

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

Appeal No. : 03/ 2018
Date of Institution : 17-01-2018
Date of order : 02-08-2023

In the matter of:

M/s Rampur Hydro Electric project SJVN Ltd., Jhakri, Rampur
Bushehar (H.P)

.....Appellant

Vs

1. Addl. ETC-cum-Appellate Authority, (SZ), Shimla (HP).
&
2. Assessing Authority, MPB Parwanoo, Distt. Solan (HP).

.....Respondents

Parties represented by:-

Shri Goverdhan Sharma, Advocate for the Appellant.
Shri Sandeep Mandyal, Sr. Law officer for the Respondents.

**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

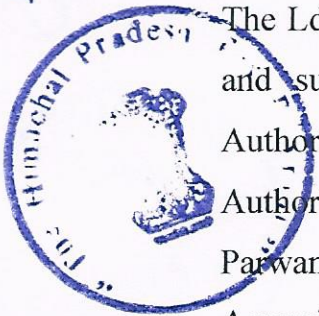
1. The present appeal has been filed by M/s Rampur Hydro Electric project SJVN Ltd., Jhakri, Rampur Bushehar, Himachal Pradesh against the order of Ld. Addl. Excise and Taxation Commissioner-Cum Appellate (SZ), Himachal Pradesh, Shimla dated 20-03-2017 who dismissed the appeal filed by the applicant against the detection order dated 06-02-2014, of the Assessing Authority MPB, Parwanoo, Solan, HP whereby additional demand of Rs. 1,67,61,920/- was created against the appellant under the HP Tax on Entry goods into Local Area Act, 2010.
2. The brief facts of the case are that Rampur Hydro Electric project of SJVN Ltd., (hereinafter referred to as 'appellant') is registered under HP value Added



Tax Act, 2005 is engaged in the business of generating Hydro Power within the State of Himachal Pradesh and distributing Electricity within the state of H.P. and throughout India. The Assessing Authority, MPB, Barrier Parwanoo vide orders dated 06-02-2014, assessed the appellant under the HP Tax on Entry of Goods into local area Act, 2010 read with the rules made there under and determined that the dealer had caused entry of goods into the area of Himachal Pradesh by way of interstate purchases which includes goods procured through import from other countries as well. The Assessing Authority found that the goods brought into HP were covered by the entry specified in Entry No. 5 of Schedule-II of the HP Tax on Entry of Goods into Local Area Act, 2010 and the appellant company was ordered that these goods were liable to Entry Tax as per section 3 of the Act *ibid*. Accordingly, Assessing Authority created an Entry Tax demand of Rs. 1,67,61,920/-. Against this order of the 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 Ld. Appellate Authority (South Zone) passed the order dated 20-03-2017 and substantially upheld the orders dated 06-02-2014 of the Assessing Authority and the demands created therein though in his orders, the Appellate Authority allowed the benefit of adjustment of Entry Tax paid at MPB Parwanoo at the time of assessment, after due scrutiny of record. The Assessing Authority was also directed to verify purchase record of the appellant. The appellant has thereafter filed the present appeals against the said appellate order dated 20th March, 2017.

3. Aggrieved by the orders of the Ld. Appellate Authority, the Appellant has filed the appeal before this Tribunal on the following grounds:

- I. *The Assessing Authority MPB Barrier failed to pass any order directing the appellant to deposit Entry Tax. The Goods consignment was forcibly detained by the respondents and was released only on deposit of entry Tax by the appellant.*

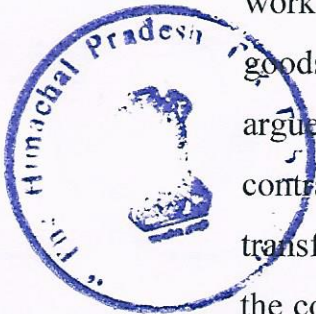


- II. *The goods imported by the Appellant into the State of Himachal Pradesh are not covered under entry no. 5 of Schedule-II of Entry Tax Act.*
- III. *The goods imported by the Appellant into the State of Himachal Pradesh are not for consumption, use or sale and thus not covered under the scope of section 3(1) of entry Tax Act.*
- IV. *The appellant has not purchased these goods in the 'course of business' and is thus not liable for any entry tax.*

4. The Ld. Counsel for the appellant stated that the intent of the legislature under Entry 5 of Schedule II of Entry Tax Act is to impose tax on importer who is using the goods for works contract including hydro power, transmission & distribution etc. In the instant case, it has been averred that the goods have been brought into the site by the Appellant company itself by way of purchase from out of the State, for its own use and there is no works contract involved with respect to the goods. These goods are not supplied under a contract for work. The goods are the property of the Appellants for its own use. As such goods are not to be used in works contract/turnkey projects. It is further argued that use of words 'erection, installation' in the definition of works contract means that there is contract for 'erection or installation' and there is transfer of property in goods in the course of such erection or installation. If the contract is solely for 'erection or installation' and there is no sale of goods in the course of erection or installation, the contract be treated 'labour' or service' contract and not a works contract.

