

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

Appeal No.-391/ATVAT/22

Date of Judgment: 5/7/2022

M/s Acutech Mfg. Co. Pvt. Ltd.
28/28, Libaspur,
Delhi-110042.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

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

Counsel representing the Revenue : Sh. S.B. Jain

JUDGMENT

1. Present appeal has been filed challenging the order dated 17-02-22 passed by learned SOHA, whereby he called upon the dealer-objector to pay a sum of Rs. 9,48,864/- by way of additional tax and interest. The demand pertains to tax period- 1st quarter and 2nd quarter of 2016.
2. The dealer filed objections before learned SOHA, feeling aggrieved by the demand of Rs. 1,17,84,515/- raised by the Assessing Authority on 27/3/2021.

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3. Said demand was raised due to the reason that the dealer did not furnish certain statutory forms and there was also absence of any clarification regarding mismatch in the value of sale, as shown in Form-9 and DVAT-16. Learned Assessing Authority observed that in the given situation he had no option but to treat the sale as inter-state sale claimed against statutory forms on applicable rate of tax under Central Sales Tax Act.
4. When the matter came up before learned SOHA by way of objections u/s 74 of DVAT Act, the dealer-appellant furnish 4 'C' forms and 18 'F' forms. On account of production of these statutory forms, learned SOHA allowed exemption to the dealer-objector, but at the same time upheld the demand as regards remaining statutory 'C' and 'F' forms which were not produced even during objections.
5. It may be mentioned here that before filing this appeal, the dealer-appellant deposited amount towards the entire disputed demand, though under protest, the reason being that the bank accounts of the dealer-appellant were attached by the department.
6. Arguments heard. File perused.
7. Learned counsel for the assessee-appellant has opened arguments by submitting that the Assessing Authority



raised demand of additional tax and interest under CST Act on account of non-furnishing of statutory forms i.e. 'F' forms, but this is a case where 'F' forms were not required to be furnished, the transactions being ones where goods were sent by the dealer-appellant in the course of business, to job workers situated outside Delhi, only for job works. The contention is that production of F-forms is not required in case of transfer of goods other than by way of sale and where the transfer of goods is from one principal to another principal.

8. Learned counsel for the assessee-appellant has referred to provisions of sections 6 and then to section 6A of CST Act- 1956 and submitted that whereas section 6 is the charging section as regards tax on interstate sales, section 6A is an exception to section 6.

As regards application of section 6A of the Act, learned counsel for the appellant has submitted that same would come into application where the dealer claims that the movement of goods from one state to another is occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale.

The contention further is that where a dealer does not claim exemption on the ground of movement of goods to any



other place of his business or to his agent or principal, and rather the goods are sent by the dealer to the other party i.e. job workers only for job work, such a dealer is not required to furnish F-forms in view of the provision of and for the purposes of section 6A of the Act.

In support of his submission, learned counsel for the appellant has referred to the following decisions:

M/s A.C.P.L. Jewels Private Ltd. Vs. Union of India and Others [Civil Misc. Petition (Tax) No. 1190 of 2008]; decided by Hon'ble Allahabad High Court on 01/02/2009.

M/s Ambica Steels Ltd. vs State of U.P. & Ors. [Civil Appeal No. 4970 of 2008]; **M/s Subh Udyog vs State of U.P. & Others** [Civil Appeal No. 4976 of 2008]; and **M/s Quantum Engg. & Fabricators Pvt. Ltd. vs State of U.P. & Others** [SLP (C) No. 6478 of 2008] decided by Hon'ble Supreme Court on 31/03/2009.

9. On the other hand, learned counsel for the Revenue has submitted that the Assessing Authority has rightly framed the assessment firstly even if this is a case where the dealer claimed to have transferred goods outside Delhi for job work, the dealer was required to furnish 'F' forms because the dealer transferred the same not by reason of sale, and secondly, because it failed to furnish 'F' forms.



