

IN THE COURT OF HIMACHAL PRADESH TAX TRIBUNAL, DHARAMSHALA,  
CAMP AT SHIMLA

Appeal Nos. 8/2022,9/2022,  
10 /2022 and 11 /2022  
Date of institution: 29-03-2022  
Date of Order: 31-03-2022

**In the matter of:**

M/s Bareja Agencies,  
By-Pass Road, Paonta Sahib'  
Himachal Pradesh.

..... Appellant

**Vesus**

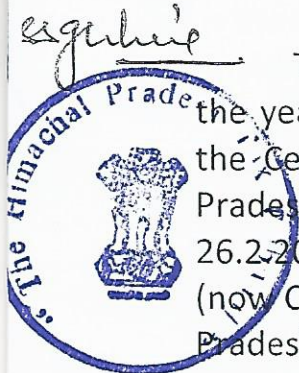
1. Excise and Taxation Commissioner ( now Commissioner ST&E)-cum-Appellate Authority, Himachal Pradesh, Shimla.
2. DETC (Flying Squad)(Assessing Authority), South Zone, Parwanoo, Himachal Pradesh.  
..... Respondents.

**Parties represented by:-**

1. Shri R.N. Sharma, Advocate with Shri Ashutosh Shankar Sharma.
2. Shri Sandeep Mandyal, Law Officer, for the Respondents.

**ORDER**

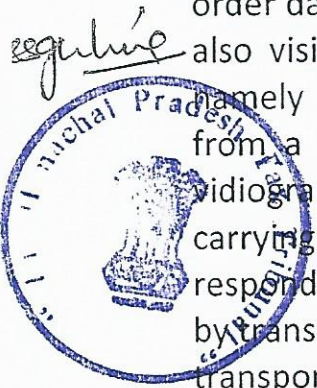
The Appellant has filed the four appeals dated 26<sup>th</sup> March, 2022 for the years 2012-13, 2013-14, 2014-15 and 2015-16, under section 9(2) of the Central Sales Tax Act, 1956 read with section 45 (c ) of the Himachal Pradesh Value Added Tax Act, 2005 against the common order dated 26.2.2022 for the said years passed the Ld. Excise & Taxation Commissioner (now Commissioner State Taxes & Excise-cum-Appellate Authority, Himachal Pradesh.



2. The facts of the case briefly stated are that for the years 2012-13 to 2015-16 the Ld. DETC (Flying Squad)-(Assessing Authority), South Zone, Parwnoo issued to the Appellant the (1) Revised Demand and Penalty Notice u/s 16 & 60 of the HP VAT Act, 2005 and sections 8 and 9 of the CST Act, 1956" "LAST OPPORTUNITY bearing No.EXN-DETC-FS-SZ-PWN-2016-17-1047 dated 14.12.2016, and (2) Notice u/s 16 & 60 of the HP VAT Act, 2005 and Section 8 and 9 of the CST Act, 1956 bearing No.EXN-DETC-FS-SZ-PWN-2016-17-1205 dated 18.1.2017, yet, however, the Ld. DETC (FS), Parwanoo issued the order dated 08-02-2017 under "16 of the HP VAT Act, 2005 and sections 8 and 9 of the CST Act, 1956" (notices and the order show divergence except that section 9 of the CST Act pertained to assessment of CST) and passed a single order dated 08-02-2017 and imposing the following demands on account of VAT, interest and penalty:-

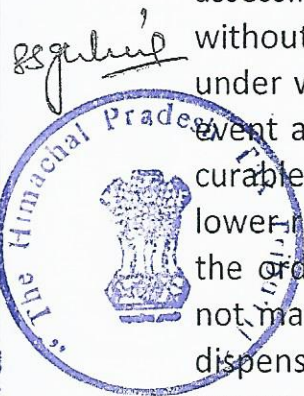
Year	VAT (in place of CST)	Interest	Penalty	Total
2012-13	4,03,468	3,08,653	6,05,394	13,17,121
2013-14	1,96,605	1,15,014	2,94,000	6,05,619
2014-15	33,25,468	13,46,814	49,88,000	96,60,282
2015-16	34,70,042	7,80,759	52,05,000	94,55,801
Total	73,95,583	25,51,240	1,10,92,000	2,10,38,823

