

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

Appeal No. 628 - 629/ATVAT/2008

Date of decision: 05/05/2022

M/s. Puneet Enterprises,  
23 Yashwant Place,  
Chanakyapuri,  
New Delhi.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. M. K. Gandhi.  
Counsel representing the Revenue : Sh. P. Tara.

**JUDGMENT**

1. This judgment is to dispose of appeals No. 628-629 of 2008. The matter pertains to assessment years 1999 – 2000 and 2000 – 2001.

Appellant was registered with Department of Trade & Taxes vide Registration Certificate No. LC/99/124287/0887 and WC/4/442003028/0200. It deals in the business of carpet flooring.

Assessing Authority/ WC-04 issued notice to the dealer in form T-13. Thereupon, counsel of the dealer appeared before learned Assessing Authority and submitted record. Learned



*Narinder Kumar*  
5/5/2022

*[Signature]*  
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Assessing Authority vide assessment order dated 29/3/2002, pertaining to tax period 1999-2000, levied tax @ 4% on gross turnover of Rs. 1 crore, keeping in view that the dealer had opted for composition scheme and the said action was allowed. This assessment was made u/s 16 of Delhi Sales Tax on Works Contract Act, 1999 read with section 23(3) of DST Act, 1975 (here-in-after referred to as DSTWC Act).

### **Tax period 1999-2000**

3. Subsequently, vide fresh assessment order dated 31/12/2001, Sh. S.K. Malhotra, learned Assessing Authority (Ward-99), framed assessments in respect of same tax period i.e. 1999-2000, u/s 23(3) of DST Act, by observing in the manner as :

“The dealer had carried out work contract of Rs.1 crore during the year 1999-00 and as per break-up given to the dealer he had utilised the material purchased on the strength of C-forms to the tune of Rs.67,53,000/-. The other components as given by the dealer are Rs.20 lakhs towards labour charges and Rs.12,47,000/- towards profit, a perusal of copy of work contract order filed by the dealer revealed that he had opted for the composition under the Work Contract Act and thus taxed at the lower rate of 4% under the said Act i.e. the benefit of job charges has already been claimed by the dealer by opting the composition and the double benefits towards the same cannot be allowed here. As such, the entire amount of the work contract receipt is treated as sale and taxed @ 12% with interest. Made ISS which shall be discussed under Central Order. The assessment of the dealer is framed as under:



GTO	3,02,98,878.00
ISS	83,84,551.00
Tax paid/tax free sales	5,65,722.00
Job work	24,41,080.00
Taxable 8%	1,200.00
10%	12,63,616.00
12%	1,76,42,709.00
Tax assessed	22,43,583.00
Tax deposited	10,41,854.00
Tax due	12,01,729.00
Interest	4,32,622.00

Hence the dealer is liable to pay Rs.16,34,351/- for which demand notice is enclosed.”

### **Tax period 2000-2001**

4. In respect of tax period 2000-2001, Assessing Authority (Ward-99) framed assessment on 23/9/2002 u/s 23 (3) of DST Act 1975, by observing in the manner as :

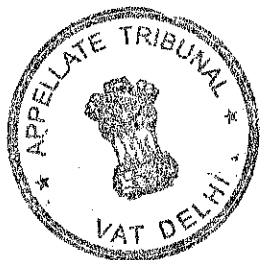
“As per the sales summary, the dealer has claimed exemption on the work contract receipt for a sum of Rs.1,37,32,316/-. The dealer is registered under the Delhi Sales Tax on Work contract Act, 1999 vide No. WC/4/442003028/0200 and the assessment of the dealer under the said Act for the Assessment was completed vide No.2304 dated 3<sup>rd</sup> July 2002. The dealer has utilized the material procured on the strength of 'C' forms received from the office in carrying out



the work contract. As per provision of the work contract, the dealer was not eligible to utilise the material received on the strength of 'C' forms under Central Sales Tax Act, 1956. The dealer did not furnish the details of material actually utilized which was received on 'C' forms. The dealer has already been allowed exemption under the Work Contract Act towards the Job work / labour charges paid etc. and the same could be allowed again. Keeping in view, the value of 'C' forms issued to the dealer during the Assessment year 1999-2000 and 2000-01 and also the other factors i.e., the value taxed during 1999-2000, the dealer used the material of value of approx Rs.65,00,000/- in carrying out the work contract after allowing the profit of 15% of the goods received on work contract, the balance amount of Rs.1,99,41,150/- is taxed @ 12% - interest."