Learned counsel for the Revenue has further submitted that decisions cited by learned counsel for the appellant do not help the dealer.

10. For ready reference, provisions of section 6A(1) of CST Act are reproduced. Same read as under:-

“ 6A Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale. —

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods² [and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.]”



11. On perusal of section 6 and 6A of CST Act, there is no doubt that section 6A is applicable in case of transfer of goods claimed "otherwise than by way of sale" whereas section 6 applies in case of interstate sale of goods other than electrical energy.
12. It is true that as per sub-section (1) of section 6A of CST Act for the purpose of furnishing of declaration form in proof of movement of goods, it must be a case of transfer of goods by the dealer to any other place of his business, and this is not a case alleging transfer of goods to any other place of business.

It is also true that this is not a case of transfer of goods by the dealer-appellant to its principal.

As regards transfer of goods to an agent, as provided u/s 6A, learned counsel for the dealer has submitted that the goods having been transferred to the job workers for job work, it cannot be said to be a case of transfer to an agent.

On the other hand, learned counsel for the Revenue has submitted that the transfer of goods by a dealer to the job workers for job work tantamount to transfer to an agent and

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as such the provision of section 6A(1) are applicable to the facts of this case.

Word 'Agent' has not been defined anywhere in CST Act or DVAT Act. Section 182 of Indian Contract Act defines 'agent' as a person employed to do any act for another, or to represent another in dealings with third person.

In view of provisions of section 6A(1), dealer having transferred goods to the job workers, the burden of proof that the movement of such goods occasioned by reason of transfer is on the dealer. To discharge this burden of proof, as provided under sub-section (1) of Section 6A, dealer may furnish a declaration (Form 'F') signed by the dealer engaged for the job work in respect of such goods. Further to discharge this burden of proof, dealer is required to produce evidence of dispatch of such goods.

13. In M/s Ambica Steels Ltd.'s case (supra), before Hon'ble Apex Court, it was submitted on behalf of the assessee that the assessee will file Form "F" with the authority concerned for the purposes of reassessment proceedings.

When Hon'ble Apex Court was informed that certain States, within whose jurisdiction the transferee was



allocated, was/were not issuing "F" Forms, the Hon'ble Court observed that in such an eventuality, it would be open to the Assessing Officer to complete re-assessment proceedings on its own merits, after examining the transaction between the parties, keeping in mind the circumstance that assessee is not in a position to obtain "F" Form, for no fault of his.

14. Here, none of the remaining "F" Forms has been produced on the basis of which the demand in dispute has been raised and upheld. There is nothing on record to suggest that the "F" Forms were not issued by the concerned Tax Department of the other States to the other dealers from whom the job-work is said to have been got done. Therefore, decision in M/s Ambica Steels Ltd.'s case, M/s Subh Udyog's case and M/s Quantum Engg. & Fabricators Pvt. Ltd.'s case do not come to the aid of the dealer.
15. So far as decisions in M/s A.C.P.L. Jewels Pvt. Ltd.'s case (supra), M/s L.T.S. International's case (supra), and M/s Pioneer Tooling Services's case (supra) are concerned, as rightly pointed out by Learned Counsel for the Revenue in those cases, Hon'ble High Court issued the directions that in all the cases in which transactions of job-work and goods-retained were involved, the assessment orders only



to the extent that the tax was imposed on such transactions for want of Form "F" of the Central Sales Tax were set aside.

Hon'ble High Court specified in M/s A.C.P.L. Jewels Pvt. Ltd.'s case that Hon'ble Court was confining the judgment only to the cases of job-work and goods-retained.