The notice dated 14.12.2016 *inter alia* state that "the investigations in your tax case are over now" and the order dated 08-02-2017 clearly showed that the Ld. DTC (Flying Squad) himself was party to investigation and visited the premises of dealer of "1540/201, Second Floor, Kacha Bagh, SPM Marg, Delhi" and verified the same in his own presence on 7,10,2015 and the assessment order dated 8.2.2017 stating clearly "in the presence of the undersigned"; he also visited the premises of another dealer called "other fictitious dealer namely M/s Sunshine Enterprises" where "nobody seemed to have lived from a long time". The order stated that "This place has been properly videographed/photographed and it is evident therefrom that nobody was carrying any kind of business here since past many years." The said respondent also inquired the official transport portal for carriage of goods by transporters and made observations against the Appellant rather than the transporters of goods, without in way impeaching their record received at the Barriers from the concerned transporters of goods. He also found that the Delhi dealers M/s Shiv Shakti Overseas, M/s Makhan Traders, M/s Ajay Agro Traders and M/s Shri Ram Enterprises were having TIN Nos. and their





Registration Certificates showed that they were dealing in Dry Fruits, Cereals and Pulses and Dry Fruits respectively but not dealing in cold drinks. The assessment order admits clearly that the Appellant "submitted copies of "C" Forms" from these four "purchasing parties" and the order itself records that "all the four purchasing dealers issued C forms to M/s Bareja Agencies for the purchase of Aerated Water and Confectionary Goods". The assessment order further records that "Even if those were issued for 'Cold Drinks, procuring 'C;' forms did not absolve the dealer from the responsibility of paying tax at full rate as mentioned in section 8(2) of the CST Act, 1956."? It was held that "inter-State sales of Cold Drinks made by it during the years 2012-13, 2013-14, 2014-15 and 2015-16 are, therefore, rejected to be so and taxed as local sale". This rejection of 'C' forms was done despite the existence of statutory evidence of 'C' forms which was not legally permissible, which legally entitles a dealer to avail of the lower rate of CST, and contrary to the 'C' forms, the tax (VAT) was imposed at the rate of 13.75% instead of the CST under section 8(1) @ 2%, already deposited by the Appellant besides imposing interest and penalties, as mentioned earlier in this order. Against the order dated 8.2.2017 passed by the Ld. DETC (Flying Squad) Parwanoo, an appeal under section 45 (b) of the HP VAT Act, 2005 etc. was preferred to the Ld. Commissioner, who has passed the order dated 26.03.2022, which (with the order dated, 8.2.2017) has been challenged under section 45(c) of the Act, ibid, on different grounds including that the notices which were although for scrutiny of returns and penalty under sections 60 and 16(8) of the HP VAT Act, 2005 yet did not disclose the material facts which the Appellant had to meet, but then order has been assessing the tax, imposing penalty and interest, which are impugned to be without jurisdiction and contrary to law. Besides, there is no provision of law under which the "C" forms duly submitted could be condemned and in the event any defects in the "C" forms were noticed, such defects were legally curable but on that count the Appellant could not be denied concessional or lower rate of CST leviable under section 8(1) of the CST Act, 1956, and also the order was challenged on further ground that a detecting officer could not make any assessment, contrary to the principles and rules of law for dispensing justice in a fair manner. The Appellant emphatically prayed for urgent hearing because the order dated 26,3,2022 was fraught with the crippling burden of immediate fiscal liability having catastrophic consequences of eroding the capital and destroying the business of the Appellant and thereby seriously impairing the very livelihood of the





Appellant. The State itself promotes industrial activity in public interest and it does not countenance closure thereof.

3. Shri R.N. Sharma, Advocate alongwith Shri Ashutosh Shankar Sharma holding power of attorney appeared for the Appellant and argued that although numerous questions are involved in the matter yet the core issues relate to ignoring of the statutory evidence of duly furnished 'C' forms in respect of inter-State sales, which emanated from the purchasing dealers outside the State and to non-compliance with the decisions of the jurisdictional High Court of Himachal Pradesh laying down a rule of law that detector of cases cannot be an adjudicator which has been held by the Hon'ble Apex Court to constitutes a mistake apparent from the record and which vitiates the impugned order absolutely. Additionally, there are other significant issues which did not receive legally sustainable resolution.

4. Regarding ignoring the statutory evidence of 'C' forms duly furnished to the Ld. DETC (Flying Squad), Shri Sharma emphatically submitted that 'C' form is a statutory document prescribed by Parliament under section 8(4) of the Central Sales Tax Act, 1956 read with Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 which is a proof of and which substantiates inter-State sales and furnishing of which entitles a selling dealer to claim levy of the central sales tax at concessional or lower rates under section 8(1) of the CST Act, 1956. This statutory evidence originates from the purchasing dealer outside the State rather than from the Appellant. A 'C' form emanating from an outside purchasing dealers of Delhi is *ipso facto* admissible and cannot be condemned by the State authorities of Himachal Pradesh. The Hon'ble Supreme Court in **Shree Digvijay Cement Co. Ltd. and Ors. v. State of Rajasthan and ors (2000) 117 STC 395 (409-11) (5 JJ Constitution Bench)** has held that:

*regular*  
"Form C...is regarded as proof of inter-State sales being made by the dealers in the State to registered dealers outside the State."

