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

Appeal No.- 385-386/ATVAT/14
Date of Judgment: 28/11/2022

M/s Calcom Electronics Ltd.
B-23/1, Wazirpur Industrial Area,
Delhi-52.

.........Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.......Respondent

Counsel representing the Appellant	:	Sh.S. Sangal
Counsel representing the Revenue	:	Sh. P. Tara

JUDGMENT

1. Both these appeals came to be presented on 08/12/2014 by the dealer challenging order dated 30/09/2014 passed by Learned Special Commissioner –II (First Appellate Authority).
2. It may be mentioned here that earlier, vide order dated 15/02/2001, Learned First Appellate Authority had disposed of the appeal filed u/s. 43(5) of erstwhile Delhi Sales Tax Act, 1975 (hereinafter referred to as DST Act) and thereby directed the dealer-appellant to deposit by 22/02/2010, a sum of Rs. 3,50,000/- under the said Act and Rs. 25,000/- under Centre Sales Tax Act, 1956 (hereinafter referred to as CST Act) as condition precedent to the entertainment of said appeals.

Narinder Kumar
28/11/2022

Since the dealer did not comply with the said order dated 15/02/2001, the first appeals came to be dismissed in limine.

That is how, review application dated 20/11/2012 was filed by the dealer, u/s. 48(6) of DST Act on the ground that the dealer had already complied with the said order by depositing requisite amount. It finds mentioned in the Review Order dated 30/09/2014 passed by Learned First Appellate Authority that on verification it was found that the dealer had complied with the order dated 15/02/2001. Accordingly, the appeal before Learned First Appellate Authority were restored.

3. The appeals were preferred before Learned First Appellate Authority challenging notice of tax and interest issued by Sales Tax Officer -Learned Assessing Authority on 29/02/2000. Same pertained to the tax period 1996-97 and were issued under Section 23 of DST Act, 1975 and Section 9 (2) of CST Act, 1956.

   Learned Commissioner, Sales Tax assigned the matter and that is how, assessments were framed.

4. Dealer – appellant deals in manufacturing and sale of electronic components etc. It has several sister concerns.

   The assessments are said to have been made by the Assessing Authority after survey conducted by the officers of Enforcement Branch on 07/03/1997.

   While framing assessment dated 29/02/2000, Learned Assessing Authority found that there was difference in the returns and

28/11

sales summary for the months of June 1996, August 1996 and September 1996.

May 1996

5. Difference was also noticed in the returns and sale summary in respect of the month of May 1996 due to omission of bill to the tune of Rs. 4,70,469/-, which was mentioned only in the sale summary.

September 1996

6. As regards September 1996, Learned Assessing Authority found difference of Rs. 1,03,343/- due to return of goods. But the dealer could not produce any documentary evidence in proof of returns, and as such rejected the claim and added the same to GTO and then subjected it to tax @ 6% (Local).
7. As regards December 1996, January 1997, February 1997 & March 1997, Learned Assessing Authority observed:-

> **December –1996 :-** "Difference is due to wrong posting of amount in export which he has corrected in sale summary. There is difference of Rs. 2,36,680/- due to return of goods but he produced **Debit Note**which is not sufficient to prove the return of goods. No proof like mode of conveyance, its expenses entry in books of accounts and other such like document provided and thus added back in GTO and to be taxed @ 6% (Local)."
>
> **January 1997 :-** "Difference of Rs. 3,09,512/- due to return of goods but no proof in support of such return of goods like mode of transport, its entries in stock register and such like documents provided and then added back in GTO and has then added up in PD Sale."
>
> **February 1997 and March 1997:**
> "Similarly return of goods of Rs. 16012/- in February 1997 and Rs. 192233.21 in March 1997 are not supported by documents except Dr. Note are added back in GTO and taxed @ 6% under Local Act."

28/11

8. Learned Assessing Authority further observed in the two assessments that as per entries in the Sales Tax Account Register, dealer – appellant had subtracted certain amounts, but when called upon to explain, the dealer came up with the plea that these amounts were the amounts of discounts allowed to the dealer. Assessing Authority also observed that no supporting evidence like, name of the dealer, bills, purpose of discount, period of discount and reasons for such discounts and other supporting documents were produced. Accordingly, net sale price was entered in the Sales Tax Account Register and all the subtractions were added to GTO.

