

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

Appeal No. : 12 /2020
Date of Institution : 14-10-2020
Date of order : 04-01-2022

With:

Appeal No. : 13 /2020
Date of Institution : 14-10-2020
Date of order : 04-01-2022

With:

Appeal No. : 14 /2020
Date of Institution : 14-10-2020
Date of order : 04-01-2022

With:

Appeal No. : 15 /2020
Date of Institution : 14-10-2020
Date of order : 04-01-2022

And:

Appeal No. : 16 /2020
Date of Institution : 14-10-2020
Date of order : 04-01-2022

In the matter of:

M/s Kangra Brick Kiln Industries,
Village Durgella, Tehsil Shahpur, District Kangra (HP)

.....Appellant

Vs

Assessing Authority Dharamshala-II, District Kangra (HP)

.....Respondent

Parties represented by:-

Shri Neeraj Jatwani , Advocate for the Appellant

Shri Karnail Thakur, ACST&E Departmental Representative 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. 5000/-, 10,000/-, 10,000/-,10,000/- and 4,80,269/- were created against the appellant for the assessment year 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 respectively, under the Himachal Pradesh Value Added Tax Act, 2005, against the order of the Ld. Assessing Authority, Dharamshala-II.(Respondent) were upheld by the Ld. Appellate Authority
2. The brief facts of the case are that the Appellant is a Brick Kiln unit registered under the provisions of HP Value Added Tax (VAT), Act, 2005 vide TIN 02060300233. The returns for the financial years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 has been scrutinized as envisaged vide Rule 44 of HP VAT Rule 2005 read with section 50 of HP VAT Act 2005.The Ld. Assessing Authority has assessed the dealer at normal rate of tax instead of



Signature

lump sum scheme as no option was exercised by the dealer to pay the lump-sum VAT on sales, as prescribed under Rule 46 of the HP VAT Rules, 2005. The Ld. Assessing Authority has assessed the dealer at normal rate of tax by the fact that the dealer has eventually started paying the lump sum tax from IIIrd quarter of financial year 2014-15 without exercising option of lump sum and filed the returns accordingly. Accordingly, the Ld Assessing Authority created an additional demand for the aforesaid financial years. The Ld. Jt. Commissioner of (ST&E)-cum-Appellate Authority, NZ has also confirmed the order of Assessing Authority vide order dated 19-06-2020.

3. Felt aggrieved by the order of Ld. Appellate Authority, NZ the appellant has filed the present appeal before this Tribunal on the following grounds:

i) *The Ld. Appellate Authority, NZ is not justified in confirming the order regarding assessing the dealer under lump sum scheme in respect of brick kiln owners as specified under rule 46 and deposited the tax accordingly. The dealer has deposited the tax of Rs. 59,065/- for 3rd quarter of the year 2015-16 when the sale was nil. In the assessment order at Para 4 the Ld. Assessing Authority has mentioned that the dealer has paid the tax for the second and fourth quarter at the rate prescribed under rule 46 of the HP VAT Rules, 2005 for Brick Kiln owners. The first quarter tax has been paid @ 5%. The dealer has been paying the tax for previous financial years at normal tax rate. This is absolutely a wrong statement because the dealer had started paying the lump sum tax from 3rd quarter of financial year 2014-15 and thereafter filed the returns accordingly. Since, the returns have been accepted under lump sum scheme for financial year 2014-15 and now taking a contrary stand by the same Assessing Authority is against the principle of equity and consistency and the Ld. Assessing Authority cannot be allowed to take the stand contrary to the stand he/she has taken in the assessment of previous financial year i.e. 2014-15 as the dealer has started paying the tax under lump sum scheme from 3rd quarter of 2014-15 and filed the returns accordingly. We are enclosing herewith the copies of returns for 3rd and 4th quarter of financial year 2014-15 which had been filed under lump sum scheme for brick kilns. The dealer continued to file the returns for the year 2015-16 under the lump sum scheme for brick kilns and deposited the tax accordingly. In view of the foregoing, It is crystal clear that the Assessing Authority has framed the assessment order arbitrarily and taken a stand contrary to what he/she has taken in the previous financial year which is against the settled position of law and has to b struck down. Once the Assessing Authority had accepted the returns filed under lump sum scheme for brick kilns for 3rd & 4th quarters of 2014-15, then she is not permitted to deny this benefit in the year 2015-16, when the returns had been filed under lump sum scheme for brick kilns and tax had been paid accordingly.*

