

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

Appeal No. 451/ATVAT/2022
Date of Judgement: 24/01/2023

M/s Pfizer Ltd.
C-40, 1st Floor, Okhla Indl. Area, Phase-II
Dayal Compound, New Delhi-110020

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

C.A representing the Appellant : Sh. I.P. Pasricha & Deepak Suneja
Counsel representing the Revenue : Sh. S.B. Jain

JUDGMENT

1. On 05/12/2022, the above captioned appeal came to be presented challenging order dated 04/04/2022, passed by Learned Special Objection Hearing Authority (hereinafter referred to as SOHA). Vide impugned order, learned SOHA disposed of objections filed by the dealer-assessee against assessment framed on 03/11/2021.
2. The default assessment pertains to the tax period – 1st Quarter of the year 2017-18, vide which demand of tax and interest was raised because of non-submission of statutory forms of the value of Rs. 3,36,74,899/-.

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3. Before learned SOHA, dealer-assessee produced 10 'F' Forms but failed to produce the remaining statutory forms. That is how, vide impugned order, learned SOHA granted exemptions to the dealer-assessee in respect of the value of 10 'F' Forms, but upheld the demand of tax and interest as regards the remaining statutory forms.
4. Present appeal has been filed on the ground that subsequent to the disposal of the objections by learned SOHA, certain 'F' Forms have been received by the dealer-assessee and that same be allowed to be taken into consideration for grant of exemption to the dealer-assessee as regards tax and interest.
5. As per claim of the dealer, 'F' Forms of the value of Rs. 49,73,139/- have not yet been received by it from the other party.
6. Vide order dated 22/12/2022, application u/s 76(4) of DVAT Act filed by the dealer was disposed of calling upon the dealer to deposit Rs. 3 lakh towards the disputed demand, for the purpose of entertainment of this appeal. Said order has been complied with by the dealer.
7. Arguments heard. File perused.
8. Case of the dealer-appellant as *ground no. 3 in* per/grounds of appeal is that in the concerned return, stock transfer of the value of Rs. 53,75,322/- was wrongly shown, for which actually no 'F' form was required to be submitted by the dealer.

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Admittedly, in the default assessment, there is no mention regarding any claim of wrong reporting in the return on the point of stock transfer of the value of Rs. 53,75,322/-.

9. In the course of arguments, learned CA for the appellant submits that he does not press ground No. 3 as regards value of Inter-state stock transfer, the reason being that no revised return was filed by the dealer – appellant.
10. Copies of the Statutory Forms filed by the dealer – appellant during pendency of this appeal are now marked as Ex.-C-1.
11. 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 Hon'ble High Court of Delhi, 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.....”

12. In the light of the judgment of Hon'ble Delhi High Court in **M/s Kirloskar Electric Company Ltd.**, appellant herein deserves another opportunity to submit F-forms, referred to above.

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13. Learned C.A for the dealer-appellant has submitted that subsequent to the passing of the impugned order by learned SOHA, 7 "F" Forms have been received and dealer is entitled to their benefit i.e exemption as per law, and in this regard matter be referred to Assessing Authority to do the needful after taking into consideration all these 7 "F" Forms.
14. Keeping in view the dates of generation/issuance of 7 "F" Forms and the dates of the invoices which find mention in the Annexures attached to the "F" Forms, which have been taken on record, today vide separate order, same need to be taken into consideration by learned Assessing Authority in accordance with law.
15. As regards, remaining 'F' Forms, admittedly same were neither produced before the Assessing Authority nor before learned SOHA, and even before this Appellate Tribunal same have not been produced. Therefore, as rightly submitted by learned counsel for the Revenue, the assessment to the tune of Rs. 49,73,139/- framed by the Assessing Authority and the impugned order passed by learned SOHA, in respect of the remaining 'F' forms, which have never been produced, deserve to be upheld. I order accordingly.
16. Accordingly, this appeal is disposed of so as to allow another opportunity to the appellant to present before the Assessing Authority, statutory forms, copies whereof have been filed before this Tribunal. The Assessing Authority shall subject

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these F-forms to verification (including ruling out of any possibility of duplicacy) and also consider, sufficient cause, if any, for non filing of the said F-forms, now filed before this Tribunal, before allowing the concessional rate of tax to the appellant, while making assessment afresh, in accordance with law. Appellant is hereby directed to appear before the Assessing Authority on 03/02/2023.

17. Copy of the Judgment be supplied to both the parties as per rules. One copy along with copy of list of 'F' forms Exhibit 'C-1' be also sent to the concerned authority. File be consigned to the record room.

Announced in open Court.
Date : 24/01/2023



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(Narinder Kumar)
Member (J)