The details of the said amount read as under:-

Amount (Local)	Amount (Central)
50943.00	
4952680.00	1861.38
7678456.40	69094.20
	3430.11
	309228.24
	31555.56
	4498.12
	40735.86
	380499.16
	34799.00
1,26,82,079.40	**875701.52**

9. Learned Assessing Authority further observed that the dealer had sold an old vehicle for Rs. 1,00,000/-. This value was also added in GTO and subjected to tax @8%.

10. Dealer also failed to produce before Learned Assessing Authority ST-49 as regards sale value of Rs. 87,52,400/-, i.e. in

28/11

respect of sale to an exporter, and subjected the same to tax @6% (local).

11. Learned Assessing Authority further observed that "H" Forms of Rs. 75,000/- were not filed by the dealer. Accordingly, he levied tax @ 10% (Central) and entered central sale of Rs. 1,03,49,647/-.

It was further observed that no satisfactory explanations for decline in sale was given.

12. As regards stock variation, Learned Assessing Authority observed in the impugned assessment as under:-

> "Officers from the Enforcement Branch visited the dealers premises on 07/03/1997 and found some documents which could not be explained by the dealer to the visiting team and thus surrendered. These documents were confronted to the dealer, he only produced the ledger and regarding other record he stated that record got burnt in the fire which took place on 30/08/1998. He filed a copy of such record from Fire Officer and copy of FIR.
> I have gone through the copy of regn. Certificate of the dealer which shows that co. is regd. At B-23, WazirpurIndl. Area whereas the fire took place at S-19, Okhla Indl. Area which is not added in its regn. Certificate. It reveals that books were lying at the place other than company's authorised place of business so it does not go in favour of the dealer.
>
> From the above, it is clear that dealer's maintenance of record had not been proper and have not been able to satisfy the return of goods and decline in sale and explanation of the surrendered documents neither filed Trading Account as on 07/03/1997 to come to conclusion about the stock variation.
>
> Keeping in view the above discussion, its sale version is rejected and the same is enhanced by 10% of GTO and taxed @6% under Local Act and interest is also charged on this sale."

Accordingly, demand of Rs. 48,09,104/- was raised by Learned Assessing Authority.

APPELLATE TRIBUNAL VAT DELHI

28/11

Assessment for the year 1996-97, under section 9 of CST Act 1975

13. Vide impugned assessment framed under CST Act, demand of Rs. 7,21,506/- has been raised. The assessment can be tabulated as under:

ISS	253690435.00
TTO 4%	242370018.00
TTO 10%	11300417.00
TAX PAYABLE	10825643.00
TAX DEPOSITED	10104137.00
TAX DUE	721506.00

14. As noticed above, while disposing of the first appeal filed against the assessment under DST Act, learned Special Commissioner-First Appellate Authority passed an order of remand so far as levy of tax due to non production of statutory forms "C and H" are concerned, the reason being that the said forms are stated to have been produced for the first time before learned Special Commissioner.

15. When the matter reached First Appellate Authority, Learned Special Commissioner –II, as noticed above, dismissed the first appeals filed as regards assessment under erstwhile DST Act, 1975 but partly allowed the other appeals filed as regards the assessment framed under CST Act,1956, while observing in the manner as :

> "Resultantly, in these facts and circumstances of the case and detailed discussion made above, the appeal of the appellant under the erstwhile DST Act, 1975 is rejected while the one filed by him under the CST

29/11

Act, 1956 is partly accepted to the extent that 148 'C' Forms of M/s. BPL Ltd. for Rs. 1,03,67,366/- and 01 'H' Form of M/s. Calcom Vision Ltd. for Rs. 75,000/- would be produced by the appellant before the assessing authority of Ward – 66 and acceptable only after proper verification etc. thereof as per the law.

