

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

Appeal No. : 2 to 7/2019
Date of Institution : 06-04-2019
Date of order : 25-04-2023

In the matter of:

M/s Punjab Laminates (P) Ltd. 9-10 Industrial Area, Mehatpur Distt Una.

.....Appellant

Vs

The Joint Commissioner ST&E-Cum-Appellate Authority,
NZPalampur(HP).

&

The Assessing Authority-Cum-ACST&E Una.

.....Respondents

Parties represented by:-

Shri Sh. Goverdhan Sharma, Advocate for the Appellant.
Shri Sandeep Mandyal, Sr. Law officer for the Respondents.

Appeal u/s 9(2) of CST Act, 1956 read with section 45 of HP VAT Act,2005

Order

1. The present appeals have been filed by M/s Punjab Laminates (P) Ltd. Industrial Area, Mehatpur Distt. Una, Himachal Pradesh against the orders of Jt. CST&E-Cum-Appellate Authority NZ, Palampur, Himachal Pradesh, dated 29-01-2019 vide which the appeal filed by the applicant against the assessment orders dated 29-09-2011 for the year 2005-06, dated 16-11-2011 for the year 2006-07, dated 16-10-2012 for the year 2007-08, dated 16-10-2012 for the year 2008-09, dated 09-04-2015 for the year 2009-10 and dated 09-04-2015 for the year 2010-11 passed by the Assessing Authority, Una, were dismissed vide which additional demand of Rs. 70,000/-, 6835/-, 13,76,884/-, 12,57,251/-, 4,92,385/-, 25,89,884/- was created against the appellant for the years 2005-06 to 2010-11 respectively, under the CST Act, 1956.



2. The brief facts of the case are that the dealer was assessed for the financial years 2005-06 to 2010-11 by the Assessing Authority Una on 29-09-2011 for the year 2005-06, 16-11-2011 for the year 2006-07, 16-10-2012 for the year 2007-08, 16-10-2012 for the year 2008-09, 09-04-2015 for the year 2009-10 and 09-04-2015 for the year 2010-11. During the course of assessment, the Assessing Authority noticed that the dealer had availed the facility of deferred payment of tax scheme under Notification No. EXN-F(2)2/2004 dated 24-08-2005 for the financial years 2005-06 to 2010-11 both under the HP VAT Act, 2005 and CST Act, 1956. It is pertinent to mention that 'deferred payment of tax scheme' was available only on intra state sales. The Assessing Authority, while framing the assessment, rejected the benefit of deferred payment of tax claimed by the dealer under the CST Act, 1956. The dealer filed appeal against the rejection of deferral of tax payment under the CST Act, 1956 by the Assessing Authority. The order of Assessing Authority was further challenged before the appellate Authority which was upheld by the Appellate Authority vide order dated 29-01-2019.

3. Feeling aggrieved by the order of Appellate Authority, the appellant has filed these appeals on following Grounds:

1) *The company being industrial unit was entitled to deferment of tax incentives according to the industrial policies and notifications dated 30-03-2005 and 24-08-2005. The appellant claimed deferment for Rs. 41308/- under the aforesaid notification under the Central sales Tax Act, 1956 (a self mode of collection of tax) but the Assessing Authority declined the aforesaid claim of Rs. 41308/- and also declined concessional rate of Central Sales Tax and raised demand of Rs. 11649/- after rejecting 'C' form (Photostat copy). He further imposed penalty of Rs. 70000/-.*

2) *The Assessing Authority erred in declining deferment claim of Rs. 41308/- under the Central Sales Tax where as he allowed the claim under the HP VAT Act, 2005. The same law and provisions of payments as applicable in the State Acts & Rules are applicable for payment of Central sales Tax.*

- 3) *It has been appealed that the Appellant company paid tax voluntarily according to the returns as laid down in Section 16(4) of HP VAT Act, 2005 and the Assessing Authority erred in imposing penalty of Rs. 11649/- u/s 16(7) and that too without serving any show cause notice and without providing reasonable opportunity of being heard in this respect.*
- 4) *The learned Assessing Authority further erred in computing amount of Central Sales Tax after rejecting of 'C' Form.*
- 5) *That Assessment proceedings and assessment order are barred by time limitation.*
- 6) **Penalty**
The appellant paid tax according to the returns (as per contents contained in the returns). Therefore no penalty could be imposed.