5. Feeling aggrieved by the two assessments subsequently made by learned Assessing Authority, Ward-99, in respect of the two tax period i.e. 1999-2000 and 2000-2001, dealer filed two appeals, by way of 1<sup>st</sup> appeal(s) before learned Addl. Commissioner-I. Learned First Appellate Authority disposed of the appeals by observing in the manner as :

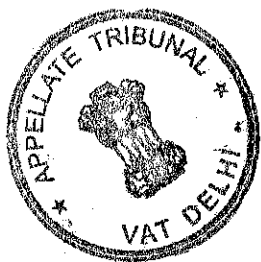
"I have heard the argument and have gone through the records produced before me. The appellant has the separate registration under Work Contract Act and has opted and assessed as per the Composition Scheme for both the years. With the insertion of the proviso to section 6(1) of Delhi Sales Tax on Work Contract Act on 30.4.01 it has been clarified that the dealers opting for the composition scheme could not utilize the material purchased on C-Form. The composition scheme was purely optional scheme and if



a dealer desires to use the material purchased on C-Form, he can opt for the alternative scheme. Under composition scheme the rate of tax was very little and in lieu of this the dealer has to do away with all other benefits like deductions for labour, tax-free material etc. It is implied that the dealer cannot use the material purchased at concessional rate of tax on the basis of C-form. I am of the opinion that merely non-existence of the proviso to Sec. 6(1) of Delhi Sales Tax on Works Contract Act prior to 30.4.01, does not allow a dealer to use the material purchased on C form for work contract taxable under composition scheme.

Perusal of order sheet shows that the dealer has been allowed a reasonable opportunity to produce the facts of the case. Hence the allegation for not allowing the appellant an adequate opportunity for submitting the details of goods purchased on C-Form or for imposing interest is not correct. The material purchased on C-Form has to be utilized as per prescribed manner. The dealer has failed to prove the correct utilization of the material purchased on C-Form and also failed to submit the quantity of material utilized for works contract. In the absence of details of material purchased on C forms and utilized for work contract, the Assessing Authority (W-99) has rightly taxed the work contract receipts in lieu of the value of material purchased on C-Form and utilized for works contract. Hence the orders of Assessing Authority are upheld and ordered accordingly.”

6. Feeling dissatisfied with the common order passed by learned First Appellate Authority, dealer has filed present two appeals.
7. Arguments heard. File perused.



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8. Learned counsel for the dealer – appellant has challenged the impugned assessments on the following two grounds :

- (i) That proviso to section 6(1) of DSTWC Act came to be inserted in the Act w.e.f. 30/4/2001 but the said provision has been wrongly made applicable by learned First Appellate Authority in the case of the dealer with retrospective effect.
- (ii) That since the dealer opted for composite<sup>ion</sup> scheme in respect of works contract, it being a<sup>L</sup> case of assessment under DSTWC Act, learned Assessing Authority erred in making assessment under DST Act.

#### **In the alternative**

That even if it be assumed for the sake of argument, that learned Assessing Authority was authorised to make assessment under DST Act, it being a case of works contract, tax could be levied only on the goods and not in respect of labour/job charges.

In support of his submissions learned counsel has referred to provision of section 2(4) of DST Act 1975 and 2(p) of DSTWC Act, which define “sale” and also to the provision of section 6(1) of DSTWC Act and following decisions :



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**“R.H. Enterprises & Others Vs. Commissioner of Sales Tax,**  
C.W.P. No. 2518 OF 1990 decided by our own Hon’ble High  
Court on 04/12/1990.

**N.J. Devani Builders Pvt. Ltd. and Another Vs. Sales Tax  
Officer & others, [1995] 099 STC 0506**

**Beekay Engineering Corporation Vs. State of Bihar and  
Others, 87 STC 509**

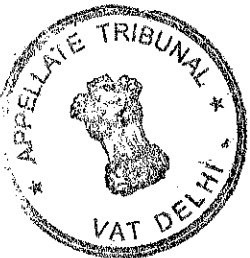
**~~Kalinga Builders (P) Ltd. and Another Vs. Commissioner of  
Commercial Taxes, Orissa and Others, 115 STC 81~~**

**State of Orissa Vs. Sidhartha Engineering Pvt. Ltd., [2009] 23  
VST 230 (Orissa)**

**Ajantha Colour Lab Vs. Additional Sales Tax Officer-III, II  
Circle, Kozhikode and another, 118 STC-37”**

Accordingly, learned counsel for the dealer – appellant has  
urged<sup>u</sup> that the impugned passed by learned First Appellate  
Authority deserves to be set-aside.

9. On the other hand, learned counsel for the Revenue has referred  
to provisions of section 6(1) of DSTWC Act and also to the  
provisions of section 4(2)(a)(v) of DST Act and submitted that  
the assessments framed by learned Assessing Authority under  
DST Act are correct and accordingly the same have rightly been  
upheld by learned First Appellate Authority. Learned counsel  
for the Revenue has submitted that the dealer – appellant having  
not correctly utilised the material purchased on the basis of C-



forms, the assessment has been correctly made by levying tax @ 12%, with interest and that the appeals deserve to be dismissed.

