

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

Appeal No. : 54/2017  
Date of Institution : 25-07-2017  
Date of order : 14-06-2023

**In the matter of:**

M/s Steel Authority of India Ltd., Bhattakuffar, Shimla HP

**.....Appellant**

**Vs**

- i) Addl. E&TC cum Appellate Authority SZ Shimla Himachal Pradesh.
- ii) Assessing Authority, Dhalli Circle District Shimla (HP)

**.....Respondents**

**Parties represented by:-**

Shri Rajeev Sood, CA for the Appellant.

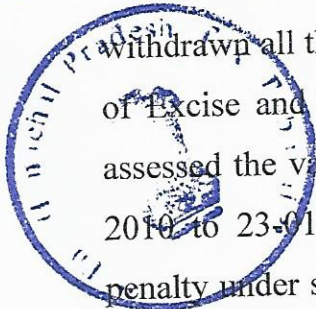
Shri Sandeep Mandyal, Sr. Law Officer, Law for the Respondent.

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

**Order**

1. The present appeal has been filed against the order of The Addl. Excise & Taxation Commissioner-cum- Appellate Authority, SZ, Shimla, Himachal Pradesh dated 30-09-2016 vide which Additional Demand of Rs. 3,18,19,646/- created for the assessment year 2010-11 by the Assessing Authority Dhalli Circle, Shimla vide order dated 10-11-2014, against the appellant, under the HP Tax on Entry of Goods into Local Area Act, 2010, was upheld.

2. The brief facts of the case are that at the time of assessment of the appellant dealer under the HP Tax on Entry of Goods into Local Area Act, 2010 read with the HP VAT Act, 2005, Assessing Authority found that the appellant had not paid any Entry Tax or filed any Entry Tax Return for the period 07-04-2010 to 23-01-2011. The Appellant had sent iron billets by way of stock transfer against Form-F form Chandigarh to its conversion agent M/s SPS Rolling Mills, Golthai, Bilaspur which was added as additional place of business by the appellant. The iron billets were meant for the purpose of conversion into/manufacture of TMT bars by the conversion agent. When confronted on the issue of non-payment of Entry Tax and non-filing of Entry Tax returns, the appellant relied on clarification letter no. 12-1/2008-EXN-Tax-Vol-II-2796 dated 26-04-2010 and letter no. 12-1/2008-EXN-Tax-4140 dated 12-05-2010 of the Excise and Taxation Commissioner, HP and Jt. Excise and Taxation Commissioner, HQ respectively, issued in response to the clarifications sought by the appellant on applicability of the Entry Tax. The Appellant case is that in view of afore-said clarification, no entry tax was leviable on the appellant dealer during the period 07-04-2010 to 23-01-2011 for causing entry of billets from Chandigarh into the local area. However, the Assessing authority had held that the billets fall under the classification of Iron and Steel as defined under section 14 (iv) (ii) of the CST Act, 1956 and further since Iron and Steel are covered under item no. 3 of Schedule-II of the HP Tax on Entry of Goods into Local Area Act, 2010, therefore, Entry Tax was leviable on Iron billets. He further held that the case of the dealer is not covered under the provisions of Section 3(4) for the Act which specifies the circumstances where-in Entry Tax is not payable by a dealer. He further observed that the Excise and Taxation Commissioner, HP vide letter no. EXN-2-6/2009-Estt. Dated 18-11-2013 has withdrawn all the instructions and clarifications issued from time to time by the office of Excise and Taxation Commissioner, H.P Shimla. As such, Assessing Authority assessed the value of said Iron billets by levying the Entry Tax @ 4% w.e.f. 07-04-2010 to 23-01-2011. The Assessing Authority also charged interest and imposed penalty under section 12 of the HP Tax on Entry of Goods into Local area Act, 2010



read with section 16(6), 16(7) and section 19 for the HP VAT Act, 2005. The aforesaid proceedings resulted in creation of total additional demand of Rs. 3,18,19,646/- (Rs. 1,42,44,340/- as due Entry Tax, Rs. 1,04,23,135/- as interest and Rs. 71,52,170/- as penalty) against the appellant for the assessment year 2010-11. Thereafter, the appellate authority upheld the demand created by the Assessing Authority vide order dated 10-11-2014 and appeals have been filed against this order.

