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

Review No. 08/ATVAT/22
In Appeal No. 162-169/ATVAT/19
Date of Order : 02/02/2023

M/s. S.C.J. Plastics Ltd.,
3/10, 11, Okhla Inds. Area,
Phase – I, Okhla,
Delhi – 110020.

..... Applicant

v.

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

Counsel representing the Applicant : Sh. R. Mahana.
Counsel representing the Respondent : Sh. C.M. Sharma

ORDER

1. The above captioned Review Application No. 08/22 came to be presented on 17/11/2022 seeking review of judgment dated 01/10/2021 passed by this Appellate Tribunal while disposing of Appeals No. 162-169/ATVAT/2019 filed by the dealer-appellant-assessee. The review application was accompanied by an application u/s 5 of Limitation Act.

Subsequently, amended application u/s 5 of Limitation Act came to be filed. Vide order dated 12/01/2023, delay in filing of

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the review application was condoned subject to deposit of cost of Rs. 2,000/-.

2. Appeals No. 162-169/19 were filed by the dealer, feeling aggrieved by order dated 30/09/2020 passed by learned Objection Hearing Authority, as regards tax period- all four quarters of the year 2013-14.

3. Vide order dated 30/09/2020, learned OHA disposed of objection filed by the Assessee-Objector challenging the assessments framed by learned Assessing Authority. Learned OHA had observed that the dealer-appellant could not prove movement of goods from Delhi to other state, and accordingly, upheld the assessment framed by the Assessing Authority treating the sales made by the dealer-appellant as local sales, details whereof find mentioned in each notice of default assessment of tax and interest issued u/s 32 of Delhi Value Added Tax Act, 2004 (herein-after referred DVAT Act, 2004).

The Assessing Authority also imposed penalty u/s 86(10) of section DVAT Act, 2004, by issuing separate notices of default assessment in respect of each quarter of the said year 2013.

Learned OHA also upheld the orders of penalty passed by the Assessing Authority.

4. It may be mentioned here that on the basis of material made

available, learned Assessing Authority had observed while framing the assessments that the dealer-assessee had failed to produce GRs or any supporting document conforming inter-state movement of goods in respect of some of the interstate sales made against 'C' forms, and further that the dealer could not give justification about missing GRs in such cases.

As further observed by the Assessing Authority, the dealer could not give any justification about the missing GRs in respect of the transactions pertaining to the following bills:-

1st Qtr. 2013-14			
Sl.No.	Bill No.	Date	Amount in Rs.
1	319	25-04-13	124158.00
2	*320	25-04-13	268541.00
3	322	25-04-13	364047.00
4	*338	26-04-13	44242.00
5	372	29-04-13	136518.00
6	*374	29-04-13	69505.00
7	*384	30-04-13	64045.00
	Total		**1071056.00**
2nd Qtr.2013-14			
Sl.No.	Bill No.	Date	Amount in Rs.
1	*2161	21-09-13	230029.00
2	*2167	23-09-13	26517.00
3	*2172	23-09-13	70787.00
4	*2178	24-09-13	107865.00
5	*2179	24-09-13	35955.00
6	2180	24-09-13	37079.00
7	2187	25-09-13	51472.00
	Total		**559704.00**
3rd Qtr.2013-14			
Sl.No.	Bill No.	Date	Amount in Rs.
1	*4537	20-12-13	51910.00
2	4578	21-12-13	54095.00
3	4579	21-12-13	31146.00
4	*4584	23-12-13	77865.00

5	4588	23-12-13	36214.00
6	4593	23-12-13	25843.00
7	*4620	24-12-13	191012.00
8	*4625	26-12-13	38203.00
9	*4680	30-12-13	173214.00
	Total		**679502.00**
4thQtr.2013-14			
Sl.No.	Bill No.	Date	Amount in Rs.
1	*5983	15-03-14	73540.00
2	*6008	18-03-14	68220.00
3	*6027	19-03-14	51910.00
4	6029	19-03-14	45809.00
5	*6048	20-03-14	67135.00
6	*6049	20-03-14	239574.00
7	*6073	21-03-14	67640.00
8	6122	25-03-14	48017.00
	Total		**661845.00**

The Assessing Authority also observed that simply from the vehicle number(s) mentioned in the invoices, produced before him by the dealer, it could not be established that it was a case of Inter-state movement of goods covered by the said bills. Assessing Authority was of the opinion that delivery of the goods was made to buyer in Delhi itself.

