

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

Appeal No. : 44 & 45/2022
Date of Institution : 16-12-2022
Date of order : 28-01-2023

In the matter of:

M/s Bector Foods Specialties Ltd. Tahliwal, Distt. Una, HP

.....Appellant

Vs

- i) Jt. CST&E-cum-Appellate Authority, NZ, Himachal Pradesh, Palampur.
- ii) Assessing Authority, Una-1, Circle, Distt. Una (HP)

.....Respondents

Parties represented by:-

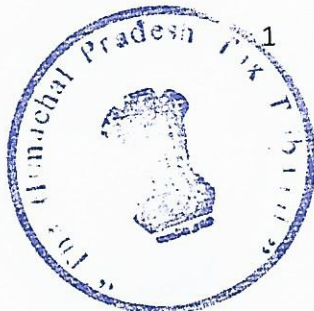
Shri J.S Bedi, Advocate for the Appellant

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

**Appeal under Section 9 (2) of the CST Act, 1956 read with Section 45 (2) of
the Himachal Pradesh, Value Added Tax Act, 2005**

Order

1. The present appeals have been filed against the order of The Jt. Commissioner State Taxes and Excise-cum- Appellate Authority, NZ, Himachal Pradesh, Palampur dated 12-08-2022 vide which an Additional Demand of Rs. 32,11,548/- and Rs. 16,18,182/- which was created for the assessment year 2006-07, by the Assessing Authority Una-I vide order dated 19-03-2018 against the appellant under the HP VAT Act, 2005 and the CST Act, 1956 was upheld.
2. The brief facts of the case are that M/s Bector Foods Specialties Ltd., Tahliwal Una Himachal Pradesh (herein after referred to as 'Appellant') is an industrial unit engaged in manufacturing of biscuits and sale thereof which is inter as well as intra state. The dealer availed the facility of deferred payment of tax scheme which was issued under Notification No. EXN-F (2)2/2004 dated 24-08-2005 for the financial year 2006-07. It is pertinent to mention that 'deferred payment of tax scheme' was available only on intra state sales. The order of the Assessing Authority Una was further challenged before the Appellate authority. The Assessing authority Una assessed the appellant under HP VAT Act and CST Act for the



year 2006-07 and disallowed the deferred payment of tax on the interstate sales which was not allowed under the 'deferred payment of tax scheme' and thus created an additional demand for Rs. 32,11,548/- and Rs. 16,18,182/-.

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

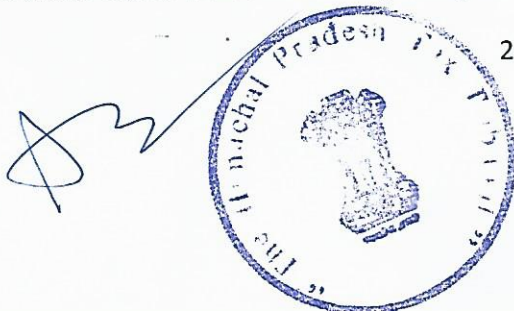
I. *That by virtue of the relevant notification, the Assessing authority is under an obligation to frame the assessment within a stipulated period but in the present case the same was not finalized within stipulated period, hence the order passed is hit by limitation. Even otherwise it is well settled that when any particular manner is prescribed for performing particular work, then the authority is under an obligation to follow the same. It is stated that Joint Commissioner State Taxes and Excise cum Appellate Authority failed to appreciate that assessment framed for the assessment year 2006-07, is hit by limitation as assessment for the above years is to be completed up to 31st December of each year as per the notification no. EXN-F (1) 2/2004 dated 30-03-2005.*

II. *That the Joint commissioner State Taxes and Excise cum Appellate Authority has passed the order without passing a speaking order.*

III. *That Ld. Joint Commissioner State Taxes and Excise cum Appellate Authority as well as Ld. Assistant Excise & Taxation commissioner have failed to appreciate the nature of business and calculated the VAT due of Rs. 32,11,548/-, whereas, in fact nothing is due as while filing the returns each and every figure was duly reflected and the returns are duly acknowledged by the dept.*

4. The Ld. Counsel for the Appellant prayed that the appeal be accepted and the impugned order be quashed, along with the additional demand created against the appellant.

5. Sh. Sandeep Mandyal Sr. Law officer for the respondent argued that as per incidence of taxation under HP VAT Act and CST Act, the dealer was liable to deposit VAT and CST into the Govt. Treasury despite having collected the same from the consumer. As per the provision of Section 16 of the HP VAT Act, 2005 and Section 9 of the CST Act, 1956, the appellant was under statutory obligation to furnish the correct entry in the tax return which was not done. The case of the department is that plea of the dealer cannot be accepted at this stage. The Senior law officer stated that the petitioner has no case to agitate before this Tribunal as the issue arising herein is already addressed by the authority below and he prayed that the order dated 12-08-2022 may be upheld.



