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

Appeal No.	:	39/2017
OMA No.	:	25/2017
Date of Institution	:	25-04-2017
Date of order	:	01-05-2024

In the matter of:

M/s Sai Refinery, Shubham Complex, Kasauli Road, Parwanoo, Solan, HP.

.....Appellant

Vs

i) Addl. CST&E-cum-Appellate Authority, SZ, Himachal Pradesh, Shimla.
ii) The ETO Cum-Assessing Authority, Parwanoo Circle-I, Distt Solan (HP).

.....Respondents

Parties represented by:-

Shri Vishal Mohan, Sr. Advocate for the Appellant.

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

Appeal under Section 12 of the HP Entry Tax Act, 2010 read with Section 45 (2) of the Himachal Pradesh, Value Added Tax Act, 2005

Order

1. The present appeal has been filed by M/s Sai Refinery, Shubham Complex, Kasauli Road, Parwanoo, Solan against the order of the Addl. Commissioner State Taxes and Excise-cum- Appellate Authority, SZ, Shimla, Himachal Pradesh, dated 30-09-2016 vide which an additional Demand of Rs. 1,22,37,501/- (Rs. 1,84,05,946/- actual demand minus penalty waiver of Rs. 61,68,445/- by the Appellate Authority) for the assessment year 2014-15, by the Assessing Authority Parwanoo Circle-I vide order dated 10-09-2015 against the appellant under the HP Tax on Entry of Goods into Local Area Act, 2010 was upheld.

2. The brief facts are that M/s Sai Refinery, Shubham Complex, Kasauli Road, Parwanoo, Solan, Himachal Pradesh (hereinafter referred to as 'Appellant') is an industrial unit holding TIN 02020501074 and is engaged in manufacturing of gold and silver bars, and

its medallion, jewellery articles and refining of gold and silver. For the purpose of use in manufacture dealer has caused to enter in to the limits of the state raw material and inputs i.e. dore-bars from outside the state. Some goods manufactured/ refined by the dealer from the said raw material/ inputs were dispatched outside the state otherwise than by way of sale. The Assessing Authority held that the appellant dealer was liable to pay Entry Tax as the gold and silver purchased by the appellant falls under the definition of non-ferrous metals and hence covered under Schedule-II of HP Tax on Entry of Goods into Local Area Act, 2010 at item no. 9(b). The Assessing Authority assessed the amount of Entry Tax on the value of afore-said goods purchased from outside the state and subsequently sent outside the state by way of stock transfer. Further, interest and penalty under section 6-A (4) and under 6-A (3) was also levied. It resulted in creation of total additional demand of Rs. 1,84,05,946 /- against the appellant. Against this order of the Assessing Authority, the appellant preferred an appeal to the Ld. Appellate Authority (SZ), HP Shimla. The Ld. Appellate Authority passed the order dated 30-09-2016 and upheld the orders of the Assessing Authority. The Assessing Authority in his order gave a partial relief to the appellant by setting aside the penalty imposed against the appellant whereas the actual demand stands still therein. The appellant has thereafter filed the present appeal against the said appellate order dated 30-09-2016.

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

i) That in the facts and circumstances of the case, the Ld. A.O. is not justified in holding that the appellant was amenable to the provisions of H.P. Tax on entry of goods into Local Area Act, 2010, though the precious metal does not find mention in Schedule-II appended to the said Act. The Ld. Assessing Officer has erred in law in treating the Gold as non-ferrous metal. Even under the H.P VAT Act, the Gold being precious metal has been separately categorized and is taxable at the special rate of 1% therein. Therefore, treating the gold at par with any other metal is a gross illegality. It is pertinent to mention that a notification under the H.P Tax on Entry of Goods into Local Area Act, 2010 was issued and Gold and Silver being precious items were included in Schedule-II separately taxable @ 0.10%. That in itself shows that prior to the issuance of said notification; the same was not at all taxable under the mandate of law. Copy of the said notification is also being placed on record for the kind perusal and ready reference of this Hon'ble Tribunal.

ii) *It is pertinent to mention that during the course of arguments, documents in support of contention of the appellant that gold is precious item and cannot be equated with other non-ferrous items. Supporting documents issued by DGFC, Ministry of Commerce, RBI and Customs and Finance Ministry were placed on record before the Ld. First Appellate Authority.*

iii) *It is also pertinent to mention that as per the instruction of the undersigned, Entry Tax has only been levied in the case of the appellant, whereas many other companies are into the same business who has not been touched. It is settled law that revenue cannot pick and choose in different assessee.*

iv) *That in the facts and circumstances of the case, the Ld. First Appellate Authority is not justified in holding that exemption to the unit located in category 'C' area, not allowable to the appellant as the same has been denotified by the State Government. It is pertinent to mention that subsequently de-notified does not unsettled the vested right accrued in favour of the unit on the principle of promissory estopple.*

