

PS

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

Appeal No : 201/ATVAT/2018-19
Date of Decision : 12th of August, 2021

M/s. Air Flow Pvt. Ltd.,
13/1090, Hardian Singh Road,
Karol Bagh,
Delhi – 110005.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi Respondent

Counsel representing the Appellant : Sh. Shyam Sethi,
Counsel representing the Revenue : Sh. P. Tara

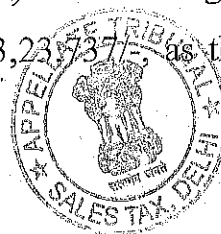
JUDGMENT

1. Present appeal came to be filed on 22/10/2018. Challenge is to order dated 20/6/2018, passed by learned Special Objection Hearing Authority, (here-in-after referred to as SOHA).

2. Vide impugned order, learned SOHA directed the appellant to pay a sum of Rs. 3,42,904/- by way of tax and interest on missing C-forms worth Rs. 20,036/- (taxed @ 10.5%) and missing C+E-1 forms worth Rs. 16,15,455/- (taxed @ 10.5%) under Central Sales Tax Act (CST), with interest.

3. It may be mentioned here that the impugned order came to be passed while disposing of objections filed by the appellant, against the notice of default assessment of tax and interest issued by Assessing Officer – VATO (Ward 109, special zone). Assessing Officer had directed the appellant – dealer to pay Rs. 13,23,737/- as the dealer had failed to furnish details of statutory forms.

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4. The matter pertains to tax period January, 2012.
5. Arguments heard. File perused.
6. The only argument advanced by learned counsel for the appellant is that after disposal of the objections, appellant has received some C- forms and appellant deserves exemption on the basis of these C-forms.
7. As per record, appellant has filed C-forms worth Rs. 6,17,054/-. Details of the invoices find mentioned in the annexure to the C-forms. Undisputedly, in view of decision in **M/s. Kirloskar Electric Co. v. CST, Delhi**, (83 STC 485) deserves consideration of above said C-forms worth Rs. 6,17,054/-.

However, it is made clear that the appellant shall have to satisfy the Assessing officer that there was sufficient cause for non submission of this C-form, now sought to be produced.

8. Counsel for appellant has also referred to photo copy of a counterfoil of another C-form issued by Corporate Solutions, Udyog Vihar, Gurgaon, worth Rs. 11,62,805/- and submitted that this form has also been received after the disposal of the objections, and appellant is entitled to exemption in respect thereof as well. But, learned counsel for the Revenue has opposed this submission, while contending that this is only a photo copy of the counterfoil of C-form and that for want of original, this form submitted by the appellant cannot be considered for the purposes of exemption.

9. There is merit in the contention raised by learned counsel for the Revenue. Counterfoil is supposed to be with the purchasing dealer for its record, whereas the original and duplicate C-form is supposed to be with the selling dealer.

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10. Here, the original C form purported to have been issued by Corporate Solutions, Udyog Vihar, Gurgaon, (counterfoil of which is being relied on) has not been filed. Appellant-the selling dealer has not furnished any explanation about non production of the original C-form, counterfoil of which has been relied on. In absence of the original C-form, and the fact that only a photocopy and that of a counterfoil of C form has been relied on, it is held that same cannot be considered for the purposes of exemption to the appellant.

11. In the given facts and circumstances, this appeal is disposed of and while setting-aside the impugned order only as regards imposition of tax and interest in respect of missing statutory form worth Rs. 6,17,054/-, the matter is remanded to the Assessing Officer for assessment afresh, in accordance with law, taking into consideration the said original C-form worth Rs. 6,17,054/-, now sought to be produced. However, the Assessing Officer shall be at liberty to consider the authenticity and genuineness of this C-form and also sufficient cause, if any, for non production thereof earlier.

Appellant to appear before the Assessing Officer on 31/08/2021.

12. Copy of the order be supplied 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 : August 12, 2021



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(Narinder Kumar)
Member (J)


Appeal No. 201/ATVAT/2018-19/760-767

Dated: 18/8/21

Copy to:-

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|--|----------------|
| (1) VATO (Ward-109) | (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)