Further, in **State of Madras v. M/s Radio and Electricals Ltd. (1967) 18 STC 222 (3JJ)**, the Honble Apex Court has clearly held that:

*The Act and the Rules do not impose an obligation upon the purchasing dealer to declare that the goods purchased by him are intended to be used for one purpose only, even though under his certificate of registration he purchased goods of the class mentioned in section 8(3)(b) for more purposes than one.*

*Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representation made to him. He must satisfy himself that the purchaser is a registered*



*dealer, and goods purchased are specified in his certificate: but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the in Form 'C', the selling is under no further obligation to see the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods, he incurs a penalty under section 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer. The selling dealer is under the Act authorized to collect from the purchasing the amount payable by him as tax on the transaction and he can collect that amount only in the light of the declaration mentioned in the certificate in Form 'C'. He cannot hold enquiry whether the notified authority who issued the of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form 'C'. There is nothing in the Act or the Rules that for infraction of law committed by the purchasing dealer by misapplication of the goods after he purchased, or for any fraudulent misrepresentation by him, penalty, may be visited on the selling dealer."*

Resultantly, if the purchaser makes a false declaration or a declaration which he does not comply with he would do so under peril of meeting the penalties under section 10 of the Act, but on that account, the selling dealer is not deprived of the concessional rate under section 8(1). In order to be entitled to a concessional rate under section 8(1) of the Act, the dealer has only to produce a 'C' form declaration and once he produces such a declaration he is in law deemed to have discharged his onus and becomes legally entitled to pay the concessional rate. Merely because of misapplication of the goods after the purchasing dealer purchased the goods, or for any fraudulent misrepresentation by him, penalty may be visited only on the purchasing dealer and the selling dealer (Appellant) cannot be legally deprived of the concessional or lower rate of CST which he has been granted under statutory provisions of section 8(1).

In *Deputy Commissioner of Commercial Taxes, Madras Division v. Manohar Brothers*, (1962) 13 STC 686 (692-93) (Mad.) (DB): it has been clearly held that:



*"It is wholly unnecessary for the assessing authority to investigate the truth or otherwise of the manifest representation made by the non-resident buyer by his keeping all the purposes set out in the form without deleting any one or more of them. The selling dealer has no manner of control over the non-resident buyer as to compel him to be more specific than what he has chosen to do by sending the C Form in the manner in which he did. Any false representation by the non-resident buyer who has signed the C Forms will certainly expose him grave consequences for breach of provisions, but the forms as such cannot be condemned and put aside to defeat the seller's right and claim of taxation under section 8(1)"*

Still further, in Deputy Commissioner of Commercial Taxes, Coimbatore Division, Coimbatore v. Stanes Motors (South India) Coimbatore (1963) 14 STC 369 (374) (Mad.) it has been held:

*"Whether or not the goods were in fact used for the stated purpose or even usable for such a purpose, so long as the purchasing dealer has furnished the required information to the selling dealer, the selling dealer becomes the law entitled to the benefit of section 8(1) of the Act. It is no function of the selling dealer to enter into a judicial examination of the goods are in fact used or usable for the manufacture or processing of goods for sale by the purchasing dealer.. The purchasing dealer declares that they are required for such a purpose and are further so specified in his form of registration granted by the Sales Tax Authorities, It is not the function of the selling dealer to enquire whether the requirement of purchasing dealer is bonafide or even is or is not with the certificate of registration of that dealer. It must not be forgotten that this is a sale in the course of Inter-State trade, the selling dealer is doing business in one State and the purchasing dealer in another. It would obviously be impossible for the selling dealer to satisfy himself of the reality of requirement of the purchasing dealer. It is precisely for that reason that in so far as the eligibility of the selling dealer to the concessional rate of taxation is concerned the relevant provisions of the Act and the Rules make it on production of the declaration from the purchasing dealer. Taking this very case we can hardly imagine it possible for the selling dealer to demand, to know from the purchasing dealer how and in what manner the goods which were subject matter of the sale, were intended to be used. When the*





*purchasing dealer declares that the subject matter of sale is listed in his certificate of registration in form 'B' as required for that purpose and furnishes a declaration in form 'C', the selling dealer is not bound to enter into any examination of the matter. In so far as he is concerned he has placed himself fully within the relevant provisions of the statute and is entitled to a lower rate of taxation."*

