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

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| Appeal No. | : | 18 to 21/2023 |
| Date of Institution | : | 11-07-2023 |
| Date of order | : | 23-07-2024 |

**In the matter of:**

M/s Himachal Wire Industries (P) Ltd. G.T. Road, Damtal- 176403, HP.

**.....Appellant**

**Vs**

i) Jt. CST&E, cum Appellate Authority, NZ, Palampur.
ii) ACST&E Cum Assessing Authority, Damtal Kandrori (HP).

**.....Respondents**

**Parties represented by:-**

Sh. Jagdish R Gupta; Sh. Rakesh Sharma, & Ms. Sakshi Gautam, Advocates for the Appellant.

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

**Appeal under Section 45 (2) of the Himachal Pradesh, Value Added Tax Act, 2005**

**Order**

1. The present appeals have been filed by M/s Himachal Wire Industries (P) Ltd. G.T. Road, Damtal against the orders of the Ld. Jt. Commissioner State Taxes and Excise-cum- Appellate Authority, NZ, Palampur, Distt Kangra, Himachal Pradesh, dated 24-04-2023 vide which the appeals filed by the applicant for the years 2011-12 to 2014-15, against the order of the Assessing Authority Damtal (Respondent Number 2) vide which the Assessing authority objected on calculation on rate of tax computed by the dealer as per deferment scheme and disallowed ITC during the Assessment proceedings vide orders dated 28-03-2022 for the year 2011-12 & 30-06-2022 for the years 2012-13,2013-14 & 2014-15 respectively under the HP VAT Act, 2005, was upheld.
2. The brief facts are that M/s Himachal Wire Industries (P) Ltd. G.T. Road, Damtal, Himachal Pradesh (hereinafter referred to as 'Appellant') is an industrial unit holding TIN

02060600007 and is engaged in manufacturing of Steel Wire, GI Wire, barbed wire, ACSR Conductors, PVC and XLPE cables. The appellant availed the facility of concession under Himachal Pradesh General Sales Tax (deferred payment of tax) scheme 2005, which was issued under Notification Number EXN-F(1)-2/2004 dated 26-07-2005 for the financial year 2014-15 & 2015-16. It is pertinent to mention that an amendment in the Himachal Pradesh General Sales Tax Act, (deferred payment of Tax) scheme 2005 inserted Para 5-A as under :-

*'5A:- Option by industrial units :- (1) notwithstanding anything contained in Para 5 of the said Scheme, the new and existing eligible industrial units other than those specified in the negative list, which have come into commercial production before 07-01-2003 and which, after the approval of the Director of Industries or other officers for authorities by him, undertake substantial expansion only after 07-01-2003 may either continue avail such facility or by making an application in Form S.T. (DP)-VII opt to pay 65% of the tax liability, for any tax period of a financial year, according to return, and upon making such payment, he shall be deemed to have paid the tax due from him according to such return. The option once exercised shall be final.*

*(2) The registered dealer (industrial unit) making payments of tax under sub- Para (1) of this Para shall be entitled to input tax credit under section 11 of the Himachal Pradesh Value Added Tax Act, 2005 in respect of intra-state sales, inter-state sale or transfer of goods on consignment basis or branch transfer basis.*

The Assessing Authority at the time of assessment observed that the dealer has wrongly calculated his gross VAT liability for the assessment years 2011-12 to 2014-15 and claimed an ITC which resulted in net tax liability as zero of the dealer, the provisions of the deferment scheme shall not be operative owing to nil tax liability and therefore there won't be any question of claiming exemption in case of nil tax liability. Whereas in the present case, the dealer, despite his liability being nil, also unlawfully claimed deduction of certain amount by reducing the tax rate. The above mentioned notification speaks of giving any right or entitlement to claim deduction from gross tax liability. The basic premise of the scheme is to provide incentive to the dealer in form of exemption in payment of tax. Therefore the scheme allows the dealers to pay only 65% of their tax liability, the remaining 35% of tax liability is deemed to be exempted to avail the benefit of scheme, the dealer was first require to ascertain his tax liability as per the provision contained under section 12 of HP VAT Act,

