

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

Appeal No. : 01/2024
Date of Institution : 26-03-2024
Date of order : 05-03-2025

In the matter of:

M/s Jindal Mectec P Ltd. (Presently known as Kingspan Jindal Pvt. Ltd)
Souri, Nalagarh, Solan HP.

.....Appellant

Vs

1. Appellate Authority cum Addl. CST&E, SZ, Shimla, HP.
2. Assessing Authority Nalagarh Circle-III, Distt. Solan, H.P.

.....Respondents

Parties represented by:-

Sh. Inderjit Singh & Sh. Ajay Sharma Advocates for the Appellant.
Sh. Sandeep Mandyal, Sr. Law Officer for the Respondent.

**Appeal under Section 9 of CST Act, 1956 read with section 45 of HP VAT
Act, 2005.**

Order

1. The present appeal has been filed against the order of the Ld. Addl. CST&E (Appellate Authority) (SZ) HP dated 29.01.2024 vide which the appeal filed by the appellant for the year 2010-11 against the order of the Ld. Assessing Authority Nalagarh-III (Respondent No.2) was set aside by the Ld. Appellate



[Handwritten signature]

1.

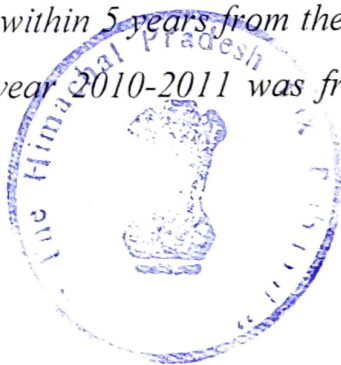
Authority and the case was remanded back to the Assessing Authority to assess the case afresh under the HP VAT act, 2005 and CST Act, 1956.

2. The brief facts of the case as per the impugned orders are that the appellant dealer is engaged in manufacturing of all types of building Insulated panels, Shelters, Rigid Foam, PV Form Sheets and PC Foam & Auto Sheets, in the name and styles as M/s Jindal Mectec. (P) Ltd presently known as King span Jindal Pvt. Ltd. Souri, Tehsil Nalagarh, District Solan, HP. The appellant is registered by Tin No. 020300640 under the HP Vat Act 2005 and CST Act 1956. The assessment order for the assessment year 2010-2011 was passed by the Assessing Authority Nalagarh on dated 28.09.2017 and created the additional demand of Rs.15, 11,170/- under HP VAT Act and Rs. 84,182/- under CST Act. The appeal was preferred against this order before the Appellate Authority cum Additional Commissioner State Taxes and Excise SZ Shimla HP mainly on the ground of limitation. The Ld. Appellate Authority has set aside the assessment order dated 28.09.2017 passed by the Assessing Authority Nalagarh on the ground of limitation and consequently the case was remanded back to the Assessing Authority Nalagarh to pass a fresh reassessment order. Thereafter, the present appeal is preferred by the appellant dealer against the order of Appellate Authority.

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

I). *During the assessment proceeding notice for assessment was issued to the appellant on 29.07.2017 by the Assessing authority Nalagarh and Assessment was framed on 28.09.2017 which is barred by limitation.*

II). *An Assessing Authority is conferred with the power to assess a case U/s 21 of HP Vat Act within 5 years from the closing of financial year. In the present case Assessment for the year 2010-2011 was framed on 28.09.2017 which is barred by limitation. U/s*



RSingh 2.

21(5) assessing authority has to finalize the assessment within 5 years from the closing of the financial year, but in the case in hand after 01.04.2016 assessing authority loses its jurisdictions to frame the assessment. Once a period of limitation prescribed by law expires, power of assessing authority to pass an assessment order comes to an end. No assessing authorities assume jurisdiction not conferred on him by express word of the statute. A proceeding not initiated within period of limitation is vitiated and assessing authority would lack jurisdiction to entertain a proceeding initiated thereafter. Any assessment order passed after 01.04.2016 is illegal and without jurisdiction and deserve to be set aside.

III). Service of notice u/s 21(4) of HP VAT Act under prescribed period in the statute is a condition precedent to the valid exercise of power u/s 21(5) and it goes to the very jurisdiction of the officer. Under the present case notice was issued on 29.07.2017 after expiry of the limitation period which is illegal and without jurisdiction.

IV). The assessment order dated. 28.09.2017 passed by the assessing authority Nalagarh was challenged before Ld Appellant authority SZ Shimla mainly on limitation ground and Ld. Appellant Authority is pleased to set aside the assessment order 28.09.2017 on the ground of limitation. But at the same time after setting aside the assessment order case was remanded back to the assessing authority Nalagarh to pass a fresh assessment order. Ld. Appellant Authority has rightly set aside the assessment order dated. 28.09.2017 on the ground of limitation but second part of order to remand the case back to assessing authority has no jurisdiction to assess or re-assess in time barred cases. Jurisdiction of assessing authority to initiate assessment or re-assessment proceeding under section 21 and 23 of HP Vat Act is jurisdiction which he derived under section 21 or 23 and not by virtue of any direction given to him by the Appellant Authority. Once the assessment order is set aside by the Appellant Authority on the ground of limitation there is no scope left to re-open the case.



