

**BEFORE THE COMMISSIONER OF STATE TAXES & EXCISE
HIMACHAL PRADESH, SHIMLA-171009**

Appeal No. : 59/2015-16
Date of Institution: 16-01-2016
Date of Order: 29-12-2021

In the matter of:-

M/s N. B. Jewellers,
Sunbreeze Building, Opp. Local Bus Stand
Sanjauli, Shimla-06Appellant

Versus

Deputy Excise and Taxation Commissioner
-cum- Assessing Authority,
Flying Squad, North Zone, Palampur
District KangraRespondent

Parties represented by: -

- 1) Ms Narvada, Advocate, for the appellant.
- 2) Sh. Rakesh Rana, Deputy Director (Legal) for the respondent.

Order

**Under Section 45 (1) (b) of the Himachal Pradesh Value
Added Tax Act, 2005**

1. The present appeal has been preferred against the orders of the Assessing Authority FS/NZ, Palampur, who vide order dated 06-11-2015, imposed a penalty of Rs. 5, 00, 000/- (₹Five lakhs only) in a detection case, disposed of under section 34 (7) of the Himachal Pradesh Value Added Tax Act, 2005.
2. The briefs in the matter are that the appellant firm was registered under the HP VAT Act, 2005 vide TIN 02011200910 with business premises at Sunbreeze Building, Opp. Local Bus Stand Sanjauli, Shimla-06. The appellant is engaged in the business of jewellery, diamonds and other bullions. On dated 05-11-2015 Shri Ankur Gupta, proprietor of the firm above was found selling gold ornaments to M/s Ganpati Jewellers, Akhara Bazaar Kullu. During the course of inspection, the inspecting team of the Flying Squad, North Zone Palampur, to ensure compliance with the

HPVAT Act and Rules, 2005, inquired about the goods being sold and statutory documents related to the sale being conducted by him at Kullu. On demand, by the inspecting team, a challans book, bill book and out-door sale permission was shown by the appellant to the inspecting team. The scrutiny of the submitted documents, revealed that the validity of document authorizing out-door sale to the appellant firm had expired on 31-03-2015, and, thus, was no more valid on the date of inspection i.e. 05-11-2015. Similarly, the bill book that was produced on demand during the inspection was not as per provisions of the HP VAT Act, 2005, but, pertained to the erstwhile HPGST Act, 1968; the bill book, as well had, thus, lost its validity. The statement of Shri Rahul Kumar, the purchasing dealer (Prop. M/s Ganpati Traders, Akhara Bazaar Kullu), was also recorded on the spot, whereby, Shri Rahul admitted that he had purchased goods from Shri Ankur Gupta above. Inventory of the goods, being traded, was prepared on spot, and the goods, with approximate sale value of Rs. 33, 46, 750/-, on request of the appellant dealer, were handed over to Shri Rahul for safe custody of the same till further orders by the competent authority. Accordingly, a detention memo was issued to the appellant on spot with the directions to get the case compounded on 09-11-2015 in the office of the Dy. Excise & Taxation Commissioner, FS/NZ, Palampur. But, Shri Ankur Gupta preferred to get the matter compounded on 06-11-2015, itself, in the office of the DETC FS/NZ. He admitted his fault of conducting the sales without mandated documents and expired permission, and paid a penalty of Rs. 5, 00, 000/- (₹Five lakhs only) in the office, itself, vide Penalty Receipt No. 0615881. The appellant felt aggrieved by the orders above of the AA FS/NZ Palampur, has preferred the present appeal before this forum.

3. Ms. Narvada, learned Advocate, arguing the matter in ink submitted on behalf of the appellant that the Flying Squad, North Zone, was not empowered under the HP VAT Act, 2005 to assess the matter and, thereafter, impose the penalty in the premises itself. Another of the arguments was that section 34 of the HP VAT Act, 2005 was applicable only in cases when the goods are in transit; and in the present case the goods had entered the shop, thus, section 34 of the VAT Act was not applicable, here. Another argument forwarded in the matter was that no

opportunity of being heard was given to the appellant before imposing the penalty. It was also argued that no enquiry was conducted prior to the imposition of penalty. Another grievance of the appellant advocated was that no copy of the order has been supplied to the appellant till date, in the matter. The last of the submissions on behalf of the appellant was that respondent, himself, being one of the members of the raiding/inspecting party, could not have decided the detection case and levied the penalty as has been done in the instant case.