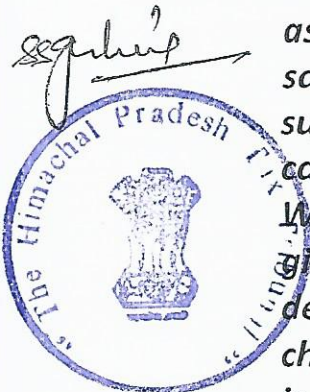
It has also been held in *State of Andhra Pradesh v. Askin Fabs (1999) 112 STC 550 (551): [2JJ]* that:

*"If the purchaser had not utilized the goods for the purpose of declaration in the certificate, it is not for the tax officer in the State, where the assessee was brought to tax, to conduct an enquiry. The tax authorities in the State of Maharashtra may, if they choose, conduct an enquiry under section 10-A of the Central Sales Tax Act, 1956 for imposing penalty on the purchasers which can be quantified with reference to the tax which would otherwise have been imposable....It is doubtful whether there was any misuse of "C" forms; even if there was any misuse, it is not for tax authorities of this State to conduct an enquiry as per the judgment of the Supreme Court cited supra."*

Shri Sharma further submitted that the Hon'ble Supreme Court in *State of HP v. Gujarat Ambuja Cements Ltd. (2005) 142 STC 1 (3 JJ)*, which is a judgment later in point of time and by a 3-judge Bench, has clearly held that:

*"40...In a given case even the declaration forms can be filed even before the appellate authority as an appeal is a continuation of assessment proceedings. In a given case, if the appellate authority is satisfied that the assessee was prevented by reasonable and sufficient cause which disenabled him to file the forms in time, it can be accepted....It was noted by this Court in Sahney Steel and Press Works Ltd. v. Commercial Tax Officer (1985) 4 SCC 173 that even in a given case, an assessee can be given an opportunity to collect declaration forms and furnish them to the assessing authority if the challenge of the assessee to taxability of a particular transaction is turned down.*

*41.....the assessing officer shall grant opportunity to the respondent No.1 company to cure the defects, if any in the declaration forms."*





The aforesaid direct judicial pronouncements of the Hon'ble Apex Courts and the Hon'ble High Courts place the matter beyond the pale of any palpable controversy. On the authority of the law laid down by directly applicable and binding judgments, the 'C' form is a proof and evidence of inter-State sale and production of that form entitles the selling dealer (Appellant) to concessional and lower rate of CST under section 8(1) and that for any deviant or fraudulent act of the purchasing dealer outside the State, the Appellant-selling dealer cannot be visited with any penal consequences of high rate of tax and penalty. It is not permissible for the Assessing Authority to condemn the 'C' form once it is duly produced or furnished. Consequently, the decision of the DETC (FS) and the appellate decision dated 26.3.2022 on this issue being absolutely contrary to law requires to be set aside and neither any tax nor any penalty or interest can also be imposed upon the Appellant. Besides, any omission or defect in the 'C' emanating from the purchasing dealer outside the State is a curable defect and does not deprive the selling dealer from entitlement to exigibility of transactions to concessional or lower rate of CST under section 8(1) of the CST Act, 1956, and such entitlement is a statutory entitlement and is not dependent upon the ipse dixit of the assessing authorities and others.

5. That it is submitted that the Appellant had submitted copies of these 'C' forms and he is in possession necessary "C" Forms issued by the following dealers:-

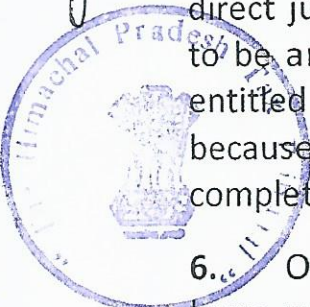
YEAR-WISE LIST OF 'C' FORMS AVAILABLE

Year	'C' Form No.	Name of the party issuing the 'C' Forms	Amount Rs.
2013-14	121227725660514	Shri Shakti Overseas, Naya Bazar, Delhi.	17,40,834
	Total:		17,40,834
2014-15	(i) 12125746020814	Shri Shakti Overseas, Naya Bazar, Delhi	1,42,04,234
	(ii) 12128299421114	Shri Shakti Overseas, Naya Bazar, Delhi	1,02,21,904
	(iii) 12134459030515	Shri Shakti Overseas, Naya Bazar, Delhi	40,60,828





	(iv) 12134637870515	Shri Ram Enterprises, 1540/201 IInd Floor, Kachha Bagh, SPM Marg-111006	10,00,000
	Total:		2,94,86,966
2015-16	12138551240915	Shri Shakti Overseas, Naya Bazar, Delhi	2,57,88,839
	Total:		2,57,88,839
2016-17	(i) 12148305470716	Makhan Traders, Nai Basti Naya Bazar, Delhi	37,50,030
	(ii) 12148292410716	Ajay Agro Traders, Nai Basti, Naya Bazar, Delhi	24,24,540
	Total		61,74,540
2013-14 To 2016-17	Grand Total:		6,16,25,179

