

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

Appeal No. 42/ATVAT/2023
Date of Judgment: 12/05/2023

M/s ARL Power Solutions P. Ltd.
RZ-71, Third Floor Narshing Garden,
Khyala, New Delhi - 110018

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Ashok Kumar Rai
Counsel representing the Revenue : Sh. C.M. Sharma

JUDGMENT

1. On 28.02.2023, dealer - appellant presented the above captioned ~~an~~ appeal challenging order dated 30.06.2022 passed by Learned Objection Hearing Authority (hereinafter referred to as OHA).
2. Vide Order dated 30.06.2022, learned OHA has upheld the demand of Rs.77,095/- i.e. Rs.43,402/- towards additional tax due and Rs.33,693/-towards interest, for the tax period –Annual 2016, after allowing certain exemptions to the dealer-assessee



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in view of 08 "C" Forms of the value of Rs.20,09,325/- and taken into consideration non-production of remaining "C" Forms of the value of Rs.4,13,350/- .

3. On 01.03.2021, learned AVATO(W-57) framed assessment in respect of tax period –Annual 2016, raising demand of Rs.1,14,556/-. The assessment was framed due to following reasons:

"Online notice u/s 59(2) of DVAT Act, 2004 was issued to the dealer concerned for reconciliation of Sale/Purchase/Form-09/Statutory Forms/Export Sale. The dealer was required to submit the documents i.e. Audited Balance Sheet, Bank Records including chequebooks, statement, counterfoil & pay-in-slip, Proof of receipt & delivery of goods, Purchase register(Form DVAT-30), Sale Register (Form DVAT -31), Statutory forms, Stock Register, G.R./R.R., Stock Summary(item wise) and Tax invoices & Retail invoices, Export Documents, Bill of Landing, Shipping Bills and e-BRC etc. of the said period. One appeared on behalf of the Dealer/Firm before the Assessing Authority till date nor any information received. Penalty u/s 86(14) of DVAT Act, 2004 for Rs.50,000/- imposed to the dealer for non-appearance/non-submission of documents for the year 2016-17. Also, in absence of any supporting documents left with no option but to decide the case Ex-Party & the demand is created against the dealer as provision of Section 8(I) & (IV) read with Section 9 & Section 32 & 33 of DVAT Act,2004. Dealer has made central concessional sale and as per record available at DVAT Portal and no Statutory C/F/H/I/E-1 forms/Export Sale Documents file by the dealer, hence total sale against C/F/I/H/E-I forms/Export Sale is to be taxed (as applicable), which is

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payable with interest. Case assessed for the year 206-17 for all quarters”

4. Default assessment of tax and interest under CST Act came to be framed as the dealer failed to submit “C” forms. Counsel for the Appellant submits that in the default assessment, specifically it has not been mentioned that only “C” forms were required to be filed. It is submitted that only “C” forms of the value mentioned therein were actually missing and as such that the appellant challenged the said assessment before learned SOHA. Counsel for the Revenue does not dispute this submission.
5. As is available from the order dated 30/06/2022 passed by learned SOHA, eight “C” forms were produced before him by the appellant and on their production exemption was allowed. As regards, the missing “C” forms of the value of Rs. 41,33,50/- learned SOHA upheld the default assessment framed by Assessing Authority as regards the said amount.
6. The appellant has produced on record copies of two “C” forms with details of goods, from page No: 19 – 26.
7. Counsel for the Revenue has gone through the copies of the two “C” forms *and details of goods - documents.*
8. Counsel for the appellant submits that the said two “C” forms could not be produced as the same got mixed with the other record of the appellant company.

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9. Counsel for Revenue has rightly submitted that appellant has not provided any material to suggest as to when said two "C" forms were received by the dealer.
10. Counsel for appellant admits that the date or the month of the receipt of the said two "C" forms is not known/ available.
11. In the given facts and circumstances and having regard to decision in **M/s Kirloskar Electric Co. Ltd. V/s. 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....."

In view of the above decision, this appeal is disposed of and matter is remitted to the Assessing Authority, as also requested by the learned counsel for the appellant, and ^{as} not opposed to by learned counsel for the Revenue, so as to [✓] allow another opportunity to the appellant to present before the learned Assessing Authority, statutory forms, copies whereof (mark C-1 and C-2) have been filed before this Tribunal.

12. The Assessing Authority shall subject these forms to verification (including ruling out of any possibility of duplicacy) and also



consider, sufficient cause, if any, for non filing of the said statutory forms, filed before Appellate Tribunal for the first time, before allowing the concessional rate of tax to the appellant, while making assessment afresh, in accordance with law.

13. Appellant is directed to appear before the Assessing Authority on 22/05/2023.
14. File be consigned to record room. Copy of the judgment be supplied to both the parties as per rules. One copy of judgment with copies of mark C-1 and C-2 be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date:12/05/2023

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Member (J)

