

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

Appeal No. : 26 & 27/2023  
Date of Institution : 08-11-2023  
Date of order : 01-05-2024

**In the matter of:**

M/s National Plastic Technologies, Trilokpur Road , Distt. Sirmaur, HP.

**.....Appellant**

**Vs**

- i) Addl. CST&E-cum-Appellate Authority, SZ, Himachal Pradesh, Shimla.
- ii) Assessing Authority, Kala-Amb Circle-II, Distt. Sirmaur (HP).

**.....Respondents**

**Parties represented by:-**

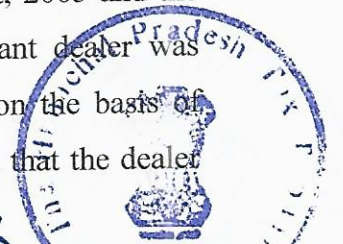
Shri Surender Singh, Advocate for the Appellant.

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

**Appeal under Section 45(2) of the HP VAT Act, 2005 read with Section 9  
of the CST Act, 1956**

**Order**

1. The present appeals have been filed by M/s National Plastic Technologies, Trilokpur Road, Distt. Sirmaur against the order of the Addl. Commissioner State Taxes and Excise-cum- Appellate Authority, SZ, Himachal Pradesh, Shimla dated 05-07-2023 vide which additional demand of Rs. 5,99,482/- and 4,45,028/- which was created for the assessment years 2014-15 & 2015-16, by the Assessing Authority Kala-Amb Circle-II Distt. Sirmaur vide order dated 31-08-2019 against the appellant under the HP VAT Act, 2005 and the Central Sales Tax Act, 1956, was upheld.
2. The brief facts are that M/s National Plastic Technologies, Trilokpur Road, Distt. Sirmaur, HP (herein after refer to as 'Appellant') is a manufacturer and sale of plastic parts of printers, and is registered under the Himachal Pradesh VAT Act, 2005 and the Central Sales Tax Act, 1956 vide TIN No. 02040400071. The appellant dealer was assessed by the Assessing Authority for the year 2014-15 & 2015-16 on the basis of notification number EXN-F-6/2006-Vol-I dated 01-04-2013 and recorded that the dealer



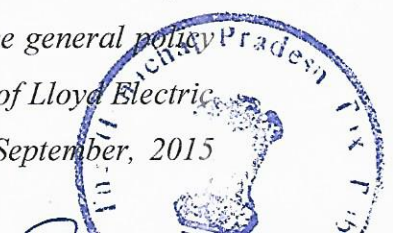
has not deposit the due tax as he was bounded to be deposit at the rate of 2 % of CST as being included in the negative list as per notification number EXN-F(1) 2/2004(iii) Dated 30-03-2005, rather dealer has deposit CST at the rate 1.5% which was less by 0.5% ,hence the Assessing Authority created an additional demand of Rs. 5,99,482/- & 4,45,028/-, under the CST Act, 1956 and HP Vat Act,2005 vide order dated 31-08-2019. Thereafter, the appellate authority upheld the demand created by the Assessing Authority vides its order dated 05-07-2023 and the appeals have been filed against this order.

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

I. *That the Assessing Authority before framing the assessment could not use their own application of mind and on the basis of objection raised by the audit party in the case of Vashisht Alloys, Nahan Road Kalamb has also taken up our assessment case on the same ground. On the basis of notification issued by the department of Excise & Taxation HP which were wrongly interpreted by the Audit party and the Ld. Assessing Authority has passed this impugned order. Although, he knows that several states High Courts has held that reassessment on the basis of audit objection- not sustainable. Moreover, Hon'ble High court of Himachal Pradesh, Shimla has passed land mark judgment in the case of Excise & Taxation Commissioner V Dhani Ram and Sons (2009) 34PHT 278. And cleared that the comments or observation of another authority (such as audit) be considered to be new and definite information warranting reopening of an assessment-held, No.*

II. *Secondly, the Ld. Assessing Authority illegally charged 2% CST instead of 1.5% as not appreciating the chapter 39 in which it is clearly mentioned that the expression "Plastics "means those materials of headings 3901to 3914 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.*

