

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

Appeal No. : 51/2017
Date of Institution : 06-06-2017
Date of order : 18-05-2023

In the matter of:

M/s HPSEB Corporation Limited Vidut Bhawan, Shimla (HP).

.....Appellant

Vs

1. Excise and Taxation Commissioner cum Appellate Authority (HP).
- &
2. Dy. Excise & Taxation Commissioner-Flying Squad, (SZ), Parwanoo.

&

3. HCL Info systems Ltd. Plot No. 31, Sector1 Parwanoo, solan (HP)

.....Respondents

Parties represented by:-

ShriRakesh Sharma, Advocate for the Appellant.
Shri Sandeep Mandyal, Sr. Law officer for the Respondent.

Appeal u/s 12 of Himachal Pradesh Tax on Entry of Goods into local Area Act, 2010 read with section 45(2) of the HP VAT Act, 2005

Order

1. The present appeal has been filed by M/s HPSEB Corporation Limited Vidut Bhawan, Shimla Himachal Pradesh against the order of Ld. Appellate Authority-Cum-Excise and Taxation Commissioner, Himachal Pradesh, Shimla dated 22-04-2017 who dismissed the appeal filed by the applicant against the assessment order dated 08-04-2015, of the Assessing Authority, FS, SZ, Parwanoo, Distt. Solan HP whereby additional demand of Rs. 2,87,78,332/-



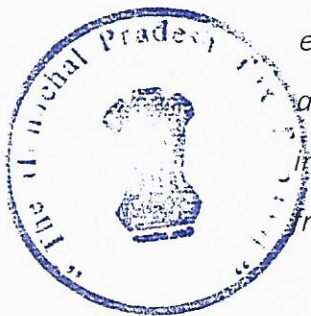
was created against the appellant for the period w.e.f 30-08-2010 to 14-03-2014, under the HP Tax on Entry goods into Local Area Act, 2010.

2. Brief facts are that M/s HPSEB engaged a few IT Companies, after entering into a contract with them for performing certain works for HPSEBL. The Respondent No. 2 investigated that certain evasion of Entry Tax is there on certain goods being imported from outside the state for use in some projects by HPSEB or its contractors. After issuing notice to the appellant on 21-10-2014 and hearing the appellant, the DETC, FS, SZ Parwanoo proceeded to calculate the outstanding liability of Entry Tax in respect of three projects amounting to Rs. 2,28,48,842/-, Rs. 56,34,832/- and Rs. 2,94,658/- respectively i.e. total amounting to Rs. 2,87,78,332/- vide order dated 08-04-2015. Against this order of the DETC FS, SZ Parwanoo, the appellant preferred an appeal to the Ld. Appellate authority-cum-Excise and Taxation Commissioner HP Shimla. The Appellate authority passed an order on 22-04-2017 upholding the order dated 08-04-2015 of the DETC, FS, SZ Parwanoo and the demands created therein. The appellant has thereafter filed the present appeal against the said appellate order dated 22nd April, 2017.
3. The appellant has filed the appeal before this Tribunal on the following grounds:
 - a. *It is unjustified on the part of Respondent No. 2, to levy the Entry Tax on the Principal or Contractee, for the failure of contractor IT Company, to pay the VAT.*
 - b. *The condition to deduct the entry tax from the suppliers invoice was incorporated as a precautionary measure to secure govt. revenue. However, it could not be given effect as there is no such provision under the Entry Tax Act like Income Tax Act. The appellant was not legally competent to deduct the tax on behalf of the HCL.*
 - c. *In the present case, the IT companies are bringing in the goods for further use of the same in awarded projects. The assessing authority*



ignored the position of the law and taxed the appellant in contradiction of the charging section.

