

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

Appeal No. : 8 /2020
OMA No. : 6/2020
Date of Institution : 23-06-2020
Date of order : 29-11-2021

With:

Appeal No. : 9 /2020
OMA No. : 7/2020
Date of Institution : 23-06-2020
Date of order : 29-11-2021

And:

Appeal No. : 10 /2020
OMA No. : 8/2020
Date of Institution : 23-06-2020
Date of order : 29-11-2021

In the matter of:

M/s Hotel City Heart
Chamba (HP)

.....Appellant

Vs

Assessing Authority, Chamba, (HP)

.....Respondent

Parties represented by:-

Shri Rakesh Sharma, Advocate for the Appellant
Shri Sandeep Mandyal, Law Officer for the Respondent

**Appeal under Section 45 (1) (a) of the Himachal Pradesh, Value Added Tax
Act, 2005**

Order

1. These appeals have been filed, against the order of Joint Commissioner of State Taxes and Excise-cum-Appellate Authority, North Zone, Palampur, vide which an additional demand of Rs. 2,80,261/-, 2,63,259/- and 2,47,978/- were created against the appellant for the assessment year 2012-13, 2013-14 and 2014-15 under the Himachal Pradesh Value Added Tax Act, 2005, against the order of the Ld. Assessing Authority, Chamba (Respondent) were upheld by the Ld. Appellate Authority
2. The brief facts of the case are that the Appellant is a Hotel Unit, having eating facility is duly registered under the provision of Luxury Tax & HP VAT Act, 2005 vide TIN No. 02070100024 as a presumptive tax payer as per provision of section 7 of HP VAT, Act 2005 That the Section 7 of HP VAT Act, 2005 provides for payment of presumptive tax for dealers having gross turnover in any year not exceeding prescribed limit. That, since the turnover of the dealer was within the prescribed limit as provided Section 7 of HP VAT Act, 2005 and Rule 50 of HP VAT Rule, 2005 the dealer accordingly opted for payment of tax on lump sum basis and continued as such. It is pertinent to mention here that dealer filed all its returns in



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due course disclosing its turnover in prescribed manner. The assessing authority, while finalizing the assessment of the dealer for the assessment year 2012-13 to 2014-15, found that the dealer has crossed the upper limit of annual turnover prescribed for the lump sum scheme during all the years under assessment but had paid tax @ Rs. 20,000/- per annum for each year as presumptive lump sum tax. Thus, the Assessing Authority framed the assessments on actual basis levying normal rate of tax as the annual turnover of the dealer for the years under reference was Rs. 33,33,659/-, Rs. 32,67,667/- and Rs. 33,34,836/- respectively and additional demand under the HP VAT Act, 2005 was created accordingly.

3. Feeling aggrieved by the order of Appellate Authority the appellant has filed these appeals on following grounds:-

i) That the Section 7 of HP VAT Act, 2005 provides for payment of presumptive tax for dealers having gross turnover in any year not exceed prescribed. That, since the turnover of the dealer was within the prescribed limits as provided Section 7 and Rule 50, the dealer accordingly opted for payment of tax on lump sum basis and continued as such..

ii) The Assessing Authority kept on assessing the appellant without questioning its eligibility to continue as presumptive dealer. For the first time the assessing authority took a different stand while framing the assessment for the year 2012-13 and subsequent years. The assessing authority while framing the assessment for the year 2012-13 and proceeded to assess the dealer at full rate of tax as a regular dealer without assigning any reason besides imposing interest or penalty. The assessing authority did not dispute the states of appellant as presumptive dealer. But, while framing the assessment for the year 2013-14 and subsequent years the assessing authority observed that the dealer is liable to be assessed as regular dealer since, it has crossed the taxable limit.

iii) That the appellant being aggrieved by the order of assessing authority, filed appeal before the 1st Appellate Authority. The appellant heavily relied upon the provisions of Rule 50 (3) of HP VAT Rules. The appeals were indexed as Appeal No. 01-04/2019-20. The appellant also filed legal submissions besides oral arguments. The appellate authority rejected the appeals of the appellant with the observation that dealer had already become ineligible for lump sum scheme when its annual turnover exceeded the last limit prescribed for the scheme. The appellate authority further observed that liquor was not a Schedule B (tax free goods) item, since it is scheduled "D" commodity which is taxable at first point of Sale under section 6 © of H.P. VAT Act, 2005 and cannot be excluded from Annual Turnover of the dealer. The appellate authority according dismissed the appeals vide its order dated 11.02.2020 and uphold the orders passed by the Assessing Authority.

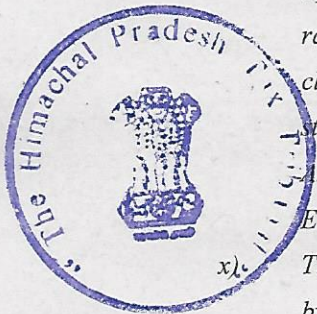
iv) That the dealer whose taxable turnover in a year exceeds twenty five lakh rupees, shall pay the tax under the Act at the normal rates specified in section 6 on the component Turnover exceeding 25 lakhs rupees. Such dealer shall also inform the Appropriate Assessing Authority about the date on which his taxable turnover exceeds 25 lakhs rupees during the year. The Assessing Authority shall w.e.f. the 1st



Signature

of April next modify the certificate of registration of such dealer into the certificate of a VAT dealer and thereupon he shall cease to be eligible for payment of lump sum under this chapter.

