

Appeal No. : 213/ATVAT/2017

Date of Decision : 17/11/2022

M/s. Vidyut Metalics Ltd.,
Malhotra House, 4th floor,
Opp. GPO Fort,
Mumbai-400001.

And

WZ/12, 4 Sona Bazar,
Delhi – 15.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Shivank Singh Panta.

Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. Initially dealer-appellant company preferred appeal on 26/09/2017 challenging order dated 25/07/2017 passed by learned Objection Hearing Authority (hereinafter referred to as OHA) – Special Commissioner IV, feeling aggrieved by the rejection of the objections in respect of notices of default assessment of tax and interest issued on 10/12/2014 by VATO (Ward 43)- Assessing Authority.
2. The matter pertains to the year 2008-09.
3. Vide notices of default assessments of tax and interest, while framing assessment under Central Sales Tax Act (CST Act),

Narinder Kumar
17/11/2022

Assessing Authority called upon the dealer-assessee to pay a sum of Rs. 13,02,01,643/- towards tax and interest.

Notice of default assessment of tax and interest was issued by Assessing Authority by observing that notice was issued for reconciliation of 2008-09 after audit and permission from the Commissioner, VAT as the case was not assessed earlier and further that none appeared before him on behalf of the dealer-assessee. In absence of any supporting relevant record, the Assessing Authority levied tax @12.5% with interest, as regards sales stated to be against 'F' forms.

4. The dealer filed objections against the default assessment. Learned OHA rejected the objections while observing in the manner as:-

"I have heard the arguments of the objector, perused the entire record available/made available before me. In view of given facts and circumstances of the case since there is no provision under DVAT Act, 2004 r/w DVAT Rules, 2005 to implead any third person as necessary party for the purpose of acquiring statutory forms from such person on the request of the objector, therefore, the application filed under Section 151 of CPC r/w Order 1 Rule 6 of CPC is not tenable and hence liable to be rejected. With regard to this application reference is also made to Central Sales Tax, 1956, wherein under section 6A(1) r/w Rule 12(5) of CST Registration Rules, 1957, the Central Government has also made it mandatory to furnish original statutory forms (in this case Form 'F') therefore in the absence of statutory forms 'F', no relief whatsoever can be considered in favour of the dealer. The objections filed by the dealer are hereby rejected."

5. Against rejection of the objections, dealer-objector filed appeal before this Appellate Tribunal. Vide judgment dated

17/11

21/09/2021, this Appellate Tribunal dismissed the appeal by observing in the manner as:

“The only argument put forth by learned counsel for the appellant is that the dealer – appellant had furnished original F-forms with DVAT – 51, but the same were lost by department and that the dealer has collected copies of DVAT – 51 vide which the original F-forms were submitted to the department; that dealer – applicant has submitted copies of DVAT-51 with copies of duplicate F-forms in respect of the four quarters of the year 2008-09 before this Tribunal, after the dealer has been successful in collecting the same, and as such the dealer – appellant be allowed exemption in this regard while disposing of this appeal.

It may be mentioned here that at the time of filing of the appeal, dealer – appellant did not file any DVAT-51. It was only during the pendency of the appeal that on application filed by the dealer, 4 DVAT-51 pertaining to all the four quarters of the year 2008-09 were submitted before the Tribunal and the same were taken on record.

As is available from the photo copies of these 4 DVAT -51 forms, the dealer submitted to the department original F-forms, specified therein on 28/12/2011.

We have come across circular dated 5/11/2009 issued by Jt. Commissioner, (Law & Justice) which is to the effect that in exceptional cases where statutory forms claimed to have been deposited by the dealers along with DVAT-51 forms, were lost or were not traceable, then credit in respect of such statutory forms may be allowed subject to the fulfilment of the following conditions:-

- i) Furnishing of the receipt in respect of submission of DVAT-51 form along with statutory forms for a particular quarter;
- ii) Duplicate parts of the statutory forms; and
- iii) Furnishing of indemnity bond by the dealer affirming therein that if any loss is caused to the government revenue, he shall indemnify the same to the government of the said loss.

While referring to this circular dated 5/11/2009, learned counsel for Revenue has pointed out that one of the

conditions for grant of credit in respect of lost / not traceable statutory forms is that duplicate parts of the statutory forms are also to be furnished, but here the dealer – appellant has not filed original duplicate parts of the F-forms and rather, it has filed only photo copies of duplicate parts of the said forms, and as such the dealer – appellant is not entitled to any credit in respect thereof.

Learned counsel for the dealer – appellant admits that only photo copies of duplicate parts of F-forms have been filed before this Tribunal. Learned counsel further admits that original duplicate parts of F-forms are not available with the dealer.

Since the original duplicate parts of F-forms have neither been furnished nor the same are available with the dealer, for want of compliance with this mandatory requirement as per circular dated 5/11/2019 issued by Jt. Commissioner (L&J), we find that dealer – appellant is not entitled to claim credit in respect of the said F-forms, only photo copies of duplicate parts whereof have been filed.

In view of the above discussion, the appeal deserves to be dismissed. Same is hereby dismissed.”

6. Feeling aggrieved by the judgment passed by this Appellate Tribunal, the dealer preferred VAT Appeal no. 17/22.
7. While disposing of VAT Appeal No. 17/22, vide judgment dated 06/10/2022, Hon'ble High Court has remitted the matter to this Appellate Tribunal for re-examination of the issue i.e. whether or not the matter needs further examination by SOHA, given the fact that the original duplicate parts of 'F' forms are available.
8. That is how, the appeal stands revived to its original number.

17/11

9. On 03/11/2022, Associate Counsel for the appellant sought adjournment to place before this Appellate Tribunal, original duplicate of 'F' forms so as to enable disposal of this appeal.
10. Today, on behalf of the appellant, copies of duplicate parts of 67 'F' Forms have been placed on record and their copies have been supplied to learned Counsel for the Revenue.
11. In the given situation, it has been submitted by learned Counsel for the appellant that the matter be referred to learned OHA for appropriate fresh orders as regards the assessment, taking into consideration the duplicate parts of 67 'F' Forms.
Learned Counsel for the Revenue has also put forth the same submission for fresh decision by learned OHA in view of Circular No. 749 dated 05/11/2019.
12. In view of Circular dated 05/11/2019 issued by the Joint Commissioner (Law & Justice), and all the facts and circumstances, as rightly submitted the matter needs to be remanded to concerned Objection Hearing Authority for decision afresh taking into consideration original duplicate parts of 67 'F' Forms, which are stated to be available with the dealer.
13. Accordingly, this appeal is disposed of so as to allow another opportunity to the appellant to present before the learned OHA, statutory forms, copies whereof have been filed before this Appellate Tribunal. Learned OHA shall subject these forms to verification (including ruling out of any possibility of duplicacy) before allowing the concessional rate of tax to the appellant,

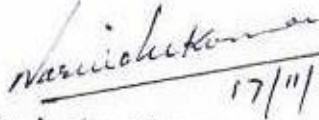
17/11

while deciding afresh, in accordance with law.

14. Appellant is hereby directed to appear before learned OHA on 19/12/2022.
15. 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 : 17/11/2022


17/11/2022
(Narinder Kumar)
Member (Judicial)