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

1. Appeal No. 98/2016-17

In the matter of:-

M/s Bareja Agencies,
Bypass Road, Paonta Sahib **...Appellant**
Versus
Deputy Excise and Taxation Commissioner
Cum- Assessing Authority, F.S. Parwanoo **....Respondent**

With

2. Appeal No. 98-A/2016-17

M/s Bareja Agencies,
Bypass Road, Paonta Sahib **...Appellant**
Versus
Deputy Excise and Taxation Commissioner
Cum- Assessing Authority, F.S. Parwanoo **....Respondent**

With

3. Appeal No. 98-B/2016-17

M/s Bareja Agencies,
Bypass Road, Paonta Sahib **...Appellant**
Versus
Deputy Excise and Taxation Commissioner
Cum- Assessing Authority, F.S. Parwanoo **....Respondent**

With

4. Appeal No. 98-C/2016-17

M/s Bareja Agencies,
Bypass Road, Paonta Sahib **Appellant**
Versus

Deputy Excise and Taxation Commissioner
Cum- Assessing Authority, F.S. Parwanoo ...Respondent

Parties represented by:-

1) Sh. R. N. Sharma, advocate for the Appellant
2) Sh. Sandeep Mandyal, Law Officer, for the Respondent.

ORDER

1. The instant Appeals have been filed by M/s Bareja Agencies, Bypass Road, Paonta Sahib, against the common Order 08.02.2017 passed by the Deputy Excise and Taxation Commissioner-cum-Assessing Authority, Flying Squad, South Zone at Parwanoo, District Solan (HP)., whereby a demand of Rs. 2, 10, 38, 823/- (Rs. Two Crore Ten Lac Thirty Eight Thousand Eight Hundred and Twenty Three only) has been created by the Respondent against the Appellant for the Financial Years 2012-13, 2013-2014, 2014-2015 and 2015-16 on account of VAT, penalty and interest under section 16(8) and 19 of the HP VAT Act, 2005 (read with section 8 and 9 of the Central Sales Tax Act, 1956. All these Appeals were instituted on 05-05-2017 and are decided by a common judgment as the facts and the law point are involved in all these Appeals.

Briefs Facts in the matter:

2 (i) Brief facts in the matter are that the Appellant is a registered dealer, vide TIN 02040200089, under the Himachal Pradesh Value Added Tax Act, 2005 (herein after referred to as HPVAT Act) and the Central Sales Tax Act, 1956 (herein after referred to as CST Act). The Appellant was engaged in the trading of cold drinks, juices, mineral water, food grains, pulses, readymade garments, electronic goods, building material, hardware goods, karyana,

crockery, tyres, shoes, general store, handlooms, confectionery, cosmetics, plastic, stationery, electronic goods etc.

(ii) It came to the notice of the Deputy Excise and Taxation Commissioner-cum-Assessing Authority, South Enforcement Zone, Parwanoo (hereinafter referred to as the Respondent) that during the years 2012-13, 2013-2014, 2014-2015 and 2015-16, the Appellant had reflected Inter-State Sales (ISS) of cold drinks like Pepsi and Dew etc. to different dealers situated in Delhi and claimed concessional rate of tax under Section 8 of the CST Act. The Respondent with the information and knowledge that most of the cold drinks are manufactured in Haryana near Delhi and are imported by a Punjab (Zirakpur) based distributor there from. Thereafter, from Punjab, these Cold Drinks were further being imported by the Appellant but, after being imported into the state, these cold drinks were further shown to be sold to the dealer in Delhi thereby making such transactions unprofitable due to transportation cost and charging of CST three times. Rather, such repeated Inter State Sale transactions created suspicion regarding the very genuineness of the transactions, itself. According to the Respondent such type of transactions was unusual and commercially non-viable.

(iii). Thereafter, the Respondent authority issued a notice to the Appellant under section 16 & 60 of the HPVAT Act (read with section 8 & 9 of the CST Act). The Appellant, in his returns submitted to the Department which were also available on HIMTAS (Himachal Pradesh Tax Administration System, a web based internet application), had shown ISS to some dealers in Delhi. In response to the aforesaid notice, the Appellant submitted that the consignments of cold drinks were sent to Delhi by means of goods vehicles. The

Respondent called upon the Appellant to produce Goods Receipts or bilties in proof of the consignments transported. However, the Appellant could not produce any such record. This further created doubts about the genuineness of the ISS claimed by the Appellant. Thereafter, the Respondent, further, conducted detailed enquiry into the matter and got verified the registration numbers of the vehicles (shown to be transporting the consignments) from the National Portal of Vehicle Enquiry maintained by the Ministry of Transport (Govt. of India). The enquiry revealed that most of the vehicles which were shown by the Appellant as transporting cold drinks to Delhi were in fact two wheelers, three wheelers or Light Motor Vehicles (Cars). Many of the mentioned vehicles were shown to be non-existent whereas the registration numbers of some of the vehicles were found to be those of tractors or even buses.