Accordingly, while referring to the requirement of Section 3 (a) of the CST Act, 1956, the Assessing Authority levied tax @ 5% treating the concerned sales as local sales.

For the aforesaid reasons, vide separate notice of default assessment under section 33 of DVAT Act, the Assessing Authority imposed penalty under section 86 (10) of DVAT Act, 2004.

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5. As already mentioned above, learned OHA upheld the notice of default assessment of tax and interest and the notice of assessment of penalty. That is how, the dealer filed eight appeals referred to above.

6. While seeking review of the judgment passed by this Appellate Tribunal, in the course of arguments, the only submission put forth by learned counsel for the applicant is that the appellant-applicant did not produce the confirmation certificates, now sought to be produced, as the dealer was under the belief that the material already made available would be adequate enough to prove movement of goods and that after the withdrawal of appeals filed before the Hon'ble High Court, confirmation certificates have been collected and are now available with the dealer-assessee. The contention is that on this ground of new evidence collected by the dealer subsequent to the withdrawal of the appeals, the judgment passed by this Appellate Tribunal be reviewed.

On the other hand, Learned Counsel for the Revenue has contended that this is not a case where any document was already in existence but the same could not be produced, and rather, a case where admittedly documents i.e. confirmation certificates have been created/executed subsequent to the withdrawal of the appeals ~~which were~~ filed before the Hon'ble High Court. It has further been contended by learned counsel for

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the Revenue that such confirmation certificates could be easily collected by the dealer for production before the Revenue Authorities and before this Appellate Tribunal during pendency of appeals, but the dealer –assessee did not take any such step. Therefore, Counsel for the Revenue has urged that there is no ground for review of the judgment passed by this Appellate Tribunal and as such the review application deserves to be dismissed.

7. It may be mentioned here that in para 7 (iii) of the application, applicant mentioned about the documents earlier produced, and claimed that from the said documents it was clear that the goods started from the factory of the applicant and their movement terminated at the point of delivery in the hands of the purchaser who acknowledged their receipt in the other State.

8. As already noticed above, while framing the assessments, on the basis of material made available during assessment proceedings learned Assessing Authority observed that the dealer-assessee had failed to produce GRs or any supporting document conforming inter-state movement of goods in respect of some of the interstate sales made against 'C' forms, and further that the dealer could not give justification about missing GRs in such cases.

As further observed by the Assessing Authority, the dealer could not give any justification about the missing GRs in respect of

the transactions pertaining to the bills specified therein.

The Assessing Authority also observed that simply from the vehicle number(s) mentioned in the invoices, produced before him by the dealer, it could not be established that it was a case of Inter-state movement of goods covered by the said bills.

Assessing Authority was of the opinion that delivery of the goods was made to buyer in Delhi itself.

Accordingly, while referring to the requirement of Section 3 (a) of the CST Act, 1956, the Assessing Authority levied tax @ 5% treating the concerned sales as local sales.

It may be mentioned here that in the course of arguments in the appeals, following contentions were raised by Ld. Counsel for the appellant:

> "Challenging the impunged order, Ld. Counsel for the appellant has referred to the provisions of section 3 of CST Act and then submitted that law does not require that production of GRs in proof of movement of goods is a must.
>
> Ld. Counsel has referred to the copies of the invoices, vide which transactions of sales are alleged to have taken place, and submitted that from their contents it stands proved that the goods sold by the dealer/appellant to the buyer vide these invoices actually moved from the dealer/appellant to the buyer named in these invoices.
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> Ld. Counsel has also submitted that as per CST rules, as in force in the State of Punjab and Haryana and the CST (UP) Rules, 1957, procedure has been laid down for obtaining of declaration forms including C forms. The contention is that under the prescribed procedure, suchlike declaration forms are issued by the concerned

officer to the buyer to the purchaser only when the said officer is satisfied that the requisition of the said dealer is genuine and reasonable. Further, it has been submitted that when declaration forms were issued by such an officer on such satisfaction, the Assessing Authority of Delhi, could not reject the claim of the dealer/appellant, simply because GRs-goods receipts were not submitted by the dealer.

