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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member
(Administrative)

Appeal No : 92/ATVAT/2019-20

Date of Decision : 26/07/2021

M/s. Siemens Ltd.
54/9, Kishan Garh,
Vasant Kunj,
New Delhi – 110070.

..... Appellant

V.

Commissioner of Trade & Taxes, Delhi

..... Respondent

Authorized- representative for Appellant : Sh. P. Sridharan,
Counsel representing the Revenue : Sh. S.B. Jain

JUDGMENT

1. Appellant company stands registered in Delhi as a dealer having Tin No. 07070022792 (Ward No. 202) for sales tax purposes. This company is carrying on the basis of import and sales/re-sales of electrical, electronic engineering and industrial goods, in addition to medical equipment etc. It has also been entering into works contract as regards installation, and commissioning jobs in respect of sales of electrical and electronic engineering goods.

Narinder Kumar
26/7/2021



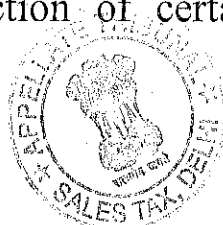
2. Present appeal pertains to assessment u/s 9(2) Central Sales Tax Act, for the financial year 2014-15. Vide impugned order dated 13/12/2019, learned Special Objection Hearing Authority (SOHA) has levied tax and interest on the appellant, by observing in the manner as :-

“The dealer has filed objection against the above said order , Sh. P. Sridharan (A.R) appeared before me with POA and submitted (16) C Forms of Rs. 2586915/-, (2) C against E-1 sale of Rs. 10804751/- exemption claimed is allowed in view of judgment of Hon’ble High Court in the case of M/s Kirloskar electric Co. v. CST, Delhi (83 STC 485), the statutory forms can be accepted by OHA. Now, missing C-forms for Rs. 12819625/- to be taxed @ Rs. 10.5% missing 1 form of Rs. 242015/- to be taxed @ 5% missing C-forms against E-1 sale of Rs. 406575/- to be taxed @ 12.5% and missing C forms of Rs. 913419/- to be taxed @5%, C + E-1 sale not supported by any forms of Rs. 17196183/- to be taxed @ 12.5% Rs. 125343/- @ 5% and Rs. 392802/- to be taxed @ 2% (not supported by E-1 forms only) under CST with interest.”

3. The appellant company happened to file objections before learned SOHA while challenging assessment (Annual 2014) made by the Assessing Officer vide order dated 12/3/2019. Said order dated 12/3/2019 has not been filed by the appellant. However, it stands re-produced in the impugned order passed by learned SOHA. As per order dated 12/3/2019, the Assessing Officer allowed exemptions to the appellant on production of certain statutory

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forms, but levied tax with interest keeping in view the missing forms.

4. As noticed above, Learned SOHA, while dealing with objections, also allowed exemptions to the appellant on production of additional statutory forms, and then affirmed levy of tax and interest as regards missing statutory forms i.e. C-forms & I-forms.

5. Hence, this appeal.

6. Arguments heard. File perused.

7. The first argument advanced by the learned Representative for the appellant is that in other proceedings under DVAT Act, 2004, certain amount has been allowed to be refunded to the appellant, but the same has not been adjusted by the Revenue Department against the present liability towards tax and interest under CST Act.

8. When we have enquired from learned Representative for the appellant as to whether any such written request was made or application moved by the appellant before the Assessing Officer or before learned SOHA, he candidly submits that only oral submission was made before these authorities. There is nothing in the orders to suggest that any such oral request was made. When no such request was made before the Assessing Officer, there was no question of filing of any objection, for any such grievance, before learned SOHA. Similarly, when no objection or request in this regard was filed before learned SOHA, it cannot be said that the

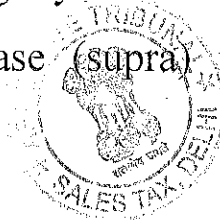


appellant has any such cause or grievance to be agitated in this appeal.

9. The other ground raised on behalf of the appellant is that interest levied by the Assessing Officer would be payable only from date of assessment and not from the date of filing of return. The contention is that a dealer should be subjected to liability of interest from the date of assessment in a case where dealer is unable to get statutory forms from other the purchasing dealer. Therefore, the contention is that the impugned order levying interest from the date of return deserves to be set-aside. In support of his contention, he has placed reliance on decisions in **J.K. Synthetics Ltd. And Birla Cement Works and Ors. v. Commercial Taxes Officer**, AIR 1994 SC 2392; **Indian Oil Corporation Ltd. v. State of Madhya Pradesh and Ors.** 2018(14) GSTL 10 and **Commissioner of Sales Tax v. Hindustan Aluminium Corporation**, 2002 127 STC 258 SC.

