

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

Appeal No. : 25/2023  
Date of Institution : 25-09-2023  
Date of order : 12-11-2024

**In the matter of:**

M/s Jai Maa Bhalai Fuel Services, Kothi, P.O., Ogli, Tehsil Sunni Distt.  
Shimla (H.P).

**.....Appellant**

**Vs**

1. Appellate Authority Cum Addl. CST&E, SZ, Shimla, HP.
2. Assessing Authority Dhalli Circle, Distt. Shimla, H.P.

**.....Respondents**

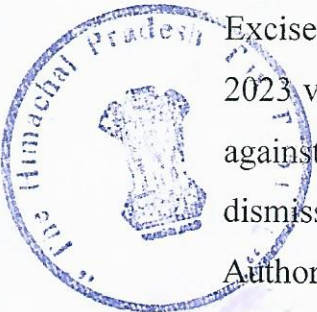
**Parties represented by:-**

Sh. Ashwani Kaundal Advocates for the Appellant.  
Sh. Sandeep Mandyal, Sr. Law Officer for the Respondent.

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

**Order**

1. The present appeal has been filled by M/s Jai Maa Bhalai Fuel Services, Sunni, Distt. Shimla against the orders of Ld. Addl. Commissioner of State Taxes and Excise-Cum- Appellate Authority, SZ Shimla Himachal Pradesh Dated 12-01-2023 vide which the appeal filed the Applicant for the years 2019-20 and 2020-21 against the orders of Assessing Authority, Dhalli Circle (Respondent No. 2) was dismissed by the Ld. Appellate Authority on the ground that the Assessing Authority has correctly assessed Appellant for the years 2019-20 and 2020-21 as



the applicant could not submit sufficient cause for not depositing the VAT and interest thereon on his own initiative and the Appellate Authority also upheld the penalty proceedings applied thereon. The appeal was dismissed by Appellate Authority and orders of the Assessing Authority dated 25-10-2021 and 28-02-2022 creating demand of (VAT, Interest and Penalty) of Rs. 5,90,644/- and Rs. 13,77,152/-were also upheld.

2. The brief facts of the case are that M/s Jai Maa Bhalai Fuel Services, Sunni, Distt. Shimla is a registered dealer under the Himachal Pradesh Value Added Tax Act, 2005 dealing in petrol, diesel and other lubricants from its petrol pump. The Assessing Authority, Dhalli Circle Assessed the appellant under Section 16,19 and 50 of the HP VAT Act for the years 2019-20 and 2020-21 and noticed that the dealer has deposited late tax for the months of January, February and March,2020 and also filed returns late for the said months. The dealer has also filed monthly return late for the months of April, May, June, July, August for the year 2019-20. Thus, the Assessing Authority has imposed penalty u/s 16(6), 16(17) and 50(2) and charged interest u/s 19 of the HP VAT act, 2005. These proceedings resulted into the creation of the additional demand of Rs. 5, 90,644/- and 13,77,152/- under the HP VAT Act, 2005 for the years 2019-20 and 2020-21 respectively. The Appellant while appearing before the Assessing Authority claimed that he was obliged to pay tax to the department which was not paid timely by him due to appellant being new in this business where he had sold the fuel on credit to number of customer. Also, the imposition of lockdown due to Covid-19 in March 2020 hampered his business due to which the appellant was not able to recover the amount of fuel sold on credit within the time. Thereafter, the appellate authority upheld the demand created by the Assessing Authority vides its order dated 12-01-2023 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) *It is pertinent to mentioned here that since the running of fuel pump is new business to the appellant and further having lack of experience to operate the business, the appellant had given fuel to the regular customer on credit basis. Furthermore, due to the imposition of lock down by the Central Government in the year, 2020, the financial condition of the appellant has became so poor, as the appellant was not able to recover the amount of the sale of fuel in time, which was given on credit to various regular customer. It is also brought to kind notice of the Ld. Court that the appellant was new in this business and further due to the wrong advice given, the present appellant is not able to file returns and also failed to deposit the tax within the period as prescribed.*
- II) *The applicant is duly registered dealer under the H.P. VAT Act and in compliance thereto statutory returns are regularly being filed by the appellant as per law and all the taxes are being deposited before filling of returns except for the period w.e.f. January, February and March, 2020 and April, May June, July , August, 2020 and January, February and March, 2021. It is submitted that the appellant has deposited the tax in excess and the amount paid in excess has been adjusted against the penalty imposed by the respondent.*
- III) *That the case of the appellant for the assessment years 2019-2020 and 2020-2021 were taken up for assessment by the Ld. Assessing Authority-cum-Excise & Taxation Officer, Dhalli Circle. The assessment within the meaning of Section 21& 32 of the H.P. VAT Act, 2005 was completed vide orders dated 26/02/2022 and thereafter vide order dated 28-02-2022 a demand of Rs.13, 77,152/- (Rs. 13,21,085/- + 56067/-) has been created for assessment years 2020-21 on account of penalty and interest. That the Ld. Assessing officer levied the penalties of Rs. 13,21,085/- under Sections 7, 16(6), 16(7) and Section 50(2) of the Act, 2005 without issuing a show cause notice prior to the levy of the said penalty and charged interest of Rs. 56,607/- on the same is illegal, arbitrary and not sustainable in the eyes of*



