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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI
Sh. Narinder Kumar, Member (J) and Sh. Rakesh Bali, Member (A)

Appeal No. 40/ATVAT/2019

Date of Judgment: 8/9/2021

M/s. Dentsply India Ltd.,
Kh. No. 66/20 & 66/11/2, Gali No. 2
Main Rohtak Road,
Mundaka Industrial Area,
Delhi – 110 041.

.... Appellant

V

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel for the Appellant
Counsel for the Revenue

: Ms. Ashwani *Chaudhary Karan*
: Sh. M.L. Garg.

JUDGMENT

1. Present appeal has been filed challenging order dated 10/7/2019 passed by VATO (Ward-203) - learned Special Objection Hearing Authority (SOHA), under Central Sales Tax Act (CST). The appeal pertain to all the four quarters of the year 2014.
2. Assessing Authority - VATO (Ward 203) vide orders dated 13/3/2019 directed the appellant to deposit tax with interest in respect of C & F forms which were not produced.

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3. Vide impugned order dated 10/7/2019, Ld. SOHA reduced the demand in respect of all the four quarters of 2014, keeping in view that some of the Statutory forms were produced before him during objections, and also taking into consideration the missing statutory Forms.

Hence, this appeal.

4. Arguments heard. File perused.

5. Learned counsel for the appellant submits that subsequent to the disposal of the objections by learned SOHA, dealer - appellant received certain statutory forms (C & F) which the appellant has placed on record, and that the same be allowed to be considered by the Assessing Authority.

Learned counsel for the appellant has submitted that the statutory forms filed in these appeals could not be earlier submitted by the appellant due to sufficient cause.

6. Learned counsel for Revenue has gone through the list now marked as Ex. C-1 of the forms, submitted by the appellant before this Tribunal, and submitted that these pertain to the above said tax period, at sl. No. 4,5,6,9 & 11, there are duplicate forms, and at sl. 18 to 21, there are only counterfoils. The contention is that no concession can be granted to the appellant in respect of these duplicate forms and counterfoils.

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7. On the other hand, learned counsel for the appellant has referred to following two decisions to submit that even duplicate part of C-forms can be considered by the Assessing Authority;

(1) Standard Machinery Sales Company v. The Assistant Commissioner (CT), 2016 (12) TMI 372 of Hon'ble Madras High Court.

(2) Manganese Ore (India) Ltd. v. Commissioner of Sales Tax, 1989 (1) TMI 351 of Hon'ble Madhya Pradesh High Court.

It is true that as per the above said two decisions, it is the form itself, which by use of the words "original", "duplicate" and "counterfoil", gives an indication as to which part of the form is required to be filed before the assessing authority. In the light of the facts of that case and the provisions of law, Hon'ble High Court of Madhya Pradesh was of the view that there was sufficient compliance with the provisions of section 8(4) of the Central Act and those of Rule 12(1) of the Central Rules, so as to entitle the assessee to get the benefit of concessional rate of tax u/s 8(1) of the Central Act.

However, the above two decisions are distinguishable on facts. In Manganese Ore (India) Ltd.'s case (supra), the assessee claimed concessional rate of tax u/s 8(1) of the Central Sales Tax Act, 1956, on the basis of photo stat~~e~~ copies of duplicate portions of prescribed declaration in form C and the statement that the originals were

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submitted before the assessing authority in the State of Maharashtra. It is not so in this case.

Here, only duplicate forms, which are initially supplied by the purchasing dealer to the selling dealer, and the counterfoils which are supposed to be with the purchasing dealer, are sought to be filed for the first time and that too after disposal of the objections.

In Standard Machinery Sales Company's case (supra), the petitioner had stated in the affidavit filed with the writ petition that they had produced original C-forms before the respondent on 20/9/2010, but the respondent lost the same. This is not the case of the dealer – appellant herein. Here, only duplicate forms, which are initially supplied by the purchasing dealer to the selling dealer, and the counterfoils, which are supposed to be with the purchasing dealer, are sought to be filed for the first time and that too after disposal of the objections.