Therefore, while confirming the assessment order passed by the then assessing authority of Enf./Ward – 66 on 29/02/2000 under the Local Act, the order passed under Central Act is set aside to the extent above and the case under this Act remanded to the assessing authority of Ward -66 with the direction that the latter will allow to the appellant an opportunity to furnish the above 18 'C' forms and 01 'H' forms along with other requisite record before her and then frame and assessment order under this Act alone afresh after scrutinizing properly the forms and verifying the transactions involved in them in depth and detail as per the provisions of the CST Act, 1956 and Rules framed there under. For this purpose, the appellant shall appear before the VATO/Assistant Commissioner of the Ward – 66 on 03-11-2014 and the latter will re-decide and dispose of the matter expeditiously as per law and the directions contained in this order but not latter then within a period of two months thereafter. Moreover, credit/ adjustment of the amounts deposited by the appellant in compliance of the order passed by the Ld. The first appellant authority under section 43(5) of the Act will also be given to him after proper verification thereof from the Ward Scroll."

16. Learned Special Commissioner disposed of the first appeals with following reasons:-

"It is also noted that the appellant was doing the business of TV and Electronic components etc. and had transactions of both purchases and sales of goods with his sister concerns like M/s. Calcom Plastic (P) Ltd., M/s. Calcom Vision Ltd. and M/s. DaishenDenken India (P) Ltd. Simultaneously, the incriminating documents seized by the Enf. Officers from the business premises of the appellant on 07/03/1997 were remained un-explained by him because as per the copy of FIR produced by him before the assessing authority, fire had taken placed on 30/08/1998 and the entire books of accounts etc. were claimed to have gutted whereas a perusal of the impugned assessment order issued under the Local Act clearly suggests that the fire had taken place at a different premises No. S-19, Okhla Industrial Area, New Delhi because as per his registration certificate, the appellant was registered at the address of B-23/1, Wazirpur Industrial Area, Delhi not at S-19, Okhla Industrial Area, New Delhi where the fire had taken place.

Therefore, it was for this reason that considering the seized documents, the then assessing authority had rejected the plea of decline in sale and consequently, the books of account of the appellant and enhanced the returned turn over by 10% and then taxed the same with interest etc. under the Local Act.

28/11

Further, since the objector has also not come up with any explanation with necessary evidence in respect of the seized documents and the decline in the sale and compared to that in the previous year, the undersigned finds no substance in his arguments and thus, the appeals of the appellant on this account are rejected.

As regards the claim that he has received the necessary declarations i.e. 08 'ST – 35' forms amounting to Rs. 87,52,400/- from M/s. Calcom Vision Ltd. under the erstwhile DST Act, 18 'C' Forms for Rs. 1,03,67,366/- from M/s. BPL Limited and again 01 'H' Form for Rs.75,000/- again from M/s. Calcom Vision Ltd under the Central Act after the assessment orders, the appellant has not only filed a detailed list together with photocopies of these forms but also, has produced the originals thereof for the perusal of the undersigned.

The original forms have been returned to the appellant after perusal while the photocopies thereof are available on the case file. Moreover, it is noted that in term of the assessment order passed by the then STO / Assessing Authority of the Enf. Branch under the Act , the declaration not furnished by the appellant for a sum of Rs. 87,52,400/- were the form 'ST – 49' while the appellant says that the forms which he could not furnished for this amount were, in fact, the "ST-35" and not "ST-49" because the assessing authority has clearly mentioned them as "ST-49" in his order. However the appellant has not submitted any corroborative evidence about the sale of Rs. 87,52,400/- being to its sister concern M/s. Calcom Vision Ltd. as made against form 'ST – 35' and not against Form 'ST -49'. Therefore, the claim of the appellant against form 'ST -35' is found to be not acceptable.

However, in view of the fact that the appellant is since having 18 C Forms for Rs. 1,03,67,366/- for M/s. BPL Ltd. and 01-'H' form for Rs.75,000/- from M/s. Calcom Vision Ltd. under the Central Act, in follow up of the law laid down by the Hon'ble higher Courts and the Tribunals on this score, the undersigned is of the view that ends of the justice would stand sufficiently met if the forms available with the appellant under the Central Act as above are taken on record and admitted to the claims against them after proper verification of the same and in-depth and detailed inquest into the transactions covered by them, as per the provisions of law. Accordingly, the appeal of the appellant under the Central Act succeeds and is found acceptable.