3. Aggrieved by the order of Ld. Appellate authority the appellant has filled the appeals before this Tribunal on the following grounds:-

I. *That the appellant/ dealer was never a party in the case titled as SPS Steel Rolling Ltd. Vs ETO Swarghat, adjudicated by the Appellate Authority cum DETC (CZ) Mandi Entry Tax M-3(2011-12). No opportunity was provided to the appellant to be heard on merits.*

II. *That the Assessing Authority has misconstrued facts of the case and has not analyzed the working and mechanism of the assessee, which by no stretch of imagination can be considered as a commodity defined in (item No.3 for Schedule II of HP Tax on Entry of Goods into Local Area Act, 2010).*

III. *That the nature of the transactions mentioned in the statement of facts was totally out of the purview of the Entry of goods into Local Area Act 2010 for the impugned period. The charging section 3 of Entry of Goods into Local Area Act 2010 was amended only with effect from 22<sup>nd</sup> January 2011 whereby processing, conversion, job work etc. were included for Goods caused to be entered into local area by the dealer for such purposes. It is averred that the period under consideration in this appeal is from 07-04-2010 to 23-01-2011 is prior to the date the Act became applicable. It is stated that after amendment of the Act the Appellant dealer is depositing the Entry Tax on regular basis. There has not been any instance of evasion of tax by this appellant.*

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 SAIL entered into a conversion agreement with M/s SPS Steels Rolling Mills Ltd. which is having its plant at patch No. 1, Industrial Area, Phase-II, Golthai, Distt. Bilaspur (HP) vide Agreement dated 12-02-2010 w.e.f 16-01-2010 for a period of 3 years. Semi- finished material i.e. raw material in the form of billets was supplied to M/s SPS for making TMT (Saria), the finished product. The TMT thus produced was either to be sold in Himachal or outside Himachal. The premise of SPS was added to VAT registration certificate as place of business. F forms were issued both for material entered into HP and transferred from HP to other branches of SAIL.

HP Govt. w.e.f. 07-04-2010 had levied Entry Tax on Entry of materials as specified in schedule II of the Act, into each local area used for consumption, use or sale therein, but the same is not payable if the goods are sold in the State or interstate trade or export out of the territory of India in the same form.

In the schedule II, Iron & Steel was mentioned at Sr. No. 3. There was no provision for taxing raw materials or industrial input, however for clarity purpose SAIL had obtained clarification regarding applicability of Entry Tax from then Excise & Taxation Commissioner, who also clarified that the Entry Tax is not applicable.

Later on, the HP Govt. had issued notification dated 24-01-2011 and inserted item no. 9 in schedule-II which included raw material and industrial inputs brought into the State for conversion, manufacture or processing and the rate of Entry Tax levied was 2%. SAIL had paid Entry Tax w.e.f.24-01-2011 on all billets transferred into the State at applicable rate.

As per record, ETO Swarghat issued notice to SPS for non-payment of Entry Tax on billets brought into the State during the period 07-04-2010 to 23-01-2011 and issued demand note for Rs. 2,08,68,566/-, on which SPS contended that since the material belonged to SAIL, liability for Entry Tax falls on SAIL and not on SPS. Thereafter, DETC Appeals accepted their plea and exonerated SPS with the direction to ETO Shimla to recover Entry Tax with interest and penalty from SAIL.



Thereafter, Excise & Taxation Officer, Shimla had issued a demand of Rs 3,18,19,646/-vide its order dated 10-11-2014 which is the subject of dispute and adjudication.

5. Sh. Sandeep Mandyal, Sr. Law officer of the department said that the petitioner has no grounds to agitate before this tribunal as the issues raised herein have been correctly addressed by the authorities below and pleaded that their actions may be upheld.
6. I have heard the Ld. Counsel and the Ld. Govt. counsel for department and perused the record. The above contentions are answered as follows :

i) It is seen that the Assessing Authority Dhalli is the appropriate Assessing Authority in the case and is legally authorized to pass order as provided under section 3 and section 12 of the HP Entry Tax Act, 2010 read with relevant provision of HP VAT Act, 2005.

