration No. PB07AS 5587 and PB13BD 9391 carrying sand and *bajri* from the petitioner firm's Crusher to different locations of the Punjab were stopped for checking by the staff of Respondent No.1. Both the vehicles were carrying respective invoices and "X" forms. Both the "X" Forms were of 09MT of sand and *bajri*, which aroused suspicion and thereafter both the vehicles were taken to the nearest Weighing Bridge. Net weight of sand and *bajri* found in both the above said Trucks was 43.095MT and 64.78MT respectively i.e. there was suppression of 34MT and 55MT of sand and *bajri*. CGCR Tax of ₹340/- and ₹550/- respectively was less collected by the Petitioner firm who was authorized to collect the due tax from the goods vehicles. Finding this to be a case of huge suppression of turnover under the HPGST Act, 2017 and evasion of CGCR Tax under the said Act, further detailed inquiry inquiry/inspection was conducted in the matter which revealed that as per sale invoices net quantity of 3872.52MT material was supplied to different parties, whereas CGCR charged by the petitioner firm was only for 1105MT.
5. The Respondent No.1, thereafter, vide common order dated 12.08.2022 created an additional demand of ₹1, 53, 98, 440/- for the assessment year 2020-21 and ₹2,12,60,608/- for the assessment year 2021-22 against the petitioner u/s 4-A (3) of the CGCR Act read with section (7) and section 2(p) of the Act ibid, on account of CGCR tax and penalty.





6. The petitioner firm thereafter filed an appeal under section 12 of the CGCR Act against the aforesaid common order dated 12-08-2022 before the Respondent No.2. The Respondent No.2, thereafter, vide order dated 01-12-2022 directed the petitioner firm to deposit 25% of the total Additional demand as conditional amount for the years under appeal (i.e. 2020-21 & 2021-22) as per mandate of first proviso to section 12 of the CGCR Act.
7. Feeling aggrieved by the aforesaid orders dated 12-08-2022 and 01-12-2022, the petitioner seeks the indulgence of this Court to exercise the powers of Revision for the purpose of satisfying this court as to the legality or propriety of the aforesaid orders dated 12-08-2022 and 01-12-2022.
8. The Ld. Counsel appearing on behalf of the petitioner submitted the following arguments that:
  - i. In view of the various supporting judgments in the matter [Citation **Board of Revenue, Madras v. Raj Brothers Agencies** [1973 AIR 2307, 1973 SCR (3) 492], in order to look into the legality or propriety of the impugned order, revision proceedings, under section 13 of the Act, may be initiated by the Commissioner even on application by a third party against the orders passed by any sub-ordinate authority. Accordingly, the order dated 12-08-2022 passed by the Assessing Authority-cum-Joint Commissioner State Taxes and Excise, (Flying Squad), Central Zone, Una may be taken into revision and the ensuing arguments being submitted by the Petitioner, may be considered on the merits;
  - ii. "neither the "Flying Squad Central Zone" or the "Central Enforcement Zone" has not been notified under section 7(1), nor the "Joint Commissioner State Taxes and Excise, (Flying Squad) Central Zone, Una" nor the "Assistant Commissioner State Taxes (Flying Squad) Central Zone Una" have been notified under section 7(2) of the Act to exercise jurisdiction in the districts of Una etc. Consequently, the said officers having neither been appointed nor





conferred the powers and duties of taxing authority under the Act of 1999, cannot exercise any jurisdiction under the Act. Resultantly, the impugned order passed by the Ld. Respondent No. 1 is beyond the powers and beyond jurisdiction. The matter be remanded to the appropriate authority before whom the returns were filed;

