

Appeal Nos. 147-148/ATVAT/2017

Date of Judgment : 8/4/2022

M/s. RCI Industries & Technologies Ltd.,  
B-97 All Heavens Building,  
Wazirpur Indl. Area,  
New Delhi-110052.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi ..... Respondent

Counsel representing the Appellant : Sh. A.K. Babbar.

Counsel representing the Appellant : Sh. M.L. Garg.

### JUDGMENT

1. This common judgment is to dispose of both the above captioned appeals as common question of law and fact is involved.
2. These two appeals have been filed against orders dated 30/6/2017 passed by Ld. Objection Hearing Authority (OHA).
3. Vide these orders, learned OHA has imposed tax and interest for the F-forms not furnished by the dealer. The said forms were of the value of Rs. 2,68,54,160/- and Rs. 33,14,000/- and pertained to tax period for the months of April 2011 and June, 2011 respectively.

4. The appellant is a dealer registered with the Department of Trade & Taxes holding Tin No. 07100159012. Two separate notices of default assessment of tax and interest u/s 9(2) of the CST Act in respect of April, 2011 and June, 2011 were issued by the AVATO ward on 29/3/2016. The assessment was made for missing C-forms on the basis of returns filed by the appellant.
5. Learned counsel for the appellant has contended that the impugned orders dated 30/6/2017 passed by learned OHA raising demand as regards F-forms are without jurisdiction, as no such assessment was framed by learned Assessing Authority. Ld. Counsel explains that learned Assessing authority had raised demand only on the ground of non furnishing of C-forms.
6. The question is as to whether learned SOHA exceeded his jurisdiction in raising demand in respect of F-forms not produced before learned Assessing Authority and also during objections.
7. Learned counsel for the Revenue has submitted that as per assessment order, Form-9 was not filed. He further submits that learned counsel representing the dealer – objector submitted before learned OHA, as regards the tax period April, 2011 that the dealer had lost one F-form amounting to Rs. 2,67,54,160/- and that the same could not be produced

before learned OHA. Further submission made by learned counsel for the objector before learned OHA was that the objector was making efforts to procure duplicate F-form in place of original. Learned counsel for Revenue submits that in this situation, learned OHA was justified in levying tax as per valuation of the missing F-form, with interest.

**Tax Period April, 2011.**

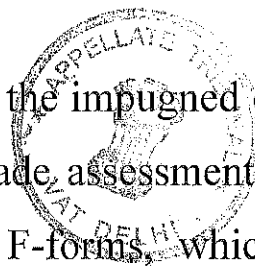
8. It is true that in the impugned order dated 30/6/2017, relating to tax period April, 2011, the submission of learned counsel of the objector regarding loss of one F-form and inability of the dealer to produce the same before learned OHA and further about efforts being made by the objector to secure duplicate F-form, stands recorded.
9. The fact remains that Assessing Authority had not made any assessment in respect of F-form or in respect of stock transfer. In this situation, learned OHA could not make assessment as regards F-form, which was stated to have been lost and was not produced before learned OHA. Learned OHA could remand the matter to learned Assessing Authority as regards F-form. However, learned OHA did not pass any order for remand of the matter.
10. This is not a case where any assessment was earlier made by learned OHA in respect of F-forms, so as to say that learned OHA exercised powers of review u/s 74 B(5) of DVAT

Act.

11. This is also not a case where any application was filed by the objector before learned OHA, for rectification of any mistake. It is also not a case where learned OHA, of his own motion, proceeded to rectify any mistake in any order passed by him, in respect of any mistake apparent on record.
12. The assessment pertained to tax period April, 2011. Even though Assessing Authority is empowered to make reassessment, but within a period of four years or at the maximum six years (in case of non payment of tax by reason of concealment, omission or failure on the part of dealer/ concerned person, to disclose fully material particulars). Said limitation provided u/s 34, for reassessment, has expired. Therefore, at this stage, even Assessing Authority would not be able to make any reassessment so far as stock transfer/ point of F-form is concerned.

Therefore, this is not a case where this Appellate Tribunal may even remand the matter to the concerned Assessing Authority for further assessment as regards stock transfer/ on the point of F-Form.

13. In view of the above discussion, the impugned order passed by learned OHA whereby he made assessments and levied tax and interest in respect of F-forms, which were not



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furnished, deserves to be set aside.

**Tax Period June, 2011**

14. So far as the assessment pertaining to tax period June, 2011 is concerned, only difference in the two impugned orders, passed by learned OHA is that so far as, no submission was made by learned counsel of the objector before learned OHA that any F-form was to be submitted or had got lost. The fact remains that learned OHA made assessment in respect of F-forms, not produced before learned OHA, even when learned Assessing Authority had not framed any assessment in respect F-form.

For the reasons recorded above in respect of assessment framed relating to tax period April, 2011, the assessment made by learned OHA, in respect of tax period June, 2011 also deserves to be set aside, same having been framed without any jurisdiction.

15. As a result, both the appeals are allowed and the impugned orders passed by learned OHA while framing assessment for the first time in respect of F-form (which were not produced) are hereby set-aside, both the appeals are allowed.

16. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent



Handwritten signature/initials.

Handwritten signature/initials.

to the concerned authority. Another copy be displayed on the concerned website.

17. Announced in open Court.

Date : 8/4/2022.

  
8/4/22

(Rakesh Bali)  
Member (A)

  
8/4/22

(Narinder Kumar)  
Member (J)



Appeal No. 147-148/ATVAT/17/4020-27

Dated: 11/9/22

Copy to:-

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|--|----------------|
| (1) VATO (Ward-66)   | (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