(iv) Furthermore, cross-checking of the Registration Certificates of the alleged purchasing dealers of the Appellant revealed that none of such purchasing traders had 'Cold Drinks' registered as trading commodity on their respective Registration Certificates in Form B. Rather, one of the purchasing dealer viz. M/s Shree Ram Enterprises, Delhi was found to be a 'shell company'. According to the Respondent, these facts amply proved that the goods were sold locally, rendering the Appellant ineligible to claim concessional rate of tax, as the mandatory provisions of section 8 (3) (b) of the CST Act were not fulfilled. Thereafter, the Respondent after giving an opportunity of being heard to the Appellant vide Order dated 08-02-2017 created a demand of ₹ 99, 46, 823/- (Ninety Nine Lakhs Forty Six Thousand Eight Hundred Twenty Three Only) as VAT and

interest along with penalty amounting to ₹ 1, 10, 92, 000/- for the financial years 2012-13 to 2015-16 as detailed under:

Year	VAT(₹)	Interest(₹)	Penalty(₹)	Total(₹)
2012-13	4,03,468	3,08,653	6,05,000	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 Appellant feeling aggrieved by the aforesaid Order dated 08-02-2017 preferred the present Appeal.

Arguments, Submissions and Citations by the Appellant:

3. Shri R. N. Sharma, Advocate for the Appellant submitted that the impugned order, in view of the below stated arguments, reasons and supportive citations may be set aside and the same may be transferred to the Dy. ST&E, Sirmour for assessment afresh:

(i) That "assessment" for the years under appeal could not have been legally initiated and concluded by the Ld. Assessing Authority (FS) South Zone, Parwanoo without obtaining the orders of the Ld. Commissioner under Rule 87(4) of the HP VAT Act, because for the lack of file transfer proceedings the assessment proceedings remained with the appropriate Assessing Authority of Paonta Sahib, and resultantly the impugned order is vitiated for the lack of jurisdiction;

(ii) That though the Respondent authority has issued several notices to the appellant but none of the said notices were served in

accordance with the provisions of Rule 84 of the HP VAT Rules, 2005; Law provides that issuance of a notice is not an empty formality, the notice should not be cryptic, but fully revealing and must be reasonable, effective and adequate;

(iii) That section 16 (8) of the HPVAT Act does not empower or authorize framing of assessment of tax; under section 2 (b) of the Act, an "Assessing Authority" is a person appointed to "make any assessment under this Act". Provisions for making "Assessment of tax" under the Act are contained only in Sections 21, and 22 of the Act read with Rules 67, 68 and 69 of the HP VAT Rules, 2005, and not under section 16(8). Every assessment of tax must be framed only under and in compliance with the procedure prescribed in the said provisions. The Assessing Authorities are bound to follow the enacted substantive procedure and they have no power to make rules or ignore or bid good-bye to the rules duly made in this behalf. The impugned order "determining"/assessing tax has expressly been made under section 16 but no demand of VAT can be legally quantified/determined/raised under section 16. It is not the choice or free will of the Assessing Authority, who is a mere creature of the Act, to ignore and by-pass the statutory procedure, render it to be a dead-letter and then go above such procedure and pass orders assessing tax contrary to and in violation of the same.

(iv) Neither any interest can be imposed based on 'determination'/assessment of tax nor can any such illegal proceedings of penalty be initiated on the basis of the impugned order, which is entirely un-enforceable in law. Quantum of

interest having direct nexus with the quantum of VAT, levy of interest is equally vitiated like the quantification of the VAT itself. Imposition of interest is contrary to the law laid down by the Constitution Bench of the Hon'ble Apex Court in **J K Synthetic Case 1994** and the same is squarely applicable in the instant case. The Appellant has paid the full amount of tax due as per returns and the demand raised on grounds of defective 'C' Forms will not legally attract levy of interest at all, even if the provisions of the statute might be different, the ratio of the law declared by the Hon'ble Supreme Court will be binding on all authorities in India;

(v) That similar is the legal position regarding levy of penalty also. Penalty under section 16(8) is expressly provided to be "equal to twice the amount of tax.....assessed"; the word "assessed" connotes validly 'assessed under the Act" only under sections 21 or 22 and can, in no circumstance, mean to be an amount of tax determined contrary to the enacted procedure. An invalidly computed/determined tax is legally un-enforceable. The assessment and penalty are two different proceedings and penalty proceedings follow assessment, but as the impugned order declares loudly that "Penalty proceedings were initiated against the dealer on 24.08.2016", whereas the assessment of tax was dated 8th February, 2017, which is legally inconsistent. Neither the ground of transport nor the GRs/bilties are relevant for imposition of penalty, because the Appellant has truly and fully disclosed the inter-State transactions, which are permissible in accordance with the law laid down by the Hon'ble Apex Court and the Hon'ble High Courts;

