REPORTABLE/NON-REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 22nd DAY OF MARCH, 2022

BEFORE

HON'BLE MS. JUSTICE SABINA, JUDGE
&
HON'BLE MR. JUSTICE SATYEN VAIDYA, JUDGE

CIVIL REVISION PETITION No. 226 of 2015

Between:

M/S POOJA COTSPIN LIMITED, SALLEWAL-NALAGARH, DISTRICT SOLAN (H.P). THROUGH ITS DIRECTOR SHRI MEGH RAJ GOYAL.

……..PETITIONER

(BY SHRI R.N. SHARMA, ADVOCATE)

AND

1.STATE OF HIMACHAL PRADESH THROUGH ADDITIONAL CHIEF SECRETARY (EXCISE & TAXATION) TO THE GOVERNMENT OF HIMACHAL PRADESH, SHIMLA-2.

2.CHAIRMAN, HIMACHAL PRADESH TAX TRIBUNAL, DHARAMSHALA CAMP AT SHIMLA, BLOCK NO. 30, SDA COMPLEX, KASUMPTI, SHIMLA-171009.

3.EXCISE & TAXATION COMMISSIONER, HIMACHAL PRADESH, BLOCK NO. 30, SDA COMPLEX, KASUMPTI, SHIMLA-171009.

4.THE ASSISTANT EXCISE & TAXATION COMMISSIONER, BADDI- BAROTIWALA-NALAGARH, DISTRICT SOLAN.

5.THE EXCISE & TAXATION OFFICER-CUM-ASSESSING AUTHORITY-1, BADDI, DISTRICT SOLAN.

…….RESPONDENTS

(BY SHRI. AJAY VAIDYA, SENIOR ADDITIONAL ADVOCATE GENERAL)

RESERVED ON : 15.03.2022
DECIDED ON : 22.03.2022

This petition coming on for hearing this day, ***Hon'ble Mr. Justice Satyen Vaidya***, delivered the following:-

O R D E R

By way of instant revision petition, petitioner has assailed order dated 29.08.2015 passed by Himachal Pradesh Tax Tribunal (for short 'Tribunal') Dharamshala, camp at Shimla, in Appeal No. 19/2012, whereby order dated 28.05.2012, passed by the Excise & Taxation Commissioner, Himachal Pradesh(for short 'Commissioner') was affirmed.

2. Brief facts of the case are that the petitioner is a registered dealer under the Himachal Pradesh Value Added Tax Act, 2005, (in short 'VAT Act'). The Assessing Authority, Baddi, District Solan, H.P. assessed the petitioner for the year 2010-11 under the VAT Act and also the Central Sales Tax Act, 1956. The assessment order was issued on 29.09.2011. A total sum of Rs. 1,31,43,515/- was assessed as excess Input Tax Credit (for short 'ITC'), out of which a sum of Rs. 49,27,694/- was applied towards the payment of due Central Sales Tax and balance of Rs. 82,15,821/- was assessed as excess Input Tax Credit, which was

ordered to be carried forward to the next year under Section 12(4) of the VAT Act. Petitioner made a request for refund of ITC, however, he was directed to file separate application for refund by the Assessing Officer.

3. Petitioner submitted requisite application for refund of excess ITC of Rs. 82,15,821/-. Refund, as applied by the petitioner, was recommended by Assistant Excise and Taxation Commissioner, Baddi, Barotiwala and Nalagarh (AETC-BBN) on 02.11.2011. While considering the refund application of the petitioner, Commissioner called for additional reports from AETC-BBN and Excise and Taxation Officer (ETO) Nalagarh to verify the facts relating to actual tax deposition in Government Treasury and purchases made by the petitioner from M/s Samana Industrial Limited. In response, AETC-BBN submitted his report dated 17.01.2012. The relevant extract of said report was as under:-

> *"2. The refund of the dealer has been assessed and the amount of refund determined after verification of required documentary evidences and after verification of the ITC amount which is clearly stated in the assessment order. The dealer is a manufacturing unit dealing in yarns etc. and most of the same are interstate sales attracting CST @1%. Out of the GTO of Rs. 49,59,40,525/- an amount of Rs. 49,55,20,087/- is on account of ISS and Rs. 48,16,53,992/- is taxable @1%. The dealer has made local purchases and an amount of Rs. 1,31,43,515/- is eligible as ITC therefore, the amount has become refundable to the dealer."*

The Excise & Taxation Officer, Nalagarh, also submitted his report dated 06.01.2012 and the relevant extract of said report was as under:-