- iii. In fact, there is no provision under the Act for assessment, at all, but the Ld. Respondent No. 1 has chosen to adopt a procedure which the law does not provide for;
- iv. As per the principle of law laid by the Hon'ble HP High Court in *M/s Manali Resorts v. State of Himachal Pradesh [CWP No.178 of 2002] (DB) and [National Trading Co. v. Assistant Commissioner of Sales Tax, Cuttack-I and others (2001) 122 STC 212 (DB)]*, a detecting officer could not be an adjudicating authority, thus the impugned order is legally vitiated;
- v. The notice for 2020-21 is clearly a non-speaking and a bald notice. Issuance of notice is not only an essential precedent for initiating and finalizing the said proceedings, but it is equally essential that the notice must also be (i) proper as prescribed (ii) adequate and expressive-revealing rather than vague and concealing (iii) opportunity must be real, substantial and effective rather than sham, and (iv) the order passed must not be a product of defective procedure and pre-meditated act. These requisites are lacking in this case;
- vi. The Petitioner has been assessed ex-parte on best judgment basis without rejecting the returns filed by him. The Ld. Respondent No. 1 has assumed the powers of Assessing Authority purporting to have been exercised under section 4-A of the Act. But the Act does not empower him to frame the assessment which he has framed;
- vii. The record and information used against the petitioner needed to be exposed to the petitioner so as to enable the petitioner to furnish his explanation/reply to the same:





"Justice and fair play demanded that the sources of information relied upon...must be disclosed to the assessee so that he is in a position to rebut the same and an opportunity should be given to the assessee to meet the effect of the aforesaid information."

[Dhakeshwari Cotton Mills Ltd vs. Commissioner of Income Tax, 1955 SCR (1) 941].

9. Per Contra, reply was submitted on behalf of the Respondents in the matter but the same was objected to by the petitioner on the ground that the reply does not bear signatures of the arrayed Respondents. Accordingly, fresh reply was furnished by the arrayed Respondent. Copy of the reply was duly supplied to the petitioner. Shri Sandeep Mandyal, Senior Law Officer, submitting the reply furnished by Respondent No. 1 argued that the office of the DETC (Flying Squad), Central Zone, Una is a duly notified office and that the authorities of the office, including the DETC, Respondent No. 1, are duly notified, appointed, empowered and authorized to administer the provisions of the Act. Learned Officer further submitted that as there was violation of the provisions of section 4-A (1) and (2) of the Act, therefore the order creating additional demand on account of CGCR Tax and penalty has rightly been passed by the Respondent No. 1, the taxing Authority, under section 4-A (3) of the Act. Ld. Sr. Law Officer also submitted in reply that Respondent No. 1 had never been the member of checking/inspecting and reporting team. Ld. Sr. Law Officer further replied that proper notices and detailed pro-forma orders were issued to the petitioner and as the petitioner did not reply to the notices and pro-forma orders therefore, final *ex parte* orders were passed in the matter. It has also been submitted on behalf of the Respondent No. 1 that the demand, by the jurisdictional authority, has been created against the petitioner on the basis of irrefutable evidences of failure of the petitioner to abide by provisions of Section 4-A (1) of the Act as due tax under the Act was neither collected nor deposited into the Government treasury.





10. I have heard both the parties & gone through the record of the case carefully. Arguments advanced in the present Revision Petition(s) give rise to the following points of determination:-

- i. Whether the petitioner firm has made out a case for the exercise of Revisional powers for the purpose of satisfying this court as to legality and propriety of the orders dated 12-08-2022 and 01-12-2022?
- ii. Final order.

11. For the reasons to be record hereinafter, while discussing the aforesaid points, my findings on the same are as under:-

Point No. (i) No

Point No. (ii) Final order: Revision dismissed as per operative part of the order.

**REASONS FOR THE FINDINGS:**

12. As far as the legality and propriety of the common order dated 12-08-2022 passed by the Respondent No.1 is concerned, admittedly the petitioner has already filed a statutory appeal under section 12 of the CGCR Act wherein the petitioner prayed for the following relief (b) amongst others:-

**“(b) the impugned Order dated 12-08-2022 may kindly be quashed and set aside in the interest of justice”.**

Even, in the present Revision Petitions the petitioner firm is seeking the indulgence of this Court to quash and set aside the order dated 12-08-2022. Furthermore, the perusal of the record itself shows that grounds taken in the appeals filed before the Respondent No.2 are more or less same which are taken in the present Revision Petitions. Admittedly, the said statutory appeals filed before the Respondent No. 2 are still pending.

