

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

Appeal No- 25/ATVAT/19
Date of decision: 30/6/2022

M/s. T.D. Industries Pvt. Ltd.,
Plot No. 204, 226A, (unit I)
Near Syndicate Propp.
Mundka, Delhi – 110 041.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Kanishk Rana
Counsel representing the Revenue : Sh. M.L.Garg

JUDGMENT

1. Instant appeal has been preferred challenging order dated 16/05/19 passed by Ld. Special Objection Hearing Authority (hereinafter referred as Ld. SOHA) / AVATO Ward - 62.
2. The matter pertains to all the four Quarters of 2016.
3. On 09/11/18, Assessing Authority/AVATO (Ward -62) framed assessment in respect of all the four quarters of 2016, after issuance of notice u/s. 59(2) of Delhi Value Added Tax Act, 2004 (herein after referred as DVAT Act) to the dealer. Assessing Authority took into account communication dated



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18/05/18 received from Excise & Taxation Commissioner & and communication dated 29/05/18 & 28/05/18 & 26/04/18, received from Dy. Excise and Taxation Commissioner (PT), Panipat, Haryana, and found that C forms issued by the State of Haryana, to Cnc Enterprises; Goyal Product India, R K Traders, Kush Traders and Ambika Traders, having Tin number specified in the default assessment, had been cancelled; that the dealer-appellant had not made any sale to M/s. Kush Traders, M/s. R.K. International and M/s. CNC Enterprise and that the dealer submitted statutory forms in respect of the alleged sales to the said dealers; that dealer also failed to produce original statutory forms and export details in support of export claims; and further that the dealer failed to produce other documents for verification.

Accordingly, learned Assessing Authority disallowed concessional rate of taxes on the concerned transactions, for the period 2016-17 and raised demand of additional tax and interest.

4. Feeling aggrieved by the above demand/ assessment, the dealer filed objections before Ld. SOHA.

Vide order dated 16/05/19, Ld. SOHA disposed of objections while granting exemption from tax on production of 68 'C' Forms, but at the same time, as regards missing C Forms, upheld the tax ^{& interest} levied by the Assessing Authority. The

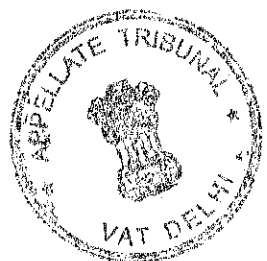


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assessment framed in respect of the other turnover, which find mentioned in the order dated 09/11/18, ^{was} ~~were~~ also upheld.

6. Arguments heard. File perused.
7. The case of the dealer- appellant is that the Assessing Authority framed ex-parte assessment. As regards the Impugned order passed by Ld. SOHA, it is case of the appellant- dealer that all the statutory forms, which were submitted before Ld. SOHA, were accepted, except the forms which were cancelled by Excise & Taxation Department, Haryana. Other necessary documents i.e. sale-purchase invoices, bank statement, original statutory forms, export details and audited balance sheet etc. are also stated to have been produced before Ld. SOHA.
8. As regards, cancellation of C-forms issued to the dealers, which find mentioned in the impugned assessment, learned counsel for the applicant has submitted that the same having been subsequently cancelled, the dealer – appellant could not be burdened with the liability of the tax and interest.

In support of his submission, learned counsel for the applicant has referred to decision in **State of Haryana v. Inalsa Limited and Another**, 2010 SCC online P&H 13071, decided by Hon'ble High Court of Punjab & Haryana on 1/9/2010; and **Jain Manufacturing (India) Pvt. Ltd. v.**



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Commissioner, WP(C 1358/2016 decided by our own Hon'ble High Court on 01/06/2016.

