

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

Appeal No. : 24/2023
Date of Institution : 29-08-2023
Date of order : 16-03-2024

In the matter of:

M/s Radiant Cement Company Pvt. Ltd., Village Moginand, Distt. Sirmaur
HP.

.....Appellant

Vs

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

.....Respondents

Parties represented by:-

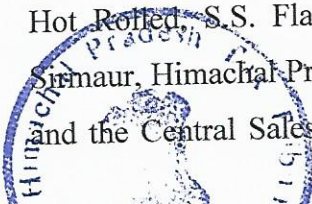
Shri Surender Singh, Advocate for the Appellant.

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

**Appeal under Section 45(2) of the HP VAT Act, 2005 read with Section 9
of the CST Act, 1956**

Order

1. The present appeal has been filed by M/s Radiant Cement Company Pvt. Ltd., Village Moginand, Distt. Sirmaur against the order of the Addl. Commissioner State Taxes and Excise-cum- Appellate Authority, SZ, Himachal Pradesh, Shimla dated 17-07-2023 vide which additional demand of Rs. 15,31,304/- which was created for the assessment year 2015-16, by the Assessing Authority Nahan Distt. Sirmaur vide order dated 14-01-2021 against the appellant under the HP VAT Act, 2005 and the Central Sales Tax Act, 1956 was upheld.
2. The brief facts are that M/s Radiant Cement Company Pvt. Ltd., Village Moginand, Distt. Sirmaur, HP (herein after refer to as 'Appellant') is a manufacturer of Non Alloys, Steel Hot Rolled, S.S. Flats, S.S. Ingots, M.S. Flats and S.S. Round; at Moginand, Distt. Sirmaur, Himachal Pradesh and is registered under the Himachal Pradesh VAT Act, 2005 and the Central Sales Tax Act, 1956 vide TIN No. 02040500058. The appellant dealer



was assessed by the Assessing Authority for the year 2015-16 on the basis of notification number EXN-F-6/2006-Vol-I Dated 01-04-2013 and recorded that the dealer has not deposit the due tax as he was bounded to be deposit at the rate of 2 % of CST as being included in the negative list as per notification number EXN-F(1) 2/2004(iii) Dated 30-03-2005, rather dealer has deposit CST at the rate 1.5% which was less by 0.5% ,hence the Assessing Authority created an additional demand of Rs. 15,31,304/-, under the CST Act, 1956 and HP Vat Act,2005 vide order dated 14-01-2021. Thereafter, the appellate authority upheld the demand created by the Assessing Authority vides its order dated 17-07-2023 and appeal has been filed against this order.

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

- I. *That the respondent no. 1 appellate authority and the respondent no. 2 assessing authority is not appreciating the limitation period which is beyond a period of almost six years from the specified last date for filing of return for the relevant assessment year is clearly barred by limitation.*
- II. *That the assessing authority before framing the assessment could not use their own application of mind and on the basis of objection raised by the Audit party in the case of Vashisht Alloys, Nahan Road Kala-Amb has also taken up our assessment case on the same ground. On the basis of notification issued by the department of Excise & Taxation HP. Which were wrongly interpreted by the audit party and the Ld. Assessing authority has passed this impugned order. Although, he knows that several States High Courts has held that reassessment on the basis of audit objection-not sustainable. Moreover, Hon'ble High Court of Himachal Pradesh, Shimla has passed land mark judgment in the case of Excise & Taxation Commissioner v Dhani Ram and Sons (2009) 34 PHT 278. And cleared that the comments or observation of another authority (such as audit) be considered to be new and definite information warranting reopening of an assessment- Held, No. we were shocked that the respondent no.1 nonchalantly observed in the assessment order dated 17th July, 2023 that he was unable to implement the order of Hon'ble High Court of Himachal Pradesh.*
- III. *The Ld. assessing authority illegally charged 2% CST instead of 1.5% as not*

understanding/ analyzing the notifications issued by the Excise and Taxation Deptt. Or-30-03-2005 and 01-04-2013.



The Hon'ble court of India has already said that "Finance Act will not authorize the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general policy resolution itself.