> *"1. Sales and purchases made by the company in the year 2010-11 were checked from the account books and were found in order.*
>
> *2. Input tax credit claimed to the tune of Rs. 1,38,03,914.00 was test checked from the accounts of its four major suppliers i.e. M/s Samana Industries, Salewal, VMT Spinning Co. Ltd. Kalyanpur, M/s Winsome Textile Industries ltd. Baddi and M/s Vardhman Textiles ltd. Baddi and was found as per claimed at the time of assessment. The company has claimed a refund of Rs. 82,15,821-00 out of the total ITC."*

4. Learned Commissioner passed order dated 28.05.2012 on the refund application of the petitioner. The Commissioner disallowed a sum of Rs. 17,06,715/- from ITC refund of the petitioner after holding the same to be unverifiable claim. Thus, refund of Rs. 65, 09,106/- only was held payable to the petitioner. The relevant extract of learned Commissioner's order necessary for the purpose of adjudication of this petition is as under:-

> *"M/s Pooja Cotspin Limited has purchased raw material from M/s Samana Industries, Sallewal-Nalagarh for Rs.14,17,05,652/- during 2010-11 and has paid tax of Rs. 70,85,283/- on such purchase as per report of ETO Nalagarh dated 21.05.2012. Since, M/s Samana Industries Limited is enjoying incentive of deferred payment of tax scheme while exercising option under notification No. EXN-F(1)-2/2004 dated 26.07.2005 for which the Assessing Authority Nalagarh has issued a necessary certificate (Deferment Certificate No. 005) for the period 14.08.2009 to 13.08.2014 covering the period of commencement of commercial production w.e.f. 14.08.2009. As per report of ETO Nalagarh dated 21.05.2012, M/s Samana Industries Limited has claimed deferment to the tune of Rs. 17,06,715/- on VAT payable for Rs. 70,85,283/- i.e the amount of Rs. 17,06,715 has not been deposited into government treasury due to option exercised for upfront payment of tax as per aforesaid notification.*

The amount of tax which has not gone into Government treasury does not become refundable to the dealer as the amount cannot be refunded out of air. For granting refund, the first and foremost requirement is to allow refund only against specific payment or deposit of tax/ demand and where no amount has been deposited, there exists no provision under law to refund such amount. The application for refund cannot be entertained to the extent of the amount of claim not deposited in Government Treasury and as such the same remains unverifiable. Hence the amount of tax to the tune of Rs. 17,06,715/- is disallowed as being unverifiable claim and the same having not been paid or deposited in Government Treasury at all."

5. Aggrieved against the aforesaid order passed by the Commissioner, petitioner preferred an appeal before the Tribunal, which was dismissed on 29.08.2015, hence the present revision.

6. The instant revision petition was admitted on 27.07.2017 on the following questions of law:-

(i) Whether the Ld. Tribunal has failed to appreciate that the provisions of (a) sections 11(1), 30(1) and (2) of the HP VAT Act, 2005 which allow Input Tax Credit and (b) section 11(7)(c) (iii) and 11(8) read with Rule 20 (also read with the Schedule appended thereto) which do not disallow Input Tax Credit in respect of purchases from dealers covered by the Deferment Scheme, 2005 notified under section 62 of the Act ?

(ii) Whether the Ld. Tribunal has failed to appreciate that the entire field occupied by the provisions of payment of (i) presumptive tax and (ii) lump sum by way of composition is expressly and statutory confined, restricted and stood thereby completely exhausted by provisions of sections 7 and 16(2) of the HP VAT Act, 2005 read with Rules 45, 46, 47, 48, 49 and 50 of the HP VAT Rules, 2005, and could not be expanded to include Deferment of tax notified under section 62 of the said Act by quasi-judicial adjudicatory process ?

(ix) Whether denial of Input Tax Credit to the Petitioner amounting to Rs.17,06,715/- in respect of purchases from M/s Samana Industries under section 11(7)(c)(iii) which has no application at all to the purchases from dealers enjoying deferment and making upfront payment is valid and legal even through there is no other provision in the Act or the Rules sustaining such denial?

7. We have heard Mr. R.N.Sharma, learned counsel for the petitioner as well as Mr. Ajay Vaidya, learned Senior Additional Advocate General and perused the record.