v) *That in the facts and circumstances of the case, the Ld. First Appellate Authority is not justified in upholding the assessment of the tax because the area from which the appellant was dealing had not been separately notified as a local Area and as such provisions of H.P. Tax on Entry of Goods into Local Area Act, 2010 did not apply to the same.*

vi) *That in the facts and circumstances of the case, the additional Excise and Taxation Commissioner is not justified in upholding the charging of interest, though the same had been charged without passing speaking order in respect of the same.*

vii) *That the orders of the Ld. Authorities below are bad in law and facts.*

4. The Ld. Counsel for the Appellant prayed that first and foremost it is most respectfully submitted that the assessee had set up its unit in tax free zone and in tax free zone no taxes were being collected. It is admitted that Bansar Panchayat was de notified as Category-C backward area vide notification dated 30-03-2013, but the same would not hamper the claim of the assessee as the said notification and the exemption came up for adjudication before the Division Bench of Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court held that even if Panchayats have been de notified to be backward, exemption for the period of first 10 years cannot be denied. Copy of the said judgment is being placed on record for the kind perusal and ready reference of this Hon'ble Tribunal.

As per the mandate of Hon'ble High Court of Himachal Pradesh the exemption is to be accorded and as such appeal deserves to be allowed on this very score as the issue is directly, wholly and squarely covered in favour of the assessee by the judgment of the Division Bench of the Hon'ble High Court of Himachal Pradesh.

Secondly, it is most respectfully submitted that Entry No. 9 of Schedule-II was amended with effect from 19-04-2016 and precious metals were made amenable to tax for the first time with effect from 01-05-2016. Prior to that only non-ferrous metals other than precious metals were amenable to tax. Precious metals and non-ferrous metals have always been treated separately by the state fiscal laws. Even in the VAT regime same are treated differently. As there was no specific insertion of the precious metals which only came to be added by the Act of 2016, the natural corollary of the same is that prior to 01-05-2016 precious metals were not amenable to taxation at all. The contention of the Ld. Assessing Authority and the first Appellate Authority that non-ferrous metals include precious metals are too far fletched. Had the same been the intention the precious metals would not have been introduced in column no. 9 of Schedule-II with effect from 01-05-2016 that too taxable @ 0.10%. That being the case the interpretations of the Ld. Assessing Authority and the first Appellate Authority are bad in law and facts.

It is most respectfully prayed that appeal filed by the assessee may kindly be allowed and the demand so created be struck down or any other relief be given which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.

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 30-09-2016 may be upheld. The Entry Tax Act is a separate and independent legislation enacted in 2010, there is no mention of exemption of goods manufactured in tax free Zone i.e. "C" category. He further stated that interest has been levied as per the provisions of the Act. He also argued that gold is a non- ferrous metal as per the definition of various dictionaries and as per Engineer's Handbook as well. He further pleaded that Entry 9(b) of the Schedule-II of the 2010 act includes all ferrous and non-ferrous metals of any nature whatsoever.

6. I have heard the Ld. Counsel and the Ld. Govt. Counsel for the respondent in detail and perused the record as well. The primary issue for consideration is that whether the dealer/ appellant are eligible to exercise tax exemptions as per Govt. notifications or not. Also, it is to be decided that whether gold falls under non-ferrous metal under the Entry 9(b) of

the Schedule II of the HP Tax on Entry of Goods Act, 2010 as on date when assessment was done or not. I proceed to decide the present appeal on merits, as per points below:-

i) As regards levy of Entry Tax, it is neither in doubt nor in dispute that the appellant has, in fact, admittedly affected entry of the concerned goods. The registration certificate of the dealer shows that the dealer has registered himself for manufacturing of (1) 'Gold & Silver Bars and its Medallions, and (2) Jewellary & Refining of Gold and Silver with the department of industry also vide registration no. EM No. 02/009/11/15545 dated 26-03-2010. At the time of registration he has furnished a project report in which the processing and manufacturing activities are collaborated. It is an admitted fact by the dealer that he is importing gold in the shape of 'dore bars' and sending it back as stock transfer in the shape of 'biscuits' after purification. It is remarkable to note here that Entry Tax is levy able not only on manufacturing but also on processing as is clear in the Act (Sub-Section (3) of Section 3). The provision of the charging Section 3(1) of the Entry Tax Act mandates that *"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."* It is an admitted fact that the appellant has been importing gold bars and refining them and then sending them outside the state. It was revealed on examination of returns filed by the dealer that since April 2014 dealer has sent the goods outside the state ; otherwise then by way of sale (stock transfer). The intention of the introduction of the HP Tax on Entry of Goods into Local Area Act, 2010 is to tax the area and business where is no tax i.e. VAT or CST is levy able, stock transfer is one such example where the HP TEGLA Act, 2010 comes into effect.

ii) The contention raised by the appellant that his unit was set up in a tax free zone so no tax could be levied or collected for the first 10 years as mentioned in the exemption notification 30-03-12005 issued under Himachal Pradesh General Sales

Tax Act, 1968; issued on 30-03-2005 under the Central Sales Tax Act, 1956 and issued on 19-01-2006 under the HP Value Added Tax Act, 2005, is not tenable.