2005. After the ascertainment of tax liability the dealer has to pay only 65% of his tax liability as per deferment scheme. Whereas in the present case the dealer instead of first determining the tax liability, secured benefit of scheme by claiming deduction 35% of gross tax liability before the determination of his actual tax liability. If during any period the tax liability of a dealer becomes nil, the provisions of the scheme won't be operative as tax liability of the dealer is nil. It is a very simple and obvious explanation of the scheme that one can extract from the provisions of the scheme. Whereas the dealer, with malafide intention of evading tax, claimed unlawful deduction, in the name of benefit of the scheme, even before determining his actual tax liability. Thus, the Assessing Authority vides its orders dated 28-03-2022 & 30-06-2022 denied the benefit of any exemption under the deferment scheme. Thereafter, the Appellate Authority upheld the orders of the Assessing Authority vide order dated 24-04-2023 stating that the dealer has not calculated his tax liability as per provisions of section 12 of HP VAT Act, 2005 rather he has devised his own formula in contravention of law which led to unlawful accumulation of ITC in favor of dealer causing loss to the Govt. Exchequer and the present appeal has been filed against this order.

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

   i) *That the Assessment order for 2011-12 to 2014-15 made on* 28-03-2022 & 30-06-2022 *is totally time barred under section 21(5) of the H.P. VAT Act, 2005. 1st Appellate Authority had wrongly concluded that Assessing Authority had proceeded to assess the dealer well within time, when the notice issued were never complied with on 19-03-2016, 02-02-2017,20-02-2017,25-04-2017,17-05-2017, 11-09-2017, 15-11-2019 and 10-12-2019 as is clear from order sheet and Assessment order itself. Thus, order passed is totally time barred and prayed to be quashed. Assessment made is best judgment assessment and its confirmation by Appellate Authority is bad in law..*

   ii) *That no notice under CST Act, 1956 for 2011-12 to 2014-15 was ever issued, thus assessment order is bad in law.*

   iii) *That no notice was ever issued before levy of the penalty thus levy of penalty without notice is bad in law.*

   iv) *That as no tax is payable if C/F ITC is corrected, the levy of interest is bad in law.*

v) *That appellant craves for your honor's leave to add, amend or alter any ground of appeal before the appeal is finally heard or disposed off and its confirmation by Appellate Authority is against provisions of law.*

4. The Ld. Counsel Sh. Rakesh Sharma for the Appellant prayed that the appeal be accepted and the impugned order be quashed. The cogent reading of VAT provisions coupled with the Settled Law no assessments cannot be completed after the expiry of 5 years in any case. The reasoning submitted by the authorities to initiate the proceedings within 5 years without any time period for conclusion of the same is incorrect. The Rule 64(2) clearly stipulates as under:-

"The assessment under sub-rule (1) shall be completed
Within three months after service of the notice."

So, the framing of assessments after 7 years of initiation of proceedings and 8 to 11 from the end of the return period is hopelessly barred by limitation.

The Government of Himachal Pradesh, vide notification number EXN-F(1)2/2004(III)- dated 30.03.2005, notified Himachal Pradesh General Sales Tax (Deferment Payment of Tax) scheme, 2005, and notification dated 26.07.2005, has clearly provided that eligible units were allowed making deferred payment of sales tax, for a period of 5 years in 'A' Category of area and 8 years in 'B' category of area, or by making an application in Form ST(DP)-VII of pay 65% of Tax Liability. The bare reading of the above notification clearly provides that eligible units were liable to pay only 65% of their tax liability. In other words, the gross tax liability otherwise payable shall be reduced by the 35%. The section 12 of HP VAT Act, 2005, provides for determination of net tax payable. The relevant part of the section 12 is reproduced as under:

