

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Appeal No. : 398/ATVAT/2022

Date of Judgment: 24/06/2022

M/s. Jai Mata Kota Stones,
70/1/2, Marble Market,
Mangolpur Kalan,
Delhi - 110085.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Simit Aggarwal.
Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. This appeal has been filed challenging order dated 15/03/2022 passed by learned OHA whereby even though dealer has been allowed certain exemptions from payment of tax in respect of the value of two "C" forms pertaining to tax period 1st quarter of 2012, but at the same time the dealer has been directed to pay the balance amount of tax with interest, on account of non-submission of remaining "C" forms of the value mentioned in the assessment order.

2. It may be mentioned here that vide order dated 01/06/2022 passed on application u/s 76(4) of DVAT Act, this appeal was entertained waiving condition of pre-deposit towards the balance disputed demand, for the reasons recorded therein.

3. Arguments heard. File perused.



Narinder Kumar
24/6/22

4. Learned counsel for the appellant has submitted that after the passing of the impugned order by learned OHA, dealer-appellant has received one statutory form for the tax period 1st quarter of 2012.

Learned counsel submits that had the dealer received this statutory form earlier, it would have produced the same before the Assessing Authority or before the learned OHA. Further contention is that in the given situation, matter be remanded to learned Assessing Authority for fresh assessment taking into consideration the statutory form subsequently received by the dealer.

5. Learned counsel for the Revenue has gone through the copy of the statutory form already placed on record, and has no objection to the remand of the matter to learned Assessing Authority for fresh assessment taking into consideration, in accordance with law the statutory form said to have been subsequently received.

6. Copy of statutory form filed by the dealer – appellant before this Appellate Tribunal has been exhibited as Ex. C-1.

7. In the case of **M/s Kirloskar Electric Co. Ltd. vs. 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.....”

8. In the light of the judgment of our own Hon'ble High Court in **M/s Kirloskar Electric Company Ltd.**, appellant herein deserves another opportunity to submit “C” form, referred to above.

9. Accordingly, this appeal is disposed of so as to allow another opportunity to the appellant to present before the Assessing Authority, statutory form, copy whereof has been filed before this Appellate Tribunal. While making assessment afresh, in accordance with law and before allowing the concessional rate of tax to the appellant, the Assessing Authority shall subject this C-form to verification (including ruling out of any possibility of duplicacy) and also consider, sufficient cause, if any, for non-filing of the said C-form, now filed before this Appellate Tribunal. Of course Assessing Authority to provide to the dealer reasonable opportunity of being heard.

10. Appellant is hereby directed to appear before the Assessing Authority on 19/07/2022.

11. File 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: 24/06/2022



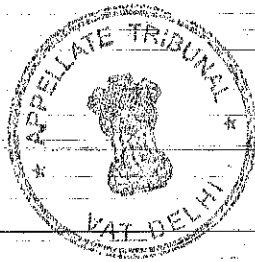
Narinder Kumar
24/6/2022
(Narinder Kumar)
Member (Judicial)

Appeal No. 398/ATVAT/22/4872-79

Dated: 24/06/2022

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