

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

Review Application No. : 1 & 2 /2021 of Appeal No.  
33&34/2013  
Date of Institution : 25-08-2021  
Date of order : 03-11-2022

**In the matter of:**

M/s Superintending Engineer/ Dehar Power House Circle BBMB, (PW)  
Slapper (HP)

.....Appellant

Vs

1. Deputy Excise and Taxation Commissioner (DETC)-cum-Appellate Authority Palampur, Distt, kangra (HP).
2. Excise and Taxation officer-cum-Assessing Authority, Sunder Nagar, Distt. Mandi (HP)

.....Respondents

**Parties represented by:-**

Shri Atul Jhingan, Advocate for the Appellant.

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

**Appeal under Section 45 of the HP VAT Act, 2005 read with Section 12 of the HP Tax on Entry of Goods Act, 2010.**

**Order**

1. The above two Appeals are being heard in view of order of High Court of Himachal Pradesh preferred in CR Nos.224&225 of 2018 filed by the above applicant (here-in-after referred to as the appellant), which were earlier rejected by a order of this Tribunal dated 23-08-2016, in the review application No.6 & 7 of 2015. These

applications are being considered afresh on the basis of High court order *ibid*, which includes the following observations:-

*'.....we are of the considered view that an adequate opportunity should have been granted to the petitioners while disposing off the appeals. It is needless to say that no orders could be passed behind the back of the litigant. That a person has a right of being heard'.*

*'.....Consequently, the order dated 23-08-2016, passed by the said Tribunal, in Review Application No. 6/ 2015 in appeal No. 33 of 2013 and Review Application No. 7/2015 in Appeal No. 34 of 2013, is also set aside. The aforesaid Appeals No. 33 & 34 of 2013 of the petitioners are restored to the respective files. The Himachal Pradesh Tax Tribunal, Dharamshala, is directed to hear the Appeals No. 33 & 34 of 2013 in accordance with law and pass appropriate orders thereon, as expeditiously as possible'.*

2. The Ld. Counsel for the appellant had contended in the High Court that appellant's appeals no. 33 & 34 of 2013 were disposed of by the Tribunal along with Appeal no. 11 of 2014, pertaining to another assessee. Therefore, neither the petitioners were given any opportunity of hearing nor they were aware that their appeals were disposed off on that day.

The Ld. Counsel has also contended that the principal amount of Entry Tax of Rs. 6,21,71,331/- was deposited by the appellants on 25-09-2012, The respondent had issued them Notice No. 345 on 12-09-2012, under section 27 of the HP VAT Act, 2005 to recover approx Rs. 18 Crores through coercive process. It is further contended that the assessment orders were not conveyed to the appellants till 07-11-2012 and hence the recovery notice dated 12-09-2012 was liable to be set aside. The Ld. Counsel also averred that no notice was issued to the appellants before imposition of penalty and interest and the impugned orders dated 19-07-2012 of the Assessing Authority were passed without waiting for reply of the appellants therefore, the same was liable to be quashed as they had been passed without hearing them, in

contravention of the order of the Hon'ble High Court. It is claimed that the appellants had correctly declared the purchases made by them at the Golthai barrier, Bilaspur and hence there was no question of concealment of tax liability as the appellant is a responsible Govt. body. It is also stated that the penalty could not be imposed keeping in view the principles of equity and justice and thus the penalty imposed was harsh and arbitrary.

3. After due consideration, the main grounds for examination in the present appeals are summarized as under:-

- (i) *While passing order dated 19-07-2012 has the Assessing Authority considered all points on merit?*
- (ii) *Whether the Appellate authority has not taken a considered view in giving adequate opportunity to the petitioner to explain stand taken before the Assessing Authority?*
- (iii) *Whether penalty and interest imposed by the order of the Assessing Authority be waived off or reduced as prayed by the Appellant?*

