HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-1342-2018 (O&M)
Date of decision: 25.04.2023

M/s. Himachal Bhawan (Himachal Pradesh Tourism Development Corporation Ltd.) ....Appellant

Vs.

U.T. of Chandigarh and another ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sandeep Goyal, Advocate
for the appellant.

Mr. Ajay Jagga, Advocate
for the respondents.

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Ritu Bahri, J.

1. This order shall dispose of 11 VAT appeals bearing VATAP Nos. 1340 to 1346, 314, 337, 338 and 339 of 2018 having identical issue. However, for the sake of brevity, facts are being extracted from VATAP-1342-2018.

2. The appellant has come up in appeal against the order dated 31.05.2018 (Annexure A-8) passed by the U.T. VAT Tribunal (hereinafter referred to as 'the Tribunal'). The business premises of M/s. Himachal Bhawan Madhya Marg, Sector 28, Chandigarh were inspected by a team of Excise and Taxation Officers U.T., Chandigarh on 19.11.2010 in the presence of Anil Kumar Goel, Senior Accountant. During inspection proceedings, balance sheet for the years 2000-01 to 2009-10, sales statements prepared by the Accountant were impounded and subsequently, the proceedings were initiated by issuing ten notices for framing assessment for the years 2000-01 to 2009-10. The Excise and Taxation Officer-cum-

Designated Officer vide order dated 27.12.2010 framed assessment under Section 29(2)(c) of the PVAT Act, 2005 (as applicable to U.T., Chandigarh) for the period 2006-07 to 2009-10 and created a tax demand of Rs. 6,31,250/-, Rs.6,28,529/-, Rs.9,80,698/- and Rs.10,41,460/- respectively. In response to the notice, the appellant appeared before the Ld. Assessing Authority and argued that the Assessing Authority, while framing assessment under Section 29(2) had not followed the procedure laid down under Section 29(5) of the Act, 2005. The appeals filed by the appellant against the orders dated 27.12.2010 of the Excise and Taxation Officer-cum-Designation Officer were dismissed by the Deputy Excise and Taxation Commissioner, (Appeals)., U.T., Chandigarh vide order dated 01.08.2012 (Annexure A-6). Aggrieved with the order 01.08.2012 (Annexure A-6), the appellant filed four appeals before the Tribunal, Union Territory, Chandigarh. Before the Tribunal, the main grounds raised by the appellant were as under:-

> "i. That assessment has been framed without determining the date of liability, which is mandatory before framing assessment. The Assessing Authority has wrongly framed assessment from 01.07.2000. As per Section 4 of the PGST Act, 1948 (as applicable to UT, Chandigarh), a dealer is liable to pay tax and the liability shall commence from the date on which his gross turnover during any year first exceeds the taxable quantum. In the case of appellant, the taxable quantum is Rs.40,000/- and liability commences after expiry of 30 days from the date the gross turnover exceeds Rs.40,000/-. Since, the liability has not been determined as per law and as such the

date of liability i.e. 1.7.2000 fixed by the Assessing Authority is liable to be quashed.

ii. That the Assessing Authority, while framing assessment u/s 29(2) has not followed the procedure laid down u/s 29(5) of the Act. The Assessing Authority has never proposed any ground for the proposed assessment, therefore, assessment is against the principles of natural justice and thus liable to be quashed.

iii. That since the date of liability has not been determined when the appellant had applied under PGST Act, 1948 (as applicable to U.T., Chandigarh), on 22.06.2000, therefore, the validity of the dealer shall be entitled to claim Input Tax Credit available to a taxable person under Punjab Value Added Tax Act, 2005 (as extended to U.T. Chandigarh). The Officer, while framing assessment and while imposing penalty, had solely relied upon the ground that the applicant had made an application for withdrawal of Registration on 04.05.2001, after making an application for grant of Registration on 22.06.2000. He submitted that the Excise & Taxation Officer had completely failed to appreciate the fact that the appellant is still in continuation of its business operations from the date of its application for registration which makes the withdrawal application as null and void. Hence, the impugned orders passed by the courts below are liable to be set aside."