- IV. The applicant has obtained clarification regarding the negative list issued by the Member Secretary, single window clearance Agency, Kala-Amb Sirmaur in which it was clearly mentioned that "as such negative list notified under incentives Rules-2004 separately does not apply to industrial units as the units not eligible for this incentive has been already mentioned as indicated above." But respondent no. 2 (Assessing Authority) as well as respondent no.1 (appellate authority) ignores the clarification issued by the District Industrial Centre.
- V. That as far as interest amounting to Rs. 5,39,463/- and penalty Rs. 3,36,947/- under section 9(2) of CST Act; and under section 16(7) of the HP VAT Act; respectively is concerned, such action is highly illegal and contrary to law, because all the returns and due tax has been filed in time and according to law. So, as far as to levy of penalty under section 16(7) of the HPVAT Act; is concerned, it is by now well-settled that the levy of penalty could have been made only in a case if a dealer fails without sufficient cause to comply with the requirements of the provisions of sub-section (4), but the appellant fulfill the conditions of section 16(4) for the HPVAT act; and filed all the returns and paid due tax in time, so such illegal assessment order deserve to be quashed.
- VI. Moreover, regarding the correction of application and calculation of tax, penalty and interest is concerned the rule 44 and section 60 of HPVAT Act; were ignored completely by the respondent no. 1. The section 60 says 'without prejudice to the provisions of sub-section (4) of section 21, at any time in the year, every assessing authority may undertake scrutiny of the returns filed during any tax period for ascertaining compliances of the provisions of sub-sections (3) and (4) of Section 16 and to check correctness of application and calculation of rates of tax, penalty and interest payable, claim of input tax credit and payment of full amount of tax due according to such return. But assessing authority was failed to take scrutiny of the returns filed by the appellant company within eight years. So, impugned order passed by the Ld. Assessing Authority and also ignoring the above section by the respondent No. 1 appellate authority deserves to be quashed and set aside.

VII. *Prayer :- Thus in view of the above judgments of various High Courts and Hon'ble Supreme Court, kindly quashed the impugned order passed by the respondent no. 2.*

4. The Ld. Counsel for the Appellant prayed that the appeals be accepted and the impugned order be quashed. The Ld. Counsel for the appellant also relied upon the judgments which are as under:-

1. Hon'ble Supreme court of India, in the matter of, Lloyed Electric and Engineering Vs. State of Himachal Pradesh and Ors. Dated 03-09-2015.

2. Hon'ble Patna, High Court of Bihar in the matter of, State of Bihar and Ors etc. Vs. M/s Suprabhat Steel Limited and ors dated 17-11-1998.

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 17-07-2023 may be upheld.

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 the consideration raised by the appellant pertains to the issue of 'limitation'; 'rate of calculating CST ' and 'issue of Industrial Policy 2004 directive Vs notification issued by the Excise & Taxation Dept.'. I have given considerable thought to the issues involved in detail as follows:-

i) The objection raised by the appellant that the order of Respondent Number 2 is time barred although does not hold ground because the date of filing annual return for the assessment year 2015-16 was 30th November 2016 accordingly 5 year limitation period would have applied after 30th November 2021, but the notice in the matter was issued on 13-10-2021, therefore the same has been passed within the prescribed time limit. The case has been dealt under Section 21(5) of the HP VAT Act, 2005 wherein the Assessing authority is required to pass an assessment order within a period of 5 years from the last date prescribed for furnishing the last return in respect of that period.

ii) Further, the notification dated 29-05-2009 of the Government of Himachal Pradesh, Department of Industries (A) No. Ind. A (F) 6-3/2008 and its partial modification No. Ind. A (F) 6-7/2004 dated 30th December, 2004 notifying Industry policy 2004 regarding grant of Incentives, Concessions and facilities to Industrial Units in Himachal Pradesh, has extended the incentive of validity of concessional rate of CST @ 1% upto 31-03-2013 in Rules 10.3 of Industry Policy, 2004 or till the time CST is phased out, whichever is earlier.'

