

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

Appeal No. : 19/2010 & 01/2011
Date of Institution : 25-08-2021
Date of order : 27-07-2022

In the matter of:

Malwa Cotton Spinning Mills Ltd.,
Paonta Sahib Distt. Sirmour (H.P).

.....Appellant

Vs

The Addl. ETC-Cum-Appellate Authority, (SZ) HP Shimla-09
&
Assessing Authority, Nahan, District Sirmour (HP).

.....Respondent

Parties represented by:-

Sh. Rakesh Sharma, Advocate for the Appellant.
Shri Sandeep Mandyal, Law Officer for the Respondent.

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

Order

1. The present appeals have arisen from High Court orders/Judgement dated 11-08-2021 in Civil Revision NO 82/ of 2014 titled M/s Malwa Cotton. Spinning Mills, Paonta, U/S State of HP in which the High Court, as per Paras 3 to 6 of the Judgement held as under:

Para -3 The Tribunal relied on the judgment of the Hon'ble Supreme Court in the case of Associated Cement Company Ltd. Vs Commercial Tax Officer reported in 1981 (4) SCC 578 in terms of its order dated 31-03-2014. However, it

failed to follow the latest judgment of the Constitution Bench in J.K Synthetics vs. Commercial Tax Officer, reported in (1994) 4 Sec 276(1994) [94 STC 422 (SC)]. In Para-19 of the J.K Synthetics case, it was held that the majority opinion in the case of Associated Cement Company Ltd. Vs Commercial Taxes Officer does not State the Law correctly. Therefore, the legal position was reiterated in the said paragraph. This is a matter which the Tribunal ought to have considered. Even though, the Tribunal has referred to the judgment reported in J.K Synthetics' case in para-7 of its order, however, it has chosen not to follow the same. Therefore, we are of the view that the Tribunal committed a gross error in not considering the said judgment.”

“**Para 4.** It is suffice for us to hold that the Tribunal wrongly failed to consider the judgment of J.K Synthetics and on the contrary considered the case of Associated Cement Company Ltd. Vs Commercial Tax Officer, which judgment was overruled.”

“**Para 5.** As a result whereof, the substantial question of law is answered by holding that the Tribunal committed an error in wrongly following the judgment in Associated Cement Company Ltd. Vs Commercial Tax Officer. Resultantly, the petition is allowed. The order of the Tribunal dated 31-03-2014 is set aside. The matter is remitted to the Tribunal for a fresh consideration by taking into consideration the judgment of the Hon'ble Supreme Court in J.K Synthetics' case supra and any other relevant judgment that arises for consideration therein.”

“**Para 6.** Both the parties are entitled to place additional material in support of their respective case. The petition is accordingly restored to file. In view of the long pendency of the matter, the Tribunal is directed to dispose of the matter within a period of three months.”

It is seen that the dispute in this matter does not involve a huge amount. But it does involve the important issue of the date from which interest is payable by the assessee, which is the main point of the dispute which has arisen as a result of the challenge to the order dated 31-03-2014 of this Tribunal by the Appellant in the High Court.

3. In the High Court, Malwa Cotton Ltd. Had framed the following questions of Law in the Revision Petition, which were pleaded to be adjudicated upon by the Court.
Issues before High Court

a) "Whether the Ld. Tax Tribunal has committed error in charging the interest under section 9(2A) read with section 17-A of H.P General Sales Tax Act, 1968 from the date prior to ascertaining the tax liability by the process of assessment.

b) Whether the Ld. Tribunal has committed error relying upon the majority opinion in the case of Associated Cement Company Ltd. Vs Commercial Tax Officer 1981 (4) SCC 578 which stands overruled by the later judgment of Constitution Bench in J.K Synthetics V/s Commercial Tax Officer reported at (1994) 94 STC 422 (SC).

c) Whether the Ld. Tribunal has committed the error in confirming the levy of tax under Central Sale Tax @ 10% on yarn in the absence of "C" forms, instead of maximum rate of 4% prescribed under the Local Act after, the amendment notification dated 01-04-2007 carried out in Central Sales Act, 1956."

4. It was prayed in the High Court by way of Revision petition that the order of Assessment Authority and Appellate Authorities, including this Tribunal regarding charging on interest be quashed.

