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

Appeal No. : 58/ATVAT/18
Date of decision: 18/07/2023

M/s Diageo India Pvt. Ltd.
D-2, Southern Park,
Saket Place,
New Delhi-110017

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Tushar Jarwal
Counsel representing the Revenue : Sh. P. Tara

JUDGMENT

1. Present appeal was earlier disposed of vide judgment dated 17/12/2021 while upholding the impugned orders dated 13/11/2017 passed by Learned Objection Hearing Authority (hereinafter referred to as OHA) as well as notice of Default Assessment of Tax, Interest and assessment of Penalty framed by the Assessing Authority on 20/01/2015, as regards tax period – 2010-11.

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2. The dealer-appellant filed VAT Appeal No. 03/2022 against the judgment and the order passed on review application.

3. Vide judgment dated 23/05/2022, Hon'ble High Court has set-aside the judgment dated 17/12/2021 passed by this Appellate Tribunal and remanded the matter, while observing in the manner as :

> "The matter is remanded to the Tribunal for a *de novo* examination, bearing in mind what has been noted hereinabove.
>
> The Tribunal will be at liberty to call for the record available with the statutory authority.
>
> Although, what has been noted above by us in respect of C and F Forms is a position which emerges from the record, available with the statutory authority, needless to add, nothing stated by us hereinabove, will impact the determination that the Tribunal is required to make in the mater.
>
> The appeal is disposed of in the above said terms."

4. That is how, the Appellate Tribunal is seized of the matter.

5. Arguments heard. File perused.

6. Dealer – appellant is engaged in the business of manufacturing and marketing of alcoholic beverages in India and registered under DVAT Act as well as CST Act.

7. Above mentioned assessment of tax and interest was framed by Assessing Authority on 20/01/2015 due to reasons, including that the dealer had failed to submit 'C' Forms of

the value of Rs. 4,73,72,324/-.Accordingly, the Assessing Authority raised demand by levying tax @ 20% on the above said turnover, in addition to levy of interest @ 15%, while allowing benefit of tax deposited @2%; that the dealer had reflected less sale for Rs. 11,39,93,107- in his returns for which he claimed that turn over of Rs. 4,13,04,110/- was of sales against 'C' forms; and that of Rs. 7,26,88,997/- was towards stock transfer against 'F' forms; and that the dealer did not revise his return.

8. Before Learned OHA, in objections u/s 74 of DVAT Act, the dealer produced certain 'C' Forms. Learned OHA disposed of the objections granting exemption on one of the 'C' forms and rejected the objections on the other points i.e. the dealer having not included and reflected turnover/sales of Rs. 11,39,93,107/-; non production of documents issued by State Excise Department of Delhi as well as Excise Department of importing states, relating to movement of liquor and also on the point of penalty, due to tax deficiency. As regards 'C' forms, learned OHA observed in the manner as :

> "...However, as is evident from above the objector dealer has produced only three original C forms. Further, from preliminary examination of C forms and other records produced, it is observed that there are many deficiencies in the C forms produced.
>
> C form No. 8609124 is issued for M/s Diageo India P. Ltd., Maharashtra and not for Delhi.

C form No. 1512684 seems to be issued for Mumbai and not for Delhi as there is cutting on C form.

C form no. 8609125 is not submitted in original and this C forms is coloured photocopy which is not allowed/acceptable under the CST Act/Rules.

Therefore, only one C form no. 1512685 of Rs. 1,14,103/- submitted in original is acceptable and allowed.

Further, no Good Receipts (GRs) for invoices no. 12210054 and 12210055 both dated 29.09.2010, for invoice no. 12210064 dated 13.10.2010 and for invoice no. 12210139 dated 29.12.2010 is made available by the objector dealer.

Further, original or even photocopy of C form no.1247122 of rupees claimed as Rs.1,01,58,481/- has not been submitted by the objector dealer before the undersigned."

9. Before the Hon'ble High Court in VAT Appeal No. 03/22, it was submitted on behalf of the Revenue – Respondent that 'F' Forms of the value of Rs. 5,87,03,652/- and 'C' Forms amounting to Rs. 11,78,04,074/- (excluding Rs. 5,59,823/- from Rs. 11,83,63,897/-) are available on record of the Learned OHA.