*Signature*  

 Shri Sharma pleaded that on the strength and authority of the aforesid direct judicial authorities, and statutory provisions, these 'C' forms require to be and must be entertained under the law and the Appellant is legally entitled to concessional rate of CST under section 8(1) of the CST Act, 1956, because he has full discharged his onus and complied with the law completely

6. On the issue of jurisdiction of the detecting officer to assess, it has been submitted that full effect must be given to the judgments of the Hon'ble Courts which have declared the principles of law of natural justice and rules of law of fairplay, impartiality and justice which emanate from Article 14 of the Constitution. *in National Trading Co. v. Assistant Commissioner of Sales Tax Cuttak, (2001) 122 STC 212 (DB)* it has been held that:

*"Short point being that the reporting officer himself cannot be the assessing officer. It is said that justice should not only be done but should manifestly be seen to be done. Justice can never be done if a*



*person acts as a judge in his own cause or is himself interested in the outcome. This principle applies not only to judicial proceedings but also to quasi-judicial and administrative proceedings, The reporting officer could not have taken up the impugned assessment proceedings and completed the same."*

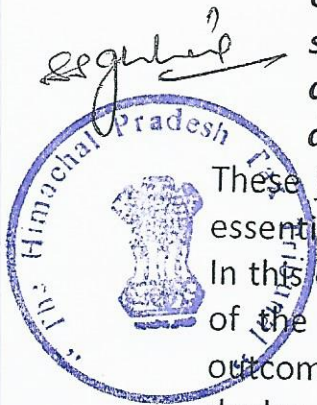
Similarly, the jurisdictional High Court of HP in a Sales Tax Reference no. 8 of 2009 titled as M/s John Reymond Bright v. Additional ETC has also held that:

*"We find it to be no longer res integra for the same stood decided by the co-ordinate Bench of this Court in judgment dated 24<sup>th</sup> April, 2007 passed in CWP No.178 of 2002, titled as Manali Resorts v. State of Himachal Pradesh and others, wherein the Bench, after holding that a member of a raiding party cannot be an adjudicator, quashed the order and remanded the matter back for adjudication afresh by another competent officer."*

The Hon'ble HP High Court in its judgment in and M/s Manali Resorts v. State of Himachal Pradesh dated 24<sup>th</sup> April, 2007 held:

*"Learned counsel has drawn our attention to judgment of the Punjab and Haryana High Court in Vipin Kumar Jain and others v. Union of India and others (2001) 17 PHT 588 (P&H) in which a Division Bench of that Court has held that the officer taking search or a member of the raiding party becomes a witness to the proceedings of such search and cannot be authorized to make regular assessment. We are in agreement with the principles of law laid down in the judgment."*

These judgments enunciate the foundational principles of justice, and it is essential that justice should not only be done but must appear to be done. In this case a 'reporting officer', 'the officer taking the search' or a 'member of the raiding party' becomes a witness, an interested person in the outcome of the case and he cannot be allowed to assess or penalize the dealer. It is the rule of law that **Justice can never be done if a person acts as a judge in his own cause or is himself interested in the outcome.** Accordingly, these judgments are not distinguishable. It is writ large on the face of the proceedings and duly admitted facts that the Ld. DETC (Flying Squad) was indisputably himself a party to investigations and visited the premises of dealer of "1540/201, Second Floor, Kacha Bagh, SPM Marg, Delhi" and verified the same *in his own presence on 7,10,2015* stating clearly *"in the presence of the undersigned"*; he also visited the premises of another dealer called "other fictitious dealer namely M/s Sunshine Enterprises"