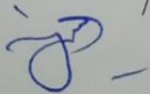
The citations relied up on by the appellant in support of her arguments above in the matter are: **Nahar Spinning Mills State of Punjab CWP No. 2324 of 2006, CC v Sayed Ali AIT 2011 94 SC, Manali Resorts v State of H.P. (2007) 3 Shima LC 319, Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr., JAIR 1976 SC (1785), Steel Authority of India Limited vs Sales Tax Officer, Rourkela-I (2008) 16 VST 181 SC, Raj Kishore Jha v. State of Bihar 2003 (11) SCC, Breen v. Amalgamated Engg. Union (1971) 1 All ER 1148 and Alexander Machinery (Dudley) Ltd v Crabtree 1974 ICR 120 (NIRC)**

4. Shri Rakesh Rana, Deputy Director (Legal) for the respondent replied that the appellant did not have any valid document in respect of the consignment with him and the documents shown to the inspecting team of the Flying Squad, North Zone were all with expired validity. On the issue of not being provided due opportunity of being heard in the matter and proper inquiry, before imposition of penalty in the matter, Shri Rana, learned counsel for the respondent replied that on spot statements given, by both the selling (the appellant) and purchasing dealers, and candid admission by the former of not having proper and valid documents with him at the time of inspection of goods, and his own telephonic request to compound the matter on 06-11-2015, itself, instead of 09-11-2015 (the given date of hearing) required no further inquiry in the matter. The appellant was found blank on account of documents mandated under the provisions of the HPVAT Act. Regarding jurisdiction of the Flying Squads, the counsel for the respondent furnished a copy of notification, whereby, all the Zonal Flying Squads of the State, have been provided with jurisdiction over their respective Zones, the authorities posted in

such Zones are Assessing Authorities for the purpose of HP VAT Act, so, there is no substance in the contention of the appellant that the order has been passed without jurisdiction replied the Departmental counsel.

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5. I have carefully gone through submissions of both the parties and perused the case record in the matter. Perusal of case record reveals that the assertion of the appellant that he had gone to Kullu to show the samples to the dealers there, is without any documentary evidence, as, there is no corroborating document, as well, on the record file to support this claim of the appellant. The documents, *challan* book and bill book, produced before the inspecting team on demand in respect of the goods in question were all with expired validity and over-writing, as well, and, were, thus, irrelevant and invalid on the date of inspection (05-11-2015). The other contention of the appellant that he was not provided with the copy of order is also not true on two accounts- firstly, the appellant, submitting the appeal papers, has attached the copy of the order as 'Annexure A-1', and secondly, the appellant signature are appended there in token of having received the order on the date (06-11-2015) of disposal of the case itself. So, the last contention of the appellant is contrary to facts revealed on the face of record.
6. The appellant is also aggrieved on accounts of not being provided the due opportunity of being heard, non-issuance of notice and non-conduction of inquiry into the matter. Record in the matter reveals that the appellant has been heard on the date of detection i.e. 05-11-2015, and on 06-11-2015, when the appellant, admitted bringing the goods and selling the same without valid documents, and he himself requested for compounding the matter. On account of this admission and subsequent request to compound the matter even before the actual date (09-11-2015) of hearing given by the respondent authority in the matter, the need of any further inquiry in the matter was not warranted.
7. The appellant has also raised the issue of matter being decided by the member of the inspecting team. The member of the inspecting team, by virtue of his rank and due authorization in this behalf, as has been enshrined, itself, under the HP VAT Act and Rues, 2005 (quoted below),



is fully empowered to decide the matter, so the appellant is not right to raise the issue of matter being decided by the member of the inspecting team.

Taxing authorities.