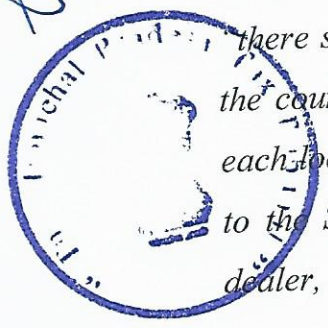
ii) The order under appeal is a regular assessment order for the year 2010-11 and has nothing to do with the issue whether the appellant was a party in the case titled as SPS Rolling Mills V/s ETO Swarghat, adjudicated upon before Ld. Appellate Authority, Central Zone, Mandi. The point was raised by the Assessing Authority during the assessment proceedings that the appellant has submitted that the entry of goods into local area i.e. State of Himachal Pradesh was effected by them. This is mentioned in the order dated 22-10-2011 passed by the Appellate Authority, Central Zone, Mandi. The Appellant Authority vide order dated 22-10-2011 had disposed off the case with the observation that the Entry Tax is leviable on the Entry of Iron Billets into local area i.e. Himachal Pradesh and the same is payable by M/s SAIL because the commodity i.e. Iron Billets is covered under item No. 3 (Iron and Steel as defined under Section 14 (iv)(ii) of CST Act, 1956) of Schedule-II appended to Entry Tax Act.

iii) The contention of the Appellant that no opportunity of being heard was given and the impugned order was passed on the back of the appellant is not based on

facts. From the perusal of the order, it is clear that proper notice for assessment was given to the appellant. Appellant was given opportunities on 07-07-2014, 01-08-2014, 12-09-2014, 01-10-2014, 29-10-2014 and 10-11-2014 to put forth its arguments. The appellant was afforded reasonable opportunity of being heard and put forth arguments on why interest and penalty under Section 16(6), 16(7) and 19 of HPVAT Act, 2005 read with section 12 of Entry Tax Act, 2010 should not be imposed. As such, I am of the view that the orders are legal and have been passed after affording reasonable opportunity of being heard and principles of natural justice have been honoured.

iv) It is seen that the clarification letters issued by the Taxation department officers mentioned at Para 2 above have been duly considered during the Assessment process and also during the appeal before the Appellate Authority. Since the Entry tax was held to be payable by SAIL after considering the contents of clarification letters and being well in the knowledge of applicant, the issue of non-supply of copy of withdrawal letter of 2013 has no relevance. The order is passed as per the applicable provisions of the HPVAT Act, 2005 and Entry Tax Act, 2010.

v) The appellant is well covered under the definitions/ parameters given in the Section 3 of HP Entry Tax act:-



*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 into each local area for consumption, use or sale therein .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 into each local area for consumption, use or sale therein". Section 2(1) (f) of the Entry Tax Act defines "entry of goods into a local area" with all its grammatical variations and cognate expressions means entry of goods into a local area from any place outside thereof including a place outside the State for consumption, use or sale therein."*

Since appellant is engaged in the business of causing Entry of goods i.e. Iron, Billets as raw material into local area and receiving the same for the purpose of using them for converting into TMT bars through the process of conversion, which has rightly been construed as manufacturing or processing of goods for sale. Conversion is a process in which the goods i.e. billets are used for manufacturing of TMT bars as finished product. The nature and intent of causing the Entry of Goods into local area is well covered under the provisions of Section 3(1), 3(2) and 3(3) of the Act *ibid.* the goods being caused to be entered by the appellant into the local area are covered under item No. 3 of the Schedule-II appended to the Act. The applicable rate from 07-04-2010 to 23-01-2011 is 4% and thereafter, 2% as per notification.

7. For the aforesaid reasons, the appeal does not merit any consideration and is dismissed. The impugned orders of the Assessing authority dated 10-11-2014 and order of the appellate authority dated 30-09-2016 are upheld.
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**  
H P Tax Tribunal Camp at Shimla.  
Block No 30, Camp Shimla-9

Endst. No. HPTT/CS/2023 - 89 to 93

Dated: 14-06-2023

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. Assessing Authority Dhalli Circle, Shimla (DCST&E Shimla.)
3. M/s Steel Authority of India (A Government of India Undertaking) C/o HP State Civil Supplies Corporation, Bhattakuffar, Dhalli, Shimla.
4. Sh. Rajeev Sood, CA for the Appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



Reader

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