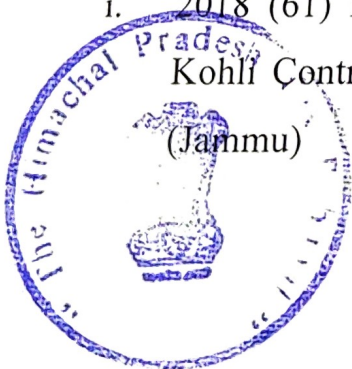
[Handwritten signature]

V). The appeal was filed merely on the ground of limitation and this contention is admitted by the Ld. Appellate Authority SZ Shimla in para 8 of the judgment passed on 29.01.2024. Complete facts and law were placed before the Ld. Appellate Authority SZ Shimla by the appellant, to establish the expiry of limitation period and department representative at the time of argument has not raised any objection to the facts mentioned by the appellant and he also admitted the legality of section 21(5) of HP Vat Act 2005 and same can be viewed in para 7 of judgment passed by the Ld. Appellate Authority SZ Shimla but remanding the case back to the Assessing Authority to pass a fresh order is beyond the scope of law when Assessing Authority has no jurisdiction to re-assess a case which is barred by limitation and original assessment is set aside by the same Ld. Appellate Authority.

4. The Ld. Counsel for the appellant prayed that the appeal be accepted and impugned order be quashed since dealer has never defaulted in any payment of tax in previous years or months, since, in the present case the assessment is done for the year 2010-11 on dated 28.09.2017, wherein section 21(5) of the HP Vat Act 2005 provides a limitation period of 5 years within the closing of the financial year. Thereby, the assessment order dated 28.09.2017 is illegal and without jurisdiction. He also submitted that even as per the order first notice was issued on 29.07.2017 which is also barred by limitation. Also, as the assessment order is set aside by the Appellate Authority on the ground of limitation there is no scope left to reopen the case for re-assessment because it is time barred for the reason that direction has been given approximately after 12 years for the assessment year 2010-2011.

In support of his submissions, Ld Counsel has referred to following decisions:-

- i. 2018 (61) PHT 276 (J and K States Tax Appellant Tribunal)- Kuldeep Kohli Contractor v/s Deputy Commissioner Commercial Taxes Appellant



[Handwritten signature]

4.

- ii. (2012) 43 PHT 211 pvt- in a case Varun Duggal C/o Biotronik Medical Devices India P Ltd v/s State of Punjab. AIR 1999
- iii. SC 1125-Ashwn Kumar K Patel vs Upendera J. Patel and other is followed.
- iv. 2014 (47) PHT 228(PVT Vardhman Polytex Ltd. Bathinda vs State of Punjab.
- v. 2016 (53) PHT 149 (J&K State) - (J & K State Sales Tax (Appellate) Tribunal, Srinagar) Saba Timbers Zaldagar, Srinagar vs Appellate Authority, Commercial Taxes Kashmir Division Sgr.
- vi. The Hon'ble Punjab and Haryana High Court in case of Gopal oil Mill vs Assessing Authority (1984) 57 STC 314 (P&H)
- vii. Madan Gopal vs CTO 1984) Tax gazetted 14, and Divisional Authority. same view was taken in cases reported as (1979) 44 STC 456 and (1983) Tax Gazetted 19(AII)
- viii. Assessing Authority v/s Om Parkash Seth (1969) 24 STC 282(P& H) (Full Bench)
- ix. Ghan Shaym Dass v/s Regional Assessment Commissioner Sales tax Nagpur -1963) 14 STC 976 (Supreme Court)
- x. Jaipuria brother Ltd. v/s State of Utter Pradesh 1965) 16 SCT 494-SC .

5. Sh. Sandeep Mandyal, Sr. Law officer of the department said that the petitioner has no case to agitate before this tribunal as the issues raised herein have been already addressed by the authorities below and their actions may be upheld.

6. I have heard the Ld. Counsel and the Ld. Govt. Counsel for the respondents in detail. The short point that arises for consideration is whether it is a fit a case for re assessment under Section 23 of the HP Vat Act 2005 or not?

The another point that requires adjudication as raised by the appellant pertain to the issue of *whether the assessment that was framed for the year 2010-11 on*



[Handwritten signature]

5.

dated 28.09.2017 was barred by limitation period or not as per Section 21 of HP Vat Act 2005?

