

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

Appeal No. : 32 /2017
Date of Institution : 27-03-2017
Date of order : 09-08-2023

In the matter of:

M/s Parle Biscuits (P) Ltd. C&F M/s M S Associates,
Sector-6, Parwanoo (HP).

.....Appellant

Vs

1. Addl. Excise & Taxation Commissioner Cum
Appellate Authority (SZ), HP, Shimla-09
2. Excise and Taxation Officer- Cum Assessing Authority, Solan
Circle-II, HP

.....Respondents

Parties represented by:-

Shri Rakesh Sharma, Advocate for the Appellant

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

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

Order

1. The present appeal has been filed by M/s Parle Biscuits (P) Ltd. C&F M/s M S Associates, Sector-6, Parwanoo, Himachal Pradesh against the order of Ld. Addl. Excise and Taxation Commissioner-Cum Appellate Authority (SZ), Himachal Pradesh, Shimla dated 15-06-2016 who upheld the appeal filed by the applicant against the detection order dated 19-09-2015, of the Assessing Authority, Solan Circle-II, whereby additional demand of Rs. 1,44,775/- was created against the appellant under the HP VAT Act, 2005.

2. The brief facts of the case are that M/s Parle Biscuits P. Ltd., Parwanoo is a registered company under the provisions of HP Value Added Tax Act, 2005 vide TIN No. 02020600946. The Assessing Authority during roadside checking at Parwanoo detained a truck consigning goods of the appellant on 14-09-2015. Although, goods under transport were duly accompanied by the prescribed documents including Invoice, stock-transfer challan and goods receipt but declaration form VAT-XXVI-A was missing. The appellant's answer in this regard was that these goods were being consigned by the manufacturing company from its manufacturing unit at Varanasi (UP) to its C&F agent at Parwanoo (H.P) by way of stock-transfer against statutory F Form prescribed under the CST Act, 1956. The Assessing Authority, in his orders ordered that as per notification dated 10-05-2015, vehicles/ vessels transporting goods and leaving or entering into the limits of the state, are not even required to stop at the barrier of the Excise and Taxation department but are required only to file VAT XXVI A declaration form in the official website of the department. The vehicle in question was inspected by the team of Assessing Authority, two kilometers inside the State from the entry of barrier and the same was found without declaration. The team detected that goods were neither declared on the official website of the department by the appellant dealer nor were said goods declared at the entry of the barrier into the state. The Assessing Authority imposed the penalty to the tune of Rs. 1,44,775/- for failure to make declaration via form VAT-XXVI-A under section 34(7) of HP VAT Act, 2005 by order dated 19-09-2015.

Against this order of the Assessing Authority, the appellant preferred an appeal to the Ld. Appellate Authority-Cum Addl. Commissioner State Taxes and Excise (South Zone), H.P. Shimla. The Ld. Appellate Authority (South Zone) passed order dated 15-06-2016 and upheld order dated 19-09-2015 of the Assessing Authority and the demand created therein. The appellant has thereafter filed the present appeal against the said appellate order dated 15th June, 2016.

3. Aggrieved by the orders of Ld. Appellate Authority, the appellant has filed the present appeal before this Tribunal on the following grounds:



i) That the Appellate Authority ignored legal provisions while imposing penalties.

ii) That the respondent officer acted in violation of the mandatory procedure by detaining the loaded vehicle without passing any detention order on the spot and also without issuing show cause notice during checking of vehicle.

iii) That the Respondent Authority did not conduct any enquiry as envisaged under Section 34(4) before levying penalty.

4. The Ld. Counsel for the appellant prayed that the appeal be accepted and impugned order be quashed, along with the additional demand created against the appellant. The Ld. Counsel has made reference to judgment in the case of Hindustan Steel Limited V/s State of Orrisa (1970) 25 STC 2011 (SC) wherein Supreme Court has held that an order imposing penalty for failure to carry out statutory obligation is the result of quasi criminal proceedings and penalty will not ordinarily be imposed unless the party obliged acted deliberately in defiance of law. The Ld. Counsel also averred that non- declaration was result of a bonafide mistake on part of the driver. He pleaded that goods were covered by proper stock transfer note and GR and there was no intention to evade tax on part of the appellant.