10. Learned counsel for the Revenue has opposed this contention raised by learned counsel for the appellant, by rightly contending that when a dealer fails to furnish statutory forms, the dealer becomes liable to pay interest on the amount of the tax , from the date of filing of the return, and not from the date of making of assessment by the Assessing Officer.

11. Learned counsel for Revenue has rightly submitted that the decision in M/s J K Synthetic Ltd's case (supra) pertains to



provisions of Central Sales Tax Act, 1956 before the amendment of the year 2000.

12. In view of provisions of section 9(2B) of the Act, 1956, as regards assessment of interest on the delayed payment of tax, provisions of DVAT Act, 2004 would apply, even if the tax liability arises under the Act of 1956.

13. Section 9(2B) came to be inserted in the Act of 1956, vide Finance Act, 2000, retrospectively, much after the decision in M/s J K Synthetic Ltd's case (supra), which is of the year 1994. Present appeal pertains to the tax period i.e. Annual 2014.

14. In view of provisions of sections 9(2B) of Act 1956, the provisions for delayed payment of tax, as per general sales tax law of each state, shall apply in relation thereto, and also for assessment and calculation of interest for delayed payment of tax under CST Act, 1956, in such state, as if the tax and the interest payable under this Act were a tax and an interest under such general sales tax law of the State.

15. In view of the above provision, it has not been disputed that provisions of DVAT Act 2004 come into application as regards delayed payment of tax, due date for payment of tax, rate of interest for delayed payment of taxes. Under the same provision, if the tax payable by any dealer under CST Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax.

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16. Section 42(2) of DVAT Act, which is attracted, in view of the provision of section 9(2B) of the Act 1956, a dealer would be liable to pay interest from the date of default in making the payment of due tax. U/s 32(3) of DVAT Act, where the Commissioner has made an assessment under this provision of law, and further tax is assessed as owed, the amount of further tax assessed is due and payable on the same date as the date on which the net tax for the tax period was due. When we refer to provision of section 3(4) of DVAT Act, the dealer is liable to pay net tax within 21 days of the conclusion of the dealer's tax period.

17. Even as per Rule 36(3) of DVAT Rules, 2005, the interest payable u/s 42(2) is to be calculated at the time of making an assessment, and that too for the period commencing from the date of such default.

18. Case of Hindustan Aluminium Corporation (supra) pertained to provisions of section 8 of U. P. Sales Tax Act, 1948. Requirement of sub-section (1) of section 8 was that the assessee must pay tax on the amount of his turnover as particularized in the Explanation.

There was a dispute as to the classification of products of the assessee. It was held that said provision was not attracted in case of a classification of products. Present case is not a case of dispute of classification of products. For this reason too, decision in Hindustan

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Aluminium Corporation's case does not come to the aid of the appellant.

19. Herein, learned OHA reduced the amount of tax imposed by the Assessing Officer, taking into consideration production of certain forms by the appellant – objector subsequently at the time of hearing on objections. This is not a case where learned OHA for the first time issued directions for payment of interest. Even the Assessing Officer had issued directions for payment of interest and learned OHA upheld the direction regarding interest.

20. During this appeal, neither any other statutory form has been produced. No justification was shown by the appellant-objector for non-filing of the remaining statutory forms. Even now, no justification has been shown by the appellant-objector for non-filing of the remaining statutory forms.

21. In view of the above provisions, there is no merit in the other contention raised on behalf of the appellant.

22. No other argument has been advanced on behalf of the appellant.

23. As a result, this appeal is ~~being~~ without any merit and deserves to be dismissed. Same is hereby dismissed.

24. Copy of the judgment be supplied to the parties as per rules. Two copies be sent to the department. Order be also uploaded on

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the concerned web-site. File be consigned to the record room after the needful is done by the office.

Announced in open Court.

Date : 26/07/2021




(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)


Appeal No. 92/ATVT/2019-20/632-639

Dated: 28/7/21

Copy to:-

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|--|----------------|
| (1) VATO (Ward- 202) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) VATO (L&J) |
| (4) Secretary (Sales Tax Bar Association) | |
| (5) PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch. | |




PS/ PA to Member (A)