**First ground (in respect of both the appeals and both the assessment orders u/s 23(3) of DST Act)**

10. As noticed above, it is admitted case of the parties that the Dealer-Assessee-Appellant had opted for Composition Scheme and its prayer for availing benefits under the Composition Scheme was allowed.
11. Section 6(1) of DSTWC Act, 1999 provides that the Assessing Authority may, when the dealer so elects, accept during the year, by way of composition, tax @ 4% of the total amount of the contract or the total aggregate value of the work contract received or receivable towards the execution of works contract, in lieu of payment of tax due from the dealer u/s. 5 of the said Act.

Proviso to sub-section (1) of Section 6 DSTWC Act came to be inserted by the Amendment Act, 2001, w.e.f. 30/04/2001. As a result of insertion of this proviso, a dealer, who makes inter-state purchase of the material used for the execution of the works contract on the strength of his Registration Certificate, shall not be entitled to opt for Composition of tax under the said Act.



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Consequently, when the present dealer-appellant had applied for composition of tax u/s. 6(1) of DSTWC Act, it became ineligible for the same w.e.f. 30/04/2001, while making inter-state purchases for utilisation in execution of work contract.

*In M/s. Bajaj Overseas India v. Special Commissioner –I, WP(C) 2763/13* decided by our own Hon'ble High Court on 08/05/2013, cited by learned counsel for the dealer, it was held that the Commissioner could not invoke 3<sup>rd</sup> proviso of Section 74(1) of DVAT Act and thereby require the petitioner to make pre-deposits, by way of condition for entertaining objections, when the returns had been filed much prior to the insertion of the said 3<sup>rd</sup> proviso.

*here,*  
However, *✓* in the impugned order, Learned First Appellate Authority *✓* was of the opinion that existence of the said proviso prior to 30/04/2001 did not allow the dealer-appellant to use the material purchased on C Form for Work Contract taxable under Composition Scheme. While so expressing, Learned *First - Appellate* Assessing Authority *✓* appears to be of the view that the amendment, i.e. insertion of proviso came into force with retrospective effect. Learned Counsel for the Revenue has also not been able to point out any provision of law that the said provision had *✓* retrospective effect.



In view of the above discussion, we find that the amendment inserting proviso to Section 6(1) cannot be said to have come into force with retrospective effect. Consequently, the view taken in the impugned order passed by learned First Appellate Authority in this regard in respect of both the first appeals cannot be sustained and is hereby set aside.

### **Second ground**

**(Tax period 1999-2000)**

12. As regards the second contention that Learned Assessing Authority had no jurisdiction to make assessment under DST Act, 1975 having clearly observed that the dealer had carried out works contract, and having levied tax, as per composition scheme @ 4% on the gross turnover of Rs. 1 crore, for the same tax period 1999-2000.
13. As observed by Learned Assessing Authority in the assessment order dated 31/12/2001, relating to tax period 1999-2000, the dealer had given break-up regarding utilisation of the material purchased on the strength of C Forms, i.e. to the tune of Rs. 67,53,333/-.

However, nowhere in this assessment, Learned Assessing Authority observed that the material purchased on the basis of C

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Forms was not proved to have been correctly utilised, so as to say that it was a case of violation of the terms and conditions of the C Forms.

14. Learned Assessing Authority, vide the said assessment order dated 31/12/2001 observed that the dealer had already availed of the benefits of lower rate of 4%, as per its option for composition, and as such it was not entitled to the benefit of job charges already claimed by the dealer, as it amounted to availing of double benefit.

There is nothing on record to suggest as to what led to the fresh assessment under DST Act on 31/12/2001/<sup>as regards works contract</sup> when assessment had already been framed on 06/11/2001 under DSTWC Act, while allowing the benefits of the composition scheme.

U/s. 23(3) of DST Act, Commissioner is required to serve a notice on the dealer, in case he is not satisfied that the returns furnished in respect of any period are correct and complete.

In this situation, Learned First Appellate Authority was to consider the grounds of satisfaction by the Assessing Authority for levy of tax as regards the works contract and also record findings as to whether learned Assessing Authority was or was not justified under the law to make fresh assessment as regards the works contract part and thereby levy tax, with interest, under



DST Act on the entire amount of the works contract. However, in the impugned order passed by the First Appellate Authority, there appears to be no discussion as regards the assessment order dated 31/12/2001 passed u/s. 23(3) of DST Act, relating to the tax period 1999-2000.