5. Sh. Sandeep Mandyal, Sr. Law officer of the department said that the petitioner has no case to agitate before this tribunal. The issues raised herein have been addressed by the authority below and now the actions of the Assessing Authority and Appellate Authority only need to 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 point for consideration raised by the appellant pertains to the issue of waiving of penalty, which was imposed vide order dated 19-09-2015 by the Assessing Authority. The contentions of the appellant are discussed below:

i) The notification dated 10-05-2015 of the department makes it mandatory for a dealer to make declaration of goods on the website of the department ID before bringing goods into the State. The main intent behind this notification is that once online declaration is made,




transactions are bound to be accounted in books of accounts by a dealer as these transactions are directly recorded by the department in its official online database. The dealer has violated the provisions of HP VAT Act in which declaration in form VAT-XXVI-A electronically, is mandatory before entering the State of Himachal Pradesh after which there is no need for submitting such forms at any barrier of the department. Since the truck in question crossed the State boundary inward and also crossed barrier at Parwanoo without declaration of goods in form VAT-XXVI-A, the appellant/ dealer violated the provisions of act *ibid*, for which penalty under Section 34(7) of HP VAT Act, 2005 is liable to be imposed.

- ii) The order of the Assessing authority specifies that the representative of the company while present for hearing of the case on 18-09-2015 has himself made voluntary admission of mistake and admitted that they knew that prior to entering the limits of Himachal Pradesh one has to declare goods electronically in form XXVI-A, a procedure which they failed to adhere to. The representative of the company having availed the opportunity of hearing and having failed to furnish defense by way of satisfactory explanation of lapses committed by him, cannot have any legally valid ground to have the order dated 19-09-2015 passed by the Assessing Authority Solan Circle-II quashed.
- iii) Further, it is seen that the impugned order dated 15-06-2016 of 1st Appellate Authority cannot be held to be a non-speaking order. It is a detailed order. It would be pertinent to mention Section 34(7) of the HP VAT Act, 2005. Reading of the Section shows that penalty is payable on the undeclared goods, after giving opportunity of being heard to the owner of goods, if after enquiry, such officer finds that there has been an attempt to evade tax. This provision cannot be read as to imply that the penalty of Twenty- Five percent of the value of the goods is the maximum and lesser penalty can be levied. The intent of the HP VAT Act, 2005 is clear it specifies a fixed rate of penalty and does not give



any discretion in lowering the rate of penalty. The penalty so fixed is meant to be a deterrent and cannot be regarded as illegal. The law enunciated by the Hon'ble Supreme Court in the case of State of Rajasthan V/s D.P. Metals (2001) STC 611 (SC) supports the imposition of penalty and hence the same is being relied upon. It was clearly held ^{ibid} that *'submission of false or forged documents or declaration at the check-post or even thereafter can safely be presumed to have been motivated by desire to mislead the authorities. Hiding the truth and tendering falsehood would per se show existence of mens rea, even if required. Similarly where, despite opportunity having been granted if the requisite documents are not produced, even though the same should exist, would clearly prove the guilty intent... the quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Art. 19, courts would naturally be circumspect and cautious as such there cannot, in the present case, be any valid challenge to the rate of penalty provided'.*

7. For the aforesaid reasons, the appeal does not merit consideration and is dismissed. The impugned orders of the Assessing Authority Solan Circle-II dated 19-09-2015 and order of the Appellate Authority dated 15-06-2016 are upheld.
8. 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, Dharamshala,
Block No 30, SD Camp at Shimla

Endst. No. HPTT/CS/2023 -128+132

Dated: 09/08/2023

Copy forwarded for information to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. Assessing Authority, cum ACST&E, Solan Circle-II, through DCST&E, Solan (HP).
3. M/s Parley Biscuits Pvt. Ltd., C&F M/s M S Associates, Sector-6, Parwanoo H.P.
4. Sh. Rakesh Sharma, Advocate for the Appellant.
5. Sh. Sandeep Mandyal, Sr. Law Officer, HQ.

Ql

Reader

HP Tax Tribunal
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