Furthermore, in Kedarnath Jute Manufacturing Co. Ltd. v. CTO (1965) 16 STC 607 (SC), Hon'ble Apex Court observed that if the intention of the Legislature was to give exemption only if the terms for filing of declaration forms are complied with them, then to allow deduction in the absence of such declaration is to ignore the proviso altogether. It will defeat the express intention of the Legislature. Provision providing for production of declaration forms is mandatory

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and secondary evidence such as duplicate forms is not permissible to replace the lost one.

In India Agencies (Regd.) vs. Addl. CT (2005) 139 STC 329 (SC), Hon'ble Apex Court observed that the dealer has to strictly follow the procedure and produce the relevant materials required under the rule. Without producing the specified documents as prescribed there under, a dealer cannot claim the benefits provided under the law. The requirement is not merely formality or technicality, but it is intended to achieve the object of preventing the form being misused for the commission of fraud and collusion with a view to evading payment of taxes.

In view of the above two decisions by Hon'ble Apex Court, the decisions cited by the learned counsel for the appellant do not come to the aid of the appellant.

8. Additional F-forms have also been placed on record by the appellant by alleging that these have been collected by the dealer – appellant after the disposal of the objections by learned SOHA. There description finds mentioned in lists Ex. C-2 & C-3. Learned counsel for the Revenue has gone through these two lists and the statutory forms lying annexed thereto.

9. In the case of **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485,

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decided by Hon'ble High Court of Delhi, Hon'ble Judge observed in the manner as :-

“The State is entitled to the tax which is legitimately due to it. When the Sales Tax Act provides that a deduction can be claimed in respect of sales affected in favour of registered dealers than the deduction should be allowed. The proof in support of claiming the deduction is the production of the S.T. 1 forms. Even though the S.T. 1 forms were produced after the assessment had been completed. It will not be fair or just not to allow the legitimate deduction.....”

10. In the light of the judgment of Hon'ble Delhi High Court in M/s Kirloskar Electric Company Ltd., appellant herein deserves another opportunity to submit C & F -forms, excluding the duplicate and counterfoil of C-forms, as noticed above.

11. Another point raised by learned counsel for the appellant is that the learned SOHA failed to take into account the sales return made during the relevant year for INR 1,83,06,579/-; that the appellant had correctly disclosed the details of sales returns in its CST returns and adjusted the output tax liability only against eligible credit notes (sales return received within 6 months); and that accordingly the benefit of a total sales return of INR 1,83,06,579/- be granted to the appellant and demand of tax be proportionally reduced.

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On the other hand, learned counsel ^{for Revenue} has submitted that no such objection was raised by the dealer – objector before learned SOHA, and as such the appellant cannot raise this fresh objection before this Tribunal.

In the course of arguments, learned counsel for the appellant admits that this point based on facts was not taken in the objection before learned SOHA. It is also not being disputed that as per section 76(5) of DVAT Act, in proceedings before the Appellate Tribunal, the person aggrieved shall be limited to disputing only those matters stated in the objections.


In the given situation, the dealer – appellant cannot be allowed to raise this new objection, based on facts, for the first time before the Appellate Tribunal, when the same was admittedly not taken in the objection before learned SOHA.

12. No other argument has been advanced or pressed by learned counsel for the appellant

13. As a result, these appeals are being disposed of so as to allow another opportunity to the appellant to present before the Assessing Authority, statutory forms (excluding the duplicate & counterfoils), copies whereof have been filed before this Tribunal.

The Assessing Authority shall subject these Statutory forms to verification (including ruling out of any possibility of duplicacy) and


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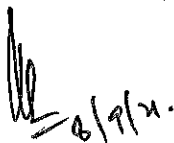
also consider, good and sufficient cause, if any, for non filing of the said Statutory forms, before allowing the concessional rate of tax to the appellant, while making assessment afresh, in accordance with law.


~~Appellant is hereby directed to appear before the Assessing Authority on 04/10/2021.~~

14. 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 : 08/09/2021


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Appeal No. 960-967 / 9/9/21

Dated: 9/9/21

Copy to:-

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



REGISTRAR