*In other side the Hon'ble Supreme Court of India has already said that "Finance Act will not authorize the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general policy resolution itself. The Hon'ble Supreme Court of India in the case of Lloyds Electric and Engineering Vs State of Himachal Pradesh and Ors on 3 September, 2015*



was held that "the state Government cannot speak in two voice. Once the cabinet takes a policy decision to extend its 2004 industrial policy in the matter of CST concession to the eligible units beyond 31-03-2009, to 31-03-2013, and the Notification dated 29-05-2009, accordingly, having been issued by the Department concerned, viz., Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. In this matter also the respondent no.1 could not appreciate the decision of Hon'ble Supreme Court of India.

III. Under Article 227 of the Constitution, the High Court is vested with the Power of superintendence over the court and Tribunals in the state. Acting as a quasi-judicial authority under the Orissa Hindu Religious Endowments Act, the appellant (Endowments Commissioner) was subject to the superintendence of the High court. Accordingly the decision of the High Court was binding on him. He could not get away from them by adducing factually wrong and illegitimate reasons. The conduct of the appellant is not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the Constitutional Authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of contempt.... The High Court has rightly found the appellant guilty of contempt. "It was held in the case of Baradakanta Mishra V. Bhimsen Dixit.

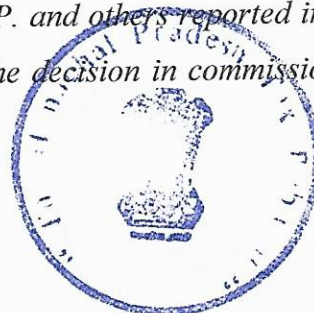
IV. Similarly, it was held in the case of State of Bihar & Ors. Etc. Vs M/s Suprabhat Steel Limited &.... On 17 November, 1998 that consequently, the High Court was fully justified in striking down that part of the notification which is repugnant to sub-clause (b) of Clause 10.4(i) and we do not find any error committed by the High Court in striking down the said notification. We are not persuaded to accept the contention of Mr. Dwivedi that it would be open for the Government to issue a notification in exercise of power under section 7 of the Bihar Finance Act, which may over-ride the incentive policy itself. In our considered opinion the expression "such conditions and restrictions as it may impose" in sub-section (3) of Section 7 of the Bihar Finance Act will not authorize the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general policy resolution itself. In this view of the matter, we see no

illegality with the impugned judgment of the High Court in striking down a part of the notification dated 4<sup>th</sup> April, 1994. This case was also not appreciated by the respondent no.1 which forced the appellant to file the appeal in the Hon'ble Tribunal.

- V. Secondly, the applicant engaged in the manufacturing of Printer parts which fall under HSN code 8443 & 8442. The product manufacture by the applicant does not fall in the negative list prescribed under sales tax legislation. As per Chapter 15 plastic goods as defined by chapter 39 of the Central Excise Tariff Act, 1985 Section VII which falls under negative list i.e. plastics and Articles thereof are being enclosed for your ready reference and kind perusal.
- VI. Moreover, as per Industrial Policy 2004 of the Government of Himachal Pradesh has also issued the negative list products with their HSN code which shows the genuineness of concessional rate of tax claimed. Therefore, the order dated 31-08-2019 passed by the respondent no.2 as well as order dated 05-07-2023 passed by the respondent no.1 which imposes CST 2% on the Printer parts, being non-speaking, unlawful and cryptic, deserved to quash.
- VII. That the respondent no.2 as well as respondent no.1 imposed interest on the disputed tax which wrong in law and arbitrary.
- VIII. The Hon'ble Supreme Court in the case of the Commissioner of sales Tax V Hindalco Industries Ltd., reported in 1999 U.P.T.C. held that no interest can be charged on a turnover which has not been admitted by a dealer.
- IX. That the Hon'ble High Court in the case of M/s Annapurna Biscuit Company V.s State and other reported in 1980 U.P.T.C. 1320 he has placed para 4 of the said judgment which contain, that the dealer may raise dispute about taxability or about rate, and then the question may raise what is tax payable under the Act, that the tax which is calculated or determined by dealer or that found to be due by assessing authority. In such cases it is the bona fide of assessee which shall have to be examined. So long the calculation is honest and fair the dealer shall not incur any liability to pay interest.