(vi) That though orders under section 16 of the HPVAT Act, 2005 and sections 8 and 9 of the CST Act, 1956 have been passed, yet these are essentially orders under section 9(2) of the CST Act read with the section 16(8) and 19 of the HP VAT Act, 2005;

(vii) That the Ld. Assessing Authority has although mentioned certain vehicles in the impugned order but the orders in the matter haven passed denying him adequate and effective opportunity to explain and rebut the allegations levelled against him, Cit. **State Of Kerala vs K.T. Shaduli Yusuff Etc.** (1977) 39 STC 478; "in case the authority proposes to use against the assessee the result of any private inquiries made by him, he must give him ample opportunity to meet it'' **Muralimohan Prabhudayal vs State Of Orissa 1970 26 STC 22 Orissa**;

(viii) That there is no reason why the sale of goods dispatched by other modes of transport should not also be deducted from the taxable turnover, because Article 286(2) in exempting sales in the course of inter-State trade, makes no distinction between modes of transport by which the goods are dispatched. Mode of transport is not a relevant consideration when there is a concluded sale duly vouchsafed by issuance of a statutory declaration in Form-'C', **The State of Bombay Vs United Motors India (India) Ltd. (1971) 4 STC 133 (SC 5JJ) (P155).** The limitation, put in the impugned orders, was beyond the competence of the Respondent and thus void;

(ix) That the Respondent has mentioned in the impugned orders that "it is sufficient to mention that as many as 81 vehicles numbers out of total 235 were either pertained to non-goods vehicles

(bikes, moped, cars and buses etc.) or no-existent vehicles". This and the further mention of one vehicle 10 times and another vehicle 9 time during 2015-16 led the Ld. Respondent to observe that "it is established beyond doubt that the dealer did not transfer Cold Drinks to Delhi by means of the shown vehicles". Since, no observation about remaining 154 vehicles was at all made/available, the omnibus and sweeping observation does not hold legally good because the law is that this was a wholly wrong procedure to follow and the Ld. Respondent, on whom the duty lay of assessing the tax in accordance with law, was bound to examine each and individual transaction and then decide whether it constituted and inter State sale eligible to tax under the provisions of the Act; Cit. **Tata Engineering & Locomotive Co. Limited Vs The Assistant Commissioner of Commercial Taxes Jamshedpur & Another (1970) 26 STC 354 (P381).** The Ld. Respondent cannot in law follow an easy course of examining one transaction and then to record a finding that all the transactions are of similar nature and are not inter-State transactions;

(x) That the rate of tax in sub-section (1) of section 8 becomes applicable when the selling dealer *"furnished to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars..."* For the purposes of section 8(4), sub rule (1) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 has prescribed Form 'C'. These provisions show that no additional requirements are provided for claiming concessional rate of CST under section

8(1) of the CST Act, 1957. On a fair reading of the provisions of section 6, 8(1) of the Act and Rule 12(1) of the said Rules it is clear that the only requirement of getting the concessional rate of CST under section 8(1) [and avoiding higher rate of tax under section 8(2)] is to produce C Form declaration, and once the said declaration is produced concessional rate has to be granted and the Assessing Authority is not justified in requiring the Appellant to produce any secondary evidence or alternative mode to substantiate the above. No power is conferred under the Act or the Rules to issue any directions of the nature as contained in the impugned order, about production of GRs. Any further requirement as insisted upon in the impugned order which have mandatory effect on denying concessional rate of CST cannot be issued, being *non est* in law. He must satisfy himself that the purchaser is a registered dealer, **and the 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 certificate in Form 'C' the selling dealer 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. Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representation made to him. (**State of Madras Vs Radio & Electricals Ltd. (1966) 18 STC 222 (231, 233) [3JJ]).** Any false representation by the non-resident buyer who has signed the C Forms will certainly expose him to grave consequences for breach of statutory

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) (**Deputy Commissioner of Commercial Taxes, Madras Division Vs Manohar Brothers (1962) 13 STC 686 (692-693) (Mad.) [DB]**). In the instant case, it is admitted position that the "purchasing traders issued 'C' forms to M/s Bareja Agencies for the purchase of Aerated Water and Confectionery Goods". The action for violating the terms of the Form 'C' was within the jurisdiction of the Delhi VAT authorities and the Respondent has no jurisdiction in the matter. As such, the conclusion to reject the 'C' forms out rightly is without sanction of law and without jurisdiction. Form C is regarded as proof of inter-State sale being made by the dealers in the State to registered dealer outside the State. The purpose of form C is only to ensure that sales are made in the course of inter-State sales, (**Shri Digvijay Cement Co. Ltd. and ors Vs State of Rajasthan and ors (2000) 117 STC 395 (409-411) [5JJ]**). If a 'C' Form declaration is produced before the assessing authority and the latter finds that there is some error or omission for which the declaration cannot be accepted as valid, it is only fair that he draws the attention of the dealer to the error or infirmity and gives him an opportunity to get it properly rectified by the issuing dealer, **Commissioner of Sales Tax (MP) Vs Dayaram Balchand Madhya Pradesh High Court Date: Oct 25, 1972. Since the law is clear that no one can be a judge in his own case, (M/s John Reymond Bright vs Additional Excise and Taxation Commissioner (STR 8 of 2009) and** CWP No. 178 of 2001, titled as M/s Manali Resorts

