

86

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

Appeal No. 162-165/ATVAT/19

Appeal No. 166-169/ATVAT/19

Date of Judgment : 01/10/2021

M/s. S.C. J. Plastics Ltd.,
3/10, 11, Okhla Inds. Area,
Pjase – I, Okhla,
Delhi – 110020.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi.

..... Respondent

Counsel representing the Appellant

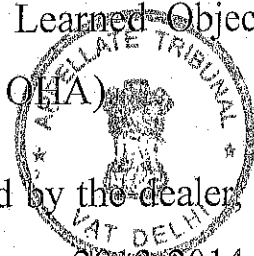
: Sh. R. Mahana.

Counsel representing the Respondent

: Sh. C.M. Sharma

JUDGMENT

1. The appellant/ M/s. S.C. J. Plastics Ltd.-dealer Company stands registered with department of Trade and Taxes vide TIN no. 07640033100.
2. The dealer has filed all the above captioned eight appeals challenging order dated 30.09.2020 passed by Learned Objection Hearing Authority (hereinafter referred to as Ld. OHA).
3. The matter pertains to inter-state sales, as termed by the dealer, said to have been made in all the four quarters of the year 2013-2014.



Narinder Kumar
1/10/2021

4. Vide impugned order, Learned OHA has observed that the dealer-appellant could not prove movement of goods from Delhi to other state, and accordingly, upheld the assessment framed by the Assessing Authority treating the sales made by the dealer-appellant as local sales, details whereof find mentioned in each notice of default assessment of tax and interest issued u/s 32 of Delhi Value Added Tax Act, 2004 (herein after referred DVAT Act, 2004).

The Assessing Authority also imposed penalty u/s 86(10) of section DVAT Act, 2004, by issuing separate notices of default assessment in respect of each quarter of the said year 2013.

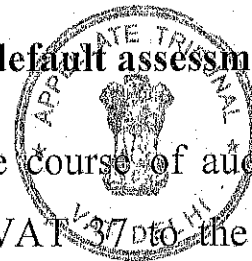
Learned OHA has also upheld the orders of penalty passed by the Assessing Authority,

5. Vide order dated 23.08.2021, while entertaining appeals, dealer/appellant was directed to deposit, by way of pre-deposit 20% of the disputed demand towards tax, interest and penalty in respect of each quarter.

In this regard, on 02.09.2021, compliance report was filed.

As to what led to issuance of notices of default assessments?

6. As per record, it was 19.08.2016, in the course of audit that the Assessing Authority issued notice in DVAT 37 to the dealer, as regards its business affairs for the year 2013-14, calling upon the dealer to produce books of account and other records.



During proceedings before the Assessing Authority, representative of the dealer produced documents including DVAT 30/31, sale/purchase summary, copies of returns, copies of invoices, copy of balance sheet and copy of bank statement etc.

7. After going through the material made available, the Assessing Authority observed that dealer/appellant had failed to produce GRs or any supporting document conforming inter-state movement of goods in respect of some of the interstate sales made against 'C' forms, and further that the dealer could not give justification about missing GRs in such cases. As observed by the Assessing Authority the dealer could not give any justification about the missing GRs in respect of the transactions pertaining to the following bills:-

1st Qtr. 2013-14			
Sl.No.	Bill No.	Date	Amount in Rs.
1	319	25-04-13	124158.00
2	320	25-04-13	268541.00
3	322	25-04-13	364047.00
4	338	26-04-13	44242.00
5	372	29-04-13	136518.00
6	374	29-04-13	69505.00
7	384	30-04-13	64045.00
	Total		1071056.00
2nd Qtr. 2013-14			
Sl.No.	Bill No.	Date	Amount in Rs.
1	2161	21-09-13	230029.00
2	2167	23-09-13	26517.00
3	2172	23-09-13	70787.00
4	2178	24-09-13	107865.00
5	2179	24-09-13	35955.00
6	2180	24-09-13	37079.00
7	2187	25-09-13	51472.00
	Total		559704.00

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3rd Qtr.2013-14			
Sl.No.	Bill No.	Date	Amount in Rs.
1	4537	20-12-13	51910.00
2	4578	21-12-13	54095.00
3	4579	21-12-13	31146.00
4	4584	23-12-13	77865.00
5	4588	23-12-13	36214.00
6	4593	23-12-13	25843.00
7	4620	24-12-13	191012.00
8	4625	26-12-13	38203.00
9	4680	30-12-13	173214.00
	Total		679502.00
4thQtr.2013-14			
Sl.No.	Bill No.	Date	Amount in Rs.
1	5983	15-03-14	73540.00
2	6008	18-03-14	68220.00
3	6027	19-03-14	51910.00
4	6029	19-03-14	45809.00
5	6048	20-03-14	67135.00
6	6049	20-03-14	239574.00
7	6073	21-03-14	67640.00
8	6122	25-03-14	48017.00
	Total		661845.00

The Assessing Authority further observed that simply from the vehicle number(s) mentioned in the invoices, produced before him by the dealer, it could not be established that it was a case of inter-state movement of goods covered by the said bills.