On this note, it is seen that on 30-03-2013, that the status of the backward Panchayat for Banasar in Dharampur block has been denotified by Govt. Notification Number PLG(BASP)/2012-13(Misc) dated 30th March, 2013 issued by department of Planning Govt. of Himachal Pradesh. This was followed by an office letter dated 26-04-2013 from the office of Principal Secretary (Excise & Taxation), directing the Excise & Taxation Commissioners to realize the tax under the relevant statutes from the industrial units established in the areas, now de-notified as backward areas or re-notified as non-backward areas. Consequently, notices were issued to the petitioners by the Excise & Taxation Department that on account of withdrawal of the status of backward Panchayats where they had established their industrial units, they were liable to deposit VAT and CST with effect from 01-04-2013 and were directed accordingly.

In this regard, I am convinced with the view of Ld. Govt. Counsel that Entry Tax Act is a separate and independent Legislation which was enacted in 2010 where in which there was no mention of exemption of goods manufactured in tax free zone i.e. 'C' Category. It is pertinent to mention that dealer has caused Entry of raw material into the limits of the State in form of dore-bars form outside the state which were refined by the dealer and were dispatched to outside the state otherwise then by way of sale. The action initiated under HP Tax on Entry of Goods into Local Area Act, 2010 is according to the notified legislation. There is no mention of exemption of goods on manufactured in tax free zone under the above HP Tax on Entry of Goods into Local Area Act, 2010. Goods exempted from Entry Tax are categorically mentioned in Schedule-I appended to the act whereas the goods refined by the appellant are not entered in the Schedule-I. When the Entry Act was enacted the 'C' category area was already in place. Had there been any intention of the legislature to extend exemption of Entry Tax it would have found place in the Act itself, categorically. Hence, **issue of exemption to backward Panchayat or withdrawal thereof on 30-03-2013 has no impact on the liability of Entry Tax as the liability is for the period of 2014-15.**

iii) Further, it is seen that amendment to Entry No. 9(b) of Schedule-II dated 19-04-2016 made precious metal amenable to tax. Prior to that non ferrous metal were amenable to tax with specified rate of tax. The dealer was assessed by the

Assessing Authority on dated 10-09-2015 treating gold under non ferrous metal and alloys category. I am convinced with the findings of the Appellate Authority that if the attention of the statute was not to tax non-ferrous items like gold and silver then same should have been included in Schedule-I of the act i.e. Schedule of exempted goods under the act. As such, the Assessing Authority has rightly treated these goods to be covered under Entry Number 9(b) of the HP Tax on Entry of Goods Act, 2010.

Also, the order of the Assessing Authority is a detailed one, specifying gold to be treated as non-ferrous metal. Hence, the contention raised by the appellant to treat gold as a precious metal is not acceptable in the present scenario. It is evident from the record that the assessment proceedings fall before the amendment to the Schedule-II of the Entry Tax Act, 2010. Therefore, in the present case it is warranted to take gold under the category of non-ferrous metal.

iv) In written submissions produced by the advocate of the appellant reliance on order of the Division Bench of the Hon'ble High Court of Himachal Pradesh in CWP No. 4599 of 2013 and connected matters decided on 4th December 2023 is seen, where core question of whether tax incentives granted to petitioner under specific rules and statutory notification framed and issued pursuant to the state industry policy, 2004, could be withdrawn during the currency of the exemption period was decided. The judgment cited by the appellant has categorically held that petitioner are entitled to tax exemptions as per the tax exemption notification dated 30-03-2005(GST & CST) and 19-01-2006 (VAT).

In the present case, the pivotal question that is to be adjudicated is that whether the case of dealer is covered under above said judgment. It is expounded that as per the discussions made hereinabove the dealer was clearly falling under HP Entry Tax Act, 2010 and was thus liable to file a return and pay tax as prescribed under section 6-A(1) and (2) of the act. The above said judgment is not applicable in cases covered under the HP Tax on Entry of Goods Act, 2010. The circumstances of the case are different and in the present case dealer has caused loss to the state exchequer by non deposition of Entry Tax within the prescribed period. As such I am of the view that the order of the Assessing authority is legal and just.

7. For the aforesaid reasons, the appeal does not merit consideration and is dismissed. The impugned order of the Assessing Authority dated 10-09-2015 and the order of the Appellate Authority 30-09-2016 are upheld.

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,
Camp at Shimla

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

Endst. No. HPTT/CS/2024 - 4670 50 **Dated:** 01/05/2024

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The ETO Cum-Assessing Authority, Parwanoo Circle-I, Distt Solan (HP)
3. M/s Sai Refinery, Shubham Complex, Kasauli Road, Parwanoo, Solan (HP)
4. Sh. Vishal Mohan, Sr. Advocate for the Appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.

Reader
HP Tax Tribunal,
Dharamshala

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