Vs. State of Himachal Pradesh and others), **the entire proceedings are vitiated;**

(xi) That it is the principle of law that fresh particulars furnished before the appellate authority should be received and if they are in order, the appellate authority ought to extend the benefit of the concessional rate under section 8(1) to that portion of turnover. The Appellant has furnished the rectified Forms-'C' for the three years to the Respondent on 28th March, 2017 and the Respondent was required re-open the assessment and considered the forms submitted and allowed concessional rate of CST, and modified the impugned order to waive the levy of interest and penalties accordingly, as held in a catena of judicial pronouncements. The rectified 'C' forms duly submitted on 28th March, 2017 may accordingly be allowed to be considered and entertained by the appropriate Assessing Authority of the District at Ponta Sahib, District Sirmour, in the interests of justice;

(xii) That it is highly incorrect to make sweeping observation that it is very easy during rush hours to get form XXVI-A stamped or even deposit some tax voluntarily in respect of the vehicles which are not present at the Barrier. In any case, the Appellant cannot be made liable for failure of the system, and it is for the Legislature to step in to amend the law, if necessary, but it cannot be any legitimate ground to suspect genuine transactions of the Appellant and ask him to pay the taxes on grounds of surmises and suspicion; no suspicion, however strong, can be a substitute for proof;

(xiii) That in view of above submissions the instant matter may be remanded back to the Dy. Commissioner (ST&E)-cum-In Charge Sirmour District for assessment afresh of the case.

Reply and Comments of the Respondent Department:

4. Shri Sandeep Mandyal, Ld. Law Officer (Legal Cell) for the Respondent Department submitted that the Respondent in the matter above has passed well reasoned, detailed and faultless order. The impugned order itself has already addressed all the contentions of the appellant and may be upheld.

Findings:

5. (i) I have heard both the parties in the matter. I have also very carefully perused the case record in the matter. The first of the arguments of the learned Advocate is that the assessment of tax for the years under appeal could not have been legally initiated and concluded by the Ld. Assessing Authority (FS) South Zone (the Respondent), Parwanoo without obtaining the orders of the Ld. Commissioner under Rule 87(4) of the HP VAT Act, 2005 for the lack of file transfer proceedings, due to which the assessment proceedings, legally, remained with the appropriate Assessing Authority of Paonta Sahib, and resultantly the impugned order is vitiated for the jurisdiction. This argument of the Appellant-Counsel is contrary to Section 3 (4) of the HPVAT Act:

> ***"Taxing authorities.***
> *3. (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."***

In view of above express provision and by virtue of Notification No. EXN-F(10)-5/81 dt. 28th September, 2004, the Respondent authority being Deputy Excise & Taxation Commissioner was a duly authorized to exercise the powers and to perform the duties/functions of the Assessing Authority, within the meaning of clause (a) of Section 2 of the HP General Sales Tax Act. Notably, after the coming into force of the HPVAT Act, the aforesaid HPGST Act has been repealed. However, by virtue of Section 64(2) (a) of the HPVAT Act, the operation of the notification dated 28th Sep, 2004 is continued to be still in force. Therefore, the Respondent Authority being Deputy Excise and Taxation Commissioner was duly appointed authority with jurisdiction of Flying Squad, South Enforcement Zone, Parwanoo encompassing within his jurisdiction the Districts of Kinnaur, Shimla, Solan, Sirmour and Spiti area of Lahaul & Spiti District and by virtue of the powers vested in him under section 3 (3) of HP VAT Act, which also provides that:

> *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…***

Therefore, the Respondent being had statutory jurisdiction over the Appellant Firm as the Appellant was having his business in Distt. Sirmour. So, there was no need of obtaining separate orders from the Ld. Commissioner under Rule 87 (4) of the VAT Rules. The Rule quoted by the appellant is applicable only in cases where the files are to be specifically transferred *"(4) Subject to the provisions of sub-section (4) of section 3 and sub-section (2) of section 46, the Commissioner may either suo-moto or on application, for reasons to be recorded in writing".*

Not only this, the first two lines of the above said Rule 87(4) itself shows that the same is regulated by sub-section (4) of Section 3 and subsection (2) of Section 46 of the VAT, Act. Furthermore, there was no occasion, application or any *suo moto* action to transfer the file. Thus, the contention of the Appellant that the impugned Order has been passed without jurisdiction is not legally sustainable.

