

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

Appeal No : 746-748/ATVAT/2009

Date of Judgment : 07/12/2021

M/s. Bharat Petroleum Corp. Ltd.,
ECE House, 28-A,
Kasturba Gandhi Marg,
New Delhi.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. A.K. Bhardwaj.
Counsel representing the Revenue : Sh. C.M. Sharma.

JUDGMENT

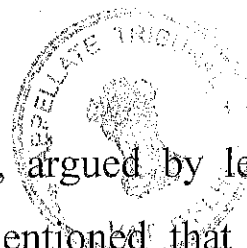
1. By way of present three appeals, appellant has challenged common order dated 13/10/200, passed by learned First Appellate Authority, whereby three First appeals filed by the appellant – dealer there came to be dismissed. Those appeals were against the assessment orders dated 31/3/2004, 31/3/2005 & 31/3/2006 which pertain to assessment year 2002-03, 2003-04 and 2004-05 respectively.
2. Arguments heard. File perused.

Narinder Kumar
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3. Vide order dated 31/3/2004, while making assessment for the year 2002-2003, Assessing Authority directed the dealer – appellant to pay tax @ 20% and 12% while rejecting two ST (35.1) forms i.e. form No. 01AB249647 and 01AB249648. The ground of rejection of the two ST forms, as per the assessment order, is that on their verification it transpired that the same were issued to M/s. Jagannath Dudadhar, for the year 2001-02 but the said dealer used the same for the tax period 2002-03, which, according to the Assessing Authority, is not permissible under the law. Accordingly, the dealer was directed to deposit a sum of Rs. 10,06,96,233/-.
4. Feelings^{an} aggrieved by the rejection of the two ST forms, the dealer filed the first mentioned appeal No. 746 u/s 43 of Delhi Sales Tax Act (DST).
5. It may be mentioned here that so far as other two appeals No. 747 and 748 are concerned, no submission has been put forth by learned counsel for the appellant to press the same. As a result, appeals No. 747 & 748 are hereby dismissed as not pressed.
6. As regards, the only appeal No. 746, argued by learned counsel for the parties, it may be mentioned that while dealing with the assessment order pertaining to the tax



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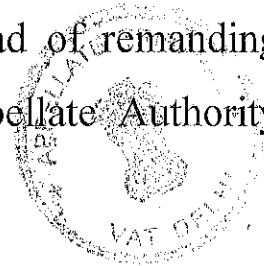
period 2002-03, in para 4 of the impugned order, learned First Appellate Authority observed in the manner as –

“I have heard the contentions of the dealer and also gone through the records of the case. It has been seen that for the year 2002-03 the appellant had submitted statutory forms. However, out of these, statutory forms given to the appellant by the purchasing dealer i.e. M/s. Jagannath Dudadhar were rejected on the grounds that these were issued by the department for the year 2001-02, but the purchasing dealer used them for the year 2002-03. For the remaining years i.e. 2003-04 and 2004-05, the appellant has not submitted statutory forms from the said purchasing dealer”.

7. In view of the above observations, learned First Appellate Authority dismissed the appeal pertaining to the tax period year 2002-2003.
8. Learned counsel for the appellant has argued that no provision under DST Act or Rules framed thereunder, prescribes the validity period of the forms per se and that the forms, once issued per se have validity in terms of the Rules, and as such the Revenue has wrongly rejected the two ST Forms. In support of this contention, learned counsel for the appellant has placed reliance on decision in

DCW Ltd. v. The Commissioner of Trade and Taxes,
Delhi, ST/APPL.46/2014, by our own Hon'ble High Court
on 30/11/2016.

9. It may be mentioned here that while disposing of appeal for the tax period 2002-2003, learned first Appellate Authority was required to record reasons^for affirming the assessment order dated 31/3/2004. However, from para – 4 of the impugned order, as reproduced above, we find that learned First Appellate Authority has not recorded any reason of its own, so as to uphold the assessment order and also to reject the two ST forms. What stands recorded in the said paragraphs is narration of facts that the statutory forms for the year 2002-03 were rejected by the Assessing Authority on the ground that the same had not issued by the Department for the year 2001-02. Learned First Appellate Authority did not record his satisfaction, while upholding of the rejection of the two ST forms.
10. In the given circumstances, when learned counsel for the dealer – appellant has raised a legal point as regards the validity period of ST forms, we proceed to dispose of the appeal in accordance with law, instead of remanding the matter back to the learned First Appellate Authority for decision a-fresh on this point.



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11. As noticed above, present appeal pertains to the tax period 2002-03 and the assessment was made on 3/3/2004, whereas the impugned order was passed by the First Appellate Authority on 13/10/2009. Undisputedly, decision in DCW Ltd. case (supra) is of 30/11/2016 but the said decision on the legal point i.e. as regard the validity of statutory forms i.e. ST forms duly applies to the present case.
12. In DCW Ltd. case (supra), the question of law was “Did the Appellate Tribunal fall into error in holding that the ST-I forms used by the assessee were invalid and therefore, could not be the basis of any benefit?”

