

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

Appeal No. : 25 & 26/ 2022
Date of Institution : 19-09-2022
Date of order : 20-04-2023

In the matter of:

M/s Raj Industries, Nalagarh, Distt. Solan (HP).

.....Appellant

Vs

The Addl. Commissioner ST&E-Cum-Appellate Authority, SZ HP. (CZ)
Mandi (HP).

&

The Assessing Authority-I, DCSTE, BBN, Distt.Solan.

.....Respondents

Parties represented by:-

Sh. AmarjeetKashyap, Advocate for the Appellant.
Shri SandeepMandyal, Sr. Law officer for the Respondents.

Appeal u/s9 of CST Act, 1956 read with section 45(2) of HP VAT Act, 2005

Order

1. The present appeals have been filed by M/s Raj Industries, Nalagarh, Distt. Solan Himachal Pradesh against the order of Ld. Appellate Authority-Cum-Addl. CST&E, SZ, Shimla, Himachal Pradesh, dated 30-06-2022 rejecting the appeal filed by the applicant against the assessment order dated 26-09-2018, of the Assessing Authority, DCSTE, BBN Baddi, by which additional demand of Rs. 16,65,746/- and Rs. 15,34,880/- was created against the appellant for the years 2013-14 and 2014-15 respectively, under the H.P. VAT Act, 2005 and CST Act, 1956.
2. Brief facts of the case are that the appellant dealer is engaged in manufacturing of fatty acid, glycerin, soap noodles, washing soap, toilet soap and sales thereof, in the name of M/s Raj Industries Nalagarh, Revenue District, BBN Baddi, District Solan. The appellant is registered vide TIN 02030300922, under the HP VAT Act, 2005 and

CST act, 1956. The appellant dealer was assessed by the Assessing Authority, DCSTE, BBNBaddi for the years 2013-14 and 2014-15, vide orders dated 26-09-2018. During the assessments, the Assessing Authority inferred that the dealer has purchased diesel from M/s HP Autocade and M/s Ashmit HP Center and claimed ITC on the local purchase of diesel amounting to Rs. 16,65,746/- for the year 2013-14 and Rs. 15,34,880/- for the year 2014-15. The same was disallowed by the Assessing Authority in view of the direction issued by Excise and Taxation Commissioner, Himachal Pradesh vide letter no. 12-56/2013-14 (305)-EXN-Tax-7798-70 dated 21-03-2015. Thereafter, the Appellate Authority upheld the demands created by the Assessing Authority vide order dated 30-06-2022. The present appeals are filed against this order.

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

1) *That the petitioner has fully complied with the provisions of sec. 11 of the HP VAT Act, 2005 and corresponding Rule 20 of the HP VAT Rules 2005. He has nowhere infringed any related provisions which could take the Assessing Authority to conclude to reject the Input Tax Credit.*

The appellant has relied on the judgment delivered in pari-materia case titled as Sanjeev Stone Crushing Co. vs. State of Haryana (2016) 53 PHY 36 (P&H) wherein court has held that "buyer is not to be denied Input Tax Credit for deficiency in tax invoices issued by the seller".

2) *That the dealer has paid due amount of tax as charged by the seller as per the tax invoice issue by him accordingly. Thereafter it is the duty of the seller to deposit it further into Govt. Treasury. It is a settled preposition of law that purchaser cannot be held responsible for non deposit of tax amount collected by the seller from purchaser. Reliance is put in pari-materia case titled as Sri Laxmi Textiles vs. CCT (2016) 53 PHT 84 (MAD) wherein the Hon'ble Court has held that "purchaser cannot be made liable for failure on the part of the seller". Thus the action taken by Ld. Assessing Authority is untenable in the eyes of law.*

3) *That if the selling dealer has concealed the fact, then it is he who is liable to be punished but not the purchaser. Fastening liability on purchasing dealer on*

account of nonpayment of tax by selling dealer is not justified. Therefore, Rule of Law says that no liability can be imposed on principle of vicarious liability. The dealer is eligible for claim of ITC once proper declaration is furnished and in the event of any falsity at the end of the seller, the Department shall proceed against him accordingly. So the Ld. Assessing Authority while not complying with such provisions, therefore, his orders suffer from illegality and impropriety.

4) That in this case, the Ld. Assessing Authority has rejected the ITC amount of Rs. 16,65,746/- and Rs. 15,34,880/- in a mechanical manner without giving due recognition to the Rule of Law. It is emphasized that it is settled proposition of law while considering rejection of Input Tax Credit, Authority shall consider explanation rationally and judiciously before embarking upon any action. So rejecting the ITC and creating resultant additional demand amounts to illegal extraction which is against the spirit of law. We put our reliance in *pari-materia* case titled as *Pratibha RCC Spun Piper & Cement Products vs. State of Karnataka (1991) 80 STC 425 (Kar)* wherein the Hon'ble Court has held that "unlawful taxation falls in the duress category."

