

BEFORE
THE COMMISSIONER OF STATE TAXES AND EXCISE,
HIMACHAL PRADESH,
(Block No. 30, S.D.A. Complex, Shimla-09)

Application No. : 01/2021-22
Date of institution : 02-02-2023
Date of order : 24-03-2023

In the matter of: --

M/s Kamal Dev Sharma,
Toll Lessee, Parwanoo, and Dherowal (BBN Baddi
Unit) Resident of Vill. Bharolian Khurd,
PO, Tehsil & District Una (HP).

..... Applicant

v/s

1. The Dy CST&E, Solan, District Solan, (HP).
2. The Dy CST&E, BBN at Baddi, District Solan.

....Respondent(s)

Parties represented by: --

1. S/Shri Sunil Cholia and Rakesh Sharma, Advocates
for the applicant.
2. Shri Sandeep Mandyal, Law Officer for the
respondents.

ORDER

**Application under section 10-B of the Himachal Pradesh Tolls
Act, 1975**

1. This order shall dispose off the present application filed under
Section 10-B of the HP Tolls Act, 1975 by M/s Kamal Dev
Sharma (hereinafter referred to as "Applicant").
2. In fact, the Ld. Financial Commissioner (Appeals) vide his
judgment dated 18.10.2022 quashed and set aside earlier order



dated 14.03.2022 passed by this Court in above cited application and the matter was remanded back to this Court with a direction to reassess the interest.

3. As a matter of fact, the Ld. Financial Commissioner (Appeals) vide his said judgment dated 18.10.2022 in para Nos. 11 and 12 of the judgment passed the following directions:

“Hence, as has been held by the then Financial Commissioner (Appeals), vide order dated 19.12.2019, passed in Appeal No.3/2019 (Toll Tax)- titled M/S Manav Kumar & Co. Vs. Excise & Taxation Commissioner, H.P. & Ors. considering lapse on part of both the parties, interest rate on Fixed Deposit as prevalent on the date of present order of State Bank of India may be charged from the appellant. It is also made clear that in case the appellant requests the respondent to remove red entries from some of his land in order to sell the same for making payment to the Government, the same may be favourably considered by the respondent.

12. Keeping in view the aforesaid position, the order dated 14.03.2022 passed by the Ld. Commissioner of State Taxes and Excise, Himachal Pradesh, Shimla-9, in application No.01/2021-22 is quashed and set aside and the matter is remanded back to the Ld. Commissioner, with the direction to re-assess the interest in accordance with the aforesaid observations after providing the opportunity of being heard to the appellant. Accordingly, the present appeal is accepted to this extent”.

4. The notices of the present application were issued to the Applicant as well as the Respondents. It was argued on behalf of the Applicant that on account of red entries made by the Department in the property of the applicant, the property could have been sold to realize the pending interest amount, but as the Department failed in doing so, therefore, the Department is equally at fault and the Applicant should not suffer on account of



inaction from the Respondent-Department. Learned Counsels on behalf of the Applicant submitted that as per the directions contained in the order of the learned Financial Commissioner (Appeals), interest rate as prevalent on Fixed Deposits be levied as held by the Financial Commissioner (Appeals) in M/s Manav Kumar & Co. vs. Excise & Taxation Commissioner.

5. After hearing the arguments of the respective parties and the perusal of the judgment dated 18.10.2022 passed by the Learned Financial Commissioner (Appeals), the following points emerged for adjudication:-

- A) Interest be assessed in the light of observations made by the Learned Financial Commissioner (Appeals), in Appeal No. 3/2019 (Toll tax) M/s Manav Kumar and Co. Vs. Excise & Taxation Commissioner & Ors.
- B) The removal of red entry from some of the properties of the Applicant so as to enable him to sale the same to make the payment to the Government after the request having been made in this regard by the Applicant.