In the view of the Assessing Authority, it appeared that delivery of the goods was made to buyer in Delhi itself.

8. Ultimately, while referring to the requirement of Section 3 (a) of the CST Act, 1956, the Assessing Authority levied tax @ 5% treating the concerned sales as local sales. At the same time, CST paid to be adjusted was levied under DVAT Act subject to verification from

scroll.

For the aforesaid reasons, vide separate notice of default assessment under section 33 of DVAT Act, the Assessing Authority imposed penalty under section 86 (10) of DVAT Act, 2004.

Objections are filed

9. The default assessments led to filing of objections. During hearing on objections, as noticed above, certain documents were produced. After providing opportunity to the dealer/appellant and its counsel, Ld. OHA observed that the dealer/objector could not prove movement of goods from Delhi to other States. With these observations, Ld. OHA upheld the notice of default assessment in respect of tax and interest, as well as notice of assessment of penalty, as framed by the Assessing Authority.

10. Hence, these appeals.

11. Arguments heard on merits. File perused.

Contentions

12. Challenging the impugned order, Ld. Counsel for the appellant has referred to the provisions of section 3 of CST Act and then submitted that law does not require that production of GRs in proof of movement of goods is a must.

Ld. Counsel has referred to the copies of the invoices, vide which

transactions of sales are alleged to have taken place, and submitted that from their contents it stands proved that the goods sold by the dealer/appellant to the buyer vide these invoices actually moved from the dealer/appellant to the buyer named in these invoices.

Ld. Counsel has also submitted that as per CST rules, as in force in the State of Punjab and Haryana and the CST (UP) Rules, 1957, procedure has been laid down for obtaining of declaration forms including C forms. The contention is that under the prescribed procedure, suchlike declaration forms are issued by the concerned officer to the buyer to the purchaser only when the said officer is satisfied that the requisition of the said dealer is genuine and reasonable. Further, it has been submitted that when declaration forms were issued by such an officer on such satisfaction, the Assessing Authority of Delhi, could not reject the claim of the dealer/appellant, simply because GRs-goods receipts were not submitted by the dealer.

Ld. Counsel for the appellant has submitted that on the aforesaid grounds, Ld. OHA should not have rejected the objections simply because of non-production of GRs.

In support of his submissions Ld. Counsel has relied on following decisions:

- i) **State of A.P. and Ors. vs. National Thermal Power Corporation Ltd. and Ors., AIR 2002 SC 1895.**



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12/10/21

ii) **Indian Oil Corporation Ltd. and Ors. vs. Union of India (UOI) and Ors.**, AIR 1981 SC 446.

iii) **Union of India (UOI) and Ors. vs. K.G. Khosla & co. Ltd. and Ors.**, AIR 1979 SC 1160.

Discussion

13. Admittedly, dealer – appellant had produced before the Learned OHA, documents like sale summary, copy of sale bills and photocopy of C-forms in respect of various transactions of sale, for the year 2013-14.

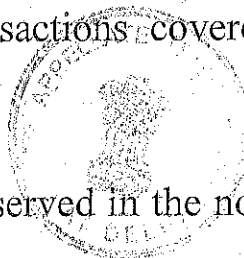
It has also not being disputed that claim of the dealer – appellant in respect of only the bills mentioned above in the tables re-produced was rejected. The reason for rejection in respect of the said bills is that the dealer failed to produce before the Assessing Authority, GR's or any supporting documents confirming inter-State movement of goods in respect of the sales said to have been made against C-forms.

Undisputedly, the dealer had duly produced before the Assessing Authority, documents confirming inter-State movement of goods in respect of all other inter-State sales and the Assessing Authority levied tax only in respect of transactions covered by the bills mentioned above.

14. The Assessing Authority clearly observed in the notices of default

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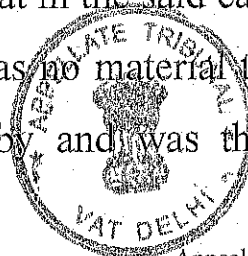


assessment that the dealer could not give justification about missing GR's in respect of the transactions covered by the aforesaid bills.