4. Sh. Sandeep Mandyal, Sr. Law Officer, for the respondent stated that the present applications i.e. Appeals No. 33 & 34 of 2013 presently restored by the High Court had been taken up independently in review application no. 6 & 7 of 2015 by the Tribunal and the issues raised by the Appellant have already been dealt in detail vide order dated 23-08-2016. He also argued that 1/3rd amount was deposited by the appellant in terms of the High Court order dated 22-01-2013 passed in CWP No, 492 of 2013 of HP High Court wherein ....*the writ petitioner had to deposit 1/3<sup>rd</sup> for the demand notice, i.e. payment of entry tax and had to execute security for balance 2/3<sup>rd</sup>....* He informed that the High Court has modified its order in CWP No. 7172 of 2010 dated 14-12-2015 wherein terms of the orders supra, the petitioner/Appellant had to deposit 50% of the demand notice and had to execute security for balance amount i.e. 50% amount in pending cases of Entry Tax. Keeping in view the

modified High Court order, he emphasized that appellant should be directed to deposit balance 17 % amount of the demand notice at the earliest till HP TEGLA Act, appeals, pending with the Supreme Court and High Court are decided. The Senior law officer stated that the petitioner has no case to agitate before this Tribunal as the issue raised herein is already addressed by the authority below and he prayed that their action may be upheld.

5. I have heard the Ld. Counsel and the Ld. Govt. Counsel for the respondent in detail and perused the record as well. The points for consideration determined at para 3 above are discussed in detail in the following paras. There is not much dispute about the facts of the case. This Tribunal has to consider the issues raised in the appeal on the basis of High Court order dated 04<sup>th</sup> August, 2021.
6. The case of the said firm for the year 2010-11 was taken for scrutiny by the Assessing Authority where he found that the appellant had made purchases worth Rs.72,39,67,989/- for the financial year 2010-11 against TIN No. of Punjab instead of TIN No. issued by Himachal Pradesh and these purchases were not disclosed in the returns of the period 2010-11 and also Entry Tax was not paid on these purchases. The Senior Executive engineer, BBMB, Nangal, during the course of hearing, confirmed to the Assessing Authority that the goods purchased for above said amount were used in Power houses which were located in the State of HP. He affirmed that all the goods were declared at Golthai Barrier in Distt. Bilaspur and these goods were stored in BBMB Neilla Store which is also located in the State of HP. Thereafter, the Assessing Authority made an assessment order taking into consideration the books of accounts for the year 2010-11 and held that the appellant was liable to pay Entry Tax as the goods were used and stored in the State of HP, in view of the provisions of HP Tax on Entry of Goods 2010 . The Assessing Authority imposed Entry Tax amounting to Rs. 3,66,55,316/- , penalty amounting to Rs. 7,33,10,632/- according to section 16(8) and interest for delayed payment for period

upto June 2012 amounting to Rs. 76,97,616/- under section 19(1) of the HP VAT Act, making the total demand to be Rs. 11,76,63,564/- for 2010-11.

7. Further, the Assessing Authority framed Re-assessment order as per Section 23 of the HP Vat Act read with section 12 of the HP Tax on Entry of Goods Act, 2010 for the year 2011-12 for each month as per leads of undisclosed purchases of previous years. During the proceedings, he assessed that the Board has also not disclosed purchases worth Rs. 44,74,61,845/- like year 2010-11, in year 2011-12 also. Accordingly, the Re-assessment order was made for the year 2011-12 and the appellant was held liable to deposit Entry Tax amounting to Rs. 2,23,73,091/-, penalty amounting to Rs. 4,47,46,182/- and interest on delayed payment of Entry Tax amounting to Rs. 17,95,641/- leading to total demand of Rs. 6,89,14,914/- for the year 2011-12.