Ld. Counsel for the appellant has submitted that on the aforesaid grounds, Ld. OHA should not have rejected the objections simply because of non-production of GRs.

In support of his submissions Ld. Counsel has relied on following decisions:

i) State of A.P. and Ors. vs. National Thermal Power Corporation Ltd. and Ors., AIR 2002 SC 1895.

ii) Indian Oil Corporation Ltd. and Ors. vs. Union of India (UOI) and Ors., AIR 1981 SC 446.

iii) Union of India (UOI) and Ors. vs. K.G. Khosla & co. Ltd. and Ors., AIR 1979 SC 1160.

While dealing with the above contentions, this Appellate Tribunal observed in the manner as:

"13. Admittedly, dealer – appellant had produced before the Learned OHA, documents like sale summary, copy of sale bills and photocopy of C-forms in respect of various transactions of sale, for the year 2013-14.

It has also not being disputed that claim of the dealer – appellant in respect of only the bills mentioned above in the tables re-produced was rejected. The reason for rejection in respect of the said bills is that the dealer failed to produce before the Assessing Authority, GR's or any supporting documents confirming inter-State movement of goods in respect of the sales said to have been made against C-forms.

Undisputedly, the dealer had duly produced before the Assessing Authority, documents confirming inter-State movement of goods in respect of all other inter-State sales and the Assessing Authority

levied tax only in respect of transactions covered by the bills mentioned above.

14. The Assessing Authority clearly observed in the notices of default assessment that the dealer could not give justification about missing GR's in respect of the transactions covered by the aforesaid bills.

15. The submission made by the learned counsel for the appellant before us is that the delivery of the goods was made as per stamp lying affixed on all these aforesaid bills/invoices, depicting the date of delivery and mode of conveyance.

In this regard, it may be mentioned here that GR issued by the Transporter is the main documents to prove movement of goods from one state to another. In absence of GR to substantiate the claim of inter-State sale, the Assessing Authority shall have no option but to assess the said sales as local sale. In this regard, reference may be made to decision by our own Hon'ble High Court in **B.R. Fibres (P) Ltd. v. Commissioner, VAT** (2015) 84 VST 570. Therein, this Tribunal had observed that inter-State movement could not be judged by documents stage as retail invoices, bank statement, C-forms etc. and such the appeal filed by the dealer was dismissed for want of production of even alternative documents such as form-38 (state entry form), stamp of the security department while entering in the State, etc.

Therein, Hon'ble Court observed that in the said case, in respect of six transactions, out of 26, there was no material to show that the movement of goods was caused by and was the result of the contract of sale.

Hon'ble Court observed as under –

> "In the present case, the assessee was able to substantiate its contention that 20 of the transactions were, in fact, inter state sales. This was because each one of them had the necessary supporting document in the form of GRs. However, in the case of these 6 transactions, there is no material to show that the movement of goods was caused by and was the result of the contract of sale.

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The assessee counsel contends that this Court must consider the facts in totality of circumstances i.e. 20 out of 26 transactions are undisputed and that given the factual compulsion i.e. the inability to use a formal carrier the assessee should not be prejudiced. Though this submission is attracted, the Court is at the same time aware that there is no presumption either way that an inter state sale claimed by the assessee is one per se."

Hon'ble High court also referred to decision in Commissioner of Sales Tax V. Pure Beverages Ltd. (2005) 142 STC 522 (Gujarat), wherein reliance was placed upon decision titled as State of Rajasthan v. Sarvotam Vegetables Products (1996) 101 STC 547 to conclude that the tender of a C form by the selling dealer raises a fundamental presumption that the purchasing dealer is a registered dealer. Hon'ble Court observed that, that is as far as the presumption can be taken. As to whether the transaction itself was covered by an inter state sale or otherwise is a burden that the assessee has to discharge. Hon'ble High Court further observed that the dealer – B.R. Fibres had done so in other 20 transactions but was unable under the remaining 6 cases.

16. Herein, as per the invoices relied by the dealer – appellant, which have not been accepted by the Revenue, admittedly, column meant for RR/GR No. and date is lying blank. Similarly, column for transporter's name is also lying blank.

In the course of arguments, learned counsel for the dealer – appellant has not been able to explain as to why these columns were left blank.

