

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

Appeal No. : 17/2001-02
Date of Institution : 05-01-2018
Date of order : 20-06-2023

In the matter of:

M/s Krishan Chand Ferro Steel Pvt. Ltd.
(Formerly M/s Praveena Ferro Steel (P) Ltd. HP

.....Appellant

Vs

Addl. E&TC cum Appellate Authority SZ Shimla Himachal Pradesh.

.....Respondents

Parties represented by:-

Shri Rajeev Sood, CA for the Appellant.

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

**Appeal under Section 30 of Himachal Pradesh General Sales Tax
Act, 1968**

Order

1. The present matter has arisen from High Court order/judgement dated 05.12.2017 in CWP no. 1256/2010 titled M/s Krishna Chand Ferro Steel Pvt Ltd Vs State of HP & ors in which High court as per Paras 5 to 7 of the Judgement held as under :

“**Para5:** True it is that on remand of the case vide order by the Appellate Authority to Assessing Authority the set off of Rs 2,90,821/- was held illegal

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and consequently vide order dated 27-12-2002 a sum of Rs. 1,87,134/- was imposed as penalty afresh against the petitioner company. The said Penalty has been imposed against the petitioner company on account of production of RM-1 Form and has nothing to do with the penalty of Rs. 29,780/- imposed initially against it for the assessment year 1995-1996. As is apparent from the order of the Appellate Authority has held the penalty so imposed against the petitioner company as legal and valid. The penalty, therefore, still subsist against it. The remand of case by the Appellate Authority was only for limited extent. i.e. the set off of Rs. 2,90,821/- in its opinion was illegally allowed. Therefore, learned H.P Tax Tribunal below while deciding the appeal, vide order dated 15-09-2009, should have decided the question as to whether the penalty of Rs. 29,780/- for the year 1995-1996 could have been levied against the petitioner company legally and validly or not.”

“**Para6** : The appeal, however, has been dismissed with the observations that the assessment order against which the petitioner was having grievance does not stand. Such observations are not correct as discussed hereinabove. Therefore, we quash and set aside the impugned order Annexure P-7 and remand the case to the H.P. Tax Tribunal, Dharamshala for fresh disposal of the appeal Annexure P-5 preferred by the petitioner company against the impugned order Annexure P-4 in accordance with law and also in the light of this judgment.”

“**Para7** : The parties through learned Counsel representing them are directed to appear before learned Tribunal on 5th January, 2018.

It is seen that the dispute in this matter does not involve a large amount. But it does involve the issue of penalty imposed on the appellant, which is the point of adjudication which has arisen as a result of the challenge to the order dated 15.09.2009 of this Tribunal, by the Appellant in the High court.

A handwritten signature in blue ink is written over a blue circular stamp. The stamp contains the text 'Tribunal Pradeshi' and a central emblem. The number '2' is written near the signature.

2. The brief facts of the case are that appellant firm was assessed on 04-10-2000 and Assessing Authority imposed a penalty of Rs. 29,780/- under Section 12(6) of Himachal Pradesh General Sales Tax Act for late filing of returns. Thereafter, the Appellate Authority also upheld the aforesaid penalty vide order dated 23.02.2001 with the direction to Assessing Authority to reassess this case. In pursuance to Appellate Authority order, Assessing Authority, Nahan passed reassessment order on 27.12.2002 which attained finality as it was not further appealed. But, the Appellant preferred an appeal against the order of Appellate Authority dated 23.02.2001. As a result, the penalty of Rs 29,780/- still subsists and the present appeal/matter is to adjudicate this imposition of penalty.
3. Aggrieved by the order of Ld. Appellate authority the appellant has filed the appeal before this Tribunal on the following grounds:-

- I. *On the fact and circumstances of the case and in law the learned tax assessing authority erred in imposing penalty u/s 12(6) of HPGST Act amounting to Rs. 29,780/-.*
- II. *On the facts and circumstances of the case and in law the learned tax assessing authority erred in rejecting appellants claim contained in their letter dated 27-09-2000 regarding grant of correct relief of set off under section 42 c of the HPGST Act, 1968 and/ or read with rule 31 (xii) of the HPGST Rules.*
- III. *That the Appellate Authority has erred in facts and circumstances of the case in rejecting the claim of the appellant u/s 42C which was correctly claimed. Without going in to the facts of the case the Appellate Authority has even rejected the claim which was allowed by the Ld. Assessing Authority which is contrary to law.*

Relief claimed



That orders of the Ld. Assessing Authority imposing penalty u/s 12(6), confirmed by the Appellate Authority be quashed keeping in view the written submissions filed before the appellate authority.

That the appellants claim contained in letter dated 27-09-2000 filed before the Assessing Authority regarding grant of correct relief of set off under section 42C of the HPGST act, be allowed and the orders passed by the Appellant Authority regarding the withdrawal of claim u/s 42C be quashed.

4. The Ld. Counsel for the appellant prayed that the appeal be accepted and impugned order be quashed along with the additional demand created against the appellant.

The claim of the Appellant is that dealer used to file his return of sales tax monthly as per the direction of the Assessing Authority. For the assessment year 1995-96, return for the month of February, 1996 was filed late due to the financial constraints and this fact was brought to the notice of the Ld. Assessing Authority as well as the Appellate authority. At the time of arguments before the Appellate Authority, and to prove the financial constraint, bank pass books as well as copy of ledger accounts were also filed but the Appellate Authority without considering the above pleading rejected the arguments put forth before him on the ground that the minimum penalty had been imposed by the Assessing Authority. The Appellant has stated that the orders passed by Appellate Authority are non-speaking orders. It has been argued that the Appellate Authority was duty bound to give speaking reason while rejecting the plea taken by the Appellant.

