

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

Appeal No. : 3 & 4 /2022
Date of Institution : 18-02-2022
Date of order : 07-05-2022

In the matter of:

M/s Palm Infracon Pvt. Ltd. Ghanahati
Distt. Shimla, (HP)

.....Appellant

Vs

- i) Addl. CST&E-cum-Appellate Authority, SZ, Himachal Pradesh, Shimla
- ii) Assessing Authority Cart Road, Distt. Shimla (HP)

.....Respondents

Parties represented by:-

Shri Rakesh Sharma, Advocate for the Appellant

Shri Rakesh Rana, Deputy Director (Legal) for the Respondent

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

Order

The present appeals has been filed by M/s Palm Infracon Pvt. Ltd. Ghanahati, District Shimla against the orders of Ld. Addl. Excise and Taxation Commissioner-cum-Appellate Authority, SZ, Himachal Pradesh Shimla dated 29-07-2021 vide which the appeals filed by the applicant for the year 2013-14 and 2014-15 against the order of the Ld assessing Authority Cart Road Circle (Respondent Number 2) were dismissed by the Ld Appellate Authority on the ground that the Assessing Authority has correctly assessed the appellant for the years 2013-14 and 2014-15 by rejecting the claim of ITC as the appellant dealer failed to establish or substantiate claim of ITC amounting to Rs. 6,64,635/- and Rupees 3,58,364/- respectively, as he could not



corroborate the LP-I of the appellant to the LS-I of the selling dealer during assessment. The appeals were dismissed by the appellate Authority and order of the Assessing Authority dated 27-11-2017 was upheld.

2. The Brief facts of the case are that M/s Palm Infracon Pvt. Ltd. Ghanahati, District Shimla is registered as a dealer under the HP VAT Act, 2005 and dealing in work contract, building material and electronic Items etc. The Assessing Authority while assessing the appellant for the years 2013-14 and 2014-15, had observe that the dealer has shown its local purchases in LP-I amounting to Rs. 48,33,723/- and claimed the ITC for Rs. 6,64,635/- for 2013-14 and local purchases amounting to Rs. 26,06,274/- and claimed ITC for Rs. 3,58,364/- for 2014-15 from M/s Deep Enterprises, Baddi. But the record available on the web portal of the department showed that the selling dealer had not filed any quarterly and annual returns for the years 2013-14 and 2014-15. Thus, the Assessing Authority rejected the ITC amounting to Rs. 6,64,635/- and 3,58,364/- for the respective years which resulted in creation of total additional demand of Rs. 7,90,800/- and 3,72,100/- for years 2013-14 and 2014-15 respectively under the HP VAT Act, 2005.

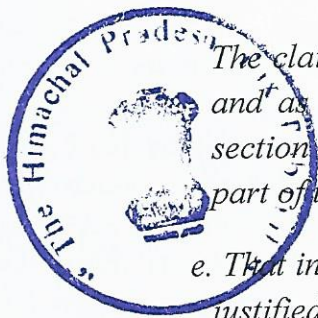
3. Aggrieved by the order of Ld Appellate Authority the Appellant has filed these appeals before this Tribunal on the following grounds:

i) *That the appellant being aggrieved by the order of the Assessing Authority filed appeal before the Appellate Authority. The Appellate authority dismissed the Appeal vide its order dated 29-07-2021 without appreciating the legal and factual position. The Appellate Authority did not consider the verdicts from the superior courts squarely applicable to the facts and circumstances of the present appeal.*

ii) *That the Appellant being still aggrieved by the orders of the respondent authority as well as confirmation by the appellate authority is filing the present appeal on the following grounds:-*

a. *That the orders passed by respondent authority as well as confirmation by the appellate authority is bad in law and liable to be quashed being illegal arbitrary and unjustified.*

- b. The assessing authority required the explanation from the appellant to which the appellant submitted a written reply clarifying the status of the dealer as alive on departmental web portal. The appellant further explained its position that it has made all the purchases against valid VAT invoices as per the mandate of the Act to claim the Input Tax Credit. The appellant further explained that it has filed all returns within stipulated period but the authorities never raised any objection whatsoever.
- c. The assessing authority did not appreciate the genuine and valid explanation of the Appellant and without assigning any reason, simply rejected the claim of Input Tax Credit on the pretext that selling dealer had not deposited the tax on its sale and taxed the same in the hand of the appellant and accordingly created an additional demand of Rs. 3,72,100/- while charging interest of Rs. 3,09,406/- and penalty under various sections to the tune of Rs. 7,000/-
- d. The appellant in accordance with the provisions of Value Added Tax Act, 2005 claimed Input Tax Credit while returning its sales. The appellant while submitting the return furnished the Tin numbers, complete addresses and other details of selling dealers from whom the present appellant has made the purchases in prescribed format LP-I. The appellant also submitted the annual return for the year in question and submitted the consolidated figures of sales and purchases. The appellant submitted the complete details of purchase against payment of Value Added Tax Input Tax defined under Section 2(m) of the H.P. VAT Act, 2005.



The claim of the VAT input tax stands disallowed on surmises and conjectures and as such the same deserves to be allowed. In view of the provisions of section 11 of the H.P. Value Added Tax Act, 2005 there was no fault on the part of the present appellant.