Some other cases cited for reference:-

- a) M/s Bharti Airtel Ltd. Vs. State of U.P. and others reported in 2015 (10) ADJ 250 (DB) the court has considered the decision in commissioner of sales tax Vs. Satna Cement Works, Manu U.P.



b) *The division bench has also considered the decision in Commissioner of Sales Tax Vs. Hindustan Aluminum Corporation, 2002(127) STC 258, (SC).*

c) *State of Gujarat Vs. Jay Steel and Tubes Traders (2015) 80 VST 530(Guj).*

X) *That imposition of penalty of Rs. 1000/- under Section 50(2) of the HP VAT Act, 2005 which is wrong and arbitrary in nature. That the turnover of the assessee is accepted and the dispute is of the rate of tax. That the appellant has not contravened or failed to comply with, any of the provision of this Act or the rules made there under therefore the penalty shall not be imposed for the dispute in rate of tax.*

4. The Ld. Counsel for the Appellant prayed that the appeals be accepted and the impugned order be quashed. The Ld. Counsel for the appellant has mainly relied upon the judgments which are as under:-

1. Hon'ble Supreme court of India, in the matter of, Lloyed Electric and Engineering Vs. State of Himachal Pradesh and Ors. Dated 03-09-2015.

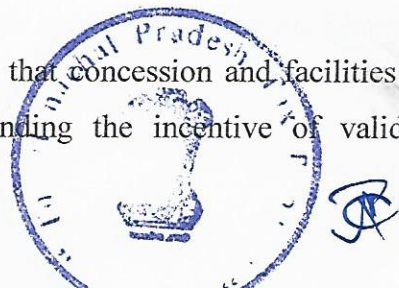
2. Hon'ble Patna, High Court of Bihar in the matter of, State of Bihar and Ors etc. Vs. M/s Suprabhat Steel Limited and ors dated 17-11-1998.

5. Sh. Sandeep Mandyal Sr. Law officer of the department 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 his order dated 05-07-2023 may be upheld.

6. I have heard the Ld. Counsel and the Ld. Govt. Counsel for the respondents in detail and perused the record as well. The points for the consideration raised by the appellant pertains to the issue of 'rate of calculating CST' and 'issue of Industrial Policy 2004 directive Vs notification issued by the Excise & Taxation Dept.'. I have given considerable thought to the issues involved in detail as follows:-

i) The notification dated 29-05-2009 of the Government of Himachal Pradesh, Department of Industries (A) No. Ind. A (F) 6-3/2008 and its partial modification No. Ind. A (F) 6-7/2004 dated 30<sup>th</sup> December, 2004 notifying Industry policy 2004 regarding grant of Incentives, Concessions and facilities to Industrial Units in Himachal Pradesh, has extended the incentive of validity of concessional rate of CST @ 1% upto 31-03-2013 in Rules 10.3 of Industry Policy, 2004 or till the time CST is phased out, whichever is earlier.'

The perusal of the notification specifies that concession and facilities of the industrial policy, 2004 are clear on extending the incentive of validity of



concessional rate of CST under rule 10.3 of 2004 to the specified Industrial unit till CST act is not phased out i.e. till the date GST act is not rolled out. The disputable period in the present case of the dealer is thus falling under this extended concessional period.

Whereas, the Excise and Taxation Department notification No. EXN-F(1) 2/2004 (iii) dated 30-03-2005 had notified the industrial units not eligible for the central sales tax incentives. According to the above notification Sr. No. 22: Mini Steel plant induction/ Arc/ Submerged, furnaces and or rolling Mills are falling under non eligible category. Subsequent notification EXN-F(5)-6/2006-Vol-I dated 01-04-2013 provides that in respect of the sale in the course of interstate trade or commerce of the goods (other than) those manufactured by the breweries, distilleries, non-fruits/ vegetables based wineries and bottling plants (both of country Liquor, Indian made foreign liquor) and industrial units specified in negative list) manufacture by the dealers running any existing industrial unit in the state of Himachal Pradesh, the tax levied under sub section (1) of Section 8 of the Act *ibid*, shall be calculated and payable at the concessional rate of 1.5% of the taxable turnover of such goods with effect from 1<sup>st</sup> April, 2013 for a period of five years or till the implementation of the Goods and Services Tax, whichever is earlier.