It is further stated that the Appellate Authority had also rejected the plea of the appellant to grant correct relief of set off of tax under section 42 C on the ground that there were no rules made under this provision, so in absence of



rules Appellate Authority directed Assessing Authority to reassess the case. It is averred that the Appellate Authority had not gone through the written submissions made by the Appellant and a non-speaking order had been passed by the Appellate Authority.

5. Sh. Sandeep Mandyal, Sr. Law officer of the department said that the petitioner had no case to agitate before this Tribunal as the issues raised herein have been duly addressed by the Appellant Authority below and has prayed that his order may be upheld.

6. In view of the direction of the High Court dated 05.12.2017, the matter was heard and record was perused. The issue raised by the appellant pertaining to waiving off the penalty imposed by the Assessing Authority vide order dated 04-10-2000. The same is answered as follows:-

- i) It is seen that delay in payment of tax, albeit marginal, was ostensibly on account of the fact that the appellant had planned to make payment of Sales Taxes due on 15.03.1996 out of the proceeds of sales made to HPPWD, Paonta Sahib. However, the payment of Rs. 1,55,743/- remained locked with HPPWD, a Government department. The amount was received by the appellant only on 20.03.1996. After realization of this cheque on 22.03.1996, the sales tax payment was made for the month of February, 1996.

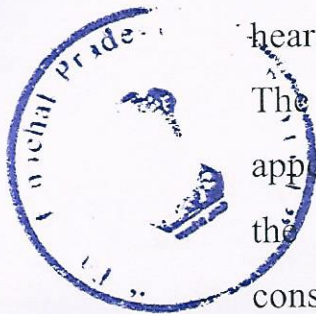
It is seen that the failure to deposit tax happened due to certain events beyond the control of the appellant. There is no material on record to show that late payment of tax was a willful act of omission. It is expounded that no default penalty could be imposed in the manifest absence of demonstrable intent to not pay tax or a refusal to pay tax.

Section 12(6) of the HPGST Act provides:-

"If a dealer fails without sufficient cause to comply with requirement of the provisions of sub-section(3) or sub-section (4) the Commissioner or any other persons appointed to assist him under sub-section (1) of section (3) may, after giving such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty a sum which shall not be less than ten per centum, but which shall not exceed one and a half times of the amount of tax to which he is assessed under Section 14 in addition to the amount of tax to which he is assessed or is liable to be assessed, and where no tax is payable, a sum not exceeding one hundred rupees."

The provision of above section empowers the assessing authority to levy minimum penalty in cases where default by the dealer is without sufficient cause and a reasonable opportunity has been given by the assessing authority before imposing the penalty. If absence of reasonable cause is not established or the assessee is able to prove the existence of reasonable cause for not filing the return, no penalty becomes imposable.

- ii) The monthly returns filed with the Department as well as annual balance sheets show that the Appellant is in regular compliance of the prescribed procedure. The Appellant has a strong case in his favour. On a cursory glance it appears that the during the course of assessment proceeding, the Assessing Authority had fixed the date of hearing on 4th October, 2000 and on the same day, it passed the order. The Assessing Authority while imposing the penalty stated that the appellant has not given a satisfactory explanation for delay in filing the Sale Tax Return. This aspect should have been necessarily considered by the Appellate Authority while deciding the appeal. The penalty should not be imposed in a perfunctory manner and is



warranted upon proper adjudication as to willful default and the presence of mens rea.

In the case of Inderjit Singh & Bros vs. State of Punjab reported in (1982) 51STC 245 (P&H) Punjab and Haryana Court has stated that sufficient time of hearing should be given to the dealer before imposing the penalty. It has been held by various courts of the country including the Supreme Court that the Penalty proceedings are quasi criminal proceedings and therefore, no penalty should be levied unless it is concluded and that the alleged default for which the penalty is sought to be levied was intentional and deliberate.

Tax becomes payable by an assessee by virtue of the charging provision in a taxing statute. Penalty ordinarily becomes payable when it is found that an assessee has willfully violated any of the provisions of the taxing statute.

iii) It is pertinent to mention that the original assessment order dated 04-10-2000 was remanded back by the 1st Appellate Authority and consequently re-assessment order was passed on 27-12-2002 by virtue of which demand was determined of Rs. 1,87,134/- by the Assessing Authority. The order dated 15-09-2009 of HP Tax Tribunal has given finality to the re-assessment order dated 27-12-2002 under Section 30(3) of the Himachal Pradesh General Sales Tax Act, 1968 against which no appeal was filed by the appellant/ dealer. It is also noted that Tribunal in its observation has categorically stated that the appeal in which penalty of Rs. 29,780/- was initially imposed was rendered infructuous as the assessment order against which the dealer was having grievances does not stand.



7. On the facts and circumstances, the appeal of the appellant is accepted and the order of the Appellate Authority upholding the penalty dated 23-02-2001 is quashed and set aside.

8. Copy of this order be sent to the parties concerned. File after due completion be consigned to the record room.



Akshay Sood
Chairman,

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

Endst. No. HPTT/CS/2023 - 94 to 97

Dated: 20-06-2023

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-9.
2. Assessing Authority Nahan Circle, Distt. Sirmaur.
3. M/s Krishan Chand Ferro Steel Pvt. Ltd. Vill Shubh Khera, Paonta Sahib, distt. Sirmaur./Sh. Rajeev Sood, CA for the Appellant.
4. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



Reader

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