where "nobody seemed to have lived from a long time. The order passed by him states that "this place has been properly vidiographed/photographed and it is evident therefrom that nobody was carrying any kind of business here since past many years." The said respondent also inquired the official transport portal for carriage of goods by transporters. These facts are absolutely unassailable. Resultantly, the adjudicating Ld. DETC (FS) evidently and indisputably become was a reporting, investigating and searching officer and thereby he not only becomes a mere witness to the events but a person interested in the outcome of the case. Justice has, therefore, been denied to the Appellant because the Ld. DETC (FS) himself indisputably acted as a judge in his own cause and was himself interested in the outcome of the proceedings in quasi-judicial determinations. Under these rules of law., the Ld. DETC (FS) could not have taken up the impugned assessment and penalty proceedings and completed the same, and therefore, the impugned order together with appellate order, now impugned, which sustained that order are clearly contrary to law and require to be set aside. The judgments of the Hon'ble courts are under the taxation laws and accordingly cannot be distinguished as applicable to a particular enactment, but have a universal application to all tax proceedings and such law has been approved by the Hon'ble Supreme Court in *AK Kripak, Binapani Dei* and other cases. It was emphatically submitted by the Id. Counsel that these judgments are binding on the departmental authorities because as held in *Jain Tube & Co. v. State of U.P. (1991) 80 STC 40 (All.) (DB)* that ***"Every authority exercising judicial and quasi judicial powers is under the supervisory jurisdiction of this Court (High Court) under Article 227 of the Constitution of India. The interpretation given by this Court of a notification, rule or law is binding on all authorities subordinate to it."*** Further, in *Seth Ganpat Ram Cotton Gining & Processing Factory v. State of Punjab (1973) 311 1TC 250 (P&H)* it has been held that ***"A reading of the order passed by the Assessing Authority shows that it sat in judgment delivered by a learned Judge of this Court. This conduct on the part of the Assessing Authority tantamount to gross violation of judicial discipline and amounts to contempt of court."*** Based on these principles of law the order of the Ld. DETC(FS) as also the impugned appellate order dated 26.3.2022 being *de horse* these judicial pronouncements, and non-consideration, non-adherence to these constitute legal mistake apparent from the record as held by the Hon'ble Apex Court in (2008) 14 SCC 171 (2JJ) and vitiates both the aforesaid orders which may be set aside, in the interests of justice.





7. Shri Sharma, the Ld. Counsel addressed the issues of 'Appropriate assessing authority' and relied upon the Hon'ble Apex Court decision in **Commissioner or Sales Tax U.P. v. Sarjoo Prasad Ram Kumar (1976) 37 STC 533 (535) (SC) [3JJ]**. He also argued on inadequacy and illegality of the notices issued by the Ld. DETC (FS) vide (1) No. EXN-DETC-FS-SZ-PWN-2016-17-1047 dated 14.12.2016 and (2) Notice u/s 16 & 60 of the HP VAT Act, 2005 and Section 8 & 9 of the CST Act, 1956" under No. EXN-DETC-FS-SZ-PWN-2016-17-1205 dated 18.1.2017 and relied upon decision in **State of Kerala v. K.T. Shaduli Yusuff (1977) 39 STC 478 (488) SC [3JJ]** assailing non-disclosure and non-communication of full facts of inquiry and allegations to the Appellant to meet the case. He further cited the judgment **Aslam Mohammad v. Competent Authority (2008) 14 SCC 186 (2JJ)** to say that *"Once the show cause notice is found to be illegal, the same would vitiate all subsequent proceedings."* and also the judgment in (1959) 35 ITR 388 (SC) titled a **Narayanappa Chetty v. Income Tax Officer Nellore**, the Hon'ble Apex Court wherein it was held that *"If no notice is issued or if the notice issued is shown to be invalid, then the validity of the proceedings taken by the Income Tax Officer without a notice or in pursuance of an invalid notice would be illegal and void."* On the issue of interest he cited the Hon'ble Supreme Court judgment in **E.I.D. Parry (India) Ltd. Vs. Asst. Commissioner of Commercial Taxes, Chennai [2005] INSC 305 (3 May 2005), 2005 (3JJ)** wherein it has been clearly held that:

*"Iyer made an attempt to distinguish the Judgments on the ground that the provisions under consideration, in J. K. Synthetics Ltd.'s case, are not in pari materia with the provisions the Tamil Nadu General Sales Tax Act..... In the absence of any such demand interest would not become payable under Section 24(3) as there is no provision for charging of interest prior to the date of demand. In this respect the principles laid down in J.K. Synthetics Ltd.'s case fully apply even though the provisions of the Tamil Nadu General Sales Tax Act and the Rajasthan Act may not be identical."*

On the question of the procedure adopted by the Ld. DETC (FS), the Ld. Counsel cited Constitution Bench judgment in **Tata Engineering & Locomotive Co. Ltd. v. The Assistant Commissioner of Commercial Taxes Jamshedpur & Another (1970) 26 STC 354 (381) (5JJ)** which deprecated the adoption of sample procedure instead of scrutinizing each case as "serious infirmity" and which held that "In our judgment, this was a wholly wrong procedure to follow and the Assistant Commissioner, on