- d. Respondent No.2 has levied Entry Tax while relying on the Entry No. 5 of the Schedule which provides for levy of tax on the goods used in the Works contracts including hydropower and thermal power project generation, transmission and distribution projects etc. The entry is unambiguously meant to tax goods used in the works contract and obviously on the dealer using such goods in execution of works contract. The appellant being a government company has never executed any such work.
- e. The respondent authority has failed to appreciate the difference between "awarding the contract by the Contractee" and "execution of contract by the contractor". Both are altogether different entities and cannot be replaced for each other. The shifting of levy from the contractor to the Contractee is against the very spirit of the Entry Tax Act, 2010 and hence the action of the respondent authority is liable to be quashed in the interest of justice.
- f. The entire turnover involved in the present case is liable for VAT payment by virtue of provisions of Section 2(v) of H.P. Added Tax act, 2005. Further, the findings of the Respondent Authority as reproduced herein below strengthen the contention of the appellant.



"M/s HCL Infosystem Ltd. is also registered in the State of HP under HP Vat Act, 2005 vide TIN 02020500594. This Company supplied some material from its business premises at Parwanoo for execution of the above mentioned two contracts and paid VAT on account of the same to this department. However, the HCL also imported huge material including computer software and hardware from its business premises situated outside the state and did not

pay any VAT on the same. M/s HP India Sales brought most of the material used in this work contract from outside the state."

In view of the specific bar, Vatable Sales cannot be made subject matter of Entry Tax. Only course available for the Respondent Authority was to press for the payment of Value Added Tax by the IT Companies on transfer of property in goods involved in the execution of the contracts.

g. The provisions of the Entry Tax Act, 2010 are violative of Constitution provisions. The Appellant has argued and given its position citing Article 304 A and Article 301 of Constitution and stated that the Entry Tax is inherently unconstitutional.

4. The counsel for the appellant prayed that the appeals be accepted and impugned orders be quashed, along with the additional demand created against the appellant. It is stated that the observations of the Appellate Authority are illegal and factually incorrect whereby it has been observed that M/s HPSEBL Shimla is a dealer and not a supplier. It is prayed that the matter be remanded back to the Assessing Authority to finalize the Assessment afresh after considering the contentions raised by the appellant.

5. Sh. Sandeep Mandyal, Sr. Law officer of the department stated that companies with whom HPSEB had done the contract for supplying material from within the State have paid VAT on the same, so those materials did not come under the purview of HP TEGLA Act, 2010, hence to include them as a party in the case is not justified. The petitioner has no case to agitate before this Tribunal as the issues raised herein have already been addressed by the authority below and their action may be upheld.

6. I have heard the Ld. Counsel and the Ld. Dept. counsel in detail, perused the record and the relevant provisions of law contained in the HP Tax on Entry of Tax into Local Area Act, 2010 (hereafter refer to as "Entry Tax Act") as well. It is seen that the activity of the dealer is covered under the definition of **Section 2(1)(s)** of HP Entry Tax, 2010 and goods are covered under Entry No.

5 of the Schedule II of the Entry Tax Act, 2010. Perusal of the charging section shows that entry of goods into a local area for consumption or use therein in the execution of a works contract will be deemed to be the entry of goods in the course of business and the person who has effected entry of such goods into a local area shall be deemed to be a dealer. Also, as per Section 9 of the Act *ibid*, the burden of proving that a dealer has not effected entry of any goods into a local area for consumption or use therein in the execution of a works contract lies on the dealer.

It would be pertinent to mention **Section 3 of the impugned Act: Incidence of Taxation** of the HP Entry Tax Act, 2010. As per this section, entry tax is levied when there is entry of goods for use, consumption or sale of goods within the local area.

It is clear from the combined reading of the above two provisions i.e. Section 2(1)(s) and Section 3 of HP TEGLA Act, 2010 that the HPSEBL or its contractors were liable to pay Entry Tax to the government @5% on the value of those goods which were brought from outside the State, for use in the execution of these work contracts.