(ii) The learned Advocate for the Appellant has expressed his grievance in the matter that notices were not served in accordance with the provisions of Rule 84 of the VAT Rules. After perusal of the impugned orders, it is revealed that notices under section 16 and 60 of the HPVAT Act, and under sections 8 and 9 of the CST Act, 1956 have been issued to the Appellant. It is also revealed from the record that opportunities of being heard were afforded to the appellant on nineteen occasion's w.e.f. 14-07-2016 to 08-01-2017. It is also revealed from the record file that the appellant has appeared personally in the matter on 24-08-2016 and 18-11-2016. On 18-11-2016 the Appellant was directly confronted with the irregularities noticed in the matter. Prescribing the method of serving the notice, Rule 84 of the HP VAT Rules, 2005 provides that:

> *"(1) Notice under the Act or under these rules shall be served by one of the following methods:–*
>
> *(a) by delivery by hand of a copy of the notice to the addressee or to any other agent duly authorized in this behalf by him or to a person regularly employed by him in connection with the business in respect of which he is registered as a dealer, or to any adult male member of his family residing with the dealer.*
> *(b) by post; ".*

The issued notices above have clearly spelt out the cause and prospective action; thus the notices issued are neither empty nor a

formality and neither cryptic as contended, but the same are fully revealing, reasonable as well as adequate. It is evident from the record that the notices in the matter have been issued by post, so the contention of the Ld. Advocate for the Appellant that notices were not served in accordance with the provisions of Rule 84 of the VAT Rules is contrary to the record.

(iii) It has also been contended by the learned Advocate that Section 16 (8) does not provide and authorizes framing of assessment. Before discussing this contention of the appellant in the matter it would be pertinent to quote the agitated sub-section 16(8) of the VAT Act:

> *"(8) If a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stocks of goods, or has concealed any particulars of his sales or purchases or has furnished to, or produced before, any Authority under this Act or the rules made there under any account, return or information which is false or incorrect in any material particular, the Commissioner or any person appointed to assist him under subsection (1) of section 3 may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty* ***in addition to the tax to which he is assessed or is liable to be assessed****, an amount upto twice the amount of tax but which shall not be less than one hundred percentum of such* ***tax amount] to which he is assessed or is liable to be assessed .****"*

The plain reading of sub-section clearly shows that the above penalty is payable on the amount of tax assessed or liable to be assessed on suppression of sales. Therefore, first, tax liability in respect of suppressed/concealed sales or purchases has to be determined under this section. Once liability on account of suppressed sales is assessed, penalty equal to or upto double of the assessed or liable to be assessed tax amount is payable. The Respondent, in the present case, has found the Appellant guilty of suppressing his local sales by garbing those sales as Inter State Sales. So, the Respondent has rightly issued notices

to the Appellant under sub-section ibid read with Rule 84 of the HPVAT Rules. Sections 21 and 22 of the HPVAT Act deal with regular assessments and thus were not applicable here. Another parallel contention of the Counsel for the Appellant in the matter is regarding non-issuance of proper notice under Rule 67 of the HP VAT Rules, 2005. Rule 67 provides that:

> *"(1) The appropriate Assessing Authority shall, in each case* ***selected for scrutiny under rule 66,*** *every case where the returns are not correct and complete and* ***in other cases where it appears to the Appropriate Assessing Authority to be necessary to make an assessment under section 21 or 22 in respect of a dealer";***

There was neither scrutiny of the case under Rule 66 nor regular assessment proceedings were underway. In the present case tax assessment under section 16 (8) of the HPVAT was being framed. In the beginning of his arguments, learned Counsel stated that proper notice was not issued under Rule 84, in the next step of his pleadings, he states that proper notice under Rule 67 was not issued. The contentions and arguments, above of the learned Advocate, being incongruous and outside the purview of section 21 or 22 of the HP VAT Act and for above discussion as well, are rejected.

(iv) Interest on willfully escaped VAT liability, including penalty during the years 2012-13 to 2015-16, becomes, automatically, payable in view of the provisions of section 19 (1) of the HPVAT Act, 2005 and the Finance Act 2000:

> Finance Act 2000
> 119. Amendment of section 9 of Act 74 of 1956.–In the Central Sales Tax Act, 1956, in section 9,–
>
> (a) in sub-section (2), for the word "penalty", wherever it occurs, the words "interest or penalty" shall be substituted;

(b) in sub-section (2A), for the words "provisions relating to offences and penalties", the words "provisions relating to offences, interest and penalties" shall be substituted;

(c) after sub-section (2A), the following sub-section shall be inserted, namely:–

"(2B) **If the tax payable by any dealer under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax** and all the provisions for delayed payment of such tax and all the provisions relating to due date for payment of tax, rate of interest for delayed payment of tax and assessment and collection of interest for delayed payment of tax, of the general sales tax law of each State, shall apply in relation to due date for payment of tax, rate of interest for delayed payment of tax, and assessment and collection of interest for delayed payment of tax under this Act in such States as if the tax and the interest payable under this Act were a tax and an interest under such sales tax law.";

(d) in sub-section (3), for the words "including any penalty", the words "including any interest or penalty" shall be substituted.

