

BEFORE
THE COMMISSIONER OF STATE TAXES AND EXCISE,
HIMACHAL PRADESH,
(Block No. 30, S.D.A. Complex, Shimla-09)

Application No. : 01/2021-22
Date of institution : 18-11-2021
Date of order : 14-03-2022

In the matter of: --

M/s Kamal Dev Sharma,
Toll Lessee, Parwanoo, and Dherowal (BBN Baddi Unit)
Resident of Vill. Bharolian Khurd,
PO, Tehsil & District Una (HP). Applicant

v/s

1. The Dy CST&E, Solan, District Solan, (HP)
2. The Dy CST&E, BBN at Baddi District Solan
..... Respondent(s)

Parties represented by: --

1. S/Shri Sunil Cholia and Rakesh Sharma, Advocates for the applicant.
2. Shri Sandeep Mandyal, Law Officer for the respondents.

ORDER

Application under section 10-B of the Himachal Pradesh Tolls Act, 1975

1. This order shall dispose of the present application filed under section 10-B of the HP Tolls Act, 1975 by M/s Kamal Dev Sharma Toll Lessee Parwanoo and Dherowal Toll Units for the year 2012-13. In fact, the applicant intends to get invoked the powers of revision provided under Section 10-B of the H.P. Tolls Act, 1975 (herein after referred to as "the Act"), with a prayer to call for record for satisfying as to the legality and propriety of the proceedings disposed of by the Deputy Commissioners of State Taxes and Excise District Solan and Revenue District BBN, respectively, and pass an Order directing the respondents to recompute the liabilities afresh after allowing the reduction of bid amount by an amount to be assessed on the basis of the losses suffered on account of the circumstances beyond the control of the Applicant or attributed to non-action of the respondents, as well as the verdicts passed by the Hon'ble High Court in similar situated situations and further allowing waiver of



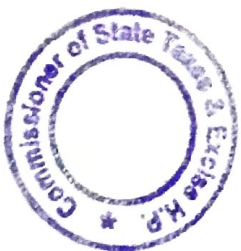
interest as the same is not chargeable after submission of FDRs at the time of bidding.

2. The brief facts required for the disposal of the present Application are that the Applicant was a Toll Lessee for the year 2012-13 in respect of Parwanoo Unit (for Rs. 11, 52, 31, 000/-) and Dherowal Unit (BBN Baddi, for Rs. 9, 25, 000/-). In his submissions in the matter the applicant claims that he has deposited a sum of Rs. 25, 70,932/- excess in respect of Parwanoo Unit. The Applicant also claims that only a sum of ₹ 77, 21, 011/- is balance to be paid in respect of Dherowal Unit. The applicant has also brought to the notice of this forum that this forum vide order dated 27-12-2019 in Appeal No. 91/2016-17, has allowed a sum of ₹ 4,82,601/- as refund along with proportionate interest of ₹ 67,486/- in respect of Gullerwala barrier for the year 2012-13 subject to deposit of the all pending dues against the Applicant as according to the constraints of the provisions contained in the Toll Announcements as any compensation is allowed in the form of refund only which clearly implies that the Applicant has to first deposit all the pending dues, if any, before any amount is refunded to the Applicant.
3. The applicant has claimed that on the basis of prevailing hardships the total amount payable by him is thus ₹ 72,38,410/- only.
4. The applicant has submitted that the respondents have added interest amounts on whims and fancies without associating the Applicant; and without confronting the Applicant the respondents have proceeded to recover the amount as arrears of land revenue.
5. The perusal of the record as well as the contents available in the present application show that the Applicant has simply attached a sheet of calculations and computations signed by the Additional Excise and Taxation Commissioner (South Zone) which according to the Applicant has been unofficially shared by the Respondent. The applicant is aggrieved that the above calculations and computations are arbitrary and were shared unofficially by the Respondent. Felt aggrieved by the above actions of the respondents, the Applicant, has preferred the present application.



6. The Applicant has submitted that the department should have proceeded with the recoveries in the month of April 2013 itself. For non action on the part of the respondents, the applicant, now, cannot be burdened with interest at the time when the applicant is losing interest recurring on the FDRs submitted with the department.
7. Another grievance of the applicant is the endorsing of red entries against the landed properties of the applicant disproportionate to recoveries to be made.
8. The applicant has requested for removal of red entries against few properties of the Applicant. The applicant has attached a list of 31 properties attached by the department. The applicant has also furnished details and evaluation of four properties which have been evaluated at ₹ 12, 66, 69, 940/-.
9. The applicant has undertaken to pay the entire basic demand within three months from the release of above mentioned properties and is willing to pay the interest and penalties subject to the outcome of appellate recourses.
10. The Applicant while submitting written submissions in support of application for removal of red entries against few properties of the applicant has referred to item no 2.3.20 of the *Announcements* (1.4.2012 to 31.3.2013) for allotment for lease of right to collect toll under the Act and to the provisions of the Himachal Pradesh Land Revenue Act, 1953. The Applicant has sought directions to the authorities below to recompute the tax liability on account of non co-operation of the Respondents in smooth functioning of toll barriers.