5. In view, of the direction of the Hon'ble Court dated 11-08-2021, the matter was heard by this Tribunal in the light of the Apex Court Judgement in JK Synthetics (1994) and other relevant Ruling and the provisions of statute i.e. Section 9(A) CST Act read with Section 17 (A) Himachal Pradesh GST Act 1968. I have perused this Appeal of Malwa Cotton Mills and also heard the Tax Department's pleadings.

6. It is seen that the petitioner was assessed by the Assessing Authority for the year 2004-05 vide order dated 25-06-2009 wherein a levy of tax demand of Rs. 1,78,137 along with interest of Rs. 72,927 total amounting to Rs. 1,72,782/- was created. The respondent no. 3 levied full rate of Central Sales Tax i.e. 10% under Section 8(2) (b) of the Central Sales Tax Act, 1956 on the amount for which the petitioner did not produce any 'C' Forms. The petitioner was charged interest

under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 19A HP VAT Act 2005/ Section 17(1) of the Himachal Pradesh General Sales Tax, 1968.

7. In my opinion, the appellant/ dealer was not entitled for concessional rate of CST @ 1% because of non production of 'C' Forms as prescribed under Section 8(4) of the CST Act and therefore was rightly taxed @10%. In this regard the provision of Section 8(4) of the CST Act is reproduced as under:-

"8(4) the provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner:-

a) A declaration duly filed and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority: or

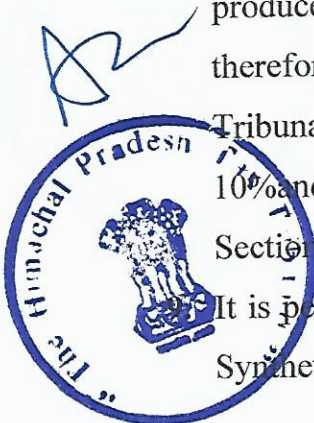
b) XXXX

[Provided that the declaration referred to in clause (a) is furnished within the prescribed time or within such further time as that authority may for sufficient cause, permit.]"

8. The case law cited by the petitioner in J.K Synthetics versus Commercial Tax Officer (1994) 94 STC 422 (SC) and EID Parry (India) Ltd. Versus Assistant Commissioner of Supreme Court is not applicable in the instant case due to different facts and circumstances and for reasons given in subsequent Paras.

The provision of Section 9(2) of the CST Act, 1956 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. As the appellant failed to procure 'C' Forms and produce them before the Assessing Authority at the time of Assessment, he is therefore not entitled to 1% rate of tax, as applicable to inter-State Sales. This Tribunal is of the view that the assessing authority has correctly levied tax @ 10% and charged interest under section 17A of the HP GST Act, 1968, read with Section 9(2) of the CST Act, 1956.

It is pertinent to state that the view expressed by the Constitutional bench in J.K. Synthetic's case supra related to the law as it stood before the amendment of

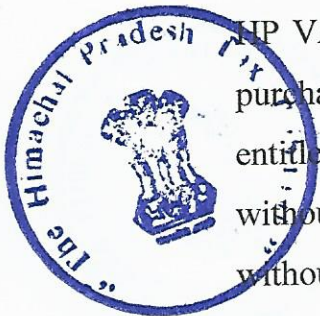


section 11 (B) of the Rajasthan Sales Tax Act, 1954 by Act No. 4 of 1979 w.e.f April 7, 1979 and the findings in that case are not applicable to the provisions relating to interest under Section 19 of the Himachal Pradesh Value Added Tax Act, 2005. The Apex Court in the aforesaid case observed as under:

“.....We must make it clear to avoid any possibility of doubt in further that our view is based on the law as it stood before the amendments by Act 4 of 1979, Reference to the provisions of law after the amendments by Act 4 of 1979 are if at all for the limited purpose of comparison and we should not be understood to have expressed any view in regard to them”.