law. It is submitted that appellants has paid sum of Rs. 1, 43,408/- towards the penalty imposed by the respondent. It is submitted that thereafter the assessment within the meaning of Section 21& 32 of the H.P VAT act, 2005 was completed vide orders dated 24/09/2022 and thereafter vide order dated 25-09-2022 a demand of Rs. 5, 90,664/- (Rs. 5,90,664/- + 30,388/-) has been created for assessment years 2020-21 on account of penalty and interest. That the Ld. Assessing officer levied the penalties of Rs. 5,60,256/- under Sections 7,16(6), 16(7) and Section 50(2) of the Act, 2005 without issuing a show cause notice prior to the levy of the said penalty and charged interest of Rs. 30,388/- on the same is illegal, arbitrary and not sustainable in the eyes of law

- IV) The Ld. Appellate authority while passing impugned judgment dated 12-01-2023 failed to appreciate this fact that the Ld. Assessing officer is not justified in creating liability for the instant assessment year as mentioned above without any issuance of notice for the said assessment years, hence, the impugned order is liable to quashed and set-aside on the score alone.
- V) The Ld. Appellate authority while passing impugned judgment dated 12-01-2023 failed to consider this material fact that the Ld. Assessing officer is not justified in imposing penalties under Section 7, 16(6), 16(7) and Section 50(2) of the Act, moreover without issuing any show cause notice prior to the levy of the said penalty. The penalty under law is never automatic and cannot be imposed in violation of the principle of natural justice and hence impugned order is liable to be dismiss.
- VI) The Ld. Appellate authority while passing impugned judgment dated 12-01-2023 failed to taken consideration this aspect of case that the Ld. Assessing Officer is not justified in charging interest has been charged against the established provisions of law without passing any specific order in respect of the same.
- VII) The the Ld. Appellate authority while passing impugned judgment dated 12-01-2023 failed to taken into consideration that the Ld. Assessing



Authority while imposing the penalty and interest on account of filing return late and further failed to deposit the tax within the prescribed period has failed to appreciate this fact that the delay caused in filing return and depositing tax is neither intentionally nor deliberate, however, the appellant was not able to file return and further to deposit the tax within time since the appellant was into the business of fuel pump in the month of December, 2019. Furthermore, being new in business, the appellant had sold the fuel on credit to numbers of customer. It is also brought to the kind notice of this Hon'ble Court that thereafter due to the imposition of lock down in the month of March, 2020, the present appellant was not able to recover the amount of the fuel sold on credit within the time, hence the same adversely effect the financial condition of the appellant. Furthermore, there is another reason due to which the appellant was not able to file return and also to deposit tax since the wrong advice was given to the appellant. It is pertinent to mention here due to the reason as mentioned, the appellant was not able to file the return and also deposit the tax within the time. Hence, the impugned order is liable to be set-aside on this score alone.

VIII) The present appellant submits that The Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs. State Of Orissa, (1972) 83 ITR 0026 has 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. The judgment is of so much relevance that it is referred to in various subsequent judicial proceeding and often relied upon High Court as well as Tribunals throughout the country.

The court has held that penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a



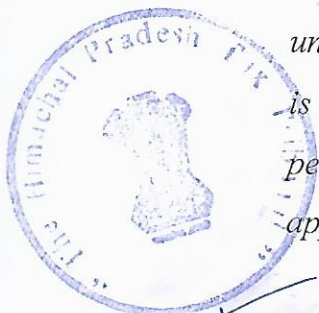
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*statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified 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.*

*In the present case also, the present appellant neither acted deliberately in defiance of law nor was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.*

