

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

Appeal No. : 25/2021
Date of Institution : 30-12-2021
Date of order : 12-08-2022

In the matter of:

M/s Yadav K.S.K Thunag, Distt. Mandi (HP).

.....Appellant

Vs

- i) The Appellate Authority-Cum-Joint Commissioner State taxes and Excise (CZ), Mandi, HP.
- ii) The Assessing authority-Cum Assistant Commissioner State Taxes and Excise Circle, Karsog, Distt. Mandi, HP.

.....Respondents

Parties represented by:-

Mrs. Kiran Dhiman, Advocate for the Appellant.

Shri Sandeep Mandyal, Sr. Law Officer (Legal) for the Respondent.

Appeal under Section 45(2) of the HP VAT Act, 2005

Order

1. The present appeal has been filed by M/s Yadav K.S.K Thunag, Tehsil Thunag, District Mandi, Himachal Pradesh against the orders of Ld. Appellate Authority-Cum-Joint Commissioner State Taxes and Excise (CZ), Mandi, Himachal Pradesh, Shimla dated 12-10-2021 vide which the appeal filed by the applicant against the order of the Assessing Authority-Cum-Asst. Commissioner State Taxes & Excise Circle Karsog (Camp at Chailchowk), Distt. Mandi (Respondent Number 2) dated 04-11-2020 was dismissed on the ground of failure to deposit pre condition amount of Rs. 40,00,000/- against the additional demand of Rs. 2,02,49,338/- for the year 2013-14 to 2019-20 created by the Assessing Authority.

The Brief facts of the case(s) are that M/s Yadav K.S.K Thunag, Tehsil Thunag, District Mandi, Himachal Pradesh is registered as dealer under the HP VAT Act, 2005 under TIN No. 02090301368 and deals in sale, purchase of diesel, petrol and lubricants. The Assessing Authority-cum-ACST&E, Karsog, assessed the Appellant for the assessment year(s) 2013-14 to 2018-19 on dated 04-11-2020 and for the year 2019-20 on 09/11/2020 and created additional demand of Rs. 2,02,49,338/- on account of due Tax, interest and penalty under the Act ibid.

The dealer was issued notices u/s 21 and 32 of the HP VAT Act, 2005 in the months of October and November, 2020 whereby he was asked to produce the audited

trading and profit and loss account, balance sheet, daily sales register, purchase bills and purchase ledger, stock register, cash book, planning map of the petrol pump, number of machine installed in the premises, storage capacity of the diesel and petrol pump, registration number of tankers etc. and the final hearing was fixed for 04-11-2022. The figures disclosed in returns and trading account were cross verified with the daily sale register and it was noticed that the dealer has not maintained his account books as per actual sales made during the year(s). There was a huge difference in sale value disclosed in trading account. It was also found that there is a large difference in value of physical stock of diesel in comparison to disclosed closing stock of diesel in trading account at the end of financial years. The accountant failed to give satisfactory reason on variation in stock. The dealer was given several opportunities to produce evidence before the Assessing Authority, on dated 04-11-2020 the assessing authority issued the order under 'Section 16 of the IIP VAT Act, 2005' imposing the following demand on account of VAT, interest and penalty:-

Year	VAT	Interest	Penalty	Total
2013-14	319701	407247	162850	889798
2014-15	676268	676268	366727	1719263
2015-16	659563	540841	409066	1609470
2016-17	385444	240902	313293	939639
2017-18	1604396	713956	990792	3309144
2018-19	4078823	1084966	2443116	7606905
2019-20	2506427	213046	1455646	4175119
Grand Total				20249338

3. Aggrieved by the order of Ld Appellate Authority and the Assessing Authority the Appellant, through his Advocate Mrs Kiran Dhiman has filed these appeals before this Tribunal on the following grounds:

(a) That the Unit i.e. M/s Yadav K.S.K Thunag was rented out for the assessment year 2013-14 to 2018-19 and for the year 2019-20 and the tenants were liable to pay the tax, but the Assessing Authority assessed the tax and penalty of Rs. 20249338/- against the appellant, which is not sustainable and the same is liable to be quashed and set aside.

That the penalty and tax Rs. 20249338/- is on account of Value Added Tax, but the rate of diesel and petrol are fixed by the Government of India and against those rates, the appellant as well as his tenants have not added any value, hence the Appellant unit is not liable to pay any Value Added Tax, hence the orders of Assessing Authority and Appellate Authority are liable to be quashed and set aside in the interest of justice.