8. Records show that the assessing authority had issued notice on 11-07-2012 for the financial year 2010-11 & 2011-12 in which the assessing authority had mentioned that the appellant has concealed the material facts and has not submitted returns. After due notice dated 11-07-2012, the Assessing Authority had directed the appellant to attend his office at Sundernagar on or before 24-07-2012, thereafter the assessing authority announced the order on 19-07-2012, after hearing the BBMB authorities. It is evident from the file notings and in the order of the assessing authority that Sh. Pradeep Rai, SDO and Sh. Varyam Singh, JE-Stores were present on 19-07-2012 in response to notice issued on 11-07-2012. After inability of the BBMB Authorities to explain their stand substantially, the assessing authority made assessment orders under Sections 12 & 13 of the HP Tax on Entry of Goods Act, 2010 read with Sections 21, 16, & 32 of the HPVAT Act, 2005 creating a demand of total demand of Rs. 18,65,78,478/- for the years 2010-11 & 2011-12. It is seen that the Board had been duly served several notices affording reasonable opportunity to the appellant of being heard, and the authorized officials of the firm were heard at length. Therefore, it is evident from the assessment orders as well as from the records that the BBMB and its officers disregarded their legal obligation under the HP Tax

on Goods into Local Area Act, 2010 for furnishing returns under the Act and to deposit tax under the Act. As per the admission of the appellant, an amount of Rs 6,21,71,331/- was deposited by the board after seeking extension of time on 25-09-2012 which shows that the appellant was aware of the assessment order otherwise there was no reason for them to deposit the Entry tax. Therefore, the allegation of the appellant that the Assessment orders were not served upon the Board does not hold ground especially since BBMB officers had been present before the Assessing Authority in several hearings including on 19th July 2012. Further, it is seen that in the appeals, the appellant has not disputed the figure of total purchases of Rs. 72,39,67,989/- for the year 2010-11 and Rs 44,74,61,845/- for the year 2011-12 as determined by the Assessing Authority which further shows that there is merit in the action of the Assessing Authority. Moreover, in the appeals they have not disputed the issue of incidence of taxation provided for under Section 3(1)(2)(3) of HP TEGLA Act, 2010, which is the basis to determine Entry Tax on the Appellant.

9. After due deliberation and consideration and in view of the above discussion, it is concluded that the Entry Tax liability on the part of appellant is legally due and payable and the assessment framed by the Assessing Authority is legally sustainable.

The legal counsel's request for waiving of penalty and interest can't be considered by this Tribunal as the same has been levied under the provisions of section 16(8) & 19 of HP VAT Act, 2005 read with section 12 of the HP Tax on Goods into Local Area Act, 2010 which are binding on the Tax Assessing Authorities. There is no discretion with this Authority or lower Authorities to consider any such concession/ waiver of interest and penalty. The law enunciated by the Hon'ble Supreme Court in the case of **State of Rajasthan and another V.O. P. Metals (2001) STC 611 (SC)** supports the imposition of penalty and hence the same is being relied upon. The law cited by the Id. Sr Law Officer in the cases of **Indodan Industries Ltd. vs. State of U.P. and others (2010) 27 VST 1 (SC)**, **Hazi Lal Mohd. Biri Works Vs. State of UP. And Others (1973) 32 STC 496 (SC)**, **Royal Boot House V. State of Jammu and Kashmir (1984) 56 STC 212 (SC)** and **Khazan chand vs. State of Jammu and**

**Kashmir and other (1984) 56 STC 214 (SC)** also supports the case of imposition of interest and hence the same cannot be disallowed.

10. For the aforesaid reasons, the applications/appeals does not merit any consideration and are dismissed. The impugned orders of the Assessing Authority dated 19-07-2012 and order of Appellate Authority dated 13-03-2013 are upheld.

11. 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,  
Camp at Shimla

Endst. No HPTT/CS/2022- 216 to 222 .

Dated 03-11-2022

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Joint Commissioner State Taxes and Excise, (Central Zone) Mandi, HP
3. The ACSTE Cum-Assessing Authority, Sundernagar, Distt. Mandi (HP).
4. M/s Superintending Engineer/ Dehar Power House Circle BB (PW), Slapper, HP.
5. Dy. Chief Engineer/ Bhakhra PHs Circle, BBMB (PW), Nangal (Punjab)
6. Sh. Atul Jhingan, Advocates for the respondent.
7. The Sandeep Mandyal, Sr. Law officer O/o Commissioner of State Taxes & Excise.

  
Reader  
HP Tax Tribunal  
Camp at Shimla  
Block No 30, SDA Complex Shimla

O/c  
↓  
IT cell