

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

Appeal No. : 06/2023
Date of Institution : 16-05-2023
Date of order : 19-07-2023

In the matter of:

M/s Rajgarh Filling Station, Rajgarh, Sirmaur, HP

.....Appellant

Vs

- i) The Addl. CST&E-Cum Appellate Authority SZ Shimla Himachal Pradesh.
- ii) Assessing Authority, cum ACST&E, Circle Sarahan and Dadahu, Distt. Sirmaur (HP)

.....Respondents

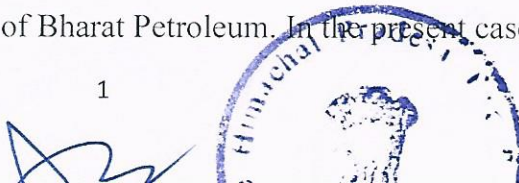
Parties represented by:-

Shri Mukesh Sharma, Advocate for the Appellant.
Shri Sandeep Mandyal, Sr. Law Officer, Law for the Respondent.

**Appeal under Section 45(2) of the Himachal Pradesh Value Added
Tax Act, 2005**

Order

1. The present appeal has been filed by M/s Rajgarh Filling Station, Rajgarh, Sirmaur, Himachal Pradesh against the order of Ld. Addl. Excise and Taxation Commissioner-Cum Appellate Authority (SZ), Himachal Pradesh, Shimla dated 02-03-2023 who upheld the appeal filed by the applicant against the assessment order dated 27-08-2021, of the Assessing Authority, Sarahan Dadahu Circle, HP whereby additional demand of Rs. 4,43,810/- was created against the appellant for the month of February and March, 2020 under the HP VAT Act, 2005.
2. The brief facts are that M/s Rajgarh Filling Station, VPO Rajgarh, Tehsil Rajgarh and District Sirmour is a registered dealer under HP VAT Act, 2005 holding registration number 02040100051. The dealer is engaged in the business of selling petrol, diesel, oil and lubricants of Bharat Petroleum. In the present case, the dealer



has deposited late tax for the month of February 2020 amounting to Rs. 2,30,000/- and 7,00,000/- respectively and also deposited tax amount late for the month of March 2020 amounting to Rs. 3,57,000/- and 8,00,000/- respectively. The Assessing Authority, vide assessment order dated 27-08-2021, charged interest and penalty under HP VAT Act, 2005, creating a total additional demand of Rs. 4,43,810/-. Against this order of Assessing Authority, the appellant preferred an appeal to the Ld. Appellate Authority-Cum Addl. Commissioner State Taxes and Excise (South Zone), H.P. Shimla. The Appellate Authority (South Zone) passed an order dated 02-03-2023 upholding the order dated 27-08-2021 of the Assessing Authority and the demands created therein. Feeling aggrieved and dis-satisfied with the order of Ld. Appellate Authority, the appellant has filed the present appeal against the order of the Appellate Authority.

3. The appellant has filed the appeal before this Tribunal on the following grounds:-
- I. *That the Ld. Appellate Authority confirmed the penalty due to late filing of returns and depositing of some amount of tax which was only late by two months, which was due to Covid 19 pandemic and has confirmed the imposed penalty and interest imposed by the Assessing Authority.*
 - II. *It has been submitted that the appellant conduct in paying taxes has been good and he has never paid taxes late in any previous months or years, only default in payment of tax happened in two months i.e. February and March 2020 when the entire country was under lockdown w.e.f 24/03/2020 to 02/05/2020. Due to the lockdown and after the opening of the lockdown, appellant's clients were unable to pay the amount to the appellant due to acute financial crises. The appellant's major sales are on a credit basis and debtors were unable to pay the amount during this period which resulted in late payment of tax.*
4. The Ld. Counsel for the appellant prayed that the appeal be accepted and impugned order be quashed, along with the additional demand created against the appellant. He has also submitted that the Govt. of India had given maximum relief to the tax payers during this pandemic and provided relaxation in interest and penalty.