As a result, the matter under challenge by way of appeal No. 628, relating to tax period 1999-2000, deserves to be remanded to learned First Appellate Authority for decision afresh giving reasons and after providing opportunity to the dealer of being heard.

Consequently, the impugned order as regards the assessment relating to tax period 1999-2000, u/s. 23(3) of DST Act is hereby to be set-aside.

**Assessments u/s 23(3) of DST Act, relating to Tax Period 2000-2001.**

15. As noticed above initially on 01/07/2002, assessment was framed by learned Assessing Authority (WC-4), u/s 16 of DSTWC-1999 read with section 23 (3) of DST Act. Said assessment was made after issuance of notice and hearing the dealer and its representative. The Assessing Authority clearly observed therein that there was nothing adverse during the period under assessments, since the dealer had opted for



composition, tax was levied only @ 4% on GTO of Rs. 1,91,55,065/-.

16. However, subsequently on 23/9/2002, learned Assessing Authority of Ward-99 framed assessment u/s 23(3) of DST Act, for the same tax period thereby calling upon the dealer to deposit Rs. 1928447/-.

In the said assessment order dated 23/09/2002, learned Assessing Authority observed that the dealer had utilised the material procured on the strength of C-forms received from the office in carry out the work contract, but as per the provision of the work contract dealer was not eligible to utilise the material received on the strength of C-forms under CST Act 1956 and further that the dealer did not furnish details of the material actually utilized which was received on C-forms.

17. As regards the above said observation that dealer was not eligible to utilise the material received on the strength of C-forms, nowhere it has been specified as to under which provision of law, he was not so eligible.

Learned First Appellate Authority was of the opinion that the material purchased on C-forms had to be utilized as per prescribed manner but it had failed to prove the correct utilization. This shows that the opinion given by learned First Appellate Authority differs from the opinion expressed by the Assessing Authority. In other words, according to the



Assessment Authority, the dealer was not eligible to utilize the material received on the strength of C-forms under CST Act but as per the impugned order dated 16/12/2008, the dealer had failed to prove correct utilization of the material. In the impugned order, it has nowhere been explained as to what was the correct utilization of the material required from the dealer and as to how it had wrongly utilized the material purchased on C-forms.

18. As further observed by learned First Appellate Authority, in the impugned order details of material purchased on C-forms and utilized for work contract, were not provided.

However, as noticed above, vide assessment dated 1/7/2002, learned Assessing Authority/WC-4 had levied tax only @ 4%, keeping in view the provision of the composition scheme opted by the dealer. There is nothing on record to suggest as to for what reasons the said assessment order required fresh consideration for the purpose of reassessment.

19. In view of the above discussion, the impugned order passed by learned First Appellate Authority – Addl. Commissioner-I upholding the assessments made by learned Assessing Authority, Ward-99, in respect of both the tax period i.e. 1999-2000 and 2000-2001 deserve to be set-aside.



## Result

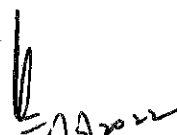
In view of the above findings, appeal No. 629/2008 is allowed and levy of tax and interest in respect of the turnover relating to tax period 2000-2001 and pertaining to works contract covered by composition scheme, is set aside.

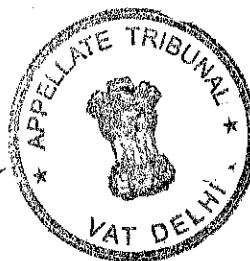
In view of the foregoing discussions and finding appeal No. 628/2008 is disposed of and while setting aside the impugned order passed by the learned First Appellate Authority, matter relating to tax period 1999-2000, is remanded to learned First Appellate Authority for decision afresh, keeping in view the decision as regards insertion of proviso to section 6(1) of DSTWC Act with prospective effect, giving reasons and after providing opportunity to the dealer of being heard. Dealer to appear before learned First Appellate Authority on 19/05/2022.

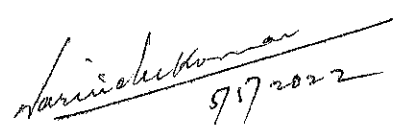
20. Copy of this judgment be placed in file No. 629/2008 as well. Files be consigned to the record room. Copy of the judgment be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 05/05/2022

  
(Rakesh Bali)  
Member (A)



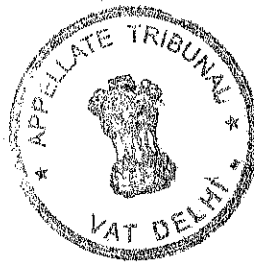
  
(Narinder Kumar)  
Member (J)

Appeal No. 628-629/ATVAT/08/4308-15

Dated: 09/05/22

Copy to:-

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