2.3.20: If the lessee fails to deposit the installment or installments plus interest, as the case may be, up to the 20th of the next month, or the last installment by 10th day of the month following the month in which the installment is payable, the Addl./Dy. Excise and Taxation Commissioner, In charge of the Zone will, unless he compounds the delay by imposing penalty as provided for in these terms and conditions, suspend or cancel the lease, and the Asstt. Excise and Taxation Commissioner, In charge of the district shall initiate recovery proceedings of the amount of lease money due,



including interest, penalty etc. as an arrears of land revenue, on the 20th day of the following month or 10th day, as the case may be, this shall be in addition to the penalty provisions that may be brought into operation against the lessee under the HP Tolls Act, 1975, and the rules framed thereunder and these terms and conditions of lease. (Emphasis supplied).

78. Attachment of estate or holding.- (1) At any time after an arrear of land revenue has accrued the Collector may cause the estate or holding in respect of which the arrear is due to be attached and taken under his own management 1 [or that of an agent appointed by him for that purpose] or that of a Gram Panchayat. (2) The Collector 2 [or the agent] or Gram Panchayat shall be bound by all the engagements which existed between the defaulter and his tenants, if any, and shall be entitled to manage the land and to receive all rents and profits accruing therefrom to the exclusion of the defaulter until the arrear has been satisfied, or until the Collector restores the land to the defaulter. (3) All surplus profits of the land attached beyond the cost of attachment and management and the amount necessary to meet the current demand for land revenue and rates and cesses shall be applied in discharge of the arrear. (4) **Land shall not be attached for the same arrear for a longer term than five years from the commencement of the agricultural year next following the date of the attachment**, but, if the arrear is sooner discharged, the land shall be released and the surplus receipts, if any, made over to the land-owner. (Emphasis supplied).

11. Shri Sandeep Mandyal, Law Officer for the Department on the other hand submitted that the applicant has submitted the present application under section 10-B of the HP Tolls Act, 1975 seeking satisfaction of this forum vis-à-vis legality and propriety of the proceedings disposed of by the respondent authorities below. But, the Applicant has not brought any such proceedings before this Court. In order to decide up on any proceedings in the matter, the same has to be brought on record within five years, but the Applicant has not placed any such proceedings on record, so, the present application is not maintainable at all, submitted the Ld. Counsel for the Respondents.

12. Though, replying on merits of the case, the Counsel submits that firstly, the Applicant himself had been requesting for grant of time to pay the pending dues under the Tolls Act on the pretext of loss in collection of toll for the year 2012-13 and now, after the lapse of the lease period and having exhausted the appellate recourses, he is referring to condition No. 2.3.30 for the year 2012-13, ignoring the preceding condition in the very



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announcements, under which he, himself, had applied for grant of time to pay due installments, the condition is being quoted hereunder:

2.3.19 In the event of his failure to pay an installment or part thereof of the lease money by the due date -- (a) the lessee shall pay interest on the unpaid amount @ 15% per annum for the period of delay up to one month from the date of default of the amount, and @ 20% per annum thereafter till the default continues;

13. Ld. Counsel for the respondents also submitted that the Applicant had been in litigation in the matter above even before the end of Lease Year 2012-13, and it was for this reason that the matter being before the higher Authorities, the proceedings under the HPLRA, 1953 could not be proceeded against the applicant conclusively. There are documents in the form of applications from the applicant himself, whereby, he had time and again sought extensions to deposit payable fee on account of less collections of toll tax during the lease period 2012-13. An amount of ₹ 2, 16, 61, 448/- is recoverable against the applicant on account of Toll Tax, interest and penalty as per provisions of the HP Tolls Act, 1975 read with condition No. 2.3.19 for the year 2012-13. The matter of the Applicant firm regarding Toll Tax was in litigation in the Hon'ble HP High Court till July 23, 2013, thereafter in the Court of the Ld. Financial Commissioner (Appeals) till 07-10-2013 (Parwanoo Unit) and 31-08-2016 (Dherowal Unit), and then before this forum till order dated 27-12-2019 (Dherowal Unit).

14. Ld. Counsel for the Department has argued that the matter above is settled to the extent that a total liability of ₹ 2, 16, 61, 418/- is outstanding against the applicant and the same is recoverable as arrears under Land Revenue Act for the fact that all other measures to recover the dues have been exhausted and the concerned authorities may be directed to take the matter to conclusion in a time bound manner as has been requested by the applicant as well. It was further argued that the details of treasury Challans w.e.f August, 2012 up till January, 2013 submitted along with the reply to the present Application are exhaustive and self-explanatory and even the interest during the period the Applicant was in appeal has not been calculated.