5. Sh. Sandeep Mandyal, Sr. Law officer of the department argued that the petitioner had no case to agitate before this tribunal. The issues raised herein have been addressed by the authority below and now the actions of the Assessing Authority and Appellate Authority only need to be upheld.
6. I have heard the Ld. Counsel and the Ld. Govt. counsel for the respondent in detail and perused the record as well. The points for consideration raised by the appellant pertain to the issue of waving off of interest and penalty which was imposed vide order dated 27-08-2021 of the Assessing Authority. The contentions of the appellant are answered as follows:-

- i) The appellant has taken the defense of the COVID-19 and the lockdown which started in March 2020. He has pleaded that delay in payment of tax was on account of the fact that the appellant's sales were substantially on credit basis and the debtors were unable to pay the amounts to the appellant due to lockdown under Covid -19 pandemic. It is stated that after realization of these amounts, the VAT payment was made for the month of February, and March 2020 respectively.

There is a reasonable ground to conclude that failure to deposit tax on time could have happened due to Covid-19, as event beyond the control of the appellant. There is no material available on record to show that the late payment of tax was a willful act of omission.

'Section 16(6), (6A) and 16(7) of the HP VAT Act, provided that if a dealer fails **without sufficient cause** to furnish the returns by prescribed date, the dealer shall be liable to pay, by way of penalty....'

Perusal of above sections shows that the assessing authority should normally levy penalty where default by the dealer is without sufficient cause. A reasonable opportunity has to be given by the assessing authority before imposing the penalty. If the assessee is able to prove the existence of reasonable cause for not filing the return or to pay the tax on time, then there may be a ground to not impose penalty. It is expounded that no default penalty could be imposed in the manifest absence of demonstrable intent to not pay tax and / or a mala fide refusal to pay tax.



ii) After perusing the previous record of tax payment of the appellant, it is seen that he has not faulted in previous payments of taxes. There is a prima facie case on the basis of these facts and no other adverse information against the Appellant is available on the record.

The default penalty ought not to have been imposed in a perfunctory manner, and would be warranted only if there is evidence of willful default. It has been held by various courts of the country including the Supreme Court that Penalty proceedings are quasi criminal proceedings and therefore, no penalty should be levied unless it is concluded that the alleged default for which the penalty is sought to be levied was intentional and deliberate. Tax becomes payable by an assessee by virtue of the charging provision in a taxing statute. Penalty is payable when it is found that an assessee has willfully violated the provisions of the taxing statute.

iii) The appellant was penalized for late payment of tax for the month of February 2020 and March 2020 which was late by twenty eight and twenty two days respectively without taking into account the facts of Covid-19 and the consequent lockdown, a big health emergency. The assessment has been framed by Ld. Assessing Authority by imposing the penalty u/s 16(6) 16(7) & 50(2) of the HP VAT Act and also u/s 19 interest of Rs.21,331/- was charged under the provisions of the HP VAT Act, 2005, without considering the pleading of the appellant regarding the Covid 19 pandemic and nation-wide lockdown.

7. On the facts and circumstances, the appeal of the appellant is partly accepted and the order of the Appellate Authority upholding the penalty dated 02-03-2023 is quashed and set aside. It is hereby ordered to quash the penalty imposed u/s 16(6), 16(7) & 50(2) of the HP VAT Act by the Assessing Authority vide order dated 27-08-2021 for reasons discussed above. I am of the considered opinion that the Appellant/ dealer has shown reasonably sufficient reasons to explain the delay in late payment of tax, which has been attributed to the Covid 19 Pandemic. The interest assessed/ levied however is sustained and has been levied under the



provisions of Section 19 of the HP VAT Act, which is binding upon the tax assessing authority, whenever the Assessing Authority has identified the dealer who has not paid the tax, as prescribed under the Act. There is no discretion with this authority or lower authority to consider any such concession/ waiver of interest.

8. Copy of this order be sent to the parties concerned. File after due completion be consigned to the record room.



Akshay Sood
Chairman,

HP Tax Tribunal Camp at Shimla,
Block No 30, SDA Complex Shimla-9

Endst. No. HPTT/CS/2023 - 112 to 116
Copy forwarded for information to:-

Dated: 19/07/2023

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. Assessing Authority, Circle Sarahan and Dadahu, Distt. Sirmaur (HP).
3. M/s Rajgarh Filling Station, Rajgarh, Sirmaur, HP
4. Sh. Mukesh Sharma, Advocate for the Appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



Reader

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