ii) *The appeal relates to confirmation of imposition of penalty of Rs. 1,28,568/- u/s 16 (7) of the Act by the ld. Appellate Authority, NZ as penalty has been imposed mechanically without affording any opportunity of being heard to the assessee, which is against the principle of natural justice. Your honour can observe from the assessment order that that the penalty has been levied mechanically and no opportunity of hearing has been*



Signature

provided to the assessee in utter violation of principle of natural justice. The Ld. Assessing Authority has not dealt the question of mensrea on the part of assessee before levying the penalty which is ~~er~~ must because for levying penalty willful conduct has to be established. In the absence of willful default of the part of the assessee coupled with the fact that there is no intension to evade tax the penalty cannot be imposed on the assessee. An order imposing penalty is the result of quasi criminal proceedings and penalty will not ordinary be impose unless the party obliged acted deliberately in defiance of the law. Penalty will be opposed merely because it is lawful to do so. The support has been taken from the decision of Hon'ble Apex Court in the case of Hindustan Steel Ltd., Vs. State of Orissa (1970) 25 STC 211 (SC). In JK Synthetic Ltd., Vs. Commercial Tax Officer (1994) 94 STC 425 (SC), the Hon'ble Supreme Court has held that dealer cannot be visited with the penalty unless it is shown that the dealer had with held payment of the differential tax by willfully with holding material information or had acted without reasonable cause in committing the default. Since, there is not any willful default at dealer's end, therefore, penalty cannot be imposed and decision of apex court in Hindustan Steel Ltd., and JK Synthetic Ltd. Squarely applies in this case, therefore, your goodself is requested to drop the penalty illegally levied in utter disregard to principle of natural justice.

iii) Further, ground of appeal relates to imposition of penalty of Rs. 2000 under Section 50(2) against the Principle of Natural Justice which is imposed mechanically without affording any opportunity of being heard to the assessee. The reasons discussed above also apply to imposition of penalty u/s 50(2) as well.

iv) The appeal also relates to charging interest of Rs. 92,569/- u/s 19 of the Act, as there was no default on the part of the dealer to meet the statutory of the obligation. The dealer has filed the returns timely along with depositing the tax due under the Lump sum scheme and has not committed any default. Since, there is not default on the part of the dealer the interest levied wrongly should be deleted.

3. The Departmental representative stated that the assessment has been framed rightly as the dealer could not produce the acknowledgement of his option to pay VAT under lump sum as prescribed under rule 46 of HP VAT Rule, 2005. Thereby, the assessing authority has levied the tax at actual prevailing rate of VAT. Without filing the option there is no liberty under the Act to the dealer to pay lump sum tax at his own wish. Therefore, the petitioner has no case to agitate before this Hon'ble Court as the issue here in already been addressed by the authorities below and their action may be upheld.

4. 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 adjudicate the assessment afresh in accordance with the provisions of the Section 16 & 50 of HP VAT Act and Rule 46 & 50 of the HP VAT Rules, 2005 and verifying the contentions of the appellant regarding acknowledgement of his option for lump sum scheme and imposition of penalty under section 50 (2) and 16 (6) of the Act from the books of account for the assessment years. 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16, 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 07-02-2022 for the said purpose. The Ld. Assessing Authority shall there after pass the necessary consequential orders.

5. Copies of this order to be sent to the parties concerned. File after due completion be consigned to the Record Room.



S. S. Guleria

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

Endst. No. HPTT/CS/2022 - 1 - 5

Dated: 05 - 01 - 2022

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, Dharamshala-II, District Kangra (HP)
4. M/s Kangra Brick Kiln Industries Village Durgella, Tehsil Shahpur, District Kangra (HP)
5. Legal Branch, O/o the Commissioner (ST&E)

Sunjay Sharma

Reader
HP Tax Tribunal
Dharamshala