17. In K.G. Khosla & Company's case (Supra), relied by the learned counsel for the appellant, the question which arose before Hon'ble Apex Court was whether the sale made by respondent 1 were made at Faridabad in the course of inter-State trade as contended by the State of Haryana or whether they awere intra-state sales effected within the Union Territory of Delhi as contended by the appellant, the Union of India. So the question was about the situs. To answer this question, the Hon'ble Court proceeded to consider as to whether the sales affective by the respondent No. 1, therein occassioned the movement of goods from one state to another State i.e. from Haryana to Union Territory of

Delhi.

Therein, Hon'ble Court observed that the contracts of sales were finalized at Delhi and specific goods were manufactured at Faridabad in pursuance of the contract. Those were "future goods" within the meaning of section 2(6) of sale of goods Act, 1930.

In that case, the course and manner of its business as set out by respondent no. 1 in the writ petition was as under : -

> "3. Orders for the supply of goods from various parties are received by the petitioner's company at its head office in Delhi. The head office draws out a production programme and advises the factory to manufacture the goods in accordance therewith. After the goods are so manufactured in the factory, the goods are collected by the head office and brought to its head office in Delhi. From its head office the goods are dispatched to various customers whether outside Delhi or in Delhi. The price of goods is also received at the head office. In short, the position is that excepting the manufacture of goods at the factory, all other activities including that of booking of orders, sales, dispatching and billing and receiving of sale price are being carried out from the head office in Delhi."
>
> "27. The goods manufactured in the factory are future goods within the meaning of the Sale of Goods Act and the dispute does not relate to any ready goods."

Therein it was observed that a sale would be an inter-State sale even if the contract of sale does not itself provide for the movement of goods from one State to another provided, however that such movements was the result of a covenant in the contract of sale or was an incident of the contract.

Therefore, decision in K.G. Khosla's and Company case (supra) is distinguishable on facts.

18. The decision in National Thermal Power Corporation Ltd. case (supra) cited by learned counsel for the appellant, pertains to sales of electrical energy generated by the Corporation – respondent No. 1 at its Thermal Power Station set up at Ramagundam and sold to electricity boards of Karnataka, Kerala,

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Tamil Nadu and State of Goa in pursuance of contracts of sales occasioning inter-State movement of electricity.

19. In India Oil Corporation Ltd. case (supra) cited by learned counsel of the appellant, Hon'ble Apex Court observed as under –

> "Section 3(a) of the Central Sales Tax Act, 1956 provided that "a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase occasions the movement of goods from one State to another". It is now well settled by a series of decisions of this Court that a sale shall be an inter-state sale under section 3(a) if there is a contract of sale preceding the movement of goods from one state to another and the movement is the result of a covenant in the contract of sale or is an incident of that contract; in order that a sale may be regarded as an inter-state sale it is immaterial whether the property in the goods passes in one state or another."

Therein, Hon'ble Apex Court further observed as under :-

> "Each case turns on its own facts and the question is whether applying the settled principle which we have mentioned above to the facts of the present case the sales can be said to be inter-state sales. An attempt to show that some of the factors present in the instant case are present or absent in some case or other in which this Court held the sale to be a local sale or inter-state sale hardly serves any useful purpose. On the facts of the present case the sales are clearly inter-state sales and the State of U.P. had therefore no jurisdiction to assess the petitioners to sales tax under the State Act. As the movement of naphtha commences from Barauni in Bihar, the sales tax payable on the sales of naphtha under the agreement dated February 9, 1970 can be assessed and collected only by the authorities in the State of Bihar on behalf of the Government of India in view of section 9 of the Central Sales Tax Act."

20. In view of the above discussion, and decision in **B.R. Fibres (P) Ltd.'s** case (supra) by our own Hon'ble High Court, the decisions cited by learned counsel for the dealer – appellant do not come to the aid of the dealer particularly when the dealer has failed to prove that movement of goods was caused in respect of the

transactions to which the rejected bills pertain. In view of **B.R. Fibres (P) Ltd.'s,** case (supra), simply because of issuance of C-forms by the competent authorities of Punjab, Haryana and UP, it cannot be said that from production of such statutory forms, a presumption is to be drawn that it would be a case of inter-State sales as per claim of the dealer.