3. The Tribunal, after hearing learned counsel for the parties and going through the record, held that the dispute was regarding framing of assessment for the period 2006-2007 to 2009-2010. The details of the tax

demand created by the Excise and Taxation Officer-cum-Designated Officer for the period 2006-2007 to 2009-2010 was as under:-

Assessment years	Amount
2006-07	Rs.6,31,250/-
2007-08	Rs.6,28,529/-
2008-09	Rs.9,80,698/-
2009-10	Rs.10,41,460/-

4. Against the order dated 27.12.2010 of the Excise and Taxation Officer-cum-Designated Officer, the appellant filed appeals before the Deputy Excise & Taxation Commissioner (Appeals) U.T., Chandigarh which were dismissed by the Deputy Excise & Taxation Commissioner, (Appeals), U.T., Chandigarh vide order dated 01.08.2012 (Annexure A-6). The Tribunal observed that the appellant had filed sales tax return for the period 01.07.2000 to 04.12.2000 and paid tax to the tune of Rs.80,240/- on 28.05.2001. But thereafter, appellant failed to deposit the tax collected from the customers and during the inspection of the business premises, it was detected that the appellant was liable to pay tax under the State Act as the appellant did not get registered under the erstwhile (now repealed) Act of 1948 and CST Act, 1956. Finally, the Tribunal observed that the assessment had been rightly framed for the period 2006-2007 to 2009-2010 creating tax demand of Rs.6,31,250/-, Rs.6,28,529/-, Rs.9,80,698/- and Rs.10,41,460/-. These tax demands had been created on the basis of accounts/balance sheets found from the business premises of the appellant and not as a best Judgment Assessment. The appellant made taxable sales and did not deposit due tax with the respondent. Since the appellant had already deposited the amount created by the department, the Tribunal dismissed the appeals as have become infructuous.

5. In the present appeal, learned counsel for the appellant has argued that as per notification dated 03.06.2010 (Annexure A-5), the Excise and Taxation Department had given information with respect to the designation of the officers and the area of jurisdiction. He has further referred to the departmental order dated 07.06.2010 (Annexure-5/A) whereby the jurisdiction of Himachal Bhawan which was in Sector 27 falls under ward No. 4 w.e.f. 26.04.2010 and the concerned ETO was Mr. K.S.Walia at that time. However, Sanjeev Madaan, ETO had framed the assessment, who was allotted ward No. 1. Hence, the Assessing Officer, who had passed the impugned order dated 27.12.2010 (Annexure A-4), had no jurisdiction to examine the appellant's case keeping in view notifications (Annexures A-5 and A-5/A). It was Mr. K.S. Walia who could have framed the assessment of the appellant. He has further argued that even the first Appellate Authority did not examine this issue that notice was not issued in terms of Section 29(5) of the Act, 2005 by the competent officer who had jurisdiction to pass assessment order. He has further argued that even though the appellant had deposited the tax demand of Rs.6,31,250/-, Rs.6,28,529/-, Rs.9,80,698/- and Rs.10,41,460/- but this cannot be a ground to dismiss the appeals by the Tribunal being infructuous.

6. Heard learned counsel for the parties at length and perused the office record.

7. In the present case, the tax has already been deposited by the appellant as observed by the Tribunal in order dated 31.05.2018 (Annexure A-8). Moreover, on merits, after examining the order dated 01.08.2012 passed by the Deputy Excise & Taxation Commissioner, (Appeals), U.T., Chandigarh, it is found that the assessment has been made after examining

documents which were recovered during the inspection from the business premises of the appellant and not as a best Judgment Assessment. Even though the ETO, who had passed the impugned order, had been allotted ward No. 1 as per notifications (Annexures A-5 and A-5/A). However, it is not the case of the appellant that ETO was not competent to pass the assessment order with regard to residents of any ward. The Deputy Excise & Taxation Commissioner (Appeals) as well as the Tribunal had proceeded to examine the case on merits in detail and the order with respect to liability of the assessee to make payment of tax pursuant to the search conducted does not require any interference on facts as well as no substantial question of law arises to interfere with the finding of facts given by the Assessing Officer, Deputy Excise & Taxation Commissioner (Appeals) and the Tribunal. At this stage, no case is made out to remand the matter back to the concerned ETO of the ward to pass a fresh order on merits which has already been examined in detail by all the three authorities below. Further, it is not the case of the appellant that after 2009-10, the appellant has not been filing returns and paying tax.

8. Hence, no substantial question of law arises to interfere in the case on the question of jurisdiction only as this Court is of the view that the matter will not be remanded back to the concerned Assessing Officer as the documents and evidence will remain same and no second opinion could have been formed with respect to the assessment made for the assessment years 2006-07 to 2009-10.

9. Keeping in view the above observations made, appeal is

dismissed. Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

25.04.2023 **(MANISHA BATRA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No