

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

Appeal No. : 12/ATVAT/23
Date of Judgment: 27/01/2023

M/s. Shiva Industries,
32/7A, Bhikham Singh Colony Gali no.07,
Vishwas Nagar,
Shahdara 110032.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. D.S. Joshi.
Counsel representing the Revenue : Sh. S.B. Jain.

Judgment

1. On 30/03/2015, learned Assessing Authority – VATO (Ward-83) framed default assessment of tax and interest under Central Sales Tax Act (CST Act) and thereby raised demand of Rs. 8,69,431/-, in respect of tax period – Annual 2011.
2. Feeling aggrieved by the default assessment, dealer-assessee preferred objections before learned Special Objection Hearing Authority (hereinafter referred to as SOHA).
3. On 27/12/2012, learned SOHA disposed of the objections and while granting exemptions to the dealer-objector in respect of 163 'C' Forms of the value of Rs. 48,49,808/- upheld demand of tax and interest in respect of the remaining 'C' Forms which were not produced even before him.

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4. Feeling dissatisfied with the order dated 27/12/2022 passed by learned SOHA, dealer has come up in appeal.
5. Vide separate order of even date, appeal has been entertained waiving of the pre-condition of deposit u/s 76(4) of DVAT Act.
6. In the grounds of appeal, dealer has alleged that the 'C' Forms now received could not be submitted earlier before learned SOHA, as by then the same had not yet been received.
7. Details of 'C' Forms pertaining to the above said tax period i.e. 01/04/2010 to 31/03/2011 find mention in the list available on record. Said list is accompanied by copies of 2 'C' Forms i.e. one for the value of Rs. 3,07,088/- and the other to the tune of Rs. 53,703/-.
8. Arguments heard. File perused.
9. Learned counsel for the dealer-appellant has submitted that subsequent to the passing of the impugned order by learned SOHA, 2 "C" 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 both these 2 "C" Forms.
10. Copies of the Statutory Forms filed by the dealer – appellant during pendency of this appeal are now marked as Ex.-C-1 & C-2.



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 'C'Forms, referred to above.
13. 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 these "C"-Forms to verification (including ruling out of any possibility of duplicacy) and also consider, steps, if any, taken by the dealer-assessee to collect the said "C"-Forms from the supplying dealer, sufficient cause, if any, for non filing of the said "C"-Forms, now filed before this Tribunal, before allowing

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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 08/02/2023. .

14. Copy of the Judgment be supplied to both the parties as per rules. One copy along with copies of Ex. C1 & C2 be also sent to the concerned authority. File be consigned to the record room. Another copy be displayed on the concerned website.

Announced in open Court.

Date: 27/01/2023



Narinder Kumar
27/1/2023
(Narinder Kumar)
Member (Judicial)