

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

Appeal No. 16/ATVAT/19-20
Date of Decision : 06/08/2021

M/s. B.D. Enterprises.,
1138, Prem Street,
Bara Bazar, Kashmere Gate,
Delhi -110006.

..... APPELLANT

V

Commissioner of Trade & Taxes, Delhi. RESPONDENT

Counsel representing the Appellant : Sh. V Bhatia

Counsel representing the Revenue : Sh. P. Tara

(In r/o ref. No. 150061502064 dtd. 30/3/15, VATO (Ward 73)

(In r/o ref. No. 150082115338 dtd. 9/12/16, VATO (Ward 73)

JUDGMENT

1. This appeal has been filed against order dated
09.12.2016 passed by Learned VATO - Objection

Narinder Kumar
6/8/2021



Hearing Authority (ward-73). Vide impugned order, Ld. OHA has observed that C-forms for Rs. 41,98,441/- being the missing C-Forms, same are taxable @ 3% with interest, and accordingly directed the dealer-appellant to pay a sum of Rs. 2,39,984/- i.e. Rs. 1,25,953/- towards additional tax and Rs. 1,14,031/- towards interest. This matter pertains to tax period - Annual (2010-2011).

2. Vide impugned order, learned VATO accordingly disposed off the objections filed by the appellant against the assessment made by the Assessing Officer on 30.03.2015.
3. As per assessment dated 30.03.2015, the Assessing Authority raised demand of Rs. 2,00,438/-, the reason being that dealer-appellant had failed to furnish the C-Forms.
4. Present appeal came to be filed on 14.12.2020. With the appeal, application under section 76(4) of Delhi Value Added Tax, 2004 (hereinafter referred to as the Act) was filed. Vide order dated 19.08.2019, while disposing of said application, the appellant was directed to deposit Rs. 25,000/- within a period of 30-days and revenue was

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restrained from taking any coercive action against the appellant. On compliance with the said order, *appeal came up for final hearing.*

5. Arguments heard. File perused.

6. Case of the appellant, in brief, is that notice under section 9(2) of Central Sales Tax Act was issued by the Assessing Officer on 30.03.2015, raising demand for the year 2010-11(Annual), without providing any opportunity to the appellant.

7. As noticed above, the Assessing Officer raised demand vide said notice of default assessment dated 30.03.2015, on the ground that the appellant had failed to submit C-Forms for Rs. 41,98,441/-. Case of the appellant is that all the C-Forms for the said amount were furnished by the appellant to the department, with DVAT-51 on 26.11.2015 with all the details in Forms CST-9 for the year 2013-14 filed on-line. It may be mentioned here that the appellant has submitted copy of DVAT-51, CST-9 and those of all the C-forms, as Annexure-2.

8. As regards objections before Ld. Special OHA, according to the appellant on the date of hearing copies

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of all DVAT-51, CST-9 and those of all the C-forms and one indemnity form were furnished but the Ld. OHA passed the impugned order without considering the said documents and upheld the impugned demand. Therefore, learned counsel for the appellant has contended that the appeal deserves to be allowed and impugned order and the demand of tax and interest be set aside.

9. As per copy of DVAT-51 filed by the appellant, quarterly return statement was submitted by the appellant to the Department of Trade and Taxes on 26th Nov. This copy bears the rubber stamp of the Department of Trade and Taxes and another rubber stamp with the date 26th Nov.
10. Appellant has also furnished photo copies of C-Form purported to have been issued by the purchasing dealer-M/s Calcutta Steel Tube Corporation; two C-form purported have been issued by purchasing dealer-M/s Dinesh Engineers, Ahmadabad; and another C- form purported have been issued by purchasing dealer-M/s Amit Tube Corporation, Ahmadabad and photo copy of form-9 depicting all relevant details.



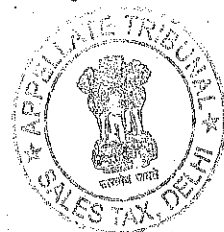
11. In the course of arguments, learned counsel for the Revenue has not disputed submission of DVAT 51, by the appellant – dealer to the Revenue Department on 26/11/2015, so far as, first quarter is concerned.

12. In view of circular No. 749 to 764 dated 5/11/2009 issued by the O/o the Commissioner VAT, Department of Trade & Taxes, New Delhi, when the statutory forms claimed to have been deposited by the dealer with DVAT 51-Form are said to have been lost or are not be traceable, then credit in respect of such statutory forms may be allowed subject to the fulfillment of the following conditions:

- i) Furnishing of the receipt in respect of submission of DVAT-51 from along with statutory form for a particular quarter.
- ii) Duplicate parts of the statutory forms and
- iii) Furnishing of indemnity bond by the dealer affirming therein that is any loss is caused to the government revenue, he shall indemnify the same to the government of the said loss;

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iv) The assessing authority may get the statutory forms verified from the issuing authority or through TINXSYS (Tax Information Exchange System) as may be appropriate.

5. As a result, the appeal is allowed and matter is remanded to the Ld. VATO, for assessment afresh, after verification of the genuineness of the four C-forms, which are stated to have been submitted by the appellant alongwith DVAT 51 on 26/11/2015. Appellant is hereby directed to appear before the Ld. VATO on 23/08/2021.

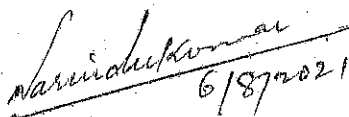
6. File be consigned to the record room. Copy of the order be sent to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 6/08/2021


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Appeal No. 16/ATVT/19-20/728-735

Dated: 17/8/21

Copy to:-

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| (1) VATO (Ward- 73) | (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)