120. Validation.–(1) The provisions of section 9 of the Central Sales Tax Act, 1956 (74 of 1956), (hereafter in this section referred to as the Central Sales Tax Act), shall have effect, and shall be deemed always to have had effect, as if that section also provided–

(a) that all the provisions relating to interest of the general sales tax law of each State shall, with necessary modifications, apply in relation to–

(i) the assessment, reassessment, collection and enforcement of payment of any tax required to be collected under the Central Sales Tax Act, in such State; and

(ii) any process connected with such assessment, reassessment, collection or enforcement of payment; and

(b) that for the purposes of the application of the provisions of such law, the tax under the Central Sales Tax Act shall be deemed to be tax under such law.

(2) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, general sales tax law of any State imposed or purporting to have been imposed in pursuance of the provisions of section 9 of the Central Sales Tax Act, and all proceedings, acts or things taken or done for the purposes of, or in relation to, the imposition or

> collection of such interest, before the commencement of this section, shall, for all purposes, be deemed to be and to have always been imposed, taken or done as validly and effectively as if the provisions of sub-section (1) had been in force when such interest was imposed or proceedings or acts or things were taken or done and accordingly.

The citation, J. K. Synthetic Case 1994, relied on by the Appellant pertains to the period prior to enactment of HPVAT Act, 2005 and Finance Act, 2000 and the latter enactments have over-riding effect, the citation becomes obsolete, hence not considered.

(v) The course of action initiated by the Respondent has emanated from powers vested in him under section 16 of the VAT Act, therefore, the orders above are essentially orders under section 16 of the HP VAT Act to be read along with sections 8 and 9 of the CST Act, 1956 as has been mentioned the Respondent authority in the impugned orders.

(vi) The arguments of the Appellant's Counsel that material facts relating to vehicles were **never** disclosed to the Appellant is totally contrary to the record especially when the Appellant himself uploaded the details of the vehicles. Even otherwise, the Respondent has simply verified the details of the vehicles entered by the Appellant (in the Official Website of the Department) from the National Portal of Vehicle Enquiry maintained by the Ministry of Transport (Govt. of India) as well as from the Vehicle Registration Search maintained by the Transport, Himachal Pradesh and Haryana. Therefore, the citations **State Of Kerala vs K.T. Shaduli Yusuff Etc.** (1977) 39 STC 478 and **Muralimohan Prabhudayal vs State Of Orissa on 3 February, 1970 Equivalent citations: 1970 26 STC 22 Orissa** relied upon by the Appellant are not applicable in the present case. Furthermore, the contention of the Appellant's Counsel that material

particulars were not disclosed to him or that he was not given umpteen opportunities is contrary to the record especially when the Appellant himself sought repeated adjournments.

(vii) Learned Counsel for the Appellant relying on Cit. **The State of Bombay Vs United Motors India (India) Ltd. (1971) 4 STC 133 (SC 5JJ) (P155),** has questioned the competence of the Respondent wherein the Respondent in the impugned orders in appeal here has mentioned that the goods carriage mentioned by the Appellant in VAT XXVI-A declarations when verified on the National Transport Portal were reflected as non-existent, two-three wheelers, private cars, buses and even tractors. Vide citation above relied upon by the Appellant the Court had ordered that Article 286 (2) in exempting sales in the course of inter-State trade makes no distinction between modes of transport by which the goods are dispatched. Learned Counsel for the Appellant, here too, has over-sighted the fact that there is difference between two terms: the modes of transport and means of transport. However, as far as the present case is concerned , judicial notice can be taken that it is impossible to transport the cold drinks worth lakhs of value cannot be transported on two –wheelers, three wheelers, private vehicles, buses and tractors etc. Even, several vehicles were found to be non-existent.