3. (1) For carrying out the purposes of this Act, the State Government may, by notification, appoint a person to be the Commissioner and such other persons with such designations, as it thinks fit.

(2) The State Government may, by notification, appoint as many Assessing Authorities as it may think fit.

(3) The Commissioner and other persons appointed under THE HIMACHAL PRADESH VALUE ADDED TAX ACT, 2005 sub-section (1) shall perform such functions and duties as may be required by or under this Act or as may be conferred, by the State Government, by notification. (4) The jurisdiction of the Commissioner and other officers posted at the State Headquarters shall extend to the whole of the State of Himachal Pradesh, and the jurisdiction of other officers or officials shall, unless the State Government otherwise directs, by notification, extend to the districts or the areas of the districts for which they are for the time being posted.

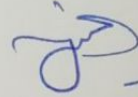
8. The appellant, while raising the issue of jurisdiction of the respondent in the case, has not submitted any documents in support of this argument. On the contrary, the Government vide Notification No. EXN-F (10)-5/81, dated Shimla the 28th of September 2004 has duly authorized the respondent to decide the detection cases falling under his jurisdiction (North Zone comprising of districts of Kangra, Chamba, Mandi, Kullu, and Lahaul area of Lahaul & Spiti District.
9. There is another objection on behalf of the appellant that section 34 of the HPVAT Act, 2005 is applicable only at barriers and was not applicable in respect of these goods, as the goods had reached the premises and, the goods were not in transit as well. Sub-section (2) of Section 34 of the HPVAT Act, 2005 answers the above objection of the appellant:

(2) The owner or person in-charge of a goods carriage or vessel shall carry with him a goods carriage record, a trip sheet or a log book, as the case may be, and a tax invoice or a bill of sale or a delivery note containing such particulars as may be prescribed, in respect of such goods, meant for the purpose of business, and produce the same before an officer in-charge of a check post or barrier or any other officer not below the rank of an Excise and Taxation Inspector checking the vehicle or vessel at any place.

Thus, from above provisions of the Act, it is clear that in respect of goods meant for the purpose of business, a tax invoice or bill of sale or a delivery note, containing such particulars as may be prescribed, has to be carried along with and the same has to be produced before an officer

in-charge of a check post or barrier or any other officer not below the rank of an Excise and Taxation Inspector checking the vehicle or vessel at any place. None of the above requirements of the Act given in section 34 (2) were fulfilled by the appellant, hence; the provisions of section 34 of the HP VAT Act were applicable against the appellant and the penalty, lawfully, has been imposed in the matter.

10. Certain citations have also been quoted by the appellant in the matter. But, as discussed above, the inspecting team was duly empowered under the Act to inspect the goods and documents related thereto and the appellant was afforded reasonable opportunity of being heard in the matter, and as the appellant himself had requested for an early hearing and disposal of the matter, therefore, the citations quoted and relied upon by the appellant are neither relevant nor applicable to the matter in hand.
11. In view of above, it is clear that none of the assertions of the appellant is supported by evidence and documented proof, therefore, the same, being without merits is rejected. The orders of the respondent being legal, proper and just are, accordingly, upheld.
12. Inform the parties accordingly. Files be consigned to records. Called for record, in the case, may be returned to its source.



**Commissioner of State Taxes & Excise
Himachal Pradesh, Shimla-09**

Endst. No: STE /CST&E-Reader /2021-22-37353-37358 Dated: 30-12-2021

Copy is forwarded to:-

- 1) M/s N. B. Jewellers, Sunbreeze Building, Opp. Local Bus Stand Sanjauli, Shimla-06 through Advocate Narvada.
- 2) Jt. Commissioner (State Taxes & Excise, North Enforcement Zone, Palampur, District Kangra, 176 061.
- 3) Ms Narvada, Advocate for the appellant.
- 4) Dy. Commissioner (State Taxes & Excise), Shimla, Shimla-09.
- 5) Rakesh Rana, Deputy Director (Legal), Legal Cell (HQ).
- 6) IT cell, with the request to upload the order on ST&E portal.

**Reader to
Commissioner State Taxes & Excise
Himachal Pradesh, Shimla-09**