

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI

Sh. Narinder Kumar, Member (Judicial)

Appeal No. 55/ATVAT/23

Date of Judgment: 03/05/2023.

M/s Bag Studio,
6456/2, Factory Road,
Nabi Karim, 110055.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Shafiq Khan.

Counsel representing the Revenue : Sh. S.B. Jain.

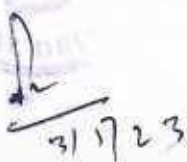
Judgment

1. On 25/10/2021, learned Special Objection Hearing Authority-VATO (ward-6) (hereinafter referred to as SOHA), passed impugned order upholding demand of additional tax to the tune of Rs. 69,090/- and interest to the tune of Rs. 56,559/-, due to non furnishing of 'C' forms of the value of Rs. 6,58,000/-, even though she allowed exemption to the dealer-assessee-objector to the tune of Rs. 14,70,815/- due to the reason that the dealer produced before her 9 'C' forms, earlier not submitted before learned Assessing Authority-AVATO (ward-6).
2. On 17/03/2020, Learned AVATO (ward-6) had framed default assessment of tax and interest u/s 9(2) of Central Sales Tax Act (hereinafter referred to as CST Act), raising demand of tax of Rs. 2,23,526/- and of interest of Rs. 1,33,840/- i.e. in total



3,57,366/-, due to the reason that the dealer, as per return for the tax period- 4th quarter of the year 2015-16, made concessional sales, but it failed to furnish details of statutory forms in Form-9 reconciliation and also to furnish requisite declaration forms.

3. As noticed above, the demand raised by learned AVATO came to be challenged before learned SOHA- VATO (ward-6) and on production of 9 'C' Forms, the demand was reduced, and taking into consideration non-production of rest of 'C' Forms. Hence, this appeal.
4. Case of the dealer-applicant is that M/s V-2 Retail Limited, Faridabad, Haryana had issued 1 'C' Form to the tune of Rs. 6,58,000/- but the dealer-appellant inadvertently misplaced the same and as such same could not be submitted even before learned SOHA. Ultimately, dealer-appellant has obtained/retrieved said 'C' Form of the value of Rs. 6,58,000/- on 02/01/2023.
5. Arguments heard. File perused.
6. Learned counsel for the appellant has submitted that learned OHA upheld demand of Rs. 69,090/-, as regards value of the "C" Form i.e., 6,58,000/-, which were not produced either before the Assessing Authority or before learned OHA. It is further submitted that with this appeal dealer-appellant has submitted copy of one "C" Form, of the said value. Said copy has been marked as Mark 'A' for the purpose of identification.


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7. Learned counsel for the Revenue has gone through the copy of the said "C" Form and submitted that it appears to have been issued on 23/06/2016 but dealer-appellant has not brought on record any material to suggest as to the steps taken by the said dealer to collect said "C" Form pertaining to the 4th Quarter of 2016..

In certain matters, where dealer does not produce certain statutory forms before Assessing Authority or before learned OHA, it is for the dealer-assessee to explain non-production thereof and also to bring on record material in proof of steps taken by the said dealer from time to time for their collection.

Indisputably, herein, dealer-appellant has not placed on record any material to show that such and such steps were taken by it for collection of said statutory form, now produced before this Appellate Tribunal.


8. 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 our own Hon'ble High Court, 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....."



9. In view of the above said decision in Kirloskar case, the matter needs to be referred to learned Assessing Authority for consideration of the above said "C" Form said to have been subsequently received by the dealer.
10. Accordingly, this appeal is disposed of so as to allow another opportunity to the appellant to present before the learned Assessing Authority, statutory form, copy whereof has been filed before this Appellate Tribunal. The Assessing Authority shall subject this form to verification (including ruling out of any possibility of duplicacy) and also consider, sufficient cause, if any, for non filing of the said statutory form, filed before this Tribunal, before allowing the concessional rate of tax to the appellant, while making assessment afresh, in accordance with law.
11. Appellant is hereby directed to appear before the Assessing Authority on 16/05/2023..
12. File be consigned to record room. Copy of the Judgment be supplied to both the parties as per rules. One copy of Judgment with copy of Mark 'A' be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.
Date :03/05/2023.


(Narinder Kumar)
Member (J)