*Also, in the Hon'ble High Court of Andhra Pradesh in case titled addl. Commissioner of Income Tax vs. Dargapandarınath Tuljayya & Co., has held that the Income Tax officer is satisfied that any person "has without reasonable causes" failed to furnish the return of total income etc, he may be levy a penalty on such person in case titled Addl. Commissioner of Income Tax vs Dagapandarınath Tuljayya & Co. All that the income Tax Officer has to be satisfied about the failure of assessee to submit return "without reasonable causes." Neither more nor less. Parliament has thus prescribed an objective test to determine the mental state of the person proposed to be proceeded against. There is no reason of importing the doctrine of mens rea into a situation where the requisite mental state is defined. Nor is there any reason for qualifying the failure to furnish a return with expression like "Contumacious". "Dishonest, "In deliberate defiance of law ", etc.*

*The perusal of the same clearly reveals that the where assessee intentionally and deliberately filing return late and also deposit the tax late shall be liable to pay the penalty. However, where the assessee like in the present case due to unavoidable circumstances, which is totally beyond the control of the assessee, is not able to file return and also it deposit tax in time shall not be burden with penalty. It is brought to the kind notice of this Hon'ble Court that the appellant has not only filed return but also deposit the tax in excess, hence*



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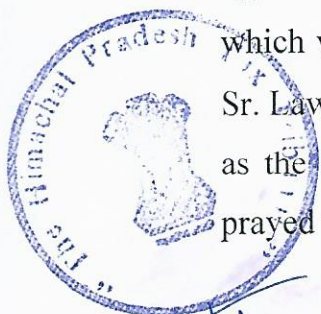
*perusal of the same clearly reveals intention of the present appellant, which show that the appellant is law abiding citizens and further not delay the filing of return and deposit of tax with any ulterior motive or dishonest intention.*

*Furthermore, it is submitted that the penalty as imposed under section as mentioned above is on very higher side and in view of the facts narrated herein above, the appellant humbly prayed to the Hon'ble Court to kindly waive the penalty as imposed on the appellant.*

*Hence, the impugned judgment has been passed in contrary to law laid down apex Court, hence, the same is liable to be quashed.*

*It is therefore, respectfully prayed that the present appeal may kindly be allowed and impugned judgment dated 12-01-2023 may quashed and set aside and further appellant may kindly be exonerate from the penalty as levy in the interest of law and justice.*

4. The Ld. Counsel for the appellant prayed that the appeal be accepted and impugned order be quashed since dealer has never defaulted in any payment of tax in previous years or months, since, it has been established that the dealer has also filed monthly return late for the months of April, May, June, July, August for years 2019-20 and January, February and March for the financial year, 2020-2021. The contentions of the Ld. Counsel in this regard are that due to the imposition of the lockdown and poor financial condition he was not able to deposit the due tax within the prescribed time frame as laid u/s 16(4) of the HP VAT Act, 2005.
5. Shri Sandeep Mandyal, Sr. Law officer for the respondents argued that as per incidence of Taxation under HP VAT Act, 2005 the dealer was liable to deposit of VAT into the Govt. Treasury despite heaving collected the same form the consumer. As per the provision of the Section 16 of HP VAT Act, 2005 the appellant was under statutory obligation to file timely returns and payment of tax which was not done. The plea of the dealer cannot be accepted at this stage. The Sr. Law Officer 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 their action may be upheld.



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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 pertains to the issues of '*opportunity of being heard*'; '*mens rea to evade tax*' and '*timely payment of tax and returns*'. I have given considerable thought to the issues involved and I hold that the present appeal 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. 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. It is also seen that appellants has paid sum of Rs. 1, 43,408/- towards the penalty imposed by the respondent. Moreover, in the appeal they have not disputed the issue of taxation provided under Section 4 of HP VAT Act, 2005 which is the basis to determine VAT liability of the appellant.
- ii) The appellant has filed the submission and pledge relaxation in his favour due to COVID-19 and the subsequent lockdown during 2020 & 2021. It is founded that the delay in payment of tax was ostensibly on account that the appellant sales were on credit basis and his debtors didn't pay the amount to the appellant dealer. It is observed that there is no material available on record to corroborate that the late payment of tax was not malafide or wilful act of omission; hence the default penalty could be levied. It is expounded that default penalty could be imposed in the manifest presence of demonstrable intent to not pay tax and / or a mala fide refusal to pay tax.