(viii) As far as the argument of the Learned Counsel for the Appellant that only 81out of the 235 vehicles have been mentioned pertaining to non-goods vehicles, non-existent vehicles, and that no mention of remaining 154 vehicles have been made is concerned, the Respondent authority in the impugned orders has duly mentioned that some vehicles (list furnished to the appellant by the Respondent) were found carrying goods in opposite directions at a time and that some vehicles have been repeated and other vehicles shown by the appellant as transporting

goods to Delhi in respect of his firm, in reality, were plying locally. To quote from the impugned order itself:

> *"Similarly, Vehicle No. HP17-7086 was shown carrying cold drinks by M/s Bareja Agencies from Paonta to Delhi at 04:18 PM on 14.04.2014 vide VAT XXVI-A No. E26A1404140012847264, however, the same vehicle had gone to M/s Alembic Pharmaceuticals, Zirakpur (Punjab) from M/s Tirupati Life Sciences, Paonta Sahib (TIN-02040200688) with 392 boxes of medicines. The same was declared by M/s Tirupati Life Sciences, Paonta Sahib vide form VAT XXVI-A No. E26A1404140012846820 at 3:58 PM on 14.04.2014. It was not only practically feasible but impossible for a vehicle to cover a distance of almost 100 kms with in 20 minutes."*

In view of above, each claimed inter-state transaction has been mentioned which itself falsifies the claim of the Appellant. The appellant was afforded enough opportunities to prove genuineness of the transactions by producing copies of dully filled in VAT XX-VIAs, purchase orders, GRs/Bilties (mandatory under section 34 (2) of the HP VAT Act), Toll Plaza Tax Receipts, Transit Passes (as were mandatorily declarable u/s 31 (4) of the Haryana VAT Act, 2003), Registration Certificates (Form B) of the purchasing dealers with Cold Drinks as commodity for trading, but the appellant has failed in doing so, proving beyond doubt that each of the claimed ISS transactions was merely on papers. In view of this fact the reliance of the appellant on citation **Tata Engineering & Locomotive Co. Limited Vs The Assistant Commissioner of Commercial Taxes Jamshedpur & Another (1970) 26 STC 354 (P381)** is not applicable to the facts of the present case.

(ix) Coming to the question regarding the production of 'C" Form declaration for claiming concessional rate of Tax, the Hon'ble Supreme Court of India in **The State Of Madras vs M/S. Radio And Electricals Ltd. on 19 April, 1966, Equivalent citations: 1967 AIR 234, 1966 SCR 198** (relied upon by the Appellant himself) has categorically laid that in respect of sales

of other classes of goods specified in the certificate of registration of the purchasing dealer, if the goods are purchased either for resale by him, or for use in manufacture of goods for sale, or for use in the execution of contracts, the concessional rate of tax is available, **provided the selling dealer obtains from the purchasing dealer the declaration in the prescribed form only** filled and signed by the latter containing the particulars that the goods are ordered, purchased or supplied under a certain specific order, bill or cash memo or challan, for all or any purposes mentioned **and that the goods are covered by the registration certificate of the purchaser described therein and issued under the Act. If the certificate is defective in that it does not set out all the details,** or that it contains false particulars about the order, bill, cash memo or challan, or about the Number and date of the registration certificate and **specification of goods covered by the certificate of the purchasing dealer, the transaction will not be admitted to concessional rates. (Emphasis supplied).**

Furthermore, section 8 (3) (b) of the CST Act, **1956** provides that:

"8. Rates of tax on sales in the course of inter-State trade or commerce.

Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be [6] [two per cent.] of his turnover

(3) (b) [***] are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him..."

It is evident from the record that when the Registration Certificates of all the claimed purchasing dealers were verified from their respective Assessing Authorities it was revealed that none of them had cold

drinks/aerated drinks specified in their RCs as trading commodity. On this sole and independent account, the claimed ISS transactions above become in-eligible to concessional rate of tax under the CST Act.

(x) The Appellant's Counsel relied upon the citations of **M/s John Reymond Bright vs Additional Excise and Taxation Commissioner (STR 8 of 2009) and CWP No. 178 of 2001, titled as M/s Manali Resorts Vs. State of Himachal Pradesh and others** where the Hon'ble Court has laid the law the authority who raided and inspected the premises cannot, himself decide the matter. The above citation is not applicable to the present case for three reasons; firstly, the premises have not been raided nor inspected in the case at hand; secondly, the above judgment has been passed interpreting the provisions under the Himachal Pradesh Luxuries (In Hotels & Lodging Houses) Act, 1979.

Lastly, the Respondent is a duly notified appropriate 'assessing authority' under the HP VAT Act and CST Act and the tax authorities do not deliver judgments under the HP VAT Act, but frame assessments. The Respondent authority, in his jurisdiction (South Zone), was duly authorized and well within his jurisdiction to pass the impugned Order .

(xi) Another of the contentions of the learned Counsel for the appellant is that the appellant had furnished the rectified 'C' Forms for the three years (2014-15 to 2016-17) to the learned Respondent on 28th March, 2017 and that the learned Respondent was required to re-open the assessment, consider the forms submitted, allow the concessional rate of CST and modify the impugned order to waive the levy of interest and penalties, accordingly. Interestingly, here too, the appellant has failed to submit an explanation worth consideration as to why he wants his case (already decided by a zonal authority of the rank of Deputy Excise & Taxation Commissioner) to be reassessed, now, by the appropriate Assessing

Authority of the District level at Paonta Sahib, District Sirmour especially when the impugned Order is legally justified and well reasoned.