7. As regards the **levy of Entry Tax**, it is not in doubt nor in dispute that the appellant has, in fact, admittedly effected entry of the concerned goods. The provisions of the charging Section 3 (1) of the Entry Tax Act mandates *that "there shall be levied and paid to the State Government a tax on the entry, in the course of business of a dealer, of the goods specified in Schedule-II into each local area for consumption, use or sale therein .shall be levied and paid to the State Government a tax on the entry, in the course of business of a dealer, of the goods specified in Schedule-II into each local area for consumption, use or sale therein"*. Section 2(1) (f) of the Entry Tax Act defines *"entry of goods into a local area" with all its grammatical variations and cognate expressions means entry of goods into a local area from any place outside thereof including a place outside the State for consumption, use or sale therein.*" It is an admitted fact that the Appellant was well aware about the liability to pay Entry Tax. The contract with HCL Infosystem ltd.- R-APDRP

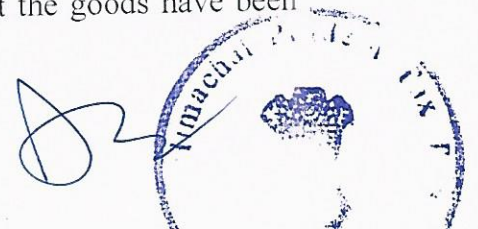


no. HPSEB (Sectt.) CESO/R-APDRP/Part-A/HCL/10-4000-29, dated 30-08-2010 in condition no. 6(d) has clearly laid as follows:-

“The cost of Entry Tax as applicable will be the liability of the supplier i.e. the price quoted is inclusive of Entry tax, the amount of Entry Tax will be deducted from supplier’s invoices and remittance to the tax dept. will be made by the purchaser under the TIN/TAN No. of purchaser. If any liability is raised by commercial tax department, Govt. of Himachal Pradesh on account of Entry Tax on a later date, the same shall be to the supplier account and accordingly recovery will be made from the supplier’s pending bills/security deposit as available with the purchaser.”

Thus, the appellant can not dispute the figure of Entry Tax liability determined by the assessing authority. There is merit in the action of Assessing Authority. It is an admitted fact that these goods have been used and irrespective of their nature of use in the infrastructure, the tax liability remains intact and is exigible under the provisions of the Entry Tax Act. The Supreme Court in Union of India v. Dharmendra Textile Processors (2008) 18 VST 180 has clearly held that *“It is well-settled principle of law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intention....Legislative casus omissus cannot be supplied by judicial interpretative process.”*

8. Perusal of the contracts executed by HPSEBL with contractors M/s HCL Infosystem Ltd., Noida and M/s HP India Sales Pvt. Ltd., Gurgaon shows that liability to pay Entry Tax has been clearly mentioned in the contract. As per record of contracts executed, it is clear that the cost of material includes Entry Tax. Also, as per the contracts, HPSEBL was duty bound to deduct Entry Tax from the bill of the contractor and pay the same to the Excise and Taxation Department as the prices quoted by the contractors were inclusive of the Entry Tax. It is also established from other facts in record that the goods have been



used in work contract and even the Entry Tax amount was included in the price quoted by the said contractors. The plea of the appellant is thus contrary to the admitted facts and therefore this deserves to be rejected and is **hereby rejected**. The challenge to the constitutionality of the 2010 HP Tax on Entry of Goods into Local Area Act is not being dealt in this order since this Tribunal has no jurisdiction to take up such pleadings of constitutionality of the Act or provisions of the Act.

9. Consequently, the impugned orders of the Ld. DETC, FS, SZ dated 08-04-2015 and of the Ld. Appellate Authority dated 19-05-2017 call for no interference and these are upheld.
10. Copy of this order be sent to the party concerned. File after due completion be Consigned to the record room.


(Akshay Sood)
Chairman,

H P Tax Tribunal Shimla,
Block No 30, Camp at Shimla Shimla-9

Endst. No HPTT/CS/2023- 757080

Dated 18/05/2023

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The JT. CST&E, FS, SZ, Parwanoo, solan HP.
3. HCL Info Systems Ltd. Plot No. 31, Sector 1, Parwanoo Distt. Solan HP.
4. M/s H.P State Electricity Board Corporation Ltd. Vidut Bhawan, Shimla HP.
5. Shri Rakesh Sharma. Advocate for the Appellant.
6. Sh. Sandeep Mandyal, Sr. Law officer, HQ.


Reader

HP Tax Tribunal
H P Tax Tribunal Shimla,
Block No 30, SDA Complex Shimla-9