The perusal of the notification specifies that concession and facilities of the industrial policy, 2004 are clear on extending the incentive of validity of concessional rate of CST under rule 10.3 of 2004 to the specified Industrial unit till CST act is not phased out i.e. till the date GST act is not rolled out. The disputable period in the present case of the dealer is thus falling under this extended concessional period.

Whereas, the Excise and Taxation Department notification No. EXN-F(1) 2/2004 (iii) dated 30-03-2005 had notified the industrial units not eligible for the central sales tax incentives. According to the above notification Sr. No. 22: Mini Steel plant induction/ Arc/ Submerged, furnaces and or rolling Mills are falling under non eligible category. Subsequent notification EXN-F(5)-6/2006-Vol-I dated 01-04-2013 provides that in respect of the sale in the course of interstate trade or commerce of the goods (other than) those manufactured by the breweries, distilleries, non-fruits/ vegetables based wineries and bottling plants (both of country Liquor, Indian made foreign liquor) and industrial units specified in negative list) manufacture by the dealers running any existing industrial unit in the state of Himachal Pradesh, the tax levied under sub section (1) of Section 8 of the Act ibid, shall be calculated and payable at the concessional rate of 1.5% of the taxable turnover of such goods with effect from 1st April, 2013 for a period of five years or till the implementation of the Goods and Services Tax, whichever is earlier.

The Hon'ble Supreme court of India in the case of Lloyd Electric and Engineering... vs. State of Himachal Pradesh and Ors on 3 September, 2015 held that:-

The State Government cannot speak in two voices. Once the cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31-03-2009, up to 31.03.2013, and the Notification dated 29-05-2009, accordingly, having been issued by the Department concerned, viz., Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one



voice. It has only one policy. The departments are to implement the Government policy and not their own policy'.

In view of the observations made by the Hon'ble Supreme Court I am of the view that any industry which is cover under the concessional benefits of Industrial policy should be following one policy which is primarily industrial policy. Such incentives are provided to industrial enterprises to encourage and facilitate industrial set up. The boost the confidence of industrial enterprises harmonizing of all policy directions into one policy is must for continued relevance. The State Government at its own consideration has given this form of tax incentive. Independent policy direction by separate departments creates dilemma in the minds of Industrial Entrepreneurs. As per the admission of the appellant he is agreeing to levy 1.5% on sales made against Form C rather than 2% rate of tax which shows that there is no willful act of omission. It is expounded that no default penalty could be imposed in the manifest absence of demonstrable intent to not pay tax or a refusal to pay tax.

- iii) The law enunciated by the Hon'ble Supreme Court in the case of Lloyed Electric and Engineering V/s State of Himachal Pradesh & ors. Dated 03-09-2015 (Supra) and the decision of Suprabhat Steel Limited High Court of Patna speak clearly to emphasize on one policy. This aspect should had been necessarily considered by the Appellate Authority while deciding the appeal. The Assessment done in this case should had not been done in a perfunctory manner and is warranted upon proper adjudication as to willful default and the presence of mens rea.
- iv) I am convinced by the observations made by Hon'ble Supreme Court in the case of Lloyd Electric and Engineering Vs State of Himachal Pradesh and by the Hon'ble Patna High Court in the case of State of Bihar Vs. Suprabhat Steel Limited and Ors.,

The collateral reading of the above stated judgments and in view of the discussions made hereinabove, I find that the appeal should be allowed and hence accepted and the impugned order dated 17-07-2023 of Appellate Authority is set aside. It is also declared that the appellant shall be entitled to the concessional CST rate of 1.5% instead of 2% for the period thereof.



7. On the fact and circumstances, the appeal of the appellant is accepted and the order of the appellate authority of not granting the appropriate rate of CST benefit and upholding the interest and penalty is dated 17-07-2023 is quashed and set aside.
8. Copy of this order is sent to the parties concerned. File after due completion be consigned to the record room.



Priyatu Mandal

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

Endst. No. HPTT/CS/2024 - 237027

Dated: 16/03/2024

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. Assessing Authority Nahan, Distt. Sirmaur, HP.
3. M/s Radiant Cement Company Pvt. Ltd., Village Moginand, Distt. Sirmaur (HP).
4. Sh. Surender Singh, Advocate for the appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.



Reader

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