9. On the other hand, learned counsel for the Revenue has submitted that the dealer, despite notice u/s 59(2) of DVAT Act, by the Assessing Authority, failed to appear or produce before the Assessing Authority sale purchase invoices, bank statement, original statutory forms, export details and audited balance sheet etc.
10. As regards cancellation of C-forms by the other States, as mentioned above, learned counsel for the Revenue has submitted that as per copy of letter No. 844 dated 18/5/2018 available in his record, The C-forms pertaining to Kush Traders were cancelled by the concerned authority on 18/5/2018. As regards, cancellation of C-forms got issued by other four dealers named in the default assessment, learned counsel for the Revenue submits that onus to prove the date of cancellation of the said C-forms was on the dealer – assessee but the dealer has not filed any such document with this appeal. He submits that copies of the record pertaining to other three letters dated 29/5/2018, 28/5/2018 & 26/4/2018 from Dy. Excise and Taxation Commissioner (PT), Panipat, Haryana and available in his brief are not complete.
11. As regards contention raised by learned counsel for the appellant that no notice was served upon the dealer by the



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Assessing Authority, it may be mentioned that the Assessing Authority specifically mentioned in the assessment order regarding issuance of notice u/s 59(2) of DVAT Act to the dealer – assessee. He further mentioned in the default assessment that neither anyone on behalf of the dealer appeared nor produced any record before him. There is nothing on record to suggest that any such objection was raised by the dealer before learned SOHA regarding non-service of notice u/s 59(2) of DVAT Act. In the course of arguments, learned counsel for the appellant candidly admits that no such objection was raised by the dealer in the objections filed before learned SOHA. In the given situation, there is no merit in the contention raised by the learned counsel for the appellant that neither any notice u/s 59(2) of DVAT Act was issued by the Assessing Authority to the dealer nor any opportunity was afforded to the dealer for hearing.

12. In the appeal, dealer has specifically alleged that all the requisite documents were submitted before learned SOHA. As per record, in the objections, the dealer – objector had specifically sought permission to produce documents in respect of export sales and also in respect of ^{the}rejected C-forms. In the impugned order, there is no ^{here}mention if any document except 68 C-forms was submitted before learned SOHA. Therefore, it cannot be said if any such document



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was submitted by the objector before learned SOHA with the objections or during hearing on objections.

13. As regards cancellation of C-forms, as communicated to Department of Trade & Taxes, Delhi, by the Excise Department, of Haryana, in view of decisions cited by learned counsel for the applicant, it was to be determined by learned OHA as to on which date and as to what reason led to the cancellation of C-forms, and as to whether the dealer – objector could be made liable to pay tax on the ground of cancellation of C-form, in case the cancellation was subsequent event, in addition to deficiencies pointed out by learned Assessing Authority.

However, learned counsel for the parties admits^h that in this case learned SOHA did not adjudicate these facts. Learned counsel for the Revenue submits that learned SOHA has limited jurisdiction to adjudicate while taking into consideration statutory forms if produced with the objections or during objections. This submission is not being disputed by learned counsel for the appellant. In such a situation, when the aforesaid questions of facts were involved, having dealt with the exemptions on account of production of 68 C-forms, learned SOHA should have asked the dealer – objector to file objections before concerned OHA or got the matter transferred to the concerned OHA through proper



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channel. However, no such step was taken by learned SOHA. The fact remains that the disputed questions referred to above remained undetermined.

In this situation, as rightly submitted by learned counsel for the parties, the matter needs to be remanded for decision afresh on the above said disputed questions, except on the point of exemptions allowed vide impugned order dated 16/5/2019 in view of 68 C-forms produced before learned SOHA.

14. In the given facts and circumstances, this appeal is disposed of and while setting aside the impugned order dated 16/5/2019 passed by learned SOHA as regards assessment relating to C-forms of the value of Rs. 1,07,98,53,000/-, the matter is remanded for decision afresh on the point as to on which date the cancellation of C-forms to the above said five dealers took place; as to what reason led to the cancellation of C-forms, and in case the cancellation of any C-form is found to be a subsequent event, as to whether the dealer – objector could be made liable to pay tax on the ground of cancellation of C-form, in view of the well settled law. Learned OHA also to consider other deficiencies pointed out by Assessing Authority while disposing of the objections.

15. On receipt of the copy of this order, learned SOHA to place the matter before learned Commissioner for assignment of



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objection to the concerned OHA for decision afresh in accordance with law. Dealer – appellant to appear before learned SOHA on 14/7/2022. Of course, concerned OHA to provide reasonable opportunity of hearing^{to} the dealer.

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

Announced in open Court.

Date : 30/6/2022



Narinder Kumar
30/6/2022
(Narinder Kumar)
Member (J)

Appeal No. 25/ATVAT/19/4896-03

Dated: 30/6/22

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