8. Learned Commissioner had disallowed the refund of Rs. 17.06,715/- to the petitioner on the ground that the petitioner purchased raw material from selling dealer M/s Samana Industries Ltd. for Rs. 14,17,05,652/- during 2010-11 and said selling dealer had paid tax of Rs. 70,85,283/- on such purchase. M/s Samana Industries Ltd. had claimed deferment to the tune of Rs. 17,06,715/- on VAT payable for Rs. 70,85,283/- and thus, a sum of Rs. 17,06,715/- had not been deposited into the Government Treasury as M/s Samana Industries Ltd. had opted for upfront payment of tax in accordance with notification No. EXN-F(1)-2/04, dated 26.07.2005. Since the amount of Rs. 17,06,715/- had not gone into the Government Treasury, hence, according to the learned Commissioner, the same was not refundable to the dealer.

9. In appeal, learned Tribunal upheld the dis-allowance of Rs. 17,06,715/-, ordered by the learned Commissioner, on the grounds that the petitioner was not entitled to avail the refund against the amount which was not deposited by the selling dealer i.e. M/s Samana Industries

Ltd. by availing the benefit of deferment scheme, and also that refund to the extent of Rs. 17,06,715/- was unverifiable under Section 11(7) (c)(iii) of the Act.

10. Since the learned Tribunal has upheld learned Commissioner's order by placing reliance on Section 11(7)(c)(iii) of the Act, we deem it proper to answer question of law at serial No. (ii) above, in the first instance.

11. Section 11(7)(c)(iii) of the Act reads as under:

> *(7) No input tax credit shall be claimed by a purchasing dealer and shall not be allowed to him for, ---*
> *(a) ……..*
> *(b) ……..*
> *(c) purchase of goods made in the State from,--*
> *(i) ……. or*
> *(ii) ……or*
> *(iii) a registered dealer who has opted to pay lump-sum amount, in lieu of tax, by way of composition under sub-section (2) of section 16 or presumptive tax under section 7;*

12. Sub section 7(c)(iii) of section 11 of the Act specifically bars the claim of ITC by a purchasing dealer who has purchased goods in the State from a registered dealer who either opted to pay lump-sum amount in lieu of tax by way of composition under section 16(2) or presumptive tax under section 7, therefore, glance at provisions of section 7 and section 16(2) of the Act becomes necessary to assess the applicability of said provisions in the facts of the case. Section 7 of the Act reads as under:-

"7. Notwithstanding anything contained in this Act, every registered dealer, whose gross turnover in any year does not exceed such amount as may be prescribed, shall, in lieu of the tax payable under this Act, pay presumptive tax on the entire taxable turnover of sales or purchases, as the case may be, at such rates, not exceeding the rates specified in section 6, as the State Government may, by notification, direct, and subject to such conditions and restrictions and in such manner as may be prescribed:

Provided that no input tax credit shall be available to such dealer:

"Provided further that a registered dealer who imports goods for sale shall pay tax on the sale of such goods imported from outside the State on actual basis i.e. as per tax applicable on the sale of such goods within the State."

Section 16(2) of the Act reads as under:-

"16(2) The State Government may, in public interest and subject to such conditions as it may deem fit, accept from any class of dealers in lieu of the amount of tax payable under this Act for any period, by way of composition, a lumpsum to be determined and to be paid at such intervals and in such manner as may be prescribed, or the lumpsum amount may be calculated at a fixed rate on the taxable turnover, as may be prescribed in respect of such class of dealers and for this purpose a simplified system of registration, maintenance of accounts, filing of returns may also be prescribed which shall remain in force during the period of such composition".

13. Section 7 of the Act provides an option to a registered dealer under the Act to pay fixed presumptive tax on the entire taxable turnover of the sales and purchase at the rates to be prescribed by the Government. A dealer having opted to pay presumptive tax under aforesaid provisions of Act is precluded to avail ITC. To bar a dealer from claiming ITC under Section 7 of the Act, it is necessary to be proved that such dealer firstly was entitled to opt and secondly had opted to pay

presumptive tax. In the facts of the case in hand, there is nothing to suggest that the selling dealer i.e. M/S Samana Industries had opted to pay presumptive tax or had ever paid it.