Section 12(1) : The net tax payable by a registered dealer for a tax period shall be difference between the output tax plus purchase tax, if any, and the input tax credit, which can be determined from the following formula. namely

Net tax payable= (O+P)-1

Explanation. ---In this formula- - -

(i) 'O' denotes the output tax payable for any tax period;

(ii) 'P' denotes the purchase tax paid by a registered

Dealer for any tax period; and

(iii) 'I' denotes the input tax paid or payable for the said tax period, including input tax credit, if any, carried forward from any proceeding tax period as determined under section11.

The aforesaid provisions provide the method to determine the net tax payable. Here the term net tax payable is referred to tax payable in cash. In the light of above notification and the bare provisions of section 12 in the equation- Net tax payable through cash, whereas 'O' shall stand for output liability i.e. 65% upfront in this present case, which shall be determined after reducing input tax credit being denotes by 'I' and 'P' stands for purchase tax not applicable in the present case. The assessing authority has committed grave error by equating Net Tax Liability (tax payable in cash) with output liability before setting off Input Tax Credit as per section 12 of HP VAT Act, 2005. The above provisions as well as clear mandate of deferment schemes clearly spells out that the output liability of a dealer shall be reduced by 35% in case he opt for upfront payment of 65% of total tax liability. The respondent authority committed grave error by taking into consideration the entire turnover for the purpose of output liability despite of the notification dated 30.03.2005 ad 26.07.2005, which had reduced the liability by 35% subject to submission of option and qualifying the given criteria.

The legislature in its wisdom has correctly fixed the maximum time period of 5 years of proceedings under HP VAT Act, 2005. In view of the above the impugned assessment orders be quashed being hopelessly time barred. The other limb of arguments on merit also is considered as per oral argument and memorandum of appeal.

**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 24-04-2023 may be upheld.

**6.** I have heard the Ld. Counsel and the Ld. Govt. Counsel for the respondent in detail and perused the record as well. The point for consideration raised by the appellant pertains to the issue of application of deferment scheme in letter and spirit. In the interest of justice and given

the fact that the matter pertains to the year 2011-12 to 2014-15. I proceed to decide the present appeal on merits, as per points below:

i) The contention raised by the appellant that the assessment order was time barred under Section 21(5) of the HP VAT Act, 2005 is legally not sustainable. The plain reading of the Section 21(5) shows that as per the provision of above mentioned section if the dealer does not comply with the terms of notice the Assessing Authority shall within five years after the expiry of such period proceed to assess the amount of tax due from the dealer. In the present case the dealer had complied to the notices and sought several adjournments citing his inability to furnish 'C' Forms. It is seen that ample time was given to the appellant to produce his submissions however; it is observed that several adjournments sought by the appellant were to drag the case beyond the period of five years which is evident from his appearance in response to notice which was issued after the expiry of five years period. Further, the Assessing Authority has clearly stated in orders of Assessment for financial year 2011-12 that the notice for the assessment of FY 2011-12 was issued well in time that is on 19.03.2016. The Assessing Authority has proceeded to assess the case well within the time; it is only due to the delay on the part of dealer, in producing the 'C' form due to which the assessment could not be carried out. However, once the process of assessment has been initiated in time, the provision of section 21(5) of HP VAT Act does not require that the assessment should be completed within five years. It speaks of a time frame, during which the Assessing Authority must proceed to assess the tax. It does not provide that the assessment should be concluded within five years.

ii) As per the assessment order done by the Assessing Authority and admissions made before the Appellate Authority, the appellant has not disputed 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 evaluation of gross turn over, ITC to be claimed and amount retained on closing stock by the 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 the HP VAT Act, 2005 which is the basis to determine CST & VAT liability on the appellant.

