

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

Appeal No.-245/ATVAT/17

Date of Judgment:

6th April, 2022.

M/s TCNS Clothing Co. P. Ltd.
Unit No. 112F/F, Rectangle 1 D-4,
Saket, District Centre
New Delhi-110017.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

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

JUDGMENT

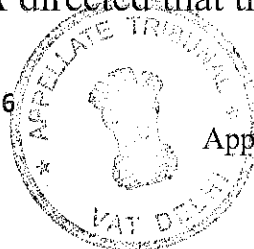
1. Present appeal pertains to tax period Annual 2012-13. On 29-03-2017 Learned Assessing Authority-VATO (ward-206), vide notice of default assessment of tax and interest issued under CST Act, raised demand of Rs. 2,58,63,098/- towards additional tax and interest, on account of non-production of some statutory forms i.e. C-forms, F-forms and H-forms.

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2. Feeling dissatisfied with the impugned assessment, the dealer-assessee filed objections before learned SOHA u/s 74 of DVAT Act.
3. On 04-10-2017, learned SOHA allowed certain exemptions to the dealer-objector on production of some statutory forms, and, at the same time upheld demand as regards the remaining statutory forms not produced even during hearing on objections.
4. Feeling aggrieved by the impugned order passed by Learned SOHA, dealer has come up in appeal.
5. Arguments heard. File perused.
6. It may be mentioned here that during the pendency of the file, the dealer-appellant has been allowed to place on record 2 F-forms, stated to have been subsequently received by the dealer, and which could not be produced earlier, before the Assessing Authority and Learned SOHA.
7. Learned counsel for the appellant has contended that disposal of the objection by learned OHA cannot be said to be a valid, as in the impugned order, learned OHA directed that the forms produced



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by the dealer – objector before him would be sent to the concerned ward for office record, and specified that the order was being passed consequence upon issuance of DVAT-40 for disposal of objections.

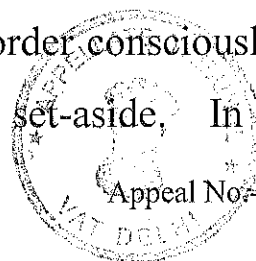
On the other hand, learned counsel for the Revenue has rightly submitted that since some statutory forms were produced by the dealer – objector before learned SOHA, while passing the impugned order, learned SOHA was required to issue directions so that appropriate action was taken by the learned Assessing Authority for implementation of the said order. So, from such direction, it cannot be said that the objections were yet to be disposed of. *That impugned order is invalid.* ✓

8. Learned counsel for the dealer – appellant referred to order passed in form DVAT 40 and then to another passed in form DVAT-24, to contend that it remains unexplained as to where was the necessity to pass two orders on the same day, when the objections were to be disposed of only in the form DVAT-40.

Learned counsel further contended that while passing order in form DVAT-24, learned SOHA clearly observed that he was reviewing the assessment order dated 29/3/2017, but he had no such power to review the order, and since it was an order consciously passed by learned SOHA, same deserves to be set-aside. In this regard,

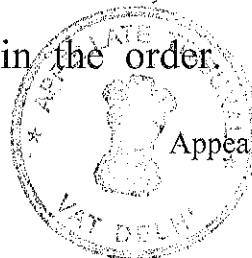
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learned counsel has also referred to provisions of section 74(7) of DVAT Act.

9. Section 74(7) of DVAT Act provides that while disposing of the objections, learned OHA is empowered, is required to either accept the exemption in whole or in part or refuse the objection or remainder of the objection.
10. As noticed above, in this regard Learned OHA disposed of the objections while allowing exemption to the dealer as regards the statutory forms produced before him, and accordingly partly allowed the objections, and then issued directions for taking of appropriate action for implementation of the said order, so as to allow exemption from tax, as regard the said statutory forms produced there. *once again we held that-* In this way, learned OHA did not commit any illegality.
11. As regards passing of two orders i.e. one in DVAT -40 and the other in DVAT-24, it is true that only one order is required to be passed, and here two orders have been passed by learned OHA, but this fact does not attach any illegality to the otherwise valid order passed in DVAT-40.
12. As regards, the expression that learned OHA was reviewing the assessment order, as observed in DVAT-40, suffice it to say that this is an error which has crept in the order. This sentence



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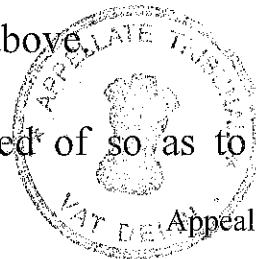
pertaining to review of the order was required to be deleted from the format, before the same was signed and issued, the reason being that learned OHA had not passed any assessment order. When there was no previous order passed by learned SOHA, how can it be said that he was reviewing any assessment order. Rather, learned SOHA was to dispose of the objections and he disposed of the same on 4/10/2017.

13. As regards the two statutory forms produced before this Appellate Tribunal, 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 our own Hon'ble High Court , 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.....”

14. In the light of the judgment of decision in M/s Kirloskar Electric Company Ltd., appellant herein deserves another opportunity to submit statutory forms, referred to above.

Accordingly, this appeal is disposed* of so as to allow another



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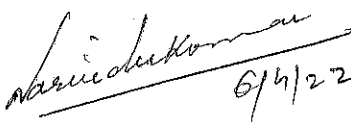
opportunity to the appellant to present before the learned Assessing Authority, statutory forms, copies whereof have been filed before this Tribunal and exhibited as Ex.C1 & C2. The Assessing Authority shall subject these forms to verification (including ruling out of any possibility of duplicacy) and also consider, sufficient cause, if any, for non filing of the said statutory forms, now filed before this Tribunal, 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 28/4/2022.

15. 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 : 6/4/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



Appeal No. 245/71 VAT/17/3272-79

Dated: 11/4/22

Copy to:-

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| (1) VATO (Ward-206) | (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. | |




REGISTRAR