

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

Appeal No. : 6 to 11/2021  
Date of Institution : 05-04-2021  
Date of order : 09-05-2023

**In the matter of:**

M/s Megha Engineering and Infrastructure Limited (MEIL)  
Village Cherna (Lohardi), Tehsil Multhan, Baijnath, Kangra.

**.....Appellant**

**Vs**

1. The Jt. Commissioner-Cum-Appellate Authority, (NZ), Palampur.
2. Assessing Authority-cum-ETO MPB Parwanoo, Solan.

**.....Respondents**

**Parties represented by:-**

Shri Pankaj Arora and Sh. Goverdhan Sharma, Advocates for the Appellant.  
Shri Sandeep Mandyal, Sr. Law Officer for the Respondent

**Appeal under Section 12 of the HP Entry Tax Act, 2010 read with Section 45  
(2) of the Himachal Pradesh, Value Added Tax Act, 2005**

**Order**

1. The present appeals have been filed by M/s Megha Engineering and Infrastructure Limited (MEIL) Village Cherna (Lohardi), Tehsil Multhan, Baijnath, Kangra against the orders of the Jt. Commissioner of State Taxes and Excise-Cum-Appellate Authority NZ, Palampur, Distt. Kangra dated 04-02-2021 vide which an additional demand of Entry Tax amounting to Rs. 5,57,24,493/-, 5,07,193/-, 6,78,447/-, 4,27,863/-, 19,10,363/- and 9,84,713/- assessed for the assessment years 2012-13 to 2017-18 (upto 30-06-2017) by the Assessing Authority, Baijnath Circe, Shimla vide order dated 20-12-2019, against the appellant under the HP TEGLA Act, 2010 and the HP VAT Act, 2005, were upheld.
2. The brief facts of the case are that M/s Megha Engineering & Infrastructure Ltd. (hereinafter refer to as 'appellant') is a registered dealer under the HP VAT act, 2005 vide TIN 02060101279 engaged in construction of Hydel Projects. The dealer has

imported goods from outside H.P for execution of contract at Vill Cherna (Lohardi) Tehsil Multan District Kangra (H.P.). The Assessing authority has levied Entry tax on the goods purchased by the appellant from outside of Himachal Pradesh for the years 2012-13 to 2017-18 (upto 30-06-2017) amounting to Rs. 5,57,24,493/-, 5,07,193/-, 6,78,447/-, 4,27,863/-, 19,10,363/- and 9,84,713/- respectively for use in execution / construction of Hydro Power Project. Against the order of the Assessing Authority, the appellant preferred an appeal to the Ld. Appellate authority-cum-Jt. Commissioner State Taxes and Excise NZ Palampur Distt. Kangra HP. The Ld. Appellate authority passed the order on 04-02-2021 and upheld the order dated 20-12-2019 of the Assessing authority and the demands created therein. The appellant has thereafter filed the present appeal against the said appellate order dated 4<sup>th</sup> of February, 2021.

3. The Appellant has filed these appeals before this Tribunal on the following grounds:

I. *Lack of jurisdiction.*

II. *Limitation with respect to return of 2012-13 and 2013-14.*

III. *The costs of Goods included in Taxable turnover under the 2010 Act are not liable to be taxed under the Act.*

IV. *The order of years 2012-13 and 2013-14 are time barred.*

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. It is seen that the appellant has been registered in Himachal Pradesh as a works contractor and is liable to pay VAT on the goods transferred to the Contractee. In simple words, the Entry Tax Act, itself clarifies that no tax would be levied on goods on which value added tax has been paid or has become payable to the State, except specified goods. The specified goods have been enumerated under the Schedule-II of the TEGLA Act, 2010.

The appellant submitted that he has imported Tunnel boring machine in the State from outside India, and this machine is being used at the construction site, just like the machinery is being used by the manufacturer for producing the goods through processing, conversion, job work, assembling etc., the tax is then discharged on the final goods produced through VAT/CST as applicable. It is stated that the application of Entry Tax comes into force only on those goods on which VAT or CST is not applicable and transfer of goods is done through stock transfer or otherwise. In the



present case, appellant has used the goods brought into the local area for execution of works contract and has become liable to pay VAT on the goods transferred to the Contractee. Further, he has submitted that as per the TEGLA Act, 2010, the person who is not registered in the State becomes liable to pay Entry Tax in respect of goods mentioned at Sr. No. 5 of the Schedule-II of the Act.

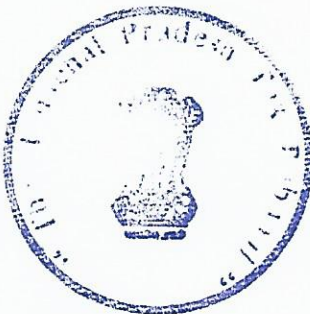
5. Sh. Sandeep Mandyal, Sr. Law officer of the department said that the petitioner has no case to agitate before this tribunal as the issues raised herein which have been addressed by the authority below and their actions may be upheld.
6. I have heard the Ld. Counsel and the Ld. Dept. counsel in detail and perused the record as well. The above points are answered as follows:

(i) It is evident that the Assessing Authority had the jurisdiction as per details submitted by the department. The location of the business of the Appellant was exclusively in Baijnath Circle whereas the principal place of the Appellant was changed from Dharamshala to Baijnath on HIMTAS Portal by AETC vide his order dated 25-02-2019 showing the jurisdiction at Baijnath Circle vide HIM TAS acknowledgment No. 90190260001008 for TIN 0206010179 firm MEIL.