(xii) Learned Advocate for the Appellant has argued that it is incorrect to suspect the genuineness of transactions by the Respondent by observing that it is very easy during the rush hours to get VAT-XXVI-A Forms stamped. The bare perusal of the first proviso of Section 34(12) of the HPVAT Act (inserted vide Notification No. L.L.R.-D (6)-47/2013-LEG dated 29-01-2014, published in R.H.P. on 01-02-2014) provides that:-

"*Provided that the owner or the person-in-charge of goods vehicle or vessel leaving, or entering the State limits and who has furnished full declaration of goods carried in vehicle in Form VAT XXVI-A electronically through the official web-site of the department* ***shall not be required to stop the vehicle or vessel, for the purpose of this section, at the check-post or barrier***".

Thus, as per the above stated provision, the vehicles having electronically generated FORM VAT XXVI-A need not to be stopped at the Check post, thus the contention of the Appellant that every vehicle should be stopped for checking deserves to be rejected.

(xiii) Notably, the appellant himself has not furnished a single proof to prove any of the above transactions as genuine despite of several opportunities given to him. Section 34 (2) of the HPVAT Act provides that:

> ***"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…",***

Thus, the Appellant was under statutory obligation to submit documents like any goods carriage record, trip sheet or log book etc. to

the Respondent in support of his claim, but the Appellant did not produce any such documents. Rather, some of the vehicles mentioned by the Appellant as carrying goods were not even goods carriages, vessels or goods vehicles.

(xiv) Yet another issue raised in his arguments for the Appellant the learned Counsel submitted that the Respondent, while determining the tax liabilities of the Appellant for the period w.e.f. 2013-14 to 2016-17 had relied on provisions of section 8 of the CST Act as existed prior to 01-04-2007, which stood substituted by Taxation Laws (Amendment) Act 2007 and were no longer applicable for the years under assessment. Perusal and comparison of provisions prior and post amendment clearly shows that the same does not affect the merits of the present case in as much as primarily the expression "(a) sells to the Government any goods;" have been omitted and simply the proviso has been amended by giving power to the Central Government to reduce the tax of rate.

(xv) In the last leg of his arguments learned Counsel has submitted that the Respondent passed orders in the matter on 08-02-2017, but no certified copy as required under Rules 69(4) and 92 of the HP VAT Rules, 2005 was issued to the Appellant. The Appellant himself has declared and admitted in memoranda of appeals, dated. 25th April, 2017, submitted before this court in the matter, wherein vide column 4 he himself has submitted that the order dated 8th February, 2017 was received on 27-02-2017. Perusal of the orders, also, reveals that the same has been endorsed on 08-02-2017 itself vide No. EXN/DETC/FS/SZ/Pwn-2016-17-1345. This contention, as well, of the Appellant, is again contrary to facts apparent on the face of record.

(xvi) Section 13 of the HPVAT Act provides that:

> ***"13. Burden of Proof.*** *In respect of any sale or purchase effected by a dealer the burden of proving that he is not liable to pay tax under Section 6 or Section 8 or that he is eligible to input tax credit under section 11 shall be on him."*

Similarly, proviso to sub-section (4) of Section 34 also provides that:

> *"[Provided further that where the goods carried by such vehicle are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the burden of proving that the goods have actually moved out of the State, shall lie on the owner or person-in-charge of the vehicle or vessel];*

The collateral reading of the above stated provisions clearly shows that the burden of proof lies upon the Appellant to prove the sales and purchase for seeking any concessional rate and not on the Respondent. The Appellant miserably failed to discharge his burden of proof in the present case.

In view of the discussions made hereinabove, I found no merit in the appeals and the same are liable to be dismissed and are accordingly dismissed. Let the copy of this order be supplied to all concerned. Files after completion be consigned on record room.

Announced on 26th Day of March, 2022

Yunus, I.A.S.
Commissioner State Taxes & Excise
Himachal Pradesh

Endst. No: STE-Reader/CST&E/2021-22-8330-8335dated: 26-03-2022

Copy is forwarded to:-

1) M/s Bareja Agencies, Bypass Road, Poanta Sahib, District Sirmour, HP.

2) Deputy Excise and Taxation Commissioner-cum- Assessing Authority, FS/SZ at Parwanoo.
3) Dy. Commissioner (ST&E), Sirmour at Nahan, District Sirmou, (HP).
4) Sh. R. N. Sharma, Advocate, H. No. A-157, Sec. 3, New Shimla-9.
5) Shri Sandeep Mandyal, Law Officer (Legal Cell), HQ.
6) IT Cell

Reader to
Commissioner State Taxes & Excise
Himachal Pradesh