13. Since, the statutory appeals filed by the petitioner firm against the common order dated 12-08-2022 are still pending before the





Respondent No.2 and the grounds taken in the said appeals are more or less same as are taken in the present Revision Petitions and further the matter in issue in the present Revision Petitions being directly and substantially similar in issue in the said Appeals, therefore it would be neither just nor proper for this court to usurp the statutory powers of the Appellate Authority (i.e. Respondent No.2) under the garb of the exercise of the Revisional powers especially when the Respondent No.2 has also given the directions to the petitioner firm to deposit the conditional amount of 25% of the total additional demand so as to enable the Respondent No. 2 to entertain the appeals filed by the petitioner firm as per mandate of first proviso to section 12 of the CGCR Act. In other words, since the legality and propriety of the common orders dated 12-08-2022 is already challenged and having been already subjudice/pending before the Respondent No. 2 in statutory appeals, filed by the petitioner firm, itself, therefore there is neither any realm nor any reason for this court to exercise the Revisional powers conferred under section 13 of the CGCR Act in order to avoid any duplication and contrary orders.

14. As far as the legality and propriety of the order dated 01-12-2022 passed by the Respondent No. 2 whereby the petitioner firm was directed to deposit a conditional amount of 25% of the total additional demand for the years under appeal i.e. 2020-21 & 2021-22 is concerned, admittedly the petitioner firm feeling aggrieved by the aforesaid common order dated 12-08-2022 passed by the Respondent No.1 filed a statutory appeal under section 12 of the CGCR Act before the Respondent No. 2. Section 12 of the CGCR Act provides that:-

***"12. Appeal.- (1) An appeal shall lie to the Appellate Authority appointed by the State Government in this behalf, against any original order passed under this Act, within sixty days of the passing of such order:***

**Provided that no appeal shall be entertained by such authority unless it is satisfied that the amount to tax and penalty imposed has been paid:**





*Provided further that such authority, if satisfied that the person aggrieved is unable to make such payment, may, for reasons to be recorded in writing, entertain an appeal without such payment having been made.*

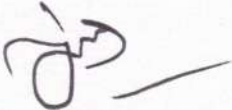
*(2) Save as provided in section 13, an order passed by the Appellate Authority shall be final."*

14. It is crystal clear from the first proviso to section 12 the CGCR Act that there is an explicit embargo on the Appellate Authority not to entertain an appeal unless such Authority is satisfied that the amount of tax and penalty imposed has been paid. Thus, the satisfaction of the Appellate Authority qua the payment of amount of tax and penalty imposed is a condition precedent for entertaining an appeal filed under Section 12 of the CGCR Act. Thus, in the present case the Respondent No. 2 was well within his statutory powers conferred by first proviso to Section 12 of the CGCR Act to direct the petitioner firm to deposit a conditional amount of 25% of the total additional demand created vide common order dated 12-08-2022 so as to enable the Respondent No. 2 to entertain the appeals filed by the petitioner firm. Thus, the order dated 01-12-2022 passed by the Respondent No. 2 is legally just and proper.

**Point/Final order**

15. For the aforesaid reasons recorded here-in-above, while discussing the point no (i), I found no merit in the present Revision Petitions and the same are liable to be dismissed and are accordingly dismissed. Let the copy of this order be supplied to all concerned. In view of the disposal of the Revision Petitions, the miscellaneous Application(s) are also dismissed as having been become infructuous. The file after due completion be consigned to record room.

**Announced this day i.e. 3<sup>rd</sup> August, 2023.**

  
Commissioner of State Taxes & Excise  
-cum-Revisional Authority (HP),  
Shimla-09



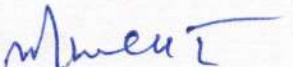


Endst. No.:ST&E/CST&E-Rev-A /Reader/2023/21681-85 Dated: 03-08-2023

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

1. M/s Lakhwinder Singh Stone Crusher and Screening Plant, (Unit I, Village Polian Beet, Unit-II Village Kungrat etc.), Tehsil Haroli, District Una, Himachal Pradesh.
2. Jt. Commissioner State Taxes & Excise, CEZ/Una, HP.
3. Dy. Commissioner State Taxes and Excise, District Una.
4. Shri Sandeep Mandyal, Sr. Law Officer (Legal Cell), HQ.
5. IT Cell.



  
Reader

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