15. The submission made by the learned counsel for the appellant before us is that the delivery of the goods was made as per stamp lying affixed on all these aforesaid bills/invoices, depicting the date of delivery and mode of conveyance.

In this regard, it may be mentioned here that GR issued by the Transporter is the main document to prove movement of goods from one state to another. In absence of GR to substantiate the claim of inter-State sale, the Assessing Authority shall have no option but to assess the said sales as local sale. In this regard, reference may be made to decision by our own Hon'ble High Court in **B.R. Fibres (P) Ltd. v. Commissioner, VAT** (2015) 84 VST 570. Therein, this Tribunal had observed that inter-State movement could not be judged by documents ^{such} ~~stage~~ as retail invoices, bank statement, C-forms etc. and such the appeal filed by the dealer was dismissed for want of production of even alternative documents such as form-38 (state entry form), stamp of the security department while entering in the State, etc.

Therein, Hon'ble Court observed that in the said case, in respect of six transactions, out of 26, there was ~~no material~~ to show that the movement of goods was caused by ~~and~~ was the result of the



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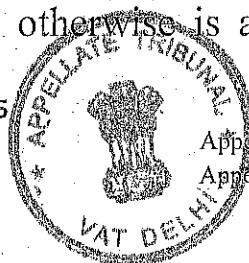
contract of sale.

Hon'ble Court observed as under –

“In the present case, the assessee was able to substantiate its contention that 20 of the transactions were, in fact, inter state sales. This was because each one of them had the necessary supporting document in the form of GRs. However, in the case of these 6 transactions, there is no material to show that the movement of goods was caused by and was the result of the contract of sale.

The assessee counsel contends that this Court must consider the facts in totality of circumstances i.e. 20 out of 26 transactions are undisputed and that given the factual compulsion i.e. the inability to use a formal carrier the assessee should not be prejudiced. Though this submission is attracted, the Court is at the same time aware that there is no presumption either way that an inter state sale claimed by the assessee is one per se.”

Hon'ble High court also referred to decision in Commissioner of Sales Tax V. Pure Beverages Ltd. (2005) 142 STC 522 (Gujarat), wherein reliance was placed upon decision titled as State of Rajasthan v. Sarvotam Vegetables Products (1996) 101 STC 547 to conclude that the tender of a C form by the selling dealer raises a fundamental presumption that the purchasing dealer is a registered dealer. Hon'ble Court observed that, that is as far as the presumption can be taken. As to whether the transaction itself was covered by an inter state sale or otherwise is a burden that the



assessee has to discharge. Hon'ble High Court further observed that the dealer – B.R. Fibres had done so in other 20 transactions but was unable under the remaining 6 cases.

16. Herein, as per the invoices relied by the dealer – appellant, which have not been accepted by the Revenue, admittedly, column meant for RR/GR No. and date is lying blank. Similarly, column for transporter's name is also lying blank.

In the course of arguments, learned counsel for the dealer – appellant has not been able to explain as to why these columns were left blank.

17. In K.G. Khosla & Company's case (Supra), relied by the learned counsel for the appellant, the question which arose before Hon'ble Apex Court was whether the sale made by respondent 1 were made at Faridabad in the course of inter-State trade as contended by the State of Haryana or whether they were intra-state sales effected within the Union Territory of Delhi as contended by the appellant, the Union of India. So the question was about the situs. To answer this question, the Hon'ble Court proceeded to consider as to whether the sales effected by the respondent No. 1, therein occasioned the movement of goods from one state to another State i.e. from Haryana to Union Territory of Delhi.

Therein, Hon'ble Court observed that the contracts of sales were finalized at Delhi and specific goods were manufactured at



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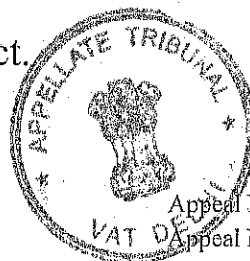
Faridabad in pursuance of the contract. Those were "future goods" within the meaning of section 2(6) of sale of goods Act, 1930.

In that case, the course and manner of its business as set out by respondent no. 1 in the writ petition was as under :-

"3. Orders for the supply of goods from various parties are received by the petitioner's company at its head office in Delhi. The head office draws out a production programme and advises the factory to manufacture the goods in accordance therewith. After the goods are so manufactured in the factory, the goods are collected by the head office and brought to its head office in Delhi. From its head office the goods are dispatched to various customers whether outside Delhi or in Delhi. The price of goods is also received at the head office. In short, the position is that excepting the manufacture of goods at the factory, all other activities including that of booking of orders, sales, dispatching and billing and receiving of sale price are being carried out from the head office in Delhi."

"27. The goods manufactured in the factory are future goods within the meaning of the Sale of Goods Act and the dispute does not relate to any ready goods."