A. Re- assessment of Interest

6. As far as reassessment of the interest in the light of the directions issued by the Learned Financial Commissioner (Appeals), in M/s Manav Kumar and Co. Vs. Excise & Taxation Commissioner & Ors. case is concerned, the decision rendered in the said appeal has been perused minutely. The perusal of the said judgment dated 19.12.2019 passed by the Learned Financial Commissioner (Appeals) in M/s Manav Kumar and Co. case as well as the order dated 18.10.2022 passed in "M/s



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Kamal Dev Sharma Vs. Excise & Taxation Commissioner" are,
"Per Incuriam" for the following reasons:

- i) The perusal of the order passed in M/s Manav Kumar's case shows that an appeal has been filed under Section 10-A of the HP Tolls Act, 1975 against order dated 05.12.2018 issued by the DCST&E, Una. Whereas Section 10-A of the HP Tolls Act provides that an appeal under Section 10-A of the HP Tolls Act shall lie before the Ld. Financial Commissioner Appeals (as Appellate Authority) only against the orders passed by the Excise & Taxation Commissioner.

Since, the appeal in M/s Manav Kumar's case has been preferred against order dated 05.12.2018 passed by DCST&E Una therefore, this appeal was not at all maintainable before the Ld. Financial Commissioner as Appellate Authority, being filed in contravention of Section 10-A of the HP Tolls Act.

- ii) The perusal of the order dated 19.12.2019 in the M/s Manav Kumar case clearly shows that though the appeal was purported to have been filed against the order dated 05.12.2018 issued by the DCST&E, Una but DCST&E Una was not arrayed as Respondent. Rather, it is evident from the memo of parties that only DCST&E, BBN, Distt. Solan and ACST&E, BBN Distt. Solan have been arrayed as party. Though the Excise & Taxation Commissioner was one of the Respondents but no order passed by the Excise & Taxation Commissioner has either been discussed or assailed in the said appeal.

- iii) The facts involved in the Manav Kumar & Co. case are entirely different from the facts of the present case in as much as in Manav Kumar's case the Appellant defaulted in the payment of principal amount which was later on



directed to be paid on installments along with interest which is to be calculated on the basis of interest accrued in the FDRs deposited in the SBI Whereas in the present case the factum of the payment of principal amount was not in dispute. In fact, the principal amount has already been paid by the Applicant and it was only interest accrued on account of default by the Applicant is required to be paid. Significantly, the liability of the payment of the principal amount as well as the interest to be paid by the Applicant has already been upheld by the Ld. Financial Commissioner (Appeals) in appeal No. 2/Toll/2013 vide his order dated 07.10.2013 passed in M/s Kamal Dev Sharma Vs. State of HP through Secretary Excise & Taxation.

- iv). That the order dated 07.10.2013 passed by the Ld. Financial Commissioner (Appeals) H.P. in appeal No. 2/Toll/2013 admittedly has not been challenged by the Applicant in any court of law and the same has now attained finality in view of the fact that the Ld. Financial Commissioner (Appeals) vide its aforesaid order dated 07.10.2013 has already upheld the liability qua the payment of principal amount along with interest.

Since, the order dated 07.10.2013, which duly formed part and parcel of the record has already attained finality therefore, in my considered opinion the issue/the question of assessment/reassessment of the interest is no more *Res-Integra*.

The order dated 07.10.2013 passed by the Ld. Financial Commissioner (Appeals) is binding upon this Court as the matter directly and substantially involved in the said appeal between the same parties is also directly and substantially in issue in the present application.



- v). The issue qua the principal amount along with interest accrued thereon has already been heard and finally decided by the Ld. Financial Commissioner (Appeals) in Appeal No. 2/Toll/2013 vide his order dated 07.10.2013 and the same shall operate as Res-judicata in the present application and the order dated 07.10.2013 is binding upon this Court for all intents and purposes.