14. As regards the applicability of section 16(2) of the Act to attract disqualification under section 11(7)(c)(iii), we find the conclusion drawn by learned Tribunal in that behalf to be clearly misplaced. The aforesaid provision of the Act clearly provides that the State Government has power to accept from any class of dealers, a composite or lump sum amount in lieu of tax payable under this Act for any period and at such intervals as may be '*prescribed'*. The calculation of payable lump-sum amount has also been left to be '*prescribed'*. The term prescribed is defined in Section 2(r) of the Act as under:-

> *"2(r) '**prescribe**d' means prescribed by rules made under this Act"*

15. The Himachal Pradesh Value Added Tax Rules, 2005 (for short 'Rules') have been framed under Section 64 of the Act. In order to understand the clear import of Section 16(2) of the Act, relevant rules fulfilling the prescriptions as contained in Section 16(2) of the Act needs to be looked at.

Rule 45 is the general rule that reads as under:-

> **"45. Lump-sum by way of Composition.*(1)*** *A registered dealer (other than a dealer running a restaurant holding bar license for retail sale of liquor under the Himachal Pradesh Liquor License Rules, 1986 and a dealer dealing in medicines) shall have the option to pay presumptive lump sum tax by way of composition under section 7 or under sub-section(2) of*

section 16, and shall pay tax in the manner prescribed in this chapter.

(2) Such payment (hereinafter called —the lump-sum) shall be deemed to be tax for the purpose of application of provisions relating to assessment, use of declaration forms, maintenance of record relating to such forms, levy of interest, imposition of penalties for contraventions and offences against provisions of the Act, and recovery of outstanding dues.

(3) The application, in the prescribed form, offering to pay the lump-sum shall be made to the Appropriate Assessing Authority and signed by a person eligible to make an application for registration under the Act. The Appropriate Assessing Authority shall scrutinize the application filed by the dealer and the option shall become operative w.e.f. 1st day of the month following the day on which such option is filed if it is correct and complete. On receipt of the application, such authority shall ascertain that it is complete and its contents are correct, and thereafter allow the applicant to make payment of the lumpsum

(4) The dealer exercising such option under sub-rule (2) shall be deemed to have been allowed to make payment of the lump-sum w.e.f. the beginning of the month following the date of application. In case, the appropriate Assessing Authority finds the option incomplete it shall allow the dealer to complete the same by affording an opportunity of being heard.

(5) A dealer paying lump-sum shall pay the lump-sum in equal quarterly installments payable within thirty days of the expiry of each quarter and shall, in proof of the payment so made, furnish to the appropriate Assessing Authority, a treasury receipt.

(6) The dealer opting to pay the lump-sum shall not issue a tax invoice under section 30 and the input tax credit in respect of goods purchased from such dealer shall be nil, and such dealer shall also not be entitled to claim any input tax credit on the purchase of goods made by him.

(7) The dealer opting to pay lump-sum shall be entitled to charge tax as may be prescribed.

> *(8) Notwithstanding anything contained in this Chapter, the State Government may at any time withdraw the facility of making payment of the lump-sum from any or all class(s) of dealers."*

Rules 46 to 49 deal with specific classes of dealers i.e. brick kiln owners, laboratory dealers, work contractors and village industries etc. Rule 50 deals with dealers other than those covered under Rules 46 to 49. As per above provisions, one is at liberty to opt to pay either under Section 7 or Section 16(2), the fixed lump-sum payable amount in accordance with its annual turnover subject, however, to the provisions of Rule 45(*supra*).

16. From the conjoint reading of Section 7 and Section 16(2) of the Act and Rule 45 of the rules, it is clear that a registered dealer under the Act has option to pay presumptive lump-sum tax under Section 7 or by way of composition under Section 16(2) in the manner as prescribed in Chapter VI of the Rules. Importantly, by virtue of Rule 45(6), the dealer opting to pay the lump-sum is not liable to issue tax invoices under Section 30.

17. It is not understandable as to under what assumption, learned Tribunal has upheld the order of the Commissioner by placing reliance upon Section 16(2) of the Act. Again, there is nothing on record to suggest even remotely that the selling dealer M/s Samana Industries Ltd. had opted to pay lump-sum tax for the year 2010-11. The findings recorded by learned Tribunal in this behalf can easily be termed to be non- speaking being bereft of any reasoning. Simply quoting a provision

of law without adjudging its application to the specific facts of the case cannot be held to be tenable on the touch stone of well settled canons of law.