iii) The section 12 of the HP VAT Act, 2005 provides: "The net tax payable by a registered dealer for a tax period shall be the difference between the output tax plus purchase tax, if any, and the input tax credit, which can be determined from the following formula, namely:-

Net Tax Payable = (O+P)-I"

Net tax payable denotes tax liability wherein 'O' signifies output tax payable for any tax period, 'P' signifies purchase tax paid by a registered dealer for any tax period and 'I' signifies the input tax paid or payable for said tax period, including input tax credit, if any, carried forward form any preceding tax period as determined under Section 11. As such, on the basis of above provision of the Act, benefit of 35% tax rebate has been rightly allowed on the basis of tax liability of the appellant, i.e. on net tax payable. Policy of upfront payment in fact is not required to be mixed up with the normal provisions of the Act relating to the ITC. While claiming ITC the dealer claims the ITC on the basis of tax liability.

The dealer has not determine his tax liability as per above formula accordingly, I am convinced by the observations made by the Assessing Authority that as per the interpretation of the exemption given under deferment scheme and as per Section 12 of HP VAT Act, 2005 the benefit of deferment scheme shall be availed by the dealer only when the tax liability to pay in cash arises. As per admission of the appellant he has discharged his all liability through ITC which means that net tax liability comes out to be NIL, which indicated that the said deferment scheme cannot be applied on NIL tax liability as per provisions of the scheme, it is thereby inferred that only when any tax liability accrues on the part of dealer then only the dealer is supposed to availed the benefit of scheme. On the contrary of the facts, the dealer has not calculated his liability as per provisions of Section 12 of the HP VAT Act, 2005 rather has divide his own formula as per his own suitability.

The plea of the appellant to allow credit of input tax paid and charge 65% of output VAT would result in subverting the very concept of value addition tax and would lead to negative effect. The reliance is placed on the judgment delivered by Supreme Court in the case of *Union of India V. Dharmendra Textile Processor (2008) 18 VST 180 has clearly held that* ***"it is well settled Principle of law that the court***

***cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intention…. Legislative casus omissus cannot be supplied by judicial interpretative process."***

*iv)* Further, it is seen that the impugned orders dated 24.04.2023 cannot held to be a non speaking orders. The impugned orders are self explanatory describing the application of deferred scheme in consonance with Section 11 & Section 12 of the HP VAT Act, 2005. Very significance facts are available on record that the appellant has significant locally purchased goods under closing stock at the end of the year. As per Section 11 of the HP VAT Act, 2005 ITC can only be availed on local purchase of goods that has been sold during the tax period. ITC involved in unsold stock cannot be claimed, which is thus rightly rejected by the orders of the Assessing Authority.

*v)* The judgments cited by the Ld. Counsel the case of State of Punjab Vs Bhatinda District Coop. Milk Producers union Ltd (2007) and State of HP and ors Vs Raj Kumar Brijender Singh and ors (2004) are not applicable in the context of the present case as the facts and the circumstances of the cases are different and in the present case dealer has caused loss to the state exchequer by unlawful claim of certain amount by reducing the tax rate which resulted in unlawful accumulation of ITC in favor of the dealer. Also it was founded that ITC was also unlawfully claimed on unsold stock. As such, I am of the view that the order of Assessing Authority is legal and principle of natural justice has been honored.

**7.** For the aforesaid reasons, the appeal does not merit consideration and is dismissed. The impugned order of the Assessing Authority dated 28-03-2022 & 30-06-2022 and the order of the Appellate Authority 24-04-2023 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**

**Endst. No. HPTT/CS/2024 - 94** **Dated:** 23.07.2024

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. ACST&E cum Assessing Authority, Damtal Kandrori (HP).
3. M/s Himachal Wire Industries (P) Ltd. G.T. Road, Damtal- 176403, (HP).
4. Sh. Rakesh Sharma, and Ms Sakshi Gautam Advocates for the Appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.

**Reader**
**HP Tax Tribunal**
**Dharamshala**