The Hon'ble Supreme court of India in the case of Lloyd Electric and Engineering... vs. State of Himachal Pradesh and Ors on 3 September, 2015 held that:-

*'The State Government cannot speak in two voices. Once the cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31-03-2009, up to 31.03.2013, and the Notification dated 29-05-2009, accordingly, having been issued by the Department concerned, viz., Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. **What is given by the right hand cannot be taken by the left hand.** The Government shall speak only in one voice. It has only one policy. The departments are to implement the Government policy and not their own policy'.*

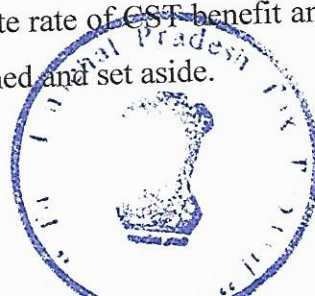


In view of the observations made by the Hon'ble Supreme Court I am of the view that any industry which is cover under the concessional benefits of Industrial policy should be following one policy which is primarily industrial policy. Such incentives are provided to industrial enterprises to encourage and facilitate industrial set up. The boost the confidence of industrial enterprises harmonizing of all policy directions into one policy is must for continued relevance. The State Government at its own consideration has given this form of tax incentive. Independent policy direction by separate departments creates dilemma in the minds of Industrial Entrepreneurs. As per the admission of the appellant he is agreeing to levy 1.5% on sales made against Form C rather than 2% rate of tax which shows that there is no willful act of omission. It is expounded that no default penalty could be imposed in the manifest absence of demonstrable intent to not pay tax or a refusal to pay tax.

- ii) The law enunciated by the Hon'ble Supreme Court in the case of Lloyed Electric and Engineering V/s State of Himachal Pradesh & ors. Dated 03-09-2015 (Supra) and the decision of Suprabhat Steel Limited High Court of Patna speak clearly to emphasize on one policy. This aspect should had been necessarily considered by the Appellate Authority while deciding the appeal. The Assessment done in this case should had not been done in a perfunctory manner and is warranted upon proper adjudication as to willful default and the presence of mens rea.
- iii) I am convinced by the observations made by Hon'ble Supreme Court in the case of Lloyd Electric and Engineering Vs State of Himachal Pradesh and by the Hon'ble Patna High Court in the case of State of Bihar Vs. Suprabhat Steel Limited and Ors.,

The collateral reading of the above stated judgments and in view of the discussions made hereinabove, I find that the appeals should be allowed and hence accepted and the impugned order dated 05-07-2023 of Appellate Authority is set aside. It is also declared that the appellant shall be entitled to the concessional CST rate of 1.5% instead of 2% for the period thereof.

7. On the fact and circumstances, the appeals of the appellant are accepted and the order of the appellate authority of not granting the appropriate rate of CST benefit and upholding the interest and penalty is dated 05-07-2023 is quashed and set aside.



8. Copy of this order is sent to the parties concerned. File after due completion be consigned to the record room.



**Priyatu Mandal**

**Chairman,**

**HP Tax Tribunal, Dharamshala,  
Block No 30, SDA Complex Shimla-9  
Camp at Shimla**

**Endst. No. HPTT/CS/2024 - 51 to 55**

**Dated: 01/05/2024**

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. Assessing Authority Nahan, Distt. Sirmaur, HP.
3. M/s National Plastic Technologies, Trilokpur Road, Distt. Sirmaur (HP).
4. Sh. Surender Singh, Advocate for the appellent.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



**Reader**

**HP Tax Tribunal, Dharamshala,  
Block No 30, SDA Complex Shimla-9**