- e. That in the facts and circumstances of the case the Ld. Assessing Officer is not justified in imposing a penalty of Rs. 6500/- under section 16(6) and 50(2). The penalty has been levied in a mechanical manner without bothering to even issue a show cause notice in respect of the same and as such the same is

voilative to the provision of natural justice and not sustainable in the eyes of law.

f. That in the facts and circumstances of the case he Ld A.O is not legally justified in charging interest under section 19 of Rs. 1,19,667. The same has been charged without passing any specific order and against settled position of law in this regard and as such the same is not sustainable in the eyes of law.

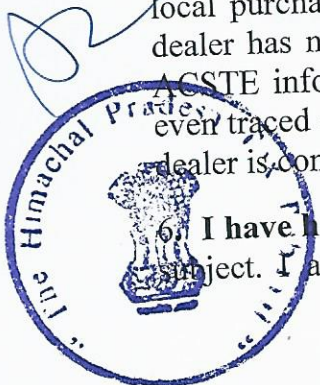
g. The Appellate Authority failed to appreciate the decision squarely covering the issue of the Appellant in the matter of M.s Gheru Lal Bal Chand Vs State of Haryana in Civil Writ Petition 6573/2007. The division bench in its concluding paragraph has held as under:-

“To conclude, no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or collusion or connivance with the registered selling dealer or their predecessor with the purchasing registered dealer is established. 34. In view of the above, it cannot be held that the provisions of section 8(3) of the Act and the sub-rules (1) and (4) of Rule 20 of the rules are ultra- vires but the same shall be operative in the manner indicated above. Consequently, the writ petitions are partly allowed and assessment orders are set aside ad cases are remanded to the assessing authority to pass fresh assessment order in accordance with law.

4. The Ld Counsel for the appellant prayed that the appeals be accepted and impugned order be quashed and also to allow the Input Tax Credit of the appellant for the said Financial Year. In support of the verbal arguments the Ld Counsel relied upon the judgment in the matters of M/s Gheru Lal Bal Chand v/s The State of Haryana and another on 23 September, 2011 In the High Court of Punjab and Haryana at Chandigarh, Civil Writ Petition No. 6573 of 2007.

5. The Ld. Deputy Director, (Legal) Sh. Rakesh Rana and the departmental Representative Sh. Virender Dutt Sharma, ACSTE, Cart Road Circle Shimla argued that on verification of ITC for Assessment Years 2013-14 and 2014-15, it was seen that the local purchases from M/s Deep Enterprises, Baddi were shown in its LP-I but selling dealer has not filed any quarterly and annual return for the above said period. Further, ACSTE informed that the selling dealers' business location as per registration was not even traced and the dealer has stopped filling returns since 2013-14 which shows that the dealer is conducting business fraudulently. He thus prayed for dismissal of the appeal.

I have heard the arguments of both the parties, perused the record and the law on the subject. I am of the considered opinion that the Ld. Assessing Authority has rightly



assessed the appellant for the said financial years 2013-14 and 2014-15, by rejecting the claim of ITC of the appellant dealer.

It would be relevant to refer Section 11(15) of the HP VAT Act which provides as under:

“Where a registered dealer without entering into a transaction of sale, issue to another registered dealer a tax invoice, retail invoice, bill or cash memorandum with the intention to defraud the State Government revenue or with the intention that the State Government may be defrauded of its revenue, the Commissioner or any person appointed under section 3 may, after making such inquiry as he thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer issuing or accepting such tax invoice, retail invoice, bill or cash memorandum or other invoice either prospectively or retrospectively from such date as he may fix”.

Also, proviso to Section 13 provides that:

“**Burden of Proof:** In respect of any sale or purchase affected by a dealer the burden of proving that he is not liable to pay tax under Section 6 or section 8 or that he is eligible to input tax credit under Section 11 shall be on him.”

The collateral reading of the above stated provisions clearly shows that the burden of proof lies upon the present Appellant to prove the sales and purchase for seeking any concessional rate and not on the Respondent. The Appellant miserably failed to discharge his burden of proof in the present case to the Assessing Authority.

I agree with the reason given by Appellate Authority in his order dated 29-07-2021, that the selling dealers has neither shown proof of tax and neither did he file returns of the sales, including sales made to the present Appellant. In fact, in the present appeal and in the proceedings before 1st Appellate Authority, no efforts were made/no proof was shown to indicate that the sellers M/s Deep Enterprises Baddi had filed any sales returns in 2013-2014 and 2014-2015. Thus, the present appellant, despite opportunity in this forum has failed to show that admissible purchases were made by him, to enable him to get benefit of ITC.

In view of the discussions made hereinabove, I find no merit in the appeals and the same are liable to be dismissed. Let the copy of this order be supplied to all concerned. Files after due completion be consigned to the record room.

Announced on 7th Day of May, 2022.




**(Akshay Sood)
Chairman,
HP Tax Tribunal,
Camp at Shimla**

Endst. No HPTT/CS/2022- 39 to 43

Dated 01-05-2022

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Assessing Authority, Cart Road Circle, Distt. Shimla.
3. M/s Palm Infracon Pvt. Ltd. Ghanahati, District Shimla (HP).
4. Shri Rakesh Sharma, Advocate Anand Vas, Ground Floor, Khalini, Shimla-171002
5. The Dy. Director, Law O/o Commissioner of State Taxes & Excise.


Reader
HP Tax Tribunal
Camp at Shimla