B. Removal of Red Entries

7. As far as the directions of Ld. Financial Commissioner (Appeals) regarding the removal of red entry from some of the land of the Applicant in order to sell the same for making payment of the Government upon the request of the Applicant is concerned, the Applicant has already moved an application (dated 20.02.2023) for removal of red entry in compliance to the judgment dated 18.10.2022 wherein the Applicant requested for removal of Red entry with respect to the lands mentioned at serial No. 1 to 31 except the land mentioned at serial No. 32 i.e. the land situated at Village Bharolian Khurd comprised of Khasra No. 2334, 2335, 2904/2336, 2898/336 Mohal Bharolian Khurd. The value of the said property is stated to be Rs. 3,68,23,688/-. The Applicant has also annexed the Shajra Latha Bandobast Jadid along with the Copy of the Jamabandi qua the said land in support of his application.

It is crystal clear that the incorporation of red entry in the revenue record is an initial step to ensure the recovery of outstanding amount as an arrears of land revenue. Thus, by incorporating the red entry, the Department has created charge on the land belonging to the Applicant.



8. However, keeping in view the peculiar facts and circumstances of the case, in my considered opinion, the interest of justice will be met if the red entry qua the property mentioned at Serial No. 32 (i.e. the land situated at Village Bharolian Khurd comprised of Khasra No. 2334, 2335, 2904/2336, 2898/336 Mohal Bharolian Khurd), itself is removed so as to enable the Applicant to pay the outstanding amount as the value of this property is stated to be Rs. 3,68,23,688/- .

Therefore, the Applicant is directed (i) to deposit 50% of the outstanding amount within 30 days from the date of this order and subject to the deposit of its 50% outstanding amount, the red entry incorporated in respect to the land situated in Village Bharolian Khurd comprised of Khasra No. 2334, 2335, 2904/2336, 2898/336 Mohal Bharolian Khurd may be removed;

(ii) the Applicant is directed to deposit the remaining 50% of the outstanding amount within 20 days of the removal of such charge and;

(iii) In case the Applicant fails to deposit the 50% of the outstanding amount; **OR**

in the event of the Applicant not depositing the remaining 50% of the outstanding amount within 20 days of the removal of such charge; the Respondent No.1 is directed to immediately complete the process of recovery of the outstanding amount preferably within two months, without fail. The application (dated 20-02-2023) for removal of red entry filed by the Applicant and the Shajra Latha Bandobast Jadid alongwith the copy of the Jamabandi shall form part and parcel of this order. The application is disposed off accordingly.



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9. Let the copy of this order be supplied to all concerned. The file after due completion be consigned to record room.

Announced on 23rd March, 2023



Commissioner of State Taxes & Excise
Himachal Pradesh

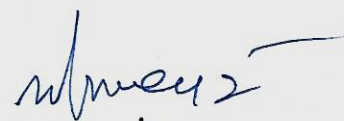
8/87-93

Endstt. No.: DoSTE/CoSTE-Reader/Appeals/2022-23/

Dated: 24-03-2023

Copy to:

1. M/s Kamal Dev Sharma, S/o Late Shri Mool Raj Sharma, Vill. Bharolian Khurd, P.O. Tehsil & District Una (HP).
2. Addl. Commissioner (ST&E), South Zone, Block No. 30, Shimla-09 with the directions that the order above may be got implemented in the given time limit.
3. The Dy. Commissioner (ST&E), Solan (HP) for compliance of orders and directions above and report the same through proper channel.
4. The Dy. Commissioner (ST&E), BBN (HP) for compliance of orders and directions above and report the same through proper channel.
5. S/Shri Sunil Cholia and Rakesh Sharma, Advocates Opp. District Courts Santoshgarh Road Una, (H.P.) for the applicant.
6. Shri Sandeep Mandyal, Sr. Law Officer (Legal Cell), HQ.
7. *IT Cell.*



Reader to

Commissioner of State Taxes & Excise
Himachal Pradesh