18. Presumably, the benefit of deferred payment availed by M/s Samana Industries ltd. under notification No. EXN-F(1)-2/04, dated 26.07.2005 has been misunderstood and overlapped with the lump-sum payment payable under Section 16(2) of the Act. The relevant extract of aforesaid notification dated 26.07.2005 reads as under:-

> *"No. EXN-F(1)-2/2004- In exercise of the powers conferred by sub section (1) of Section 62 of Himachal Pradesh Value Added Tax Act, 2005 (Act No. 12 of 2005) as amended by the Himachal Pradesh Value Added Tax (Amendment) Ordinance, 2005 (Ordinance No.8 of 2005), the Governor of Himachal Pradesh is pleased to make the following amendments in the Himachal Pradesh General Sales Tax (Deferred Payment of Tax) Scheme, 2005 (hereinafter called the 'said Scheme') with immediate effect:-*
>
> *1. **Short title and commencement-(i)** This Scheme may be called the Himachal Pradesh General Sales Tax (Deferred Payment of Tax) (First Amendment) Scheme, 2005.*
>
> *(ii) It shall come into force at once.*
>
> ***2. Insertion of Para 5-A-** After the existing para 5 of the said Scheme, the following para-5-A shall be inserted, namely:-*
>
> ***"5A. Option by industrial units-(I)** Notwithstanding anything contained in para 5 of the said Scheme, the new and existing eligible industrial units other than those specified in the negative list, which have come into commercial production before 07.01.2003 and which, after the approval of the Director of Industries or other officers so authorized by him, undertake substantial expansion only after 07.01.2003 may either continue to avail such facility or by making an application in Form S.T. (*

> *DP)-VII opt to pay 65% of the tax liability, for any tax period of a financial year, according to the return and upon making such payment, he shall be deemed to have paid the tax due from him according to such return. The option once exercised shall be final.*
>
> *(2) The registered dealer (industrial unit) making payments of tax under sub-para(I) of this para shall be entitled to input tax credit under Section 11 of the Himachal Pradesh Value Added Tax Act, 2005 in respect of intra-State sales, inter-State sales or transfer of goods on consignment basis or branch transfer basis."*

The genesis of notification dated 26.07.2005 can be traced from Himachal Pradesh General Sales Tax (deferred payment of tax) Scheme 2005 (for short, "deferment scheme') issued under the Himachal Pradesh General Sales Tax Act, 1968, notified by the State Government on 30.03.2005. The H.P. General Sales Tax Act, 1968 was repealed by VAT Act w.e.f. 01.04.2005. Thus, the deferment scheme under H.P. General Sales Tax Act was amended vide aforesaid notification dated 26.07.2005. The deferment scheme was applied to VAT Act under the first proviso to Section 62(5) of the Act vide notification dated 19.01.2006. At this stage, it is relevant to notice the provisions of Section 62(5) of the Act as under:-

> *"62(5) Any dealer who manufactures and sells goods and who, immediately before the commencement of this Act, was enjoying the benefit of any incentive of sales tax leviable on the sale of manufactured goods under the said Act and who would have continued to be eligible for such incentive on the date of commencement of this Act, had this Act not come into force, may be allowed by the State Government, by notification, --*
>
> *(a) to continue to avail of the benefit of exemption from payment of tax on the sale of manufactured goods made by such dealer himself for the unexpired period, subject to the condition that no input tax credit*

shall be allowed to the subsequent dealer purchasing goods manufactured and sold by such dealer (industrial unit), or

(b) to opt, in the prescribed manner, to avail of the facility of making deferred payment of tax for the unexpired period of incentive instead of availing the exemption specified in clause (a), or

(c) to continue to avail of the facility of making deferred payment of tax on the sale of manufactured goods made by such dealer himself for the unexpired period and such dealer (industrial unit) shall be eligible to issue tax invoice and to claim input tax credit subject to the provisions of section 11 of this Act.

[Provided that the State Government may, by notification, allow any dealer, whether registered before or after the commencement of this Act to avail of any incentive of tax leviable on the sale of manufactured goods under the Act, if such incentive has been declared by the State Government before the commencement of this Act:

Provided further that the State Government may by notification, in lieu of the incentive of exemption from tax under the preceding proviso, allow only the facility of making deferred payment of tax, subject to such conditions as it may specify therein.]

19. The first proviso to Section 62(5) of the Act enables the State to issue notification and allow any dealer to avail of any incentive on tax, if such incentive has been declared by the State before the commencement of the VAT Act. In exercise of such powers, the State Government issued notification dated 19.01.2006 and allowed the incentive of deferment to new and existing Industrial Units by applying all terms and conditions specified in deferment scheme.

