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

Appeal Nos.: 425-427/ATVAT/22
Date of Judgment : 12/10/2022

M/s Unique Agro Products,
BC- 322, Phase-II,
Mangolpuri, Delhi-110083.

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi. .....Respondent

CA representing the Appellant : Sh. Raja Ram Gupta.
Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. Appellant, a sole proprietorship concern, has preferred the above captioned three appeals through its proprietor Sh. C. P. Gupta.

2. The three appeals, being disposed of vide this common judgment, pertain to the tax period 1st, 3rd and 4th quarters of 2016-17 respectively.

3. Vide three separate notices of default assessment of tax and interest issued under Central Sales Tax Act (hereinafter referred to as CST Act), on 22/03/2021, learned Assessing Authority directed the appellant-assessee to deposit the following amounts:

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(a) a sum of Rs. 9,97,882/-, i.e. Rs. 5,82,530/- towards tax and Rs. 4,15,352/- towards interest as regards 1st quarter of 2016-17;

(b) Rs. 5,73,100/-, i.e. Rs. 3,49,919/- towards tax and Rs. 2,23,181/- towards interest as regards 3rd quarter of 2016-17 and

(c) Rs.8,92,088/-, i.e. Rs. 5,57,269/- towards tax and Rs. 3,34,819/- towards interest as regards 4th quarter of 2016-17.

4. The Assessing Authority framed default assessment due to the reason that the dealer failed to furnish 'C' forms and 'F' forms, even though it produced certain statutory forms there and succeeded in claiming exemption.

5. Feeling aggrieved by the above said three default assessments, dealer filed objections u/s 76(4) of DVAT Act. Learned SOHA disposed of the objections vide order dated 18/08/2021, while allowing further exemptions in view of furnishing of more 'C' forms and 'F' forms by the assessee-objector, and upholding the levy of tax and interest as regards remaining statutory forms, which the objector failed to produce.

6. Hence, these appeals.

7. Arguments heard. File perused.

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8. It may be mentioned here that vide order dated 22/09/2022, the appeals were entertained without calling upon the dealer to deposit any amount by way of pre-deposit.

9. On behalf of the appellant, it has been submitted that after the disposal of the objections by learned OHA, dealer-appellant received one 'C' form each, concerning 1st, 3rd and 4th quarter of 2016-17.

10. Further, it has been submitted that learned OHA did not take into consideration one 'F' form, without any justification, and as such the impugned assessments and the impugned orders deserve to be set aside, and the matter remanded to learned Assessing Authority for assessment, in accordance with law.

11. Copy of one 'C' form in respect of each of the three quarters i.e. 1st, 3rd and 4th quarter of 2016-17, has been submitted by the appellant with respective appeal. The submission on behalf of the appellant is that these "C" Forms were received by the appellant after disposal of the objections u/s 74 of DVAT Act.

12. Said copies of 'C' forms have been exhibited as Ex. C-1, to C-3 respectively in each appeal.

13. Learned CA has also referred to copy of "F" Form, submitted with the appeal filed in respect of 4th Quarter and urged that this "F" Form be also taken into consideration, the same having not been considered by Learned SOHA, even though

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produced during objection proceedings. Copy of this "F" Form has been exhibited as Ex. C-2 (in Appeal No. 427/22).

14. In the case of **M/s Kirloskar Electric Co. Ltd. v. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485, decided by our own Hon'ble High Court, 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....."

15. 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 statutory forms, referred to above.

Accordingly, these appeals are disposed of so as to allow another opportunity to the appellant to present before the learned Assessing Authority, statutory forms, copies whereof have been filed before this Tribunal. The Assessing Authority shall subject these forms to verification (including ruling out of any possibility of duplicacy) and also consider, sufficient cause, if any, for non filing of the said statutory forms, filed before this Tribunal, before allowing the concessional rate of tax to the appellant, while making

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assessment afresh, in accordance with law.

16. Appellant is hereby directed to appear before Learned Assessing Authority on 26/10/2022.

17. File be consigned to record room. Copy of the judgment be placed in connected files and be also supplied to both the parties as per rules. One copy of order with copies of Ex. C-1 & C-2 be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date: 12/10/2022

Narinder Kumar
12/10/22

(Narinder Kumar)
Member (Judicial)

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