Therein it was observed that a sale would be an inter-State sale even if the contract of sale does not itself provide for the movement of goods from one State to another provided, however that such movements was the result of a covenant in the contract of sale or was an incident of the contract.



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Therefore, decision in K.G. Khosla's and Company case (supra) is distinguishable on facts.

18. The decision in National Thermal Power Corporation Ltd. case (supra) cited by learned counsel for the appellant, pertains to sales of electrical energy generated by the Corporation – respondent No. 1 at its Thermal Power Station set up at Ramagundam and sold to electricity boards of Karnataka, Kerala, Tamil Nadu and State of Goa in pursuance of contracts of sales occasioning inter-State movement of electricity.
19. In India Oil Corporation Ltd. case (supra) cited by learned counsel of the appellant, Hon'ble Apex Court observed as under –

“Section 3(a) of the Central Sales Tax Act, 1956 provided that “a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase occasions the movement of goods from one State to another”. It is now well settled by a series of decisions of this Court that a sale shall be an inter-state sale under section 3(a) if there is a contract of sale preceding the movement of goods from one state to another and the movement is the result of a covenant in the contract of sale or is an incident of that contract; in order that a sale may be regarded as an inter-state sale it is immaterial whether the property in the goods passes in one state or another.”

Therein, Hon'ble Apex Court further observed as under:-

“Each case turns on its own facts and the question is whether applying



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the settled principle which we have mentioned above to the facts of the present case the sales can be said to be inter-state sales. An attempt to show that some of the factors present in the instant case are present or absent in some case or other in which this Court held the sale to be a local sale or inter-state sale hardly serves any useful purpose. On the facts of the present case the sales are clearly inter-state sales and the State of U.P. had therefore no jurisdiction to assess the petitioners to sales tax under the State Act. As the movement of naphtha commences from Barauni in Bihar, the sales tax payable on the sales of naphtha under the agreement dated February 9, 1970 can be assessed and collected only by the authorities in the State of Bihar on behalf of the Government of India in view of section 9 of the Central Sales Tax Act."

20. In view of the above discussion, and decision in **B.R. Fibres (P) Ltd.'s**, case (supra) by our own Hon'ble High Court, the decisions cited by learned counsel for the dealer – appellant do not come to the aid of the dealer particularly when the dealer has failed to prove that movement of goods was caused in respect of the transactions to which the rejected bills pertain. In view of **B.R. Fibres (P) Ltd.'s**, case (supra), simply because of issuance of C-forms by the competent authorities of Punjab, Haryana and UP, it cannot be said that from production of such statutory forms, a presumption is to be drawn that it would be a case of inter-State sales as per claim of the dealer.

21. As a result, we do not find any merit in the contentions raised



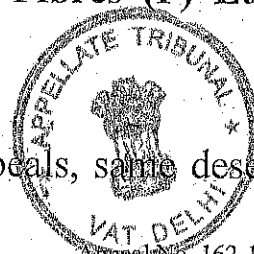
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raised by learned counsel for the appellant. The impugned order passed by learned OHA upholding the notice of default assessment as regards tax and interest, is upheld.

Penalty

22. As regards, levy of penalty, learned counsel for the dealer – appellant submitted that the Assessing Authority fell in error in imposing penalty, when all the requisite documents were produced to prove movement of goods. The contention is that the penalty imposed and ultimately upheld by the learned OHA deserves to be set-aside.
23. As noticed above, penalty has been imposed u/s 86(10) of DVAT Act on account of furnishing of a false, misleading or deceptive return in respect of material particular i.e. movement of goods by way of inter-State sale. As discussed above, dealer – appellant failed to prove movement of goods by way of inter-State sale, in respect of the transactions, which came to be rejected. Therefore, the information furnished in this regard in the returns can safely be said to be false, misleading or deceptive. In the given facts and circumstance, the levy of penalty by the Assessing Authority has been rightly upheld by the learned OHA. In this regard, reference may be again made to decision in **B.R. Fibres (P) Ltd.'s**, case (supra).
24. As a result, finding no merit in these appeals, same deserve to be



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dismissed. Consequently, all these eight appeals are hereby dismissed.

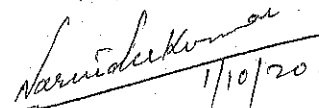
25. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 01/10/2021




(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Appeal No. 162-165 / ATVT / 19 / 1272-79
166-169

Dated: 5/10/21

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 (J) for uploading the judgment on the portal of
DVAT/GST, Delhi - through EDP branch. | |
| (9) Commissioner (T&T) | |




REGISTRAR