Relief Prayed:

- a) *Deferment claim of Rs. 41308/- may be allowed.*
 - b) *Penalty of Rs. 11649/- be quashed.*
 - c) *Correct rate of CST may be applied on the transaction covered by Photostat copy of 'C' Form.*
 - d) *Amount recovered in excess may be refunded.*
4. The advocate for the appellant gave reference of 'Orissa Cement Ltd. v/s State of Orissa' in which rebate was allowed under the Central Sales Tax Act, 1956. The appellant has also raised issue of limitation as he contended that assessment order dated 29-09-2011 was issued after expiry of 5 years. Section 9(2) of the Central Sales Tax clearly mandates that payment of tax payable under the Central Sales tax is to be collected as if the tax payable under the General Sales Tax law of the State but Assessing Authority and respondent No. 1 have missed to apply this provision of law.
 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 already been addressed by the authorities 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 points for consideration raised by the appellant pertain to the issue of 'limitation', and perusal of the 'deferred payment of tax scheme' applicability. I have given due thought to the issues involved and I hold that the present appeal should be rejected for following reasons:

- i. The objections raised by the appellant that the company is entitled to deferment of payment of tax under the Central Sale Tax Act, 1956 does not hold ground. The deferred payment of tax scheme as per Notification No. EXN-F(1)2/2004(iii) Dated 30-03-2005 was notified as per Sec 42(A) of HPGST Act 1968 only. Further, the benefits of this notification were carried forwarded to VAT regime vide Notification No. EXN-F(11)-5/2004(i) dated 19-01-2006 for HPVAT Act only. The scheme was never notified under CST Act. Moreover nowhere in the scheme any reference has been given of CST Act. Therefore, benefits of the scheme could not have been given under CST Act 1956.
- ii. As per the assessment order of the Respondent No. 2, photo state copy of 'C' form was not accepted and full rate of tax on the sales had been levied at the time of framing the assessment. The Concessional rate of 1% for interstate sales as per Notification No. EXNF(9)2/99 dated 23/27-07-1999, has been provided under Section 8(1) read with sec 8(4) (a) of CST Act, 1956.

Sec. 8(4)(a) of CST Act, 1956 is reproduced as under:

"the provision of sub-section (i) shall not apply to any sale in the course of interstate trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner:-

A declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority".

Thus, concessional rate of 1% is not unconditional and the dealer is entitled for the



same as per Notification No. EXN-F(9)2/99 dated 23/27-07-1999, only on production of C-forms in original.

- iii. The objection raised by the appellant that the order of Respondent No. 2 is time barred does not hold ground because the assessment were finalized within the provision of sec 21 of HPVAT Act, 2005 and Rules thereof, within five years form last date of filing of annual return after due service of notice (The notice for assessments was issued on dated 23-07-2011) and due opportunity of being heard was given to the dealer.
- iv. Sec. 9(2) of CST Act 1956 empowers the State authorities to levy/ assess tax, interest and penalty under CST Act and does not mention any benefits for rate of tax or concessional rate of tax. Thus any deferment scheme under HP VAT Act is not applicable in CST Act until and unless notified by the Govt. for CST Act also. Rule 7(2) of HP CST Rules 1970 provides for procedure of payment only and does not mention for quantum/ amount of tax to be deposited. It does not mean that benefits of rate of tax given under HPVAT Act are also to be given under CST Act.
- v. The assessments were finalized under Section 21 of HPVAT Act, 2005 and Rules thereof, within five years date of filing of annual return after service of notice (notice was issued on dated 23-07-2011 as per file record and was finalized on dated 29-09-2011 after several adjournments on dealer's request) and after affording opportunity of being heard to the dealer.

7. For aforesaid reasons, the appeal does not merit any consideration and is dismissed; the impugned orders of the Assessing Authority and the order of Appellate Authority dated 29-01-2019 are upheld. This order decides Appeal No's 2 to 7/ 2019 by a common order, in which similar issues are involved.



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



(Akshay Sood)
Chairman,

~~HP Tax Tribunal,~~
~~Block No 30, SDA Complex Shimla-9~~
HP Tax Tribunal,
Camp at Shimla-9

Endst. No HPTT/CS/2023- 55 to 59

Dated 25-04-2023

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Assessing Authority cum Asstt. Commissioner State Taxes & Excise Una.
3. M/s Punjab Laminates (P) Ltd. 9-10 Industrial Area, Mehatpur, Distt Una Himachal Pradesh.
4. Shri Goverdhan Sharma, Advocate for the Appellant.
5. Sh. Sandeep Mandyal, Sr. Law officer, HQ.

o/c
|
- cum -
|
IT cell



Reader

~~HP Tax Tribunal,~~
~~Block No 30, SDA Complex Shimla-9~~
HP Tax Tribunal
Camp at Shimla-9