In so far as the contention of the appellant that no claims of the 'goods returned' and the 'discount amount' received by the appellant, were allowed to him are concerned, it is found that for the value of 'goods returned', the appellant had furnished no GRs evidencing movement of goods back from the outstation located purchasing parties and also the heavy amounts of 'discounts' amounting to Rs. 1,26,82,079/- under the Local Act and of Rs. 8,75,701/- under the Central Act resulting in consequent reduction of the sales worth these amounts had gone unsubstantiated by the appellant before the authority below.

28/11

> Moreover, here at this stage too, the appellant has not come up with any substantial evidence and record in respect of both these claims. Accordingly, the undersigned finds himself unable to deviate from and interfere with the impugned assessment orders passed by the STO of the Enf. Branch on 29/02/2000 and hence, the appeals of the appellant on this score found to be acceptable."

17. Hence, these appeals.

18. Arguments heard. File perused.

Return of goods

19. On this point, case of the dealer-appellant is that learned STO separately added the value of goods which were returned back, in the taxable turnover and levied tax @ 6%.

Non-production of books of accounts

20. On behalf of the appellant, it is submitted that the appellant company produced books of accounts at the very inception of assessment proceedings, through its representative, and that is how, learned STO raised demand observing that there were certain variations in the returns when compared with the books of accounts, and levied tax @ 6% on the value of the goods returned. Further, it has been alleged that had the books not been produced, learned STO could not frame such assessment.

At the same time, case of the appellant is that on 30/08/1998, its books of accounts got destroyed in an incident of fire which took place at S-19, Okhla Industrial Area, New Delhi. As further submitted on behalf of the appellant, learned STO erred in

28/11

disbelieving its claim regarding incident of fire simply on the ground that the said place i.e S-19, Okhla Industrial Area, New Delhi, did not find mention in the certificate of its registration, but this observation is against record as the said place finds mention in the certificate of registration used by the appellant as a warehouse w.e.f. 12/01/1989, where the books of accounts pertaining to year 1996-97 were kept. Further, as per claim of the appellant, S-19, Okhla Industrial Area, New Delhi, was a place of business as per its definition available in Rule 2(j) of DST Rule, 1975.

21. Rule 2(j) defines "place of business" as a place where any dealer sells any goods or keeps his accounts of purchases and sales of goods. So, it has been contended that Revenue Authorities and learned First Appellate Authority unnecessarily drew an adverse inference against the appellant on the point of non production of books, even in the face of fire reports dated by 16/02/2015.

22. As noticed above, learned Assessing Authority disallowed claim of the appellant to the tune of Rs. 1,26,82,079/- due to the reason that assessee had failed to produce documents like GR, mode of conveyance, expense entries, entries in the stock register and other documents in proof of return of goods.

As regards the sum of Rs. 1,26,82,079/-, case of the appellant is that goods of the following value(s) were received back in the following months:-

226/11

Month	Value
September,1996	Rs. 1,03,343/-
February,1997	Rs. 16,012/-
March,1997	Rs. 1,92,233.21/-
January, 1997	Rs. 30,951/-
Total	Rs. 2,33,680/-

To challenge the assessment on this point, once again appellant has referred to the incident of fire in which its record got destroyed, and tried to explain non-production thereof.

At the same time, it has been submitted that appellant has been able to trace out the debit notes issued by its sister concern - M/s Calcom Plastics (P) Ltd., regarding return of goods as well as bills issued by the transport corporation, and record pertaining to details of GRs vide which the goods were received.

23. Learned counsel for the appellant has submitted that the requisite record could not be produced because of incident of fire which took place at S-19, Okhla Industrial Area. The contention is that learned Assessing Authority rejected the claim of dealer as regards incident of fire on the ground that S-19, Okhla Industrial Area was not added in the registration certificate, but this observation is against record.

In this regard, learned counsel has drawn attention to the certificate of registration to point out that even though the place of business as shown in the certificate of registration was B-23, Wazirpur Industrial Area, S-19, Okhla Industrial Area also finds mention in the said certificate as additional place of business.

