

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

Appeal No. 390/ATVAT/22
Date of Judgment: 01/07/2022

M/s DRS Fitking Pvt. Ltd.
173, DDA Cycle Market,
Jhandewalan Extn.
Delhi-110055.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.Respondent

Counsel representing the Appellant : Sh. SP. Gogia
Counsel representing the Revenue : Sh. N.K. Gulati

JUDGMENT

1. Present appeal came to be presented on 18-04-2022, challenging order dated 23-02-2022 passed by learned Objection Hearing Authority as regards assessment framed on 27-03-2018 relating to tax period Annual-2013.
2. While framing assessment Learned Assessing Authority directed the dealer-assessee-appellant company to deposit additional tax to the tune of Rs. 7,74,297/- with interest of Rs. 4,54,714/- due to the reason that dealer did not furnish 'C' forms to the tune of Rs. 73,74,205/-.

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Feeling aggrieved by the above assessment, dealer company filed objections u/s 74 of DVAT Act.

3. Learned OHA-VATO (ward-43) vide impugned order dated 23-02-2022 reduced the demand on account of production of 7 'C' forms by the dealer before him. Still feeling aggrieved, the dealer-appellant has come up in appeal.
4. It may be mentioned here that by way of application u/s 76(4) of DVAT Act, prayer was made for entertainment of appeal without calling upon the dealer to pay the amount due by way of interest, the reason being that the dealer-appellant deposited the entire tax in respect of the remaining 'C' forms.

In the given facts and circumstances, appeal was entertained subject to deposit of 15 percent of the disputed demand of interest. Compliance regarding deposit of 15 percent of the amount towards interest has been made.

5. Learned counsel for the dealer – appellant has raised only one ground i.e. Assessing Authority erred in levying interest for non-filing of Statutory Forms by the dealer-appellant, when the dealer – appellant did not even expect at the time of transaction that the purchasing dealer was not going to supply C-forms. As contended by learned counsel for the dealer – appellant, Revenue should be held entitled to interest only from the date of framing of the assessment and not from the

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date of filing of return. In support of his argument, in the written submissions, learned counsel has referred to provisions of section 8(1) and section 9(2)(B) of Central Sales Tax Act (CST) and some extracts from the decisions in **J.K. Synthetics Ltd. v. CTO** (1994) 94 ST 422 (SC); **Fosroc Chemicals (India) Pvt. Ltd. v. State of Karnataka** (2014-VIL-384-KAR) and **Mohindra Enterprises v. CST** (1996-97) 36 DSTC (J-220) (Del Trib.), without providing full text of these decisions.

6. On the other hand, learned counsel for the Revenue has contended that with the enactment of DVAT Act, in the year 2004, provisions as regards grant or levy of interest, in the form of section 42 (1) to (5) have been introduced. As per sub-section (2), when a person is in default in making the payment of any tax, penalty or other amount due under this Act, he shall, in addition to the amount assessed, be liable to pay simple interest on such amount, from the date of such default. Further, it has been submitted that in view of the self assessment made by the dealer and it having failed to furnish statutory forms, when called upon to do so by the Assessing Authority, the impugned assessment has been rightly framed while levying interest from the date of the default i.e. the date of filing of the return and not from the date of making of assessment by the Assessing Officer.

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7. Section 9(2B) came to be inserted in the Act of 1956, vide Finance Act, 2000, retrospectively, much after the decision in M/s J K Synthetic Ltd's case (supra), which is of the year 1994. Present appeal pertains to the tax period i.e. Annual 2013.

In view of provisions of section 9(2B) of the Act, 1956, as regards assessment of interest on the delayed payment of tax, provisions of DVAT Act, 2004 would apply, even if the tax liability arises under the Act of 1956.

Consequently, the provisions for delayed payment of tax, as per general sales tax law of each state, shall apply in relation thereto, and also for assessment and calculation of interest for delayed payment of tax under CST Act, 1956, in such state, as if the tax and the interest payable under this Act were a tax and an interest under such general sales tax law of the State.

8. In view of the above, when provisions of DVAT Act 2004 come into application as regards delayed payment of tax, due date for payment of tax, rate of interest for delayed payment of taxes, under the said provisions, if the tax payable by any dealer under CST Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax.
9. Section 42(2) of DVAT Act, which is attracted in view of the provision of section 9(2B) of the Act 1956, provides that a

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dealer would be liable to pay interest from the date of default in making the payment of due tax. U/s 32(3) of DVAT Act, where the Commissioner has made an assessment under this provision of law, and further tax is assessed as owed, the amount of further tax assessed is due and payable on the same date as the date on which the net tax for the tax period was due. When we refer to provision of section 3(4) of DVAT Act, the dealer is liable to pay net tax within 21 days of the conclusion of the dealer's tax period.

10. Even as per Rule 36(3) of DVAT Rules, 2005, the interest payable u/s 42(2) is to be calculated at the time of making an assessment, and that too for the period "commencing from the date of such default".
11. Therefore, learned counsel for the Revenue has rightly pointed that decision in **J.K. Synthetic Mills Ltd.'s case (supra)** pertained to the period prior to amendment. In this regard, Hon'ble Apex Court made it very clear by making observation therein.
12. During this appeal, no other statutory form has been produced. In the memorandum of appeal it has been simply averred that dealer – appellant has not been able to procure statutory forms from the purchasing dealer. There is no explanation as to why the dealer has not been able to procure said forms from the purchasing dealer. No reasonable



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justification or sufficient cause has been proved by the appellant for non-filing of the remaining statutory forms.

13. Decision in **Fosroc Chemicals (India) Pvt. Ltd.'s** case (supra) pertained to levy of penalty on the selling dealer. It was held that penalty could not be levied on the selling dealer as it was not at fault. However, as regard, levy of tax and interest under Karnataka VAT Act, the said decision is against the dealer.
14. In Mohindra Enterprises's case, as per extract, it was held that interest was not leviable on the ground of fake form furnished by the dealer.
15. As a result, finding no merit in the contentions raised by learned counsel for the appellant, this appeal is hereby dismissed.
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 : 01/07/2022



Narinder Kumar
(Narinder Kumar) 1/7/22
Member (J)

Appeal No. 390/ATVAT/22/4912-19

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