While deciding the said question of law, Hon'ble High Court observed that forms once issued per se have validity in terms of the rules.

13. Herein, the two ST forms appeared to have been initially issued for the year 2001-02 and the same were admittedly used by the purchasing dealer in the year 2002-03. In DCW Ltd.'s case (supra), the form was issued in August, 1994, and the Revenue had affixed stamp on it to denote its validity for the year 1994-95. Hon'ble High Court clearly observed that it had absolutely no authority or warranted for the Revenue to stamp on it with the stamp of “1994-95”, to

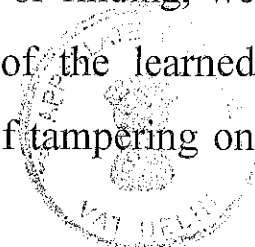
denote its validity, as in that case relevant circular was issued on 23/6/1995 whereby it was provided that all the statutory forms issued would be stamped for the particular year for which the transaction pertains. As regards circulars, Hon'ble High Court placed reliance on a decision in Bengal Iron Corporation v. Commercial Tax Officer (1993) 90 STC 47 (SC), wherein it was observed by the Hon'ble Apex Court as under –

“So far as clarifications/ circulars issued by the Central Government and / or State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the courts. It is true that those clarifications and circulars were communicated to the concerned dealers but even so nothing prevents the State from recovering the tax, if in truth such tax was leviable according to law.”

14. Said decision in Bengal Iron Corporation case (supra) was followed in Commissioner of Income Tax, UP v. Indira Industries (2001) 122 STC 100.
15. In view of the decision by the Hon'ble High Court in DCW Ltd.'s case (supra) that statutory forms once issued per se have validity, we find that the validity of the two statutory forms in the present matter, was not only for the year 2001-

02 and as such the Assessing Authority fell in error in rejecting the two ST forms, which was utilized by the purchasing dealer in the year 2002-03, and thereby in levying tax on the selling dealer – appellant herein, particularly when there is nothing on record to suggest that any action was initiated by the Revenue against the purchasing dealer.

16. Learned counsel for the Revenue has submitted that actually this is a case of tempering by the purchasing dealer, with the two ST forms, as the purchasing dealer inserted the tax period 2002-03 in these two forms, and as such the Assessing Authority rightly rejected these two forms and levied tax.
17. Learned counsel for the appellant – dealer has rightly submitted that in the assessment order, the Assessing Authority nowhere observed that it was a case of tampering with the two ST Forms, so far as the years mentioned therein, are concerned. Had it been a case of tampering, Assessing Authority would have rejected the same by specifically recording such an observation in the said order. In absence of any such specific observation or finding, we do not find any merit in the contention of the learned counsel for the Revenue that it was a case of tampering on the part of the purchasing dealer.



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18. In DCW Ltd.'s case (supra), cuttings /interpolations in the ST forms were brought to the notice of the Hon'ble High Court. In this regard, Hon'ble High Court observed that undisputedly, on the face of the form, there were over-writing / correction, but the question of interpolation at the behest or with the involvement of the purchasing dealer did not arise, in view of the fact that the goods sold which were reflected, were the goods which the selling dealer was authorized to transact.
19. Herein, it is not the case of the Revenue that the selling dealer did not indulge in sale of the goods, for which he was authorized to transact. What to say of any inquiry, as to who interpolated with the ST forms, as regards the year 2001-02 written thereon, there is not even a whisper in the assessment order that it was a case of interpolation.
20. In the given facts and circumstances and applying the decision in DCW Ltd.'s case (supra) and the decision of Hon'ble Apex Court in Bengal Iron Corporation case (supra), the impugned order, upholding the rejection of the two ST forms, deserves to be set aside.
21. No other point has been argued by the learned counsel for the appellant in the appeal NO. 746. As a result, appeal No. 746, which pertains to the tax period 2002-03 and rejection of two ST forms is hereby allowed *only to extent of rejection of ST forms* and the impugned order

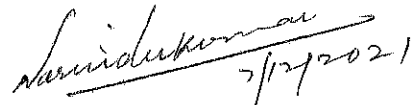
passed by learned First Appellate Authority upholding rejection of two ST forms, utilized by the purchasing dealer for the year 2002-03, is hereby set-aside. Consequently the demand of tax pertaining to the two ST Forms raised by the Assessing Authority vide assessment order dated 31/3/2004 is hereby set aside.

22. Files 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 : 07/12/2021


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



Appeal No. 746-748/ATVAT/2009/1600-07

Dated: 10/12/21

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| (1) VATO (Ward- 28) | (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