4. The counsel for the appellant prayed that the appeals be accepted and impugned orders be quashed, along with the additional demand created against the appellant. It is stated that the Assessing Authority has disallowed the ITC on the local purchase of diesel made from the petrol pump on the ground of instruction issued by the Excise and Taxation Commissioner vide letter no. 12-56/2013-14 (305)-EXN-Tax-7798-70 dated 21-03-2015, as the circular and clarification issued by the Commissioner cannot override the provision of the Act. He further argued that the purchases of diesel was on tax invoices duly issued by the selling petrol pump after the payment of tax as charged by the seller as per the tax invoice as per the provisions of section 11(3) of the HP VAT Act, 2005. He further averred that fastening the liability on the purchasing dealer on account of nonpayment of tax by selling dealer is not justified. Therefore the matter be remanded back to the Assessing Authority to finalize the assessment afresh after considering the contentions raised by the appellant.

5. Sh. Sandeep Mandyal, Sr. Law officer of the department argued that the instructions issued by Department are in consonance with Section 6(1)(c) of the HP VAT Act,

2005 which provides that tax is levied at the first point of sale in respect of the goods specified in the second column of Schedule 'D' of the HP VAT Act.

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 review of claim of ITC as per the Section 11 of the Act by the appellant and to ascertain whether diesel being a schedule 'D' item can be or cannot be taxed at second point of sale under Section 6(i)(c) of the HP VAT Act, 2005. I have given considerable thought to the issues involved and I hold that the present appeals should be rejected for reasons given below.

It is clear that the schedule relating to input tax restricted goods as notified under Section 11(8) mentions that "registered dealer shall not qualify for input tax credit in respect of tax paid on purchase of the following goods, namely:-

"Petrol, diesel, aviation turbine fuel, Liquefied petroleum gas and condensed natural gas, unless the dealer is in the business of selling such products and subject to second proviso to sub-section (3) of Section 11 of the Act."

The Department has issued instructions as per provisions of law as existing in section 6(i)(c), which authorizes levy of tax at first point of sale. The letter No. 12-56/2013-14-(305) EXN-Tax-7798-70 dated 21-03-2015, issued to all Zonal collectors and all the Assessing Authorities in Himachal Pradesh, stipulates as follows:

"Now the exercise of identifying aforesaid petrol pumps has been completed and it is therefore clarified that only those petrol pumps located within the State are allowed to issue tax invoices which are purchasing petrol, diesel etc. from outside the State. The petrol pumps making purchases of the same form within the State and making subsequent sales are not authorized to issue tax invoices."

It is inferred from the order of the Assessing Authority that the selling dealer i.e. M/s HP Autocade and M/s Ashmit HP Centre have issued tax invoices on second point of

sale which is contrary to the clarification made by the Excise and Taxation Commissioner Letter dated 21-03-2015. The Section 6(1)(c) of the HP VAT Act, 2005 provides that tax is levied at the first point of sale in respect of the goods specified in the second column of Schedule 'D' of the HP VAT Act, whereby dealers engaged in business of schedule 'D' items can only mean dealers making first point sales. The present appellant has not claimed in his appeal that the diesel which he has purchased be considered as the 'first point of sale' under the provisions of Section 6(i)(c). Thus, the claim of the appellant does not hold merit on ground of test in consonance with the ibid provisions of HP VAT Act and clarification thereon as he has made purchases from dealers M/s HP Autocade and M/s Ashmit HP Center who are second stage dealer as per the record produced by the department. If multiple levy of sale at the rate of tax as indicated in Schedule 'D' is allowed to be levied, it would only mean that dealers who purchase lubricants, fuels etc. are per force motivated to source such procurement by way of inter-state sales.

7. The instructions of Ld. Excise and Taxation Commissioner, Himachal Pradesh were aimed at controlling dealers from issuing tax invoices when in fact they have paid tax at first stage of sale by oil companies. Keeping in view the express provisions of Section 6(3) of the HP vat Act 2005, the instructions are legal and within the ambit of law.
8. In view of the above, **the appeal does not merit any consideration and is dismissed.** The impugned order of the Assessing Authority dated 26-09-2018 and the order of the Appellate Authority dated 30-06-2022 are upheld. ..
9. 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,
H P Tax Tribunal, Shimla
Block No 30, SDA Complex Shimla

Endst. No HPTT/CS/2023- 43 to 47

Dated 20-04-2023

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Assessing Authority cum DCSTE BBN Baddi O/o DCSTE, Baddi.
3. M/s Raj Industries, Nalagarh Distt. Solan Himachal Pradesh.
4. Shri Amarjeet Kashyap Advocate for the Appellant.
5. Sh. Sandeep Mandyal, Sr. Law officer, HQ.

o/c
|
cum.
|
IT cell

Reader

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