

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

Appeal No. 06/ATVAT/2023  
Date of Judgment: 08/06/2023

M/s Axis Bank Limited,  
"Statesman House",  
148 Barakhamba Road,  
New Delhi-110001.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Sunil Minocha, STP with  
Sh. J. K. Manocha, CA  
Counsel representing the Respondent : Sh. N. K. Gulati.

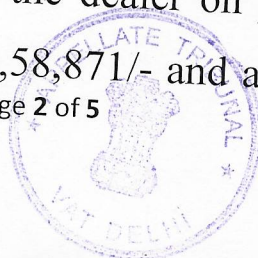
**Judgment**

1. By way of present appeal, dealer has challenged order dated 18/06/2022 passed by learned SOHA – VATO (W-206).
2. The impugned order has been passed under Central Sales Tax Act. Learned SOHA has upheld demand keeping in view non production of remaining 'F' forms, as only 1 'F' form was produced by the dealer before him.
3. The matter pertains to tax period – Annual 2012-13.

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4. Initially, assessment was framed by learned Assessing Authority on 28/03/2017, due to the reason that despite issuance of notice u/s 59 (2) of DVAT Act, the dealer failed to appear. Learned Assessing Authority observed that dealer had filed return reflecting stock register transfer of Rs.74,94,17,76,464/- against 'F' form, but in form 9 filed for the year 2014-15, the dealer entered 'F' forms of the value of Rs. 7,44,88,46,96,256/-. Accordingly, demand of Rs. 9,07,653 came to be raised holding the dealer liable to pay tax @ 1% on the missing 'F' forms of the value of Rs. 5,70,80,208/-.
5. As regards, one 'F' form of the value of Rs. 49,58,871/- collected by the appellant from Commercial Tax Authorities, Jammu & Kashmir and produced before learned SOHA, case of the applicant is that even after verification of this 'F' form, learned SOHA did not reduce the demand against the said 'F' form, while making calculations of the amount due.
6. As per impugned order, only 1 'F' form of the value of Rs. 49,58,871/- was produced before learned SOHA in respect of which he granted exemption from tax. However, as is available from the impugned order, missing 'F' forms of the value of Rs. 5,21,21,337/- were not produced before learned SOHA during objections.
7. Learned counsel for the Respondent does not dispute grant of relief by learned SOHA to the dealer on production of one 'F' form of the value of Rs. 48,58,871/- and also that while making



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calculation, learned SOHA made a mistake by not deducting the amount of tax exempted on the basis of said 'F' form produced before him.

8. In view of the above said submissions, it stands established that even after having granted exemption to the dealer for payment of tax as regards the one 'F' form produced during objections, a mistake crept in the order of learned SOHA by not deducting the amount of tax exempted in view of production of one 'F' form. As a result, it can safely be said that at the time of disposal of the objection petition, there was demand of tax to the tune of Rs. 5,21,213/- only.
9. As regards remaining forms which were not produced even before learned SOHA, the submission on behalf of the appellant is that these 3 forms were issued by the competent authority on 14/07/2022 i.e. after the disposal of the objection petition.
10. Copies of 3 'F' forms submitted before this Appellate Tribunal for the first time, bear the date of issuance as 14/07/2022.
11. Counsel for the Respondent submits that appellant has not placed on record any document to suggest as to what steps were taken by the branch of the dealer bank to collect 'F' forms from the competent authority, which came to be issued on 14/07/2022. In reply, learned STP submits that documents in this regard, will have to be collected from the concerned branch to show sufficient cause i.e. the steps taken by the said branch for

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calculation of the 3 'F' forms, which ultimately came to be issued on 14/07/2022.

12. In the given facts and circumstances, learned STP submits that the matter be remitted to learned Assessing Authority for taking into consideration the 3 "F" Forms subsequently received by the dealer from its branch at Chandigarh.

Learned counsel for the respondent <sup>has</sup> also put forth the same submission. <sub>L</sub>

13. In the case of **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 the light of the judgment of our own Hon'ble High Court in **M/s Kirloskar Electric Company Ltd.,** appellant herein deserves



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another opportunity to submit statutory forms, referred to above.

14. In the given facts and circumstances, the appeal is disposed of and matter is remitted to learned Assessing Authority for decision afresh after taking into consideration 3 "F" Forms, copies of which have been placed before this Appellate Tribunal and marked as mark C1 to C3.

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 production of the said 3 "F" Forms and also to look into if any steps were taken by the branch of the dealer bank to collect the above said 3 "F" Forms from the competent authority.

15. Dealer-appellant to appear before learned Assessing Authority on 16/06/2023.
16. File be consigned to the record room. Copy of the judgment 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: 08/06/2023.



*Narinder Kumar*  
8/6/2023  
(Narinder Kumar)  
Member (Judicial)