28/11

Accordingly, it has been urged that the assessment framed as regards return of goods, for want of production of record by the dealer, deserves to be set aside.

On the other hand, Learned counsel for the Revenue has contended that as per Section 38 of Sales Tax Act, dealer is required to keep its books of accounts at the place of business. Learned counsel has further contended that at no point of time, dealer-appellant informed the Department regarding shifting of its record/ account books from B-23, Wazirpur Industrial Area to S-19, Okhla Industrial Area.

Further, it has been pointed out that in the copy of the complaint sent by the dealer to the Police regarding incident of the fire there is no specific mention of destruction of any account books or record, and as such the assessment has been rightly upheld by the learned First Appellate Authority.

24. On going through the complaint given to the police regarding incident of fire, it is found that there is no specific mention as to which of the account books or record got destroyed in fire. Therefore, notwithstanding the fact as to where the books of accounts were actually to be kept by the dealer, there is merit in the contention raised by learned counsel for the Revenue that the version of the dealer as regards destruction of record of account books in fire does not help the dealer-appellant as regards its claim of return of goods.

It is significant to note that the dealer-assessee did not produce any document either before the Assessing Authority or before the Learned First Appellate Authority, to prove that such and such record/books of accounts was shifted from the registered office to the additional place of business i.e S-19 and that it was shifted on such and such date. No such record has been produced even before this Appellate Tribunal. Dealer-appellant has not explained non production of record in support of his claim regarding shifting of the books of accounts. This adversely affects the case of the dealer-appellant.

25. To challenge levy of tax to the tune of Rs. 87,52,400/-, on account of non-production of statutory forms ST-49, it has been contended on behalf of the appellant that nowhere in the notice of default assessment, it has been expressed that the appellant ought to have filed forms ST-49 and not ST-35 which were worth Rs. 87,52,400/- and collected from its sister concern M/s Calcom Vision Ltd.

Further, it has been contented that learned Assessing Authority has not given any reason for not considering ST-35, and that the assessment framed in this regard deserved to be set aside particularly when copies of all the sale vouchers were submitted before the learned Assessing Authority.

26. As regards claim of the dealer against form ST-35, as represented before learned First Appellate Authority, no corroborative evidence was filed before Revenue Authorities,

29/11

learned First Appellate Authority and has also not been filed before this Appellate Tribunal. Therefore, the claim of the dealer has been rightly rejected.

27. On 24/11/2022 in the course of arguments on Appeal No. 386/14, adjournment was sought by learned Counsel for the appellant to file a paper book. However, on the next day i.e. 25/11/2022, learned Counsel for the appellant submitted copies of 18 "C" Forms and 1 "H" Form, which were earlier not presented before the Assessing Authority.

28. It may be mentioned here that vide order dated 30/09/2014, learned First Appellate Authority has already remanded the matter to learned Assessing Authority of Ward-66 with the direction that he would allow the appellant an opportunity to furnish 18 "C" Forms and 1 "H" Form with requisite record, and then fresh assessment order shall be framed, after scrutinizing properly the forms and verifying the transaction in depth as per the provisions of CST Act and the rules framed thereunder.

When the matter has already been remanded in respect of the above mentioned 18 "C" Forms and 1 "H" Form, and no remaining "C" or "H" Form is stated to have been received by the dealer-appellant, there is no illegality or irregularity in the impugned order passed by learned First Appellate Authority in respect of the said statutory forms and in respect of the missing forms.

28/11

29. As regard return of goods, for the reasons already recorded above, there is no merit in the claim of the dealer-appellant so far as assessments under CST Act is concerned as well.

30. No other argument has been advanced by learned Counsel for the appellant in these appeals pertaining to assessments under DST & CST Act.

31. In view of the above findings, both the appeals No.385 and 386 of 2014 are disposed of accordingly.

32. File be consigned to the record room. One copy of the judgment be placed in the connected Appeal No. 386 of 2014. 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: 28/11/2022.

Narinder Kumar 28/11/2022

(Narinder Kumar)
Member (Judicial)

APPELLATE TRIBUNAL VAT DELHI