20. The lump-sum payment of composite tax under Section 16(2) of the Act in no way can be equated with the powers of State under Section 62(5) of the Act as both have separate and distinct fields of operation. There cannot be any overlapping between the two provisions, therefore, disallowance of Rs. 17,06,715/- payable from ITC to the petitioner by invoking the provisions either of Section 7 or Section 16(2) of the Act is wholly illegal and against the mandate of law.

21. The question of law under consideration is thus answered accordingly. It is held that the payment of presumptive tax under Section 7 or lump-sum tax by way of composition under Section 16(2) of the Act read with Rules 45 to 50 of the rules have their application in the specific field expressly contemplated in the Act and cannot be expanded to include deferment of tax notified under Section 62(5) of the Act.

22. This takes us now to the point of consideration on other question of law framed at serial No. (i) and (iii) as noticed above. The entitlement of a dealer to claim ITC is provided under sub-Section 1 of Section 11 of the Act which reads as under:-

> *"11.[(1) Subject to the provisions of this Act, the input tax credit which a purchasing registered dealer (hereinafter in this section called the purchasing dealer') may claim, in respect of taxable sales made by him during the tax period, shall be –*
>
> > *(i) the amount of input tax paid or payable by such purchasing dealer to the selling registered dealer, on the turnover of purchases of such goods as have been sold by him during the tax period; and*

(ii) calculated and allowed as provided in this section, and subject to such other conditions as may be prescribed.]"

However, sub-Section 7 of Section 11 places an embargo on claim to ITC by a purchasing dealer in certain specific exigencies. A part of the claim of refund has been disallowed to the petitioner by wrong application of Section 11(7)(c)(iii) of the Act, as already held above. The entitlement of the petitioner to claim refund of ITC was never the issue. It was the quantum of refund which had been bone of contention between the parties. Under Rule 45(6), the dealer opting to pay lump-sum is not required to issue tax invoices under Section 30, whereas sub Section 1 of Section 30 mandates the issuance of tax invoices by one registered dealer to another which forms the basis to make purchasing registered dealer entitle for claim of ITC. Under sub Section 3 of Section 30, the issuance of tax invoices is barred in certain cases which includes the payment of presumptive tax under Section 7 or lump-sum tax under sub-Section 2 of Section 16 of the Act. It is not the case of respondent No.1 that selling dealer had not issued tax invoices in the case. These provisions clearly define and distinguish the fields where ITC can be claimed under the Act and where it is prohibited. As noticed above, it has not been the case of the department that the claim of the petitioner for ITC refund was not tenable. In such circumstances, to deny a part of claim of refund by applying Section 7 or Section 16(2) of the Act is clearly arbitrary. Even the principle of proportionality cannot be applied

in cases where provisions of law are not juxtaposed, rather have their application in different situations.

23. There is no dispute on facts that the selling dealer i.e. M/s Samana Industries Limited had initially availed the benefit of deferred payment subsequently converted to upfront payment of 65% of the payable amount by virtue of provisions of notification dated 26.07.2005. It was provided in said notification that the upfront payment of 65% of the tax liability for any tax period of financial year shall be deemed to be payment of the tax due according to the return of the assessee. Therefore, deficit, if any, of 35% in receipt of tax suffered by the State was its voluntary Act under a scheme formulated by it. Such deficit to the State coffers cannot be made basis for penalizing the petitioner who was not at fault.

24. The questions of law at serial No. (i) and (iii) are accordingly answered. The petitioner was entitled to refund of entire amount of ITC to the tune of Rs.82,15,821/-. Dis-allowance of Rs.17,06,715/- from payable amount of ITC to the petitioner as ordered by learned Commissioner vide order dated 28.05.2012 and upheld by learned Tribunal vide order dated 29.08.2015 is held to be wrong, illegal and against the provisions of VAT Act and rules framed thereunder.

25. In light of above discussion, the instant revision petition is allowed. Order dated 29.08.2015 passed by the Himachal Pradesh Tax

Tribunal in Appeal No.19 of 2012 upholding order dated 28.05.2012 passed by the Excise & Taxation Commissioner, Himachal Pradesh is set-aside. Petitioner is held entitled to refund of balance Input Tax Credit to the tune of Rs.17,06,715/-. Since the petitioner remained divested from substantial amount of his business money without his fault, he is held entitled to payment of interest from Respondent No.1 @ 6% per annum on the amount of Rs.17,06,715/- from the date it fell due till the date of actual payment.

Accordingly, the present revision petition is disposed of, so also the pending application(s), if any.

(Sabina)
Judge

(Satyen Vaidya)
Judge

SAG

March 22nd , 2022
(sushma)