whom the duty lay of assessing the tax in accordance with law, was bound to examine each individual transaction and then decide whether it an inter-State sale exigible to tax under the provisions of the Act." Another case reported in **1973 Tax Law Reporter 2153, 2155 (Punj.) Kanahaiya Lal v. State** was cited to say that Assessing Authority *'cannot follow an easy course of examining one transaction'*. It was strongly emphasized that under Section 34 of the HP VAT Ac, 2005, form VAT XXVI-A is required to be tendered by the owner or person-in-charge of the motor vehicle or vessel carrying goods by road. The Appellant is a mere seller of goods and not a transporter, and it was the responsibility of the purchasing dealer to remove and transport the goods to destination. How and in what manner the purchasing dealer transported the goods and what faults he made are for the transporter and not the Appellant. The provisions of section 34 of the HP VAT Act, 2005 apply to the transporter and reliance on section 13 of that Act is absolutely irrelevant because the Appellant's case is neither of VAT payable under section 8, nor of payment of purchase tax under section 8, nor is it a case of input tax credit claimable under section 11 of the H:P VAT Act, 2005—the case being only exigibility to CST under section 8(1) of the CST Act, 1956, as submitted in detail. For misuse of 'C' forms penalty under section 10 or 10A, only Delhi Sales Tax authorities have requisite jurisdiction as held in the relevant judgments submitted in this behalf earlier. In *Manali Resorts Case* the Hon'ble High Court of HP has clearly held that "The respondents cannot assume jurisdiction and powers for performance of acts which are not conferred by the statute.". The acts of DETC (FS) in this regard are one of "inherent lack of jurisdiction" under the said section 10A and where there is such lack of jurisdiction any order passed by respondent No.1 "would be a nullity". The Hon'ble High Court of HP placed reliance on "(See Kiran Singh and others v. Chaman Pawan and others AIR 1954 SC 340 at p.342; Balai Chandra Hazra v. Shewdhari Jadav, AIR 1978 SC 1062 at page 1068, paragraphs 10, 11 and 16; Sarwaan Kumar and another v. Mohan Lal Aggarwal (2003) 4 SCC 147 paragraph 211). It is by now well settled that where there is want of jurisdiction the whole proceedings are coram non judis. (See P. Muni Dass Reddy v. Appa Rao AIR 1974 SC 2089, at page 2091)." It was also observed that in *Hindustan Steel Ltd. v. The State Orissa (1970 XXV Sales Tax Cases 211....* that *"Their lordships further held that even when the barest minimum penalty is prescribed, the competent authority may not impose such penalty when there is a technical or venial breach of the provisions of the Act or some bonafide ground for non payment of tax."* Besides, in this case for the acts of transporters and the non-resident





purchasing dealers outside Himachal Pradesh, the Appellant selling dealer incurs no liability for being penalized at all.

8. The Ld. Counsel further submitted that as regards the judgments of the Hon'ble Supreme Court, the same are binding on all Courts and authorities and the law laid down therein must be complied with, because it has been held by the Constitution Benches of the Hon'ble Supreme Court itself that ***"Pronouncement of Constitution Benches should not be treated so cavalierly as to be revised frequently. the judgments of Constitution Benches of the Hon'ble Apex Court to brief ephemerality"***, and these do not apply to only one case and not to others, but are a law in perpetuity until overruled. He also cited the judgment in Union of India v. Hematram Pandya (1995) 3 SCC 17 to emphasize that :

***"The approach of the Tribunal is patently objectionable and does not commend to us. It attempted to circumvent the law laid down by this Court on untenable reasons.... The law laid down by this Court is binding on all courts and tribunals."***

He further relied upon the judgment in In Chairman-cum-Managing Director, Coal India Ltd. v. Ananta Saha (2011) 5 SCC 142 (2JJ) Hon'ble Apex Court has also clearly held that:

*Regulup*  
***"It is well settled that the judgments of this Court are binding on all the authorities under Article 141 of the Constitution of India and it is not open to any authority to ignore a binding judgment of this Court..."***

Hence, the Hon'ble Apex Court judgments are binding and are not open to be distinguished and command unflinching application and obedience, not only by the Hon'ble Supreme Court itself, but also by the Hon'ble High Court and other judicial and quasi-judicial authorities. The judgments of the jurisdictional High Court of Himachal Pradesh enunciating rules of law relating to tax adjudications are also binding on all courts and authorities under supervisory jurisdiction of the Hon'ble High Court under Article 227 of the Constitution and command adherence in that field lest the impugned order get vitiated by legal mistake apparent on the fact of record as declared by the Hon'ble Apex Court.

9. The learned Counsel submitted that the impugned order dated 26.3.2022 as also the order of the Ld. DETC (FS) are clearly contrary to law.