6. I have heard the Ld. Counsel and the Ld. Govt. Counsel for the respondent and perused the record. The points for consideration raised by the appellant pertain to the issue of 'Limitation', 'Jurisdiction Clause' and 'payment of Tax and Returns' and non application of mind in passing order dated 12-08-2022. I partly agree with the petitioner that the Appellate Authority should have given more detailed and speaking reasons while rejecting the appeal. In the last Para, the Appellate Authority while dismissing the appeal, has simply stated that the order of the Assessing Authority is based on facts and the same has been passed as per provision of HPVAT Act & the CST Act. I feel that the orders of the Appellate Authority are not in detail though he has stated that ample opportunities were given to the party/ counsel. In the interest of justice and given the fact that the matter pertains to the year 2006-07, I proceed to decide the present Appeal on its merits, as per discussion below:-

i. As per the admission of the appellant before Assessing Authority, the appellant has admitted his CST and VAT liabilities. It means that the appellant had not disputed the figure of tax liability determined by the Assessing Authority which shows that there is merit in the action of Assessing Authority. Moreover, in the appeal, the appellant has not disputed the incidence of taxation provided under Section 3 of the CST Act, 1956 and Section 4 of HP VAT Act, 2005 which is the basis to determine CST & VAT liability on the appellant.

ii. The objection raised by the appellant that the order of the respondent number 2 is time barred does not hold ground because the case comes under the provision for Scrutiny as per Rule 66 of HP VAT Rules 2005 as the turnover of the dealer is above Rs. One Crore. The notice of assessment was issued to the dealer on 09-11-2009 with direction to appear for scrutiny alongwith account books, statutory forms and relevant record. The inordinate delay in framing assessment orders was due to pending statutory forms which were not provided by the dealer in time, as stated by the Assessing Authority the same was decided on best judgement basis under section 21(5) of the HP VAT Act, 2005 and Section 9 of the CST Act, 1956. Under Rule 66 of the HP VAT Act, there is no limitation, contrary to the assertion of the Ld. Counsel for the appellant.

iii. The dealer has claimed ITC on account of purchase of raw material for Rs. 31,55,414/- which was verified from the invoices produced but it was found that the dealer has also claimed ITC on stock transfer amounting to Rs. 24,09,263/- as well, which was disallowed under Section 11 of the HP VAT Act, 2005. ITC of

only Rs. 7,46,151/- (Rs. 31,55,414/- minus Rs. 24,09,263/-) was allowed and interest was duly imposed. In support, the Counsel for Appellant has placed reliance on decisions i.e. J.K. Synthetics Ltd. V/s Commercial Taxes Officer (1994) 94 STC 422 (SC). The Appellant's assertion is that the rationale derived from the above decisions is that no interest and penalty is leviable as they have deposited the due tax as per return in time.

The case law cited by the petitioner in J.K Synthetics versus Commercial Tax Officer (1994) 94 STC 422 (SC) is not applicable in the instant case due to different facts and circumstances and reasons. The provision of Section 9(2) of the CST Act, 1956 are very clear and the same would apply. The above citations do not assist the appellant in the face of express provisions of law. Since the appellant failed to produce Statutory Forms and produce them before the Assessing Authority at the time of Assessment, he was therefore not entitled to 1% rate of tax under CST Act, as applicable to inter-State Sales. This Tribunal is of the view that the assessing authority has correctly levied tax. Rebate of 35% deferred payment claimed by the dealer on CST sale was rightly rejected and interest has been levied under the provisions of Section 9 of the CST Act and Section 19 of the HP VAT Act, which are binding on the tax assessing authority once he has identified that the dealer has not paid the tax as prescribed under the act. There is no discretion with this authority or lower authority to consider any such concession/ waiver of interest. Section 9 (2B) of CST Act provides that if a dealer does not pay tax in time, he shall be liable to pay interest for delayed payment of tax as per the provisions of the general sales tax law of each state. Thus if a dealer defaults in payment of tax within time then he would be liable to pay interest as per statutory provision.

- iv) It is also seen that the dealer has claimed incentives of deferred tax under the HPVAT Act vide H.P. Govt. Notification No. EXN-F-(1)2/2004-30/3/2005. The dealer has claimed the facility of payment @ 65% of the deferred tax liability vide Deferment certificate No. 1/2005-2006 dated 15-07-2005. As per returns, the manufacturing dealer has availed the facility of deferred payment of tax on local as well as interstate sales on the sales made in the last quarter taking the shatter of notification no. EXN-F (1)2/2004(iii) dated 30-03-2005. Perusal of the said notification makes it very clear that deferred payment of tax scheme is allowed on



local sales only. Subsequently in terms of Notification no. EXN-F-(2)2/2004 dated 24 August, 2005, option was given to industrial unit to pay 65% of tax liability. The rebate was wrongly claimed for 35% of interstate sale which was rightly rejected and penalty and interest were imposed accordingly. In the present Appeal, no cogent arguments have been given by Appellant to state why ITC was claimed on stock transfer, as has been mentioned in the Assessment order. There is no merit also in the claim of rebate of 35% deferred payment claimed as CST sale. There is no other inference to be drawn except that the Appellant firm had claimed these exemptions for tax purposes in bad faith, which were rightly rejected.

7. For the aforesaid reasons, the appeal is dismissed. The impugned order of the Assessing Authority dated 19-03-2018 and the order of the Appellate Authority 12-08-2022 are upheld.
8. Copy of this order is sent to the parties concerned. File after due completion be consigned to the record room.



Akshay Sood
Chairman,

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

Endst. No. HPTT/CS/2023 137017

Dated: 28-01-2023

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Addl. CST&E-cum- Appellate Authority, NZ, Himachal Pradesh, Palampur.
3. Assessing Authority, Una-1, District Una (HP)
4. M/s Bector Food Specialties Ltd., Tahliwal, Distt. Una (HP)
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



Reader
HP Tax Tribunal
Dharamshala

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