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

Appeal No. 116/ATVAT/2017
Date of Judgment: 5/10/2021

M/s. Abhi Creations,
72, Rattan Bagh,
Nangloi,
Delhi - 110 041.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant

:

Sh. A.K. Babbar

Counsel representing the Revenue

:

Sh. S.B. Jain.

JUDGMENT

1. Dealer - Appellant stands registered with Department of Trade & Taxes vide Tin No. 07370326625. It also stands registered under Central Sales Tax Act (here-in-after referred to as the Act).
2. Case of appellant is that vide order dated 26/3/2016, Assessing Authority, VATO (Ward-62) issued notice of default assessment of tax and interest u/s 9(2) of CST Act, in respect of 2nd quarter of 2011-12, alleging that the dealer had failed to furnish details

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Narinder Kumar
5/10/21

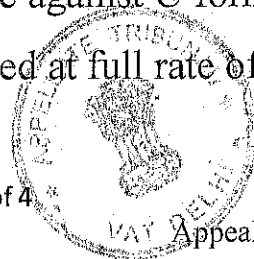
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Appeal No. 116/ATVAT/2017

of statutory form received in respect of the concessional sales and also to furnish requisite declaration forms. Accordingly, the Assessing Authority directed the dealer to pay a sum of Rs. 2,99,066/- by way of tax and interest.

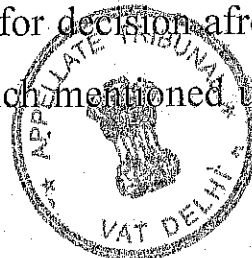
3. Case of the dealer – appellant is that the said notice of default assessment was challenged by way of objections. During objections one C-form of the value of Rs. 9,82,270/- was produced before learned Special Objection Hearing Authority (SOHA). The dealer was allowed exemption in respect of the said statutory form. However, learned SOHA directed the dealer – appellant to pay Rs. 1,30,216/- i.e. Rs. 75,168/- towards tax and Rs. 55,048/- towards interest. Hence this appeal.
4. The ground put forth by the dealer in the memorandum of appeal is that learned SOHA did not consider its plea that sale of Rs. 5,81,015/- was not claimed on concessional rate of tax, as the dealer had actually paid full tax. As further alleged by the dealer, it escaped attention of learned SOHA that it was not a case of missing C-forms of the value of Rs. 7,15,881/-. As per case of appellant, according to the appellant learned SOHA, wrongly considered the said sale against C-forms. In this regard, appellant has relied on bills raised at full rate of CST.



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5. Arguments heard. File perused.
6. Ld. Counsel for the appellant submits that actually it was not a case of any missing 'C' forms and that the dealer wrongly filed CST 4% sale of Rs. 5,81,175/- under the category of Form C in DVAT Act 16.
7. Copy of the objections in form DVAT 38 A is available on record. It reveals that this very objections was raised by the dealer before the Ld. SOHA.
8. In view of the specific objection raised by the dealer, learned SOHA should have dealt with the same, but the impugned order dated 22/9/2016 does not reveal that this objection was dealt with.
9. Ld. Counsel for revenue does not dispute that this objection was not discussed by Ld. SOHA in the impugned order.
10. In the given situation, we find merit in the contention raised by the Ld. Counsel for the Dealer – appellant. The matter needs to be remanded to Ld. SOHA for decision afresh, particularly in respect of the objection which mentioned under para 15 of DVAT 38.




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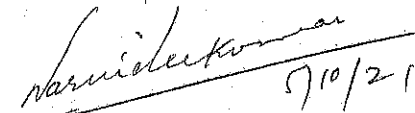
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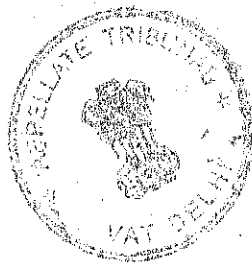
11. As a result the appeal is disposed of, and while setting aside the impugned order dated 22/9/2016 and the matter is remanded to Ld. SOHA for decision afresh, after providing reasonable opportunity to the parties as regards the objection available under para 15 of DVAT 38. Parties to appear before Ld. SOHA on 28.10.2021.
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 : 05/10/2021


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

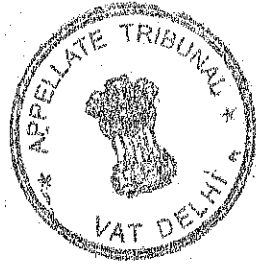


Appeal No. 116/ATVAT/2017/1296-1303

Dated: 6/10/20

Copy to:-

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| (1) VATO (Ward-62) | (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