7. The controversy is a narrow one. There is not much dispute about the facts. In any event, the tribunal has to, in its reference jurisdiction consider the questions of law referred to it on the basis of facts found in the orders of Appellate Authority dated 29.01.2024 and Assessing Authority dated 28.09.2017.
8. I have given considerable thought to the issues involved and the questions raised by the appellant are answered as follows:-

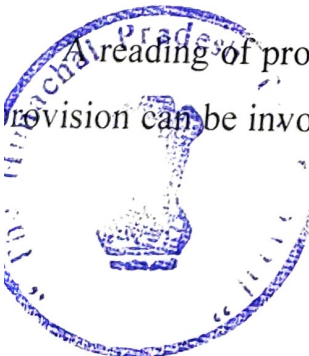
Section 21(5) Of HP Value added tax 2005, states about the limitation period as stated below:-

‘If a dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2) or (4), the Assessing Authority shall, within five years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer. If a dealer does not furnish returns in respect of any period by the prescribed date, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer.

Section 23 of the HP Value Added Tax Act, 2005, allows reassessment of tax, as stated below:-

‘If in consequence of definite information which has come into his possession, the Assessing Authority discovers that the turnover of the business of a dealer has been under-assessed or escaped assessment in any year, the Assessing Authority may, at any time within three years from the date of assessment under section 21, proceed to re-assess the tax payable on the turnover which has been under-assessed or has escaped assessment’:

A reading of provisions under Section 23 of HP Vat act 2005 makes it clear that this provision can be invoked to reassess any return/record of the dealer if the dealer has been



[Handwritten signature]

6.

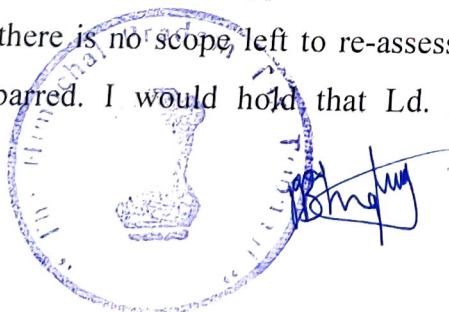
under-assessed or has escaped assessment after affording a reasonable opportunity of being heard. It is very well settled clear provision under the HP Vat Act 2005. The scope of reassessment is limited. The same cannot be enlarged to re examine the concluded issues on which there may be permissible different opinions. Herein case, it is clear that the assessment that was concluded on 28.09.2017 which was beyond the period of 5 years as prescribed under Section 21(5) of the HP Vat Act 2005. It is also seen from the order of the Assessing Authority that even the notice for assessment was issued on 29.07.2017 which is also barred by the limitation.

In this regard reliance has been placed on Supreme Court judgment in Union of India vs. Dharmendra Textile Processors (2008) 18 VST 180 where it has been 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”**.

It is also evident from the order of Appellate Authority that the order of assessing authority was set aside on the ground of limitation as provided under Section 21 of the HP Vat Act, 2005.

Thus, the Appellate Authority becomes functus-officio on concluding the ground that the order of Assessing Authority was barred by limitation period. Hence, same cannot be remanded back to re-visit the concluded issues in the guise of reassessment.

It emerges that Appellate Authority could not direct the assessing authority to take fresh proceeding for assessment or re-assessment if the same has already become time barred. The Appellate Authority cannot confer jurisdiction on Assessing Authority to initiate fresh proceeding in such cases. In the case in hand original assessment was set aside by the Ld. Appellate Authority South Zone, Shimla on the ground of limitation then there is no scope left to re-assess the case which has already been set aside being time barred. I would hold that Ld. Appellate Authority cannot grant the jurisdiction to



7.

Assessing Authority to denovo assessment in the instant case when the period of limitation has already been expired and no proper notice was served on the appellant.

9. For the aforesaid reasons, the appeal of the appellant is accepted and order of the Ld. Appellate Authority dt. 29-01-2024 to the extent of denovo assessment is hereby set aside and order of Assessing Authority dt 28.09.2017 is hereby quashed.
10. Copy of this order be sent to the parties concerned. File after due completion be consigned to the record room.



(Priyanka Basu Ingty)
Chairman,
HP Tax Tribunal,
Camp at Shimla



8.

Endst. No HPTT/CS/2025-133-139

Dated- 05-03-2025

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Jt. Commissioner ST&E SZ, Parwanoo, HP..
3. The Assistant Commissioner State Taxes and Excise, Nalagarh Circle-III,
4. M/s Jindal Mectec(P) Ltd.
5. Sh. Inderjit Singh, Advocate for the respondent.
6. Sh. Ajay Sharma, Advocate for the respondent.
7. The Sandeep Mandyal, Sr. Law officer, HQ.



Reader

HP Tax Tribunal
H P Tax Tribunal Camp at Shimla
Block No 30, DDA Colony, Shimla

9.