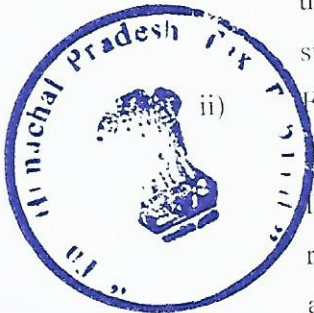
(c) That the economic condition of M/s Yadav KSK is very critical and he could not deposit the precondition amount of Rs. 4000000/- before the lower Appellate

Authority and the Lower Appellate Authority did not decide the appeal on merit, but dismissed the same on the ground that pre condition amount of Rs. 4000000/- has not been deposited. It has been averred that the appellant is not liable to pay any Value Added Tax. In view of this, the Appellate Authority was under legal obligation to hear the appeal of the appellant on merit. Hence, the impugned order dated 12-10-2021 passed in Appeal No. VAT-M-13 to 19 (2020-21) may be quashed and set aside and the case of the appellant may be remanded back to the Lower Appellate Authority to decide the same on merit.

- (d) That the order of Assessing Authority imposing penalty of Rs. 16249338/- is not tenable in the eyes of law and same is in violation of provisions of H.P. VAT Act.
- (e) That the Assessing Authority as well as First Appellate Authority has not taken into consideration the bill books for the year 2013 to 2019 & 2019-20. If the said record was taken into consideration, it would have been proved on record that the appellant Unit has not done any business of selling diesel and petrol, since in those years, the Unit was handed-over on rent to different persons, meaning thereby, the person who was running the Appellate Unit on rent was liable to pay the tax.
4. Sh. Sandeep Kumar, Sr. Law Officer of the department has stated that the appellant failed to maintain account books as per actual sales during the aforesaid assessment years. Moreover, the appellant has clearly done suppression of sales resulting in variation in closing stock. As per the provision of section 16 of HP VAT Act, 2005 the appellant was under statutory obligation to furnish the correct entry in the tax returns which was not done. The plea of the dealer cannot be accepted at this stage. Therefore the petitioner has no case to agitate before this tribunal as the issue raised herein has already been addressed by the authorities below and the action of the lower authority may be upheld.
5. I have heard the argument of the both the parties, perused the record and the law on the subject. I am convinced that the present appeal should be rejected in view of the following reasons outlined below:-

i) In terms of the order dated 16-10-2021 passed by first appellate authority, the non deposit of conditional amount determined by appellate authority is a sufficient reason to reject the appeal.

ii) Further, it is seen that the impugned order dated 04-11-2020 and 09-11-2020 cannot be held to be a non speaking order as it is a very detailed order. It would be pertinent to mention section 16 of the HP VAT Act, 2005. Plain reading of the section shows that the penalty is payable on the amount of tax assessed where there is suppression of sales. The tax liability in respect of suppressed/ concealed sales or purchases has to be determined u/s 16(8) of the act. Once liability on account of suppressed sales is assessed, penalty equal to or up to double of the assessed or liable to be assessed tax amount is payable. The respondent number 2, in the present case, has found the




appellant guilty of suppressing his sales. The dealer has also deposited a few tax payments late and some monthly returns are also filed late, for which the penal action has been rightly taken by the Assessing Authority as per the HP Vat Act.

The collective reading of the section 16, 21 and 32 of HP VAT Act, 2005 clearly shows that the burden of proof lies upon the appellant to prove the sales and purchase in the respective returns at the time of assessment. Moreover, under statute the dealer is obliged to maintain the books of accounts in proper order. The appellant has failed to discharge his duty of the burden of proof to explain late return filing, suppression of sales, delayed tax payments and not maintaining of his account books in proper order in the present case.

In view of the observations made hereinabove **I find no merit in the appeal and the appeal is accordingly dismissed.**

6. 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,
Camp at Shimla

Endst. No HPTT/CS/2022- 191

Dated-12/08/2022

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Appellate Authority-Cum-Joint Commissioner State Taxes and Excise (CZ), Mandi.
3. The Assessing Authority-Cum-Assistant Commissioner State Taxes & Excise Circle Karsog, Distt. Mandi HP.
4. M/s Yadav K.S.K. Thunag, Distt. Mandi, HP.
5. Mrs. Kiran Dhiman, Advocate for the Appellant.
6. Legal Cell, HQ.


Reader
HP Tax Tribunal
Camp at Shimla