As regards 'C' Forms of the value of Rs. 5,59,823/-, referred to above, when it was submitted before Hon'ble High Court that only photocopies thereof (not originals) were available in the record of the department, Counsel for the appellant submitted there that the appellant having not been able to

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produce the originals the said aspect could only be examined once originals were produced by the appellant.

So far as 'F' Forms are concerned, Learned Counsel for the Revenue – Respondent submitted before Hon'ble High court that three, out of seven 'F' Forms, did not bear any value.

On the other hand, counsel for the appellant submitted before the Hon'ble High Court that in the original 'F' Forms, the sale amount had been indicated and that taking into account the cumulative value of said three 'F' Forms, the cumulative value of 'F' Forms would be Rs. 7,22,15,174/-.

Hon'ble High Court observed that this Appellate Tribunal shall be at liberty to call for record available with the statutory authority.

10. On 15/09/2022, on behalf of the appellant copies of 17 'F' Forms were submitted before this Appellate Tribunal. Their copies were supplied to the Revenue. Counsel for the appellant explained that no 'F' Form was required to be summoned/collected from the Department of Trade & Taxes. Counsel for the appellant further submitted that 'C' Form No.1247122 worth Rs. 1,01,58,481/-, pertaining to Vishal Enterprises, as mentioned at Serial No. 40 of the list available at Page No. 3 of the application dated 25/08/2022, available with the Department of Trade & taxes was required to be summoned/collected from the said department.On that day,Counsel for the appellant added that no other record was

required to be summoned/collected from the Department of Trade & Taxes.

However, on 11/11/2022 counsel for the appellant submitted that record lying with Ward No. 208 be summoned for the Department of Trade & Taxes before he could open arguments.

Accordingly, record was summoned from the said department.

Statutory Forms – Framing of Assessment

11. So far as statutory forms are concerned, admittedly, 'F' forms of the value of Rs. 5,87,03,652/- and 'C' forms of the value of Rs. 11,78,04,074/- are on the record available in the office of concerned OHA, in view of the submission put forth by learned counsel for the respondent, before the Hon'ble High Court in VAT Appeal No. 03/2022.

12. As is available from the order dated 23/05/2022 passed by Hon'ble High Court in the above said VAT Appeal, on behalf of the respondent, it was submitted before the Hon'ble Court that only photocopies of 'C' forms of the value of Rs. 5,59,823/- were available in the record. Thereupon, counsel for the appellant submitted before the Hon'ble High Court that appellant had not been able to produce their originals and that said aspect could only be examined once original were produced by the appellant.

In the course of arguments even before this Appellate Tribunal, on remand of the matter, counsel for the appellant has submitted that original 'C' forms of the above said photocopies,are not available with the appellant, and further that no relief is being sought in respect of the 'C' forms of the value of Rs. 5,59,823/-, as their original are neither available nor sought to be produced.

It may be mentioned here that in the course of arguments, counsel for the respondent has not disputed genuineness of 'C' Forms available on the record of the office of OHA or the factum of inter-states sales against said 'C' Forms.

Therefore, having regard to the discovery of 'C' Forms, appellant is held entitled to benefit on the cumulative value of said Forms.

However, appellant is held not entitled to any benefit in respect of 'C' Forms of the value of Rs. 5,59,823/- original of which are neither available nor have been produced by the appellant.

'F' Forms

13. As is available from the order dated 23/05/2022, on behalf of the respondent, it was submitted before the Hon'ble High Court that mere production of statutory forms was not sufficient and the appellant also needed to place on record

other evidence i.e. books of accounts. lorry receipts and other relevant documents issued by the State Excise Department to satisfy the respondent/Revenue as to whether inter-state sales and stock transfer of the subject goods had in fact taken place.

In this regard, counsel for respondent has submitted that even before this Appellate Tribunal, appellant has not produced copies of any documents from State Excise Department and as such appellant is not entitled to any benefit on the basis of 'F' forms.