In **Ashok Leland Ltd. vs. State Of Tamil Nadu and Anr.**, (2004) 134 STC 473 (SC), Hon'ble Apex Court observed that Section 6A of the Act although provides for a burden of proof, the same has to be read in the context of Section 6 of the said Act. Section 6 provides for liability to pay tax on inter-State sales. Any transaction which does not fall within the definition of 'sale' would not be exigible to tax, the burden whereof would evidently be on the assessee. We have noticed hereinbefore that whereas prior to the amendment in Sub-section (1) of Section 6A the dealer had an option of filing a declaration in Form-F; after such amendment, he does not have such option, insofar as in terms of the amended provision, if the dealer fails and/or neglects to file such a declaration, the transaction would be deemed to be an inter-State sale.

Further, Hon'ble Apex Court observed that:



“104. The particulars required to be furnished in Form F clearly manifest that the proof required is as to whether the goods were factually transferred to the assessee himself or his branch office or his agent and not to any third party. Any other enquiry is beyond the realm of the assessing authority.”

“112. The purpose of verification of the declaration made in Form F, therefore, is as to whether the branch office acted merely as a conduit or the transaction took place independent to the agreement to sell entered into by and between the buyer and the registered office or the office of the company situated outside the State.”

16. In view of the provisions of sub-section (1) of Section 6A of CST Act which is a deemed charging section ever since the amendment in the year 2002, in the event of failure on the part of the dealer to furnish “F” Forms, movement of such goods shall be deemed to have been occasioned as a result of sale. Therefore, it can safely be said that requirement of “F” Forms in respect of transfer of goods for job works to States outside Delhi is mandatory.

In this regard, reference may be made to decision in the case of Ambica Steel Ltd. vs. State of U.P., (2008) 12 VST 216 (All), where it was held that furnishing of Form F is mandatory for claiming exemption by a dealer for stock transfer from one State to another for the purposes



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otherwise than sale. It is immaterial whether the person to whom goods are sent for or received is a job worker or a bailee. The requirement to file Form F is applicable in case of goods returned also.

17. In **Jhonson Matthey Chemicals India Pvt. Ltd. v. State of Maharashtra** (WP NO. 7400/15) decided by Hon'ble High Court of Mumbai on 16/02/2016, Hon'ble High Court was of the firm view that furnishing and scrutiny/verification of the declaration in that form is a requirement in law and if that is fulfilled, the burden on the dealer is taken to be discharged; if that declaration is not furnished, then, the consequences follow; that the goods might have been despatched for job work and not as and by way of sale, but that is the plea or case of the dealer. If that is the case and the burden is on the dealer to prove it, and for this the dealer has to obtain the declaration.
18. In the given facts and circumstances of this case, it is held that in view of specific requirement of furnishing of "F" Form, in such a case, along with the evidence of dispatch of such goods, it cannot be said that production of only documentary evidence (without F-form) regarding movement of goods outside Delhi for job-work, would be sufficient to allow exemption from payment of tax.

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Herein, the dealer itself claimed in the returns that it was a case where declaration in Form "F" shall be furnished, but it failed to do so despite opportunity, in respect of the remaining transactions/turnover as finds mention in the impugned order passed by learned OHA.

The dealer-appellant itself claimed in the returns that the transactions pertained to movement of goods occasioned by reason of transfer of such goods outside Delhi i.e. otherwise than by way of sale. That is why, Assessing Authority called upon the dealer to produce 'F' forms as per the requirement of section 6A(1). Law permitted the Assessing Authority to do so.

No copy of the agreement between the dealer-appellant and the other dealer has been placed on record. In absence thereof, the nature of the transaction as the one for job-work cannot be ascertained.

In case the transaction was not covered by section 6A(1), the dealer should have revised the return and set the record straight. Admittedly, no revised return was furnished in this regard.



Admittedly, the dealer-appellant failed to produce before learned Assessing Authority and before learned SOHA remaining declarations, Form 'F'. Therefore, no fault can be found with the impugned order or in the impugned assessments.

19. As a result of the above discussion, there is no merit in this appeal. Same is hereby dismissed.
20. File be consigned to 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: 5/7/2022.



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5/7/2022
(Narinder Kumar)
Member (J)

Appeal No. 391/ATVAT/22/4953-61

Dated: 05/07/22

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

