

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

Appeal No. : 12 & 14/2022  
Date of Institution : 31-03-2022  
Date of order : 06-06-2023

**In the matter of:**

M/s Jhiri Filling Station, Jhiri, District Mandi, HP

**.....Appellant**

**Vs**

- i) Jt. CST&E-cum-Appellate Authority, CZ, Mandi Himachal Pradesh.
- ii) Assessing Authority, Mandi, Distt Mandi (HP)

**.....Respondents**

**Parties represented by:-**

Shri Arvind Negi, Advocate for the Appellant

Shri Sandeep Mandyal, Sr. Law Officer, Law for the Respondent

**Appeal under Section 45 of the Himachal Pradesh, Value Added  
Tax Act, 2005  
Order**

1. The present appeals have been filed against the order of the Jt. Commissioner State Taxes and Excise-cum- Appellate Authority, CZ, Mandi, Himachal Pradesh dated 29-09-2020 vide which an additional Demand of Rs. 3,61,58,751/-, was created for the assessment years 2015-16, 2016-17 and 2017-18 by the Assessing Authority Mandi Circle-I vide order dated 25-03-2019, against the appellant under the HP VAT Act, 2005 and the CST Act, 1956 was upheld.
2. The brief facts are that M/s Jhiri Filling Station, Jhiri, Distt. Mandi Himachal Pradesh (herein after referred to as 'Appellant') deals in purchase and sale of petrol, diesel and lubricants. The Assessing Authority assessed the present Appellant for the assessment years 2015-16, 2016-17 and 2017-18. After going through the records i.e. online return filed by the dealer and comparing it with fresh returns and trading accounts, a big difference in sales and purchases was detected. Thus, additional demand of Rs. 3,61,58,751/- was created under the Act ibid. Thereafter, the Appellate Authority upheld the demand created by the Assessing Authority vide order dated 29-09-2020. Present appeals have been filed against this order.


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

- I. *It is prayed to set aside the interest imposed on outstanding VAT which was deposited immediately within two days from the passing of the orders of Assessing Authority.*
- II. *It has been stated that the appellant has been put to loss by his accountant. The appellant paid the due amount/tax to the accountant who however fraudulently did not deposit the same with the department. The appellant after coming to know about the above mentioned facts, he immediately appraised the authority and also lodged FIR against the Accountant. Thereafter assessing authority calculated the evaded tax. The appellant was constrained to pay VAT twice. It is submitted that in view of the exceptional circumstances the interest imposed on the outstanding VAT may be set aside.*

4. The Ld. Counsel for the Appellant submitted a copy of judgment delivered by the Andhra Pradesh High Court in case of M/s Viceroy Hotels Ltd. V/s Commercial Tax Officer and three others, Writ Petition No. 17092,17110 and 17130 of 2010- decided on 23-02-2011 by which penalty was set aside by the High Court and also submitted copy of judgment delivered by the Punjab and Haryana High Court in case of M/s Bansi Rice Mills V/s State of Haryana and others, CWP No. 9436 of 2000-decided on 15-09-2000 by which levy of interest was declared illegal on concurrent findings by the Punjab and Haryana High Court.
5. Sh. Sandeep Mandyal, Sr. Law officer of the department said that the petitioner has no case to agitate before this tribunal. The issues raised herein have been addressed by the authority below and now the actions of the Assessing Authority and Appellate Authority only need to be upheld.
6. I have heard the Ld. Counsel and the Ld. Govt. counsel and perused the record. The only point for consideration raised by the appellant pertains to the issue of the appellant's prayer to waive off the interest though the 1<sup>st</sup> Appellate Authority has waived off the penalty.
7. It is seen that the impugned order dated 29-09-2020 cannot be held to be a non-speaking order. It is a detailed order. It would be pertinent to mention Section 16 of the HP VAT Act, 2005. The tax liability in respect of suppressed sale or purchases is to be determined u/s 16(8) of the Act. The respondent no. 2, in the present case, has found the appellant responsible for non-payment VAT liability when the present case was dealt under Section 21 and Section 32 of HP VAT Act, 2005. The dealer did not deposit the tax liability amounting to Rs. 3,61,58,751/- for the years 2015-16, 2016-17 & 2017-18 which he was liable to pay.

Interest has been levied under Section 19 of the HP VAT Act. Levy of Interest is binding on the tax assessing authority. The same has to be collected from the tax defaulters wherever 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. Thus, there is no question of considering any mens rea on the part of the Assessee/ dealer. The law cited by the Id. Senior Law Officer on behalf of the department 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/s 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. Hence, the same has been rightly ordered to be imposed upon the dealer. Tax, interest and penalty are three different concepts. **Interest is ordinarily claimed from an assessee who has withheld payment of any tax payable by him and it is always calculated at the prescribed rate on the basis on the actual amount of tax withheld and the extent of delay in paying it. It may not be wrong to say that such interest is compensatory in character and not penal** - as it was categorically brought out by the Supreme Court in **Associated Cement Co. Ltd. V/s Commercial Tax Officer Case**. To summarize; interest is meant to only compensate for the time value of money lost because of delay in payment of tax. Further, the judgments cited by the Ld. Counsel are of no relevance in the present case. The 1<sup>st</sup> Appellate Authority, vide the impugned order dated 29-09-2020 has already given partial relief to the Appellant, by quashing the penalty for reasons mentioned in the impugned order. Relief sought on account of interest levied is not justified for reasons discussed above.

8. For the aforesaid reasons, the appeals do not merit consideration and are dismissed. The impugned orders of the Assessing authority dated 25-03-2019 and order of the appellate authority dated 29-09-2020 are upheld.
9. 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, Dharamshala,**  
**H P Tax Tribunal Camp at Shimla,**  
**Camp at Shimla,**  
**Block No 30, SDA Complex Shimla-9**

Endst. No. HPTT/CS/2023 - 837088

Dated: 06-06-2023

**Copy forwarded for information to:-**

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Jt. Commissioner State Taxes and Excise CZ Mandi
3. The Asstt. Commissioner of State Taxes & Excise-cum-Assessing Authority, Mandi-I, Distt. Mandi (HP)
4. M/s Jhiri Filling station, Jhiri, Nagwain Prop. Krishan Pal Sharma, Distt. Mandi.
5. Sh. Arvind Negi, Advocate for the Appellant.
6. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



Reader

HP Tax Tribunal

Dharamshala

H P Tax Tribunal Camp at Shimla,  
Block No 30, SDA Complex Shimla-9