14. In support of his argument, counsel for the respondent has referred to the impugned order passed by learned OHA, wherein it was observed that when the objector – dealer was directed to submit documents pertaining to stock transfer against "F" forms along with other legal requirements as envisaged by the Excise Department, the objector – dealer, despite sufficient opportunity provided during proceedings, failed to submit any documents issued by State Excise Department of Delhi as well as Excise Department of importing States relating to movement of liquor/goods outside Delhi. Counsel has submitted that therein, it also stands recorded that learned CA representing the objector-dealer submitted before learned OHA that only the documents already produced were available with him.

15. As per default assessment. the Assessing Authority observed that the dealer-assessee had reflected less sale of Rs. 11,39,93,107/- in the returns, out of which, the dealer claimed to have made sales to the tune of Rs. 4,13,04,110/- against 'C' forms. Learned OHA observed that books of accounts of the dealer are compulsory required to be audited under the Income Tax Act and Companies Act and as a result the books of accounts are usually finalised and audited up to 30th of September, in respect of the financial year 2010-11, but the dealer failed to explain as to why discrepancies of turnover in the returns furnished by it. were not removed by filing revised returns taking advantage of provision of section 28 of DVAT Act.

16. Counsel for the appellant has contended that no reliance can be placed on the observations made by the OHA in the impugned order, in view of the fact that when 'C' Forms and 'F' Forms were on record, he observed that these were not produced. and the similarly no reliance can be placed on the observation that the objector failed to submit any document issued by the State Excise Department of Delhi as well as Excise Department on importing states relating to movement of liquor, goods outside Delhi.

17. It may be mentioned that in the impugned order, the sentence "the inter-state sales as well as stock transfer and duly supported by Central Statutory Forms 'C' and 'F' it could not

be produced" has been attributed to learned CA. This is not an observation by learned OHA.

Indisputably, no document from any of the State Excise Department came to be furnished by the dealer-assessee before the Assessing Authority or before the OHA. No such document has been filed even before this Tribunal. Therefore, it cannot be said that learned OHA wrongly observed in the impugned order that despite sufficient opportunity during the proceedings, the objector had failed to submit any document issued by the State Excise Department of Delhi and other States.

18. Another contention raised by counsel for the appellant is that even though no revised return was furnished by the assessee, the authorities could not deny the benefit available under the law. In this regard, counsel for the appellant has placed reliance on decisions in **Jupiter International Ltd. v. The Senior Joint Commissioner, Sales Tax and others**, 2014 SCC Online Cal 4122; **Commissioner of Income Tax v. Bharat General Insurance Company Ltd.**, 1970 SCC Online, Delhi 301; and **North Star India Pvt. Ltd. v. Commissioner of Trade Tax, U.P. Lucknow**, (2009) 25 VST 378.

In Jupiter International's case (supra), case of the petitioner before the Assessing Authority was that there was a mistake

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in depicting goods under the head "stock transfer" and that actually those goods were imported directly from abroad and sent to the destination outside the State of West Bengal.

Therein, the Assessing Authority decided the matter, which the petitioner therein did not accept and accordingly challenged the order before the Appellate Authority.

The Appellate Authority decided the appeal in the absence of the petitioner, it having failed to appear on the date of hearing. The revisional application filed before the Board was also dismissed. One of the grounds of dismissal of the revisional application was that the petitioner had failed to submit revised return within the statutory period, and secondly, that the documents sought to be produced for the first time could not be accepted.

Hon'ble High Court found that particular amount was shown under the stock transfer and no revised return was filed within the prescribed period. Hon'ble High Court observed that while making an assessment on the basis of return, the authorities are denuded of power to disallow any claim under a particular head, if the documents and other evidence suggest otherwise; and further that if the documents are produced by the assessee which manifest that the amount shown under particular head is wrongly shown therein, the authorities, if otherwise satisfied on the basis of the

documents as well as the explanation offered, cannot deny the benefit as the petitioner had shown the said amount under a wrong head.

Herein, the dealer-appellant failed to produce and submit any documents issued by the Excise Department of Delhi and other States, despite ample opportunities, in addition to the fact that it did not revise return furnished u/s 28 of DVAT Act up to the time limit prescribed i.e. 31st December 2012. Therefore, decision in Jupiter International's case (supra), distinguishable on facts, does not come to the aid of the appellant.

In **Bharat General Insurance Company Ltd.**'s case (supra), on Income Tax Reference, the question