21. As a result, we do not find any merit in the contentions raised raised by learned counsel for the appellant. The impugned order passed by learned OHA upholding the notice of default assessment as regards tax and interest, is upheld."

9. Section 78 of DVAT Act provides that the burden of proving any matter in issue in proceedings under section 74 of this Act, or before the Appellate Tribunal which relates to the liability to pay tax or any other amount under this Act shall lie on the person alleged to be liable to pay the amount.

In view of the above provision, during the pendency of the appeals, it was for the dealer to bring on record all the relevant material to prove the factum of movement of goods on the point of inter-state sale transactions, but, during the pendency of the appeals, dealer failed to produce cogent and convincing evidence or the documents now sought to be produced in the these proceedings.

Sub-rule (2) of Rule 57C of DVAT Rules, 2005 postulates that the Appellate Tribunal shall not, for the first time receive in evidence on behalf of the appellant, an account, register, record or other documents, unless it is satisfied that the appellant was prevented by sufficient cause from producing such documents

before the authority against whose order the appeal has been preferred.

Here, dealer has not been able to satisfy that it was prevented by sufficient cause from producing such documents before the authority against whose order the appeal has been preferred.

Vide separate order of even date, application seeking permission to lead additional evidence has been dismissed for the reasons recorded therein.

10. Regulation 24 of Delhi VAT (Appellate Tribunal) Regulations 2005 provides as to on which grounds application for review of an order lies.

Regulation 24 reads as under :

> "1. Subject to the provisions contained in sub-section (2) of section 76 of the Act and the rules made there under, any person considering himself aggrieved by an order of the Tribunal and who, from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the order made against him, may apply for a review of the order within sixty days from the date of service of the order:
>
> Provided that the Tribunal may at any time, review the order passed by it suo motu also for reasons to be recorded by it in writing.

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2. Where it appears to the Tribunal that there is no sufficient ground for review, it shall reject the application.

3. Where the Tribunal is of opinion that the application for review should be granted, it shall grant the same:

Provided that-

(a) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the order was made, without strict proof of such allegation."

11. In view of the above provision pertaining to review of order, any person feeling aggrieved by the order of the Appellate Tribunal is to satisfy that the review is being sought because of discovery of new and important matter or evidence and that the said matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced at the time the order was passed by the Appellate Tribunal or on account of some mistake or error apparent on the face of record or for any sufficient reason. Clause (b) of sub-regulation (3) of Regulation 24 of Regulations, 2005 provides that no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was now within his knowledge, or could not be adduced by him when the order was made, without

strict proof of such allegation.

Here, the dealer-applicant has sought review on the basis of documents/evidence but not brought on record any material to suggest that this is a case of discovery of new and important matter for evidence, which after the exercise of due diligence, was not within its knowledge or could not be produced before the Revenue Authorities or before learned OHA or before this Appellate Tribunal during pendency of the appeals. The confirmation certificates now sought to be produced are admittedly stated to have been prepared/executed by the purchasing dealers even after withdrawal of appeals filed before the Hon'ble High Court.

12. As noticed above, admittedly before learned OHA, dealer-objector had produced documents like sale summary, copy of sale bills and photocopies of 'C' forms in respect of various transactions of sale for the year 2013-14.

It is significant to note that before framing the assessments, a notice in DVAT 37 was issued to the dealer for conducting desk audit of the business affairs of the company for the financial year 2013-14 requiring the dealer to produce the books of account and other records. Learned Assessing Authority rejected the claim of the dealer-appellant in respect of the bills which were mentioned in the table, available in the assessment, the

reason being that dealer had failed to produce GRs or any supporting documents conforming inter-state movement of goods in respect of sales said to have been made against 'C' forms, and further that the dealer had failed to justify non production of missing GR in respect of the transactions covered by the said bills mentioned in the table. At no point of time, either before the Assessing Authority or before learned OHA any request appears to have been made by the dealer or any step appears to have been taken by the dealer for production of any material, now sought to be produced in this review application. Rather the specific stand adopted by the dealer before learned OHA and before this Appellate Tribunal was that the Act nowhere requires production of GRs.

13. In view of the above discussion, this review application deserves to be dismissed. Same is hereby dismissed.

14. Copy of the order 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 : 02/02/2023

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(Narinder Kumar)
Member (J)

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