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

Appeal No.	:	86/2017
Date of Institution	:	13-11-2017
Date of order	:	08-12-2023

In the matter of:

M/s Shree Krishna Packaging, VillJohro, Trilokpur Road, Kalamb, HP.

.....Appellant

Vs

i) Addl.CST&E-cum-Appellate Authority, SZ, Himachal Pradesh, Shimla.
ii) Assessing Authority, Nahan, Distt. Sirmaur(HP).

.....Respondents

Parties represented by:-

Shri Rakesh Sharma, Advocate for the Appellant.

Shri Sandeep Mandyal, Sr. Law Officer, of the department for the Respondents.

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

Order

1. The present appeal has been filed against the order of the Addl. Commissioner State Taxes and Excise-cum- Appellate Authority, SZ, Himachal Pradesh, Shimla dated 20-03-2017 vide which an Additional Demand of Rs. 8,55,535/- which was created for the assessment year 2010-11, by the Assessing Authority Nahan vide order dated 17-11-2015against the appellant under the HP VAT Act, 2005 and the CST Act, 1956, was upheld.
2. The brief facts are that M/s Shree Krishna Packaging Vill. Johro, Kalamb Himachal Pradesh (hereinafter referred to as 'Appellant') is an industrial unit holding TIN 02040400436 and is engaged in manufacturing of packaging material. The appellant availed the facility of concession under Himachal Pradesh General Sales Tax (deferred payment of tax) scheme 2005, which was issued under Notification Number EXN-F(1)-2/2004 dated 26-07-2005 for the financial year 2010-11. It is pertinent to mention that an amendment in the Himachal Pradesh General Sales Tax Act, (deferred payment of Tax) scheme 2005 inserted Para 5-A as under :-

'5A:- Option by industrial units :- (1) notwithstanding anything contained in Para 5 of the said Scheme, the new and existing eligible industrial units other than those specified in the negative list, which have come into commercial production before 07-01-2023 and which, after the approval of the Director of Industries or other officers for authorities by him, undertake substantial expansion only after 07-01-2023 may either continue avail such facility or by making an application in Form S.T. (DP)-VII opt to pay 65% of the tax liability, for any tax period of a financial year, according to return, and upon making such payment, he shall be deemed to have paid the tax due from him according to such return. The option once exercised shall be final.

(2) The registered dealer (industrial unit) making payments of tax under sub- Para (1) of this Para shall be entitled to input tax credit under section 11 of the Himachal Pradesh Value Added Tax Act, 2005 in respect of intra-state sales, inter-state sale or transfer of goods on consignment basis or branch transfer basis.

On the basis of abovementioned amendment, the Assessing Authority at the time of assessment of the appellant for the year 2010-11 under the HP VAT Act, 2005 and the CST Act, 1956, observed that an ITC amounting to Rs. 4,34,801/- was liable to be retained and carried forward to next year being ITC involved in unsold stock, but the appellant had retained only ITC amounting to Rs. 25,473/-. Resultantly, the excess ITC claim was disallowed by the Assessing Authority and due on account of disallowance of ITC involved in closing stock on the amount of tax was calculated, also interest for one year was also charged. Further, C-Forms for CST sales amounting to Rs. 1,92,963/- were not produced by the appellant thus they were also subjected to full rate of tax. The Assessing Authority held that 35% benefit of exemption is available against net tax payable as per aforesaid notification and framed the assessment accordingly. The aforesaid proceedings resulted in creation of total demand of Rs. 8,55,535/- (Rs.7,83,535/- as tax due and Rs. 72,000/- as interest under section 19(1) of HP VAT Act, 2005) for the assessment year 2010-11. Thereafter, the Appellate Authority upheld the demand created by the assessing authority vides order dated 20-03-2017 and the present appeal has been filed against this order.

3. Aggrieved by the order of Ld. Appellate Authority the appellant has filled the appeal before this Tribunal on the following grounds:-

I. *The appellant explained that the stock of purchases on which tax has been paid inand ITC is being claimed was sold out and therefore the ITC which the respondent has carried forward for next year should have been allowed.*

II. *The appellant had not claimed said benefit in respect of net tax payable (i.e. output tax minus input tax credit) but had claimed 35 % benefit in respect of entire amount of output VAT and adjusted 100% ITC against the balance 65% amount of output VAT. The appellant has thus been given the benefit of only 65% of the ITC against the tax he has paid.*

III. *In case the theory of the respondent is subscribed then what about the tax which the dealer pays within H.P on purchases but who is claiming/being allowed 100% of ITC against such purchases who is making payment of tax under deferment scheme after fiver year. In that sense he should be disallowed 100% ITC.*

IV. *The linkage of ITC to the deferment scheme is totally unwarranted. The ITC is governed by the provisions of section 11 of the H.P. VAT Act and the ITC is to be allowed strictly as per those provisions. Section 11 clearly envisages that the ITC is the amount of tax paid or payable by such purchasing dealer to the selling registered dealer on the turnover of purchase of such goods as has been sold by him during the tax period. The nexus of ITC to be allowed is thus on the tax which has been paid by the purchasing dealer and the goods sold by him.*

V. *It is therefore, totally unwarranted that the ITC is not allowed up to the 35% of the Tax paid on purchase. Section 11 should be interpreted only confining to the words contained therein. There is no ambiguity in section 11 and the words are crystal clear when it says that the ITC is the amount of tax paid or payable by such purchasing dealer to the selling registered dealer on the turnover of purchase of such goods as has been sold by him during the tax period.*