- v) That the Assessing Authority as well as the Appellate Authority misread the exact mandate of above provisions. The dealer was having its annual turnover much below 25 lakhs and accordingly opted to pay tax as a presumptive dealer and continued as such. It is pertinent to mention here that at no point of time except for the 2014-15 the taxable turnover of the Appellant exceeded the prescribed limit of 25 lakhs (i.e. Rs. 25,13,049/-)
- vi) Hence, as per the provisions of VAT Act & Rules the dealer was liable to pay a sum of Rs. 25,000/- - plus tax at normal rate on the amount exceeding 25 lakhs. From, the year 2015-16 onward, the assessing authority was liable to amend the registration certificate of the dealer and made the appellant to pay tax as a regular dealer.
- vii) That the Appellate Authority has miserably failed to appreciate the distinction between Annual Turnover & Taxable Turnover and determined the taxability of the dealer on the basis of Gross turnover in violation of Rule 50.
- viii) The interest has been charged without issuing the mandatory notice to the appellant. Furthermore, no interest is chargeable in the instant case in view the various judgments of Apex Court.
- ix) The Appellant submits that the order passed by the Assessing Authority as well by Appellate Authority is a cryptic and non-speaking order, devoid of any analysis, rationale or basis for confirming the demands against the Appellant and therefore, is clearly unsustainable and ought to be set-aside. In this regard, the Appellant places string reliance on the decision of the Hon'ble Supreme Court in *M/s. Kranti Associates Pvt. Ltd. & Another vs. Sh. Masood Ahmed Khan & Others* [2011 (273) E.L.T. 345 (S.C.)]
- x) That, the Appellant submits that as the order passed by Assessing Authority as well by Appellate Authority proceeds on the basis of erroneous presumptions and incorrect application of law, the demands raised against the Appellant cannot be sustained and the order deserves to be set aside. It is because any order which patently demonstrates non-application of mind, absence of reasons has been held to be in violation of the principle of natural justice. In this regard, the Appellant places reliance on the decision of the Hon'ble Supreme Court in *Steel Authority of India Ltd. Vs. Sales Tax Officer, Roukela-1 circle and Ors* [(2008)] 9 SCC 407] wherein his Lordship has upheld the settled position of law that an assessment order passed on the basis of non-application of mind and devoid of reasons ought to be set aside as it is in violation of the principles of natural justice. The relevant extract of the judgment has been reproduced hereunder:-



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"A bare reading of the order shows complete non- application of mind. As rightly pointed out by learned Counsel for the appellant, this is not the way a statutory appeals is to be

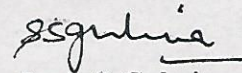
disposed of. Various important questions of law were raised. Unfortunately, even they were not dealt by the first appellate authority.

- xi) Reason in the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. (See Raj Kishore Jha v. State of Bihar 2003 (11) SCC 519).
- xii) Therefore, in terms of the observations made by this Court while issuing notice on 19.10.2006, we set aside the impugned order of the Assistant Commissioner and remit the matter to him for a fresh consideration of the appeal. Needless to say, he has to dispose of the appeal by a reasoned order dealing with all the points of challenge highlighted by the appellant".

In view of the above, order of the Assessing Authority as well as of the Appellate Authority are illegal arbitrary and unjustified.

4. The Ld. Counsel for the Appellant prayed that the appeal be accepted and the impugned order be quashed and stated that his taxable turnover for the year 2012-13 & 2013-14 should not be assessed at normal rate of tax rather should have been assessed under the Lump Sum Scheme for the said years. He also stated that his taxable turnover for the year 2014-15 exceeded the limit of the turnover prescribed for the Lump Sum Scheme and he is ready to deposit the tax at normal rate on the component of taxable turnover for the year 2014-15.
5. The Ld. Law Officer for the Respondent has stated that the assessment has been rightly done according to the provisions of HP VAT Act & Rules 2005 specific to Lump Sum Scheme. Therefore, the petitioner has no case to agitate before this Hon'ble Court as the issue raised herein already been addressed by the authorities below and there action may be upheld.
6. I have heard the arguments of both the parties, perused the record and the law on the subject. Accordingly, I am convinced that the Ld Assessing Authority needs to hear the Appellant and take on record the books of accounts in the possession of the appellant and adjudicate the assessment afresh in accordance with the provisions of the Rule 50 (3) of the HP VAT Rules, 2005 and verifying the contentions of the appellant regarding crossing of taxable turnover for the first time from its account books for the assessment years 2012-13, 2013-14 and 2014-15, after hearing the appellant. **Accordingly, the case is remanded back to the Assessing Authority; with the directions that the appellant shall appear before the Respondent on or before 31-12-2021 for the said purpose. The Ld. Assessing Authority shall thereafter pass the necessary consequential orders.**
7. Copies of this order to be sent to the parties concerned. File after due completion be consigned to the Record Room.




Dr. S. S. Guleria
Chairman,
HP Tax Tribunal, Dharamshala,
Camp at Shimla

Endst. No. HPTT/CS/2021-159-163

Dated: 30.11.2021

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Jt. Commissioner (ST&E)-cum- Appellate Authority, NZ, Himachal Pradesh, Palampur.
3. Assessing Authority, Chamba, District Chamba (HP)

4. Hotel City Heart, District Chamba (HP) Chamba through Shri Rakesh, Advocate
Anand Vas, Ground Floor, Khalini, Shimla-171002
5. Law Officer (Legal Branch) O/o the Commissioner (ST&E)

Sulejja Sharma
Reader
HP Tax Tribunal
Dharamshala