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

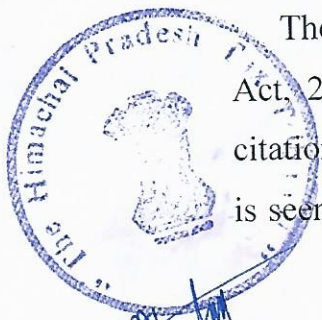




Tax becomes payable by an assessee by virtue of the charging provisions in a taxing statute. The provision of above section empowers the Assessing Authority to levy penalty in cases where default by the dealer is with sufficient cause and a reasonable opportunity has been given by the Assessing Authority before imposing the penalty. Penalty ordinarily becomes payable when it is found that an assessee has wilfully violated any of the provisions of the taxing statute.

- iii) The objection raised by the Appellant that in the order of Respondent No. 2 penalties have been levied without issuing the show cause notice does not hold ground because the notice in the matter was issued to the dealer to appear on 26-02-2022, wherein accountant of the dealer appeared along with account books on 28-02-2022, it means, the appellant was afforded reasonable opportunity of being heard and put forth arguments on why interest and penalty under Section 16(6), 16(7) and Section 19 & 50 of HP VAT Act, 2005 should not be imposed. As such, I am of the view that the orders are legal and have been passed after affording reasonable opportunity of being heard and principles of natural justice have been honoured. Moreover, the case has been dealt under Section 16 of the Act; where there is no such limitation prescribed contrary to the assertion by the Ld. Counsel for the appellant.
- iv) The case law cited by the petitioner in Addl. Commissioner of Income Tax Vs Dargapandinath Tuljayya & Co. in the High Court of Andhra Pradesh is not applicable in the instant case due to different facts and circumstances and for reasons given in subsequent Para.

The perusal of the provision of subsection 4 of Section 16 of the H.P VAT Act, 2005 is very clear and the same would apply accordingly. The above citations do not assist the appellant in the face of express provisions of law. It is seen that no authority has been vested under the ibid provisions to condone



any delay for late filing of return and late depositing of tax. as the appellant failed to file returns timely for the months of April, May , June, July , August of year 2020 and January, February, March for the year 2021 and also deposited tax late for the mentioned months, he is therefore subjected to penal provisions of the law. This Tribunal is of the view that Assessing Authority has rightly imposed the penalty and charged the interest as per the provisions of the HP VAT Act, 2005.

In this regard reliance has been placed on Supreme Court judgment in Union of India vs. Dharmendra Textile Processors (2008) 18 VST 180 where it has been clearly held that **“It is well-settled principle of law that the Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intention....Legislative casus omissus cannot be supplied by judicial interpretative process”**.

- v) It is also seen that the impugned order dated 12-01-2023 cannot be held to be a non speaking order as it is a very detailed order. It would be pertinent to mention Section 16 of the HP VAT Act, 2005. Plain reading of the section shows that the penalty is payable on the amount of the tax assessed where there is delay in payment of tax liability. The tax liability in respect of sale or purchases has to determined u/s 16 of the Act. Once liability on account of late filing of returns and tax is assessed penalty equal to or upto double of the assessed tax amount is payable. The respondent No. 2, in the present case has found the appellant guilty of late payment of VAT liability when the scrutiny of the returns u/s 60 of HP VAT Act, 2005 was undertaken. 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




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identified the dealer who has not paid the tax as 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 and another Vs. D. P. Metals (2001) STC 611 (SC)** supports the imposition of penalty and hence the same is being relied upon. The law cited by the Ld. 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 Vs. State of UP. And Others (1973) 32 STC 496 (SC)**, **Royal Boot House Vs. State of Jammu and Kashmir (1984) 56 STC 212 (SC)** and **Khazan Chand vs. 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 order to be imposed on the dealer.

- 7 For the aforesaid reasons, the appeal does not merit any consideration and is dismissed. The impugned orders of the Assessing Authority dated 25-10-2021 & 28-02-2022 and order of the Appellate Authority dated 12-01-2023 are upheld.
- 8 Copy of this order is sent to the parties concerned. File after due completion be consigned to the record room.



  
(Priyanka Basu Ingty)  
Chairman,  
HP Tax Tribunal,  
Camp at Shimla

Endst. No HPTT/CS/2024- 110

Dated- 18-11-2024

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Addl. Commissioner ST&E SZ, Shimla, HP.
3. The Jt. Commissioner State Taxes and Excise, SZ Parwanoo.
4. The Assistant Commissioner State Taxes and Excise, Dhalli Circle,
5. M/s Jai Maa Bhalai Fuel services, Kothi, P.O. Ogli, Distt. Shimla, HP.
6. Sh. Ashwani Kaundal, Advocate for the respondent.
7. The Sandeep Mandyal, Sr. Law officer, HQ.



Reader  
HP Tax Tribunal  
Camp at Shimla