5. Sh. Sandeep Mandyal, Sr. Law officer of the department stated that Entry Tax has been charged as per the provisions of HP Tax on Entry of Goods Act, 2010. 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. The points for consideration raised by the appellant mainly focuses on 'Levy of Tax'; incidence of taxation'; and 'Intention of the parties i.e. Burden of proof'. I have given considerable thought to the issues involved and I hold that the present appeal should be rejected in view of the following reasons:-

- i) As regards **levy of Entry Tax**, it is neither in doubt nor in dispute that the appellant has, in fact, admittedly effected entry of the concerned goods for consumption or use in the Hydro Electric Projects.

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"*.

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 clear from the combined reading of the above two provisions i.e. Section 2(1)(f) and Section 3 of HP TEGLA Act, 2010 that the SJVN(RHEP) was liable to pay Entry Tax to the government @5% on the value of those goods which were brought from outside the State in view of their provision read with Entry 5 of Schedule II. Entry 5 of the Schedule II to the Entry Tax Act only determines a rate of the charge of tax created by Section 3(1) of the Entry Tax Act.

- ii) **Entry 5 of the Schedule –II of Entry Tax Act, 2010**

'Goods used in works contracts, including hydropower and thermal power projects generations, transmission and distribution projects,



telecommunications and all others turnkey projects being executed by private as well as Govt. Deptt./ Corporations/ Boards etc. in the State.'

The intent of the legislature under Entry 5 of schedule II of entry Tax Act is to impose tax on importer who is using the goods for works contract and other turnkey projects including hydro power, transmission & distribution, telecommunication etc. A perusal of above Entry 5 of the schedule II of Entry Tax Act, 2010 makes it clear that the nature of work undertaken by the appellant is for hydroelectric projects and thus it falls under Entry 5 of the Act ibid. Here it is clearly seen that goods used in other turnkey contracts are under the ambit of Entry Tax Act, 2010, thereby as per statute it is binding on the dealer to pay Entry Tax on goods used in this case.



iii) **Burden of Proof**

'Section 9 (1) The burden of proving—

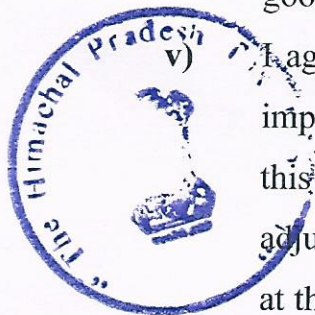
- (a) That a dealer has not effected the entry of any goods specified in Schedule into a local area for consumption, use or sale therein;
- (b) That a dealer has not effected the entry of any goods into a local area for consumption or use therein in the execution of a works contract;...'



As per Section 9 of the Act ibid, the law is well settled that it is for a dealer who claims exemption to establish it, and therefore, it was for the assessee to prove that goods imported were exempted from Entry Tax Act. The respondent no. 2, in the present case has found that the appellant is guilty of not disclosing the Entry Tax liability when the goods consignment was detained at MPB Barrier Parwanoo. The Assessing Authority did not find sufficient evidence by the taxpayer to prove that the detained goods do not come under the Entry Tax Act. The burden of proving that Entry Tax is not payable by the

importer of goods lies upon the dealer/ importer to show that entry of goods into the local area are not for consumption, use or sale therein, which the appellant has failed to prove. There cannot exist any intention of law which enables the appellant dealer to reap benefit resulting from oversight or lack of information relating to certain transactions, which are otherwise liable to be taxed.

- iv) The argument of the appellant that Assessing Authority had levied Entry Tax on goods which have been imported from outside the country does not exempt the Appellant company from payment of the statutory tax liability which arises with the entry of goods into a local area even for own consumption or use, even if the goods were not brought by any works contractor. It is an admitted fact that the Appellant has purchased goods from outside the state/imported from Italy for use of the same in Hydro Electric Projects within the state of Himachal Pradesh. There is no provision under the Entry Tax Act to exempt Entry Tax in respect of goods imported from outside the country. Consequently, the appellant by its act of having caused and effected entry of the relevant goods into local areas of the State for consumption, made the appellant liable to pay tax on entry of the goods.



v) I agree with the reasons adduced by the 1st appellate authority in the impugned order dated 20-03-2017, and the same are concurred to by this Tribunal also. The 1st Appellate Authority by giving direction of adjustment of Entry Tax paid at MPB Parwanoo with the tax liability at the time of regular assessment for the concerned period has ensured that the appellant will be charged Entry Tax only as per the provisions of the Act.

- vi) Further, it is directed that the Assessing Authority shall, after considering the representation, if any, made by the Appellant/ dealer determine the amount of Entry Tax, interest and penalty due according

to the provisions of the HP Tax on Entry of goods Act, 2010 and issue the order accordingly.

7. Consequently, the impugned orders of the Ld. Appellate Authority-Cum-Addl. Commissioner State Taxes and Excise SZ Shimla dated 20-03-2017 calls for no interference and is upheld.
8. Copy of this order be sent to the party concerned. File after due completion be consigned to the record room.



Akshay Sood
Chairman,

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

Endst. No HPTT/CS/2023- 12270127

Dated 02/08/2023

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Assessing Authority, MPB, Parwanoo, Solan, HP.
3. The Assessing Authority Rampur, Distt. Shimla, HP.
4. Rampur Hydro Electric project SJVN Ltd., Jhakri, Shimla, HP.
5. Shri Goverdhan Sharma. Advocate for the Appellant.
6. Sh. Sandeep Mandyal, Sr. Law officer, HQ.



Reader

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