(ii) Limitation issue: Provisions of Section 13 of HP TEGLA Act, 2010 and section 21 and 32 read with Section 60 of HP VAT Act, 2005 show that there was no question of limitation of 5 years especially where tax is evaded or less tax is deposited than that which is leviable under the Act. The limitation ground taken therefore is baseless.

(iii) The objection raised by the appellant regarding goods included in taxable turnover under the HP TEGLA Act being not liable <sup>to be</sup> taxed under the Act is a substantive issue since it involves the issue of Tax payable/ levied under HP TEGLA Act, 2010. In this regard, I see that due notice has been served on the Appellant as it is evident from the Assessment order dated 25-09-2019. The same is reproduced as under:

“The incidence of taxation under HP TAX ON ENTRY OF GOODS INTO LOCAL AREA ACT, 2010 is defined under section 3(1) of the Act as-“There shall be levied and paid to the State Government a tax on the entry, in the course of business of a dealer, of the goods specified in Schedule-II, in to each local area for consumption, use or sale therein”.



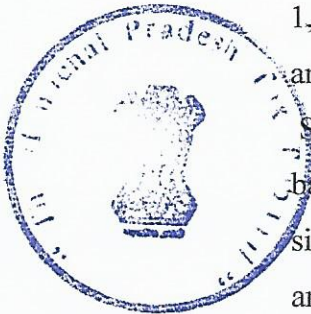
Further section 2(f) of HP TEGLA-2010 defines entry of goods into a local area with all its grammatical variation and cognate expressions to mean entry of goods into a local area from any place outside thereof including a place outside the State for consumption, use or sale therein. Further Section 2(s) defines "works contracts" as agreement for-(i) the construction, fitting out, improvement, maintenance or repair of any building, road, bridge or any other immovable property' therefore all goods used in works contracts for power projects are taxable @5% under Section 3(2) of HP TEGLA-2010.

The dealer while filing returns in Form-XV as provided under Section 12 of HP TEGLA-2010 has not shown the detail of Entry Tax payable or paid, therefore the dealer filed incomplete returns for the purpose of HP TEGLA-2010. In this regard, a notice no. 195 dated 27-07-2019 was served to the dealer by registered post as well as through registered mail ID. The dealer was provided with all the check posts data in digital mode for the years 2012-13 to 2017-18. As per above notice of dated 27-07-2019, the dealer was directed to attend office on dated 20-08-2019 along with all the accounts and documents as shown in the above notice.

The Perusal of Assessment order of 2012-13 shows that Assessing authority has given due credit for deduction of goods specified in schedule I, the Assessing Authority has also ordered allowing set off the tax payable @ 5% under HP TEGLA Act, 2010 on goods amounting to Rs. 36,40,74,779/- since VAT was not paid on that goods.

iv) 5% tax was payable on TTO Taxable Turnover of 31,70,66,981/-. It is seen that interest and penalty has been excluded on account of Rs. 1,82,03,739/- and Rs. 5,69,529/- whereas interest and penalty on other amount is payable under the Act.

Similarly calculation has been done for Assessment year 2013-14 and balance tax has been determined to the extent of only Rs. 1,86,092/-, since significant high tax amounts had been paid in the Assessment year. Interest and penalty is as per statute order, there is no ground to interfere in the same.





v) Similar tax demand has been determined for Assessment Year 2014-15, 2015-16, 2016-17, and 2017-18, with no interest and penalty being levied in Assessment Year 2016-17 and 2017-18. The appellant dealer has been allowed set off when due VAT proof is shown to the concerned Assessment Authority.

7. For above reasons, I find no infirmity in the impugned Assessment order and also the order of the Appellate Authority dated 04-02-2021. The same are in accordance with the HP TEGLA Act, 2010. The appeal is therefore liable to be dismissed.
8. 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, Shimla,**  
**Block No 30, SDA Complex Shimla-9**

**Endst. No. HPTT/CS/2023 - 6370 68**

**Dated: 12/05/2023**

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Jt. CST&E-Cum-Appellate Authority NZ, Palampur, Himachal Pradesh.
3. Assessing Authority, Baijnath Circle, District Kangra (HP)
4. M/s Megha Engineering and Infrastructure Limited (MEIL) Village Cherna (Lohardi), Tehsil Multhan, Baijnath, Kangra (HP)
5. Sh. Pankaj Arora and Sh. Goverdhan Sharma, Advocate.
6. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



**Reader**

**HP Tax Tribunal**  
**HP Tax Tribunal, Shimla,**  
**Block No 30, SDA Complex Shimla-9**