

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

App. No. 230 & 269/ATVAT/21
In Appeal No. 115-117/ATVAT/2019
Date of Order: 23/12/2021

M/s. Kundan Rice Mills Ltd.
D-16 & 17, Central Market,
Prashant Vihar,
New Delhi.

..... Applicant

V

Commissioner of Trade & Taxes, Delhi.

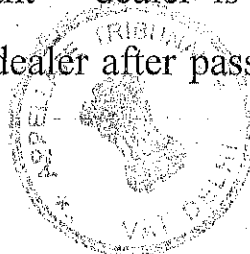
.....Respondent

Counsel representing the Appellant : Sh. Vineet Bhatia
Counsel representing the Revenue : Sh. S.B. Jain.

ORDER

1. The above mentioned two applications have been filed by the dealer – applicant on 12/10/2021 and 2/12/2021 respectively u/s 76(5)(c) of DVAT Act with Rule 20 of Delhi Value Added Tax (Appellate Tribunal) Regulation, 2005 for adducing additional evidence. The additional evidence consists of C-forms and F-forms.
2. The ground put forth by the applicant – dealer is that these statutory forms have been received by the dealer after passing of the

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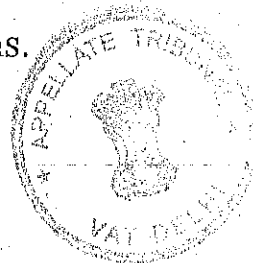


impugned order passed by learned OHA and that non furnishing of the said form before the Assessing Authority and OHA was neither intentional nor deliberate.

3. Learner counsel for the appellant has referred to the aforesaid ground and submitted that the applications be allowed, as the statutory forms have been subsequently received and the dealer – applicant was making efforts to secure the same from the dealers.

4. Learned counsel for the Revenue has submitted that as per copies of whats app messages submitted by the applicant with the second application, efforts appeared to have been made by the dealer to collect the forms from the dealers, w.e.f. 10/8/2021 i.e. even after filing of these appeals, and that there being no material on record to suggest regarding any steps taken by the dealer prior thereto secure the statutory forms, the dealer be burdened with costs before these statutory forms are taken on record.

Learned counsel for the applicant does not dispute that the correspondence by the dealer applicant annexed to the second application is w.e.f. 10/8/2021 and that to by way of whats app messages. Learned counsel submits that actually the dealer – applicant has been regularly contacting the other dealer on phone for submission of the remaining statutory forms.



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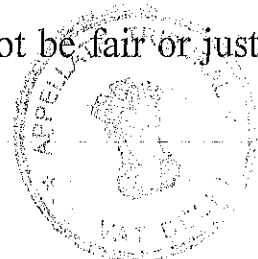
However, there is no material to suggest as to the steps taken by the dealer – applicant prior to 10/8/2021 so as to secure the concerned statutory forms from the other dealers for the purpose of their production before the Assessing Authority and then before the learned OHA.

The applications have been filed during pendency of the three appeals which pertain to quarter 1st, 2nd & 3rd of the year 2015.

5. Keeping in view that from the material placed on record by the dealer-applicant, it appears that there is nothing to suggest as to the efforts made by the dealer applicant prior to 10/8/2021.

On the point of statutory forms, in the case of **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485, 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.....”



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6. In the given facts and circumstances, the applications are allowed but subject to cost of Rs. 10,000/- to be deposited with the Revenue under the appropriate head. However, it is made clear that it shall be within the jurisdiction of the Revenue Authority to verify all these statutory forms which are allowed to be taken on record, *in case of such an eventuality.* ✓

7. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority.

Announced in open Court.

Date : 23/12/2021



Narinder Kumar
23/12/21
(Narinder Kumar)
Member (J)

Misc. App - 9308269/ATVAT/21/
in Appeal No. 115-117/ATVAT/19/1696-1703

Dated: 24/12/21

Copy to:-

- | | |
|---|----------------|
| (1) VATO (Ward-63) | (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