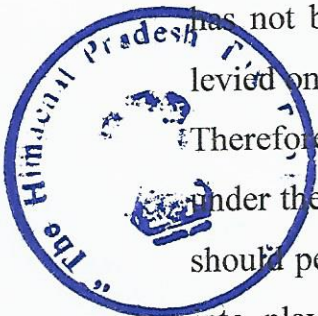
10. In view of above, the case law relied upon by the appellant is not applicable in the instant case. It was the duty of the petitioner to collect and produce the requisite 'C' Forms to avail the concessional rate of tax. The production of 'C' Form is sine qua non. Since the petitioner failed to do so, the Assessing Authority was justified in levying full rate of tax @ 10% on the purchases made by the appellant. No alternative evidence other than 'C' forms to substantiate the claim for concessional rate could be considered by the Assessing Authority in disregard to the express provisions of law under section 8(4) of the GST Act, 1956. The petitioner has been rightly charged interest as per the provisions of section 17-A of the Himachal Pradesh General Sales Tax Act, 1968/ Section 19(1) of the Himachal Pradesh VAT Act, 2005 which are in pari-materia read with section 9(2) of the CST Act. Since the dealer failed to the deposit the tax due from him, interest is rightly charged under section 9 (2) of the CST Act, 1956 read with section 19 (1) of the Himachal Pradesh VAT Act. It was the duty of the appellant to collect the 'C' Forms from the purchasing dealers and submit the same to the assessing authority to become entitled for concessional rate of tax. Since the dealer company filed the return without C-Forms, as such appellant was not eligible for concessional rate of tax without furnishing the 'C' Forms.

11. A similar question was considered and decided by the High Court of Rajasthan (Jaipur Bench) in the case titled as CTO Versus Rastogi Steel Furniture 135 STC 117 and the finding given in that judgment by the High Court of, Rajasthan are




applicable in the present case as the amended provisions of section 11-B (1)(f) of Rajasthan Sales Tax Act are similar to the provisions of Section 19(1) of the HP VAT ACT 2005.

12. The arguments of the appellant counsel is that the order of assessing authority is not in compliance with the provision of section 21(1) of the HP VAT Act, 2005 read with rule 40(6) of the HP VAT Rules and that the Assessing Authority is competent to levy interest only after finalization of assessment and interest is to be levied in accordance with section 19(2) of the Act *ibid*.
13. In support, the Counsel for Appellant as stated above has placed reliance on decisions i.e. J.K. Synthetics Ltd. V/s Commercial Taxes Officer (1994) 94 STC 422 (SC) and E.I.D. Parry (India) Ltd. V/s Assistant Commissioner of Commercial Taxes, Chennai (2005) 114 STC 12(SC). The Appellant's assertion is that the ratio derived from the above decisions is that, interest can only be charged after a final assessment is made and after the expiry of the period allowed under the tax demand notice issued on finalization of the assessment to pay the tax due.
14. The issue as already discussed in above Paras to be determined here is, whether levy of interest should commence only ~~from~~ from the period of finalization of assessment or from the date on which the said dealer filed the return and paid tax in accordance with section 16 and 21 of the HP VAT Act, 2005. There are two provisions providing for charging of interest under Section 19(1) and 19(2). The two sub Sections operate in different circumstances. While Section 19(2) relates to charging of interest, on issuance of notice of demand if the tax amount or penalty has not been paid, Section 19(1), envisages a situation where interest would be levied on the dealer in addition to the amount of tax due from him, under this Act. Therefore, the levy of interest in accordance with section 19(1) is permissible under the HP VAT Act, 2005. It is not correct to conclude that assessment orders should perforce be passed vis-a-vis dealers before the provisions of interest come into play. In the present case, appellant had filed his returns and paid tax in accordance with provisions of Section 16 of the HP VAT Act.



15. In view of above discussion, the Appeals are dismissed being without merit. The orders dated 25-06-2009 passed by Assessing and the order of 1st Appellate authority dated 30-12-2009 are upheld.
16. Copy of this order be sent to the parties concerned. File after due completion be consigned to the record room.



(Akshay Sood)
Chairman,
HP Tax Tribunal,
Camp at Shimla

Endst. No HPTT/CS/2022- 17070174

Dated 27-07-2022

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Assessing Authority, Nahan, Distt. Sirmour.
3. M/s Malwa Cotton Spinning Mills Ltd., Nahan Distt. Sirmour, HP.
4. Sh. Rakesh Sharma, Advocates for the respondent.
5. The Sandeep Mandyal, Law officer O/o Commissioner of State Taxes & Excise.


Reader
HP Tax Tribunal
Camp at Shimla