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15. I have heard both the parties in the matter. The applicant has preferred the present application under section 10-B of the HP Tolls Act, 1975 which provides as under:

10-B. Revision.- The Commissioner may, on his own motion call for the record of any proceeding which is pending before, or have been disposed of by any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or the orders are prejudicial to the interest of revenue, may pass such order in relation thereto as he may think fit:

Provided that powers under this section shall be exercisable only **within a period of five years** from the date on which such order was communicated.

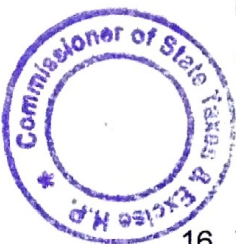
The bare perusal of the above said provision shows that the power of Revision as envisaged under Section 10-B of the Act can only be invoked by the Commissioner on his own motion with respect to the proceeding which is **either pending before or have been disposed of by any authority** subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or the Orders are prejudicial to the interest of the revenue.

As far as proceedings pending, disposed by the subordinate authorities are concerned, the following documents, in this regard, have been annexed by the Applicant before this Court:

S No.	Document	Document Date
1.	Bid Sheet	Year 2012-13
2.	Department Calculation Sheet	12-10-2013
3.	Applications regarding Non-functioning of Barriers	19-09-2012, 17-10-2012
4.	Department letter to bank	30-10-2013
5.	KVP Forfeiture	18 Nov 2013
6	FDRs not forfeited	

From the perusal of dates given in above documents, it is quite clear that that none of the proceedings pertain to last five years which would warrant this forum to invoke the powers conferred under Section 10-B of the Act.

16. The Computation annexed is simply the gist showing the details of late deposited Monthly Toll License Fee for the year 2012-2013 qua the Applicant with the endorsement of imposition of the penalty that too in the



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year, 2013. In fact, no order has been passed by any authority nor the same has been annexed with the present Application against which the Applicant claims to be aggrieved. Since, the powers under section 10-B of the Act can only be exercised only within five years, therefore, the present application under section 10-B is barred by limitation. The Applicant has neither pleaded nor shown to have any sufficient cause for the condonation of delay. Even otherwise, the gist showing the details of late deposited Monthly Toll License Fee is legal and proper and the same is not prejudicial to the interest of revenue especially when the Orders dated 7-10-2013 passed by the Ld. Financial Commissioner (Appeals) as well the Order dated 27-12-2019 passed by this forum respectively have elaborately dealt with the same. Those orders have not been assailed by the Applicant in any court of law and the same has attained finality.

17. Not only this, the details of the challans from August, 2012 up till January, 2013 filed along with the Reply to the present Application clearly show that the Applicant has defaulted in the timely deposit of the Toll fee especially when the Applicant has not rebutted the said details by filing any rejoinder to the same.
18. In view of the discussions made hereinabove, it will be in the interest of justice if the present Application is disposed of with the directions to the concerned Departmental authorities (In charges of the Solan and BBN (Revenue) Districts respectively), to immediately complete the process of recovery of all the outstanding amounts within their respective jurisdiction within a period of three months positively .The Application is disposed of accordingly. No order as to costs.
19. Let the copy of this order be supplied to all concerned. In view of the disposal of this Application, the Miscellaneous Applications are dismissed as having become in-fructuous. The file after due completion be consigned to record room.



Commissioner of State Taxes & Excise

Himachal Pradesh



Endstt. No.: DoSTE/CoSTE-Reader/Appeals/2021-22/ 6931-6936

Dated: 14-03-2022

Copy to:

1. M/s Kamal Dev Sharma, S/o Late Shri Mool Raj Sharma, Vill. Bharolian Khurd, P.O. Tehsil & District Una (HP).
2. Addl. Commissioner (ST&E), South Zone, Block No. 30, Shimla-09 with the directions that the order above may be got implemented in the given time limit.
3. The Dy. Commissioner (ST&E), Solan (HP) for compliance of orders and directions above and report the same through proper channel.
4. The Dy. Commissioner (ST&E), BBN (HP) for compliance of orders and directions above and report the same through proper channel.
5. S/Shri Sunil Cholia and Rakesh Sharma, Advocates Opp. District Courts Santoshgarh Road Una, (H.P.) for the applicant.
6. Shri Sandeep Mandyal, Law Officer (Legal Cell), HQ.

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Commissioner of State Taxes & Excise
Himachal Pradesh

KAMAL DEV VS DY. CST&E (SOLAN, BBN);