There is no provision of law which denies admission of the "C" forms submitted by the Appellant, and the C forms constitute admissible evidence has held by the Hon'ble Apex Court and other High Courts which entitles the Appellant to claim concessional and lower rate of CST of 2% under section 8(1) of the CST Act, 1956. Any representation made by the purchasing dealer cannot be made a basis for visiting the Appellant-selling dealer with punitive consequences of higher rate of CST and penalty. The Hon'ble Supreme Court has already held any defect in the 'C' forms to be a curable defect, and not a disqualification for entitlement to concessional or lower rate of CST as per section 8(1) of the CST Act, 1956. He pleaded that the Appellant may be allowed to adduce the requisite 'C' forms before the Ld. Assessing Authority, Paonta who is an appropriate Assessing Authority and necessary direction to the Ld. Assessing Authority, Paonta, may be issued for taking on record and entertaining the 'C' forms for the years 2012-13 to 2015-16, and allowing the concessional or lower rate of CST of 2% to the Appellant in accordance with section 8(1) of the CST Act, 1956, in terms of the judgments of the Hon'ble Apex Court and the High Courts, and in the interests of justice. It is settled law that it is the function of the Delhi Sales Tax Authorities alone and not of the Ld. DETC (FS) Parwanoo to decide the question of use or misuse of the "C" Forms. Besides, it was also submitted that the "C" Forms have emanated from the concerned purchasers outside the State, whose particulars have been duly furnished in the relevant "C" form, which cannot be legally denied to the Appellant.

*Legulup*

10. Shri Sandeep Mandyal, Law Officer, appearing for the respondents submitted written arguments that the Ld. DETC (FS) and the Ld. Appellate Authority have decided the matter in accordance with the law and the same may be upheld to be valid not only in the interest of revenue which is involved in these cases but the same also deserves to be sustained in the interests of justice and on the basis of the detailed orders passed by the authorities. He further submitted that the VAT XXVI-A showed suspicion on the transactions, and therefore the order passed by the Ld. DETC (FS) has been properly passed and may be sustained as the documents under section 34 had to be provided by the assessee. At this stage Ld. Counsel for the Appellant rebutted the arguments for the department by re-iterating that section 34 of the Act of 2005 applies to the owner or transporter of goods and not to the selling dealers. He also asserted that the written reply does not distinguish any of the judgments cited on behalf of the appellant which are legally binding, which only shows clearly that the case law relied upon remains irrebutable and is completely applicable. Hence both on facts and





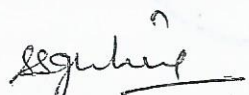
law the submissions of the department deserve to be rejected and may kindly be rejected and submissions on behalf of the appellant may kindly be accepted.

**11.** I have heard the arguments and fully considered the written arguments submitted on behalf of the respondents, perused the entire relevant record and considered the orders dated 8.2.2017 passed by the Ld. DETC (FS) and the order dated 26.3.2022 passed by the Ld. Commissioner and have also considered the relevant statutory provisions. I am of the considered view that the law laid down by the Hon'ble Apex Court and the Hon'ble High Courts in regard to the "C" Forms under the Central Sales Tax Act, 1956 is conclusive on the issues involved in the cases and the same has to be followed in all aspects. Submission of "C" form by the Appellant is clearly a proof and an evidence of inter-State sales and entitles the dealer to concessional and lower rate of CST under section 8(1) of the CST Act, 1956, and these aspects are not disputable and are covered by the judicial pronouncements cited herein. Resultantly, the impugned orders of the Ld. DETC (FS) dated 8.2.2017 and of the Ld. Commissioner-cum-Appellate Authority dated 26.3.2022 being contrary to the law laid down are set aside. The matter is remanded to the Ld. Assessing Authority, Paonta and he is directed to take on record, consider each of the "C" forms as per the judgments referred to in this order and pass orders afresh. Appellant is also directed to appear before the Ld. Assessing Authority within 15 days and submit to the said authority the 'C' forms for passing assessment orders for the period covered by these appeals and it is also accordingly further directed that the said authority shall pass necessary consequential order in this behalf within a month thereafter.

**12.** Parties be informed accordingly, and the file, after completion, be consigned to the record room.

Announced:

31<sup>st</sup> March, 2022

  
(Dr. S.S. Guleria)  
Chairman,  
H.P. Tax Tribunal  
Camp at Shimla.




Endst No.HPTT/CS/2022- 8-10

Dated: 01-04-2022

Copy to:

1. The Commissioner of State Taxes and Excise, Himachal Pradesh, Block No.30, SDA Complex, Shimla.
2. M/s Bareja Agencies, By-Pass Road, Paonta Sahib, District Sirmour, HP.
3. Shri R.N. Sharma, Advocate, House No. A-157, Sector-III, New Shimla.
- ✓ 4. Legal Cell, office of the Commissioner of State Taxes and Excise, Himachal Pradesh.
5. Assessing Authority, Paonta Sahib, Sirmour (HP)

  
Reader to the  
Chairman,  
H.P. Tax Tribunal  
Camp at Shimla