

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

Appeal No. : 15 & 16/2023  
Date of Institution : 04-07-2023  
Date of order : 16-03-2024

**In the matter of:**

M/s Sabacchus Distilleries India Pvt. Ltd. Village Rerhu, Nalagarh, Solan  
(HP)

**.....Appellant**

**Vs**

- i) Addl. CST&E-cum-Appellate Authority, SZ, Himachal Pradesh, Shimla
- ii) The Assistant Commissioner State Taxes & Excise cum-Assessing  
Authority Nalagarh circle-III, Distt. Solan (HP)

**.....Respondents**

**Parties represented by:-**

Shri Goverdhan Sharma, Advocate for the Appellant.

Shri Sandeep Mandyal, Sr. Law Officer (Legal) for the Respondents.

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

**Order**

1. The present appeals have been filed by M/s Sabacchus Distilleries India Pvt. Ltd. Village Rerhu, Nalagarh, Revenue District, BBN Baddi, Solan (HP) against the orders of Ld. Addl. Commissioner State Taxes and Excise-cum-Appellate Authority, SZ, Shimla Himachal Pradesh dated 03-02-2023 vide which the appeals filed by the Applicant for the years 2018-19 & 2019-20 against the order of the Ld assessing Authority Nalagarh Circle-III (Respondent Number 2), vide which the Assessing Authority has created an additional demands of Rs. 23,09,890/- and Rs. 54,41,000/- under the HP VAT Act, 2005 was upheld.

2. The Brief facts of the case are that M/s Sabacchus Distilleries India Pvt. Ltd. Village Rerhu, Nalagarh, Solan (HP) is registered as dealer under the HP VAT Act, 2005 and also under the CST Act, 1956 vide TIN 02030301163. The dealer is engaged in the business of distillation, bottling and sale of liquor etc. The Ld. Assessing Authority assessed the appellant under section 16, 21 and 60 of the HP VAT Act for the years 2018-19 and 2019-20, and noticed that the dealer has deposited the tax late for the specified period and also there was late filing of annual returns which resulted in scrutiny of the case and resulted into the creation of the additional demands of Rs. 23,09,890/- and Rs. 54,41,000/- under the HP VAT Act, 2005 for the years 2018-19 and 2019-20 respectively. The Assessing Authority has imposed penalty under section 16(6), 16(6-A) and 16(7) and charged interest under section 19 of the HP VAT Act, 2005. Thereafter, the appellate authority upheld the demand created by the Assessing Authority vides its order dated 03-02-2023 and the present appeals have been filed against this order.

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

i) *That the order of assessment passed by the Assessing Authority as well as the order passed in appeal by the Appellate Authority rejecting the appeal confirming the order of assessment is a unjust, arbitrary, unlawful non speaking order that violates principles of natural justice.*

ii) *That order passed by the respondent No. 2 confirmed by the Ld. Appellate Authority creating additional demand is not tenable in law. The Ld. Assessing authority as well as Ld. Appellate Authority has miserably failed to consider the submissions made by the appellant for late deposit of tax and late filing of returns and has arbitrarily come to the conclusion that penal provisions under section 16(4) 16(7) automatically attracted for non compliance of section 16(3) and 16(4) even if the appellant had sufficient reasons for not having been able to comply with section 16(3) and 16(4). The appellate authority has erred in law and facts has given no findings on the contentions raised and the submissions made by the*





iii) After having made credit sales during the year could not deposit the tax due to the reason that the payments were not received from the purchasing dealers in time thereby creating extreme hardship to the appellant. Because the Assessing Authority as well as appellate authority after having accepted the books of account to be true and genuine, could not have rejected appellants contention of not depositing the taxes and return for non receipt of the payment for the sales made as it constitutes a sufficient cause due to which the tax could not be deposited in time therefore penalty under section 16(7) of HP VAT Act, 2005 is not attracted.

iv) That as per the provision of the section 16(3) of the HP VAT Act, 2005 the dealer was required to file the returns by such dates and to such authority as may be prescribed. In the instant case while issuing the registration certificate assessing authority ordered to deposit VAT and file return monthly, the dealer has been filing all the returns monthly and paid tax along with the returns on the basis of the books of account statement prepared. The taxes for the months preceding, the months in question, and also for the succeeding months have been deposited in time. The Books of accounts having been accepted reflecting the delay in release of tax and principal amount by the purchasing dealers the assessing authority could not have levied penalty u/s 16(6) & 16(7) in a capricious and slipshod manner is thus totally illegal, arbitrary and contrary to the provisions of the Act.

v) Reliefs:

a) That the order dated 07-07-2020 that has merged in order dated 03-02-2023 in appeal No. 07-08/2021-22 be quashed being illegal, arbitrary and against the provisions of HP VAT Act, 2005.

b) That the interest penalty charged u/s 16(6), 16(6-A) and 16(7) of HP VAT be quashed as the same is not imposable in the fact and circumstances of the case in view of the judgment of the apex court.

c) That any other relief that may be granted to the appellant by the Hon'ble Court keeping in view the full facts and circumstances of the case.