VI. *It is, thus, submitted that the claim of the appellant to allow the benefit of Rs. 1505133.70 be allowed against Rs. 628615.Further the interest of Rs. 7200, in such situation, does not become leviable at all.*

4. The Ld. Counsel for the Appellant prayed that the appeal be accepted and the impugned order be quashed. The acceptance of the accounts of the appellant by the assessing authority is self-explanatory that there was no misappropriation of amount. The assessing authority has wrongly allowed the benefit of ITC. The nature of the business of the appellant is such that the closing stock of finished goods is almost nil at the close of the year which is borne out by

the fact that the carry forward of ITC on 31-03-2010 was merely Rs. 25,473/-. However, the Assessing Authority has arbitrarily been taken as carry forward 31-03-2011 for Rs. 4,34,801/-. Similarly the Assessing Authority has wrongly allowed the benefit of deferment of tax for Rs. 6,28,615/- instead of Rs. 15,05,133.70/-.Thus, the Assessing Authority has wrongly worked out the liability at Rs. 8,55,535/-.

5. Sh. Sandeep Mandyal Sr. Law officer of the department stated that the petitioner has no case to agitate before this Tribunal as the issue arising herein is already addressed by the authority below and he prayed that his order dated 20-03-2017 may 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 point for consideration raised by the appellant pertains to the issue of application of deferment scheme in letter and spirit. In the interest of justice and given the fact that the matter pertains to the year 2010-11,. I proceed to decide the present appeal on its merits, as per points below:

i) As per the admission of the appellant before Assessing Authority, the appellant has admitted his CST and VAT liabilities. It means that the appellant had not disputed the figure of tax liability determined by the Assessing Authority which shows that there is merit in the action of Assessing Authority. Moreover, in the appeal, the appellant has not disputed the incidence of taxation provided under section 3 of the CST Act, 1956 and Section 4 of the HP VAT Act, 2005 which is the basis to determine CST & VAT liability on the appellant.

ii) The section 12 of the HP VAT Act, 2005 provides: "The net tax payable by a registered dealer for a tax period shall be the difference between the output tax plus purchase tax, if any, and the input tax credit, which can be determined from the following formula, namely:-

Net Tax Payable = (O+P)-I"

Net tax payable denotes tax liability wherein 'O' signifies output tax payable for any tax period, 'P' signifies purchase tax paid by a registered dealer for any tax period and 'I' signifies the input tax paid or payable for said tax period, including input tax credit, if any, carried forward form any preceding tax period as determined under section 11. As such, on the basis of above provision of the Act, benefit of 35% tax rebate has been rightly allowed on the basis of tax liability of the appellant, i.e. on net tax payable. *Policy of upfront payment infact is not required to be mixed up with the*

normal provisions of the Act relating to the ITC. While claiming ITC the dealer claims the ITC on the basis of tax liability.

The tax liability for tax period of 2010-11 is calculated on the basis of return filed by the appellant under the deferred payment of tax scheme, dealer was taxed on the quantum of output tax with subtraction of input tax credit already paid on the purchasers. Under the scheme of VAT Act, a dealer is taxed only on the quantum of value addition, i.e. output tax payable on sales minus input tax already paid on purchases. A dealer's tax liability of 65% quantum and rebate 35% quantum is only in respect of tax actually payable as a normal dealer after availing benefit of ITC, retention of ITC on closing stock which is carry forward able to next year and other provisions as applicable to other normal dealers. The plea of the appellant to allow 100% credit of input tax paid and charge 65% of output VAT would result in subverting the very concept of value addition tax and would lead to negative effect.

iii) The assessment order of the Assessing Authority shows that the appellant had shown total sale of Rs. 8,78,86,106/-. The appellant had claimed ITC of Rs. 21,41,282/- on intra state purchases, which is validated after verification from the original bills submitted by the trader to the Assessing Authority, out of which the trader has deducted the unsold goods as per Government Notification dated 26th July, 2005. The amount of Rs. 25,473/- was forwarded for the next year. The appellant in his response to the Assessing Authority told that local purchases are made only as per requirement, hence, ITC is not amortized on the basis of ratio, in respect of which the appellant has not maintained any separate accounts to adjust the ITC. Contrary, in order of Assessing Authority it is evident that the trader has shown interstate sales of Rs. 19,04,963/- at the rate of one percent, in respect of which the trader has submitted seven 'C forms' worth Rs. 17,12,000/-, which were kept on hold. The appellant had also not submitted the' C forms ' of Rs. 1,92,963/- on which tax and interest was charged at normal rate. One year's interest was imposed on the tax payable due to non-forwarding of ITC on unsold goods. In total demand Challan was issued to the dealer for additional demand amounting to Rs. 8,55,535/.

In view of the deducement made by the Assessing Authority it is my considered view that ITC on closing stock has been rightly retained by the Assessing Authority and interest is also rightly been charged.

7. For the aforesaid reasons, the appeal does not merit consideration and is dismissed. The impugned order of the Assessing Authority dated 17-11-2015 and the order of the Appellate Authority 20-03-2017 are upheld.

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

Priyatu Mandal
Chairman,
HP Tax Tribunal, Dharamshala,
Camp at Shimla

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

Endst. No. HPTT/CS/2023 – 156 to 159 **Dated:** 08/12/2023

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. Assessing Authority, Nahan, District Sirmaur(HP)
3. M/s Shree Krishna Packaging, Vill Johro, Trilokpur Road, Kalamb, HP (HP)
4. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.

Reader
HP Tax Tribunal
Dharamshala

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O/C