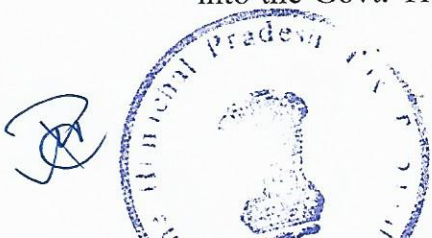
4. The Ld. Counsel for the Appellant prayed that the appeals be accepted and the impugned order be quashed, along with additional demands created against the



appellant. He averred that the appellant being law abiding responsible dealer is very much aware of its duty towards the State, bonafidely, out of his own will, immediately on the receipts of payments from the purchasing dealer deposited the due taxes into the Govt. Treasury and filed the returns much before the scrutiny of the returns was initiated by the Assessing Authority. Because the appellant never had any intention to evade the taxes, and delay payments which occurred just because of peculiar facts and circumstances in the instant case as submitted above. The Id. Counsel relied upon the judgment of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd., V.s State of Orissa 1970 (25) STC 211, wherein it was held that:-

*“An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.”*

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 03-02-2023 may be upheld. As per incidence of taxation under HP VAT Act, the dealer was liable to deposit VAT into the Govt. Treasury despite having collected the same from the consumer. As per





section 16 of the HP VAT Act, 2005 the appellant was under statutory obligation to furnish the tax returns on time which was not done.

6. I have heard the Ld. Counsel and the Ld. Govt. Counsel for the respondents in detail and perused the record as well. The points for consideration raised by the appellant pertain to the issue of 'payment of tax and returns within stipulated time frame'. I have given considerable thought to the issues involved and I hold that the present appeals should be rejected for following reasons:-

- i) As per the admission of the appellant before the respondent No. 2, the appellant had admitted his VAT liabilities for the years 2018-19 and 2019-20. It means the appellant had not disputed the figure of VAT 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 4 of the HP VAT Act, 2005 which is the basis to determine the VAT liability on the appellant.
- ii) It would be pertinent to mention Section 16 of the HP VAT Act, 2005 wherein sub section 4 and 7 of the said section clearly provides the deposition of tax and if not, levying of penalty thereof for delay in days specifically. The penalty and interest has been levied under the provisions of Section 16 and 19 of the HP VAT Act, which are binding for the tax assessing authority for the same to be collected from the tax evaders whenever the Assessing Authority has identified the dealer who has not paid the tax, prescribed under the act. There is no discretion with this authority or the lower authority to consider any such concession/ waiver of interest and penalty. The law enunciated by the Hon'ble Supreme Court in the case of **State of Rajasthan & Anr. Vs. D.P. Metals (2001) STC 5085 (SC)** supports the imposition of penalty and hence the same is being relied upon. The law cited by the Ld. Sr. Law Officer in the cases of **Indodan Industries Ltd. Vs. State of U.P and others (2010) 27 VST 1 (SC)**, **Hazi Lal Mohd. Biri Works V/s State of Jammu and Kashmir (1984) 56 STC 212 (SC)** and **Khazan Chand V/s State of Jammu and Kashmir and other (1984) 56 STC**



214 (SC) fully supports the case for imposition of interest and hence the same has been rightly ordered to be imposed upon the dealer.

- iii) From the perusal of the order of the Assessing Authority it is recorded that the appellant was afforded reasonable opportunity of being heard and put forth arguments on why penalty and interest under Section 16(6), 16(6-A), 16(7) and Section 19 of HP VAT Act, 2005 should not be imposed. Furthermore, the contention of the Ld. Counsel, that due to credit sales by the appellant dealer with no timely receivable of sales considerations, cannot be considered as a sufficient cause for non deposition of tax and late filing of returns. The sale and purchase of the commodity between the two parties is the internal business understanding and any lapses in this regard can't be corroborated with the payment of tax or any statutory obligations which has to be complied by the appellant dealer vis-à-vis to the provisions of HP VAT Act, 2005.
- iv) The judgment cited by the Ld. Counsel the case of **Hindustan Steel Ltd. V/s State of Orissa 1970, (25) STC, 211** is not applicable in the context of the present case as the facts and circumstances of the case is different and in the present case dealer has miserably failed to present sufficient cause of delayed payments and late filing of returns even after affording reasonable opportunity of being heard. As such, I am of the view that the orders of Assessing Authority are legal and principles of natural justice have been honored.
7. For the aforesaid reasons, the appeals do not merit any consideration and is dismissed. The impugned order of the Assessing Authority dated 07-07-2020 and the order of the Appellate Authority dated 03-02-2023 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,  
Block No 30, SDA Complex Shimla-6  
Camp at Shimla



Endst. No. HPTT/CS/2024 - 187022  
Copy forwarded for information to:-

Dated: 16/03/2024

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. Assessing Authority Nalagarh Circle-III, Distt. Solan, HP.
3. M/s Sabacchus Distillery Pvt. Ltd., Village Rehru Upperlla, Nalagarh, Revenue District BBN, Baddi. (HP).
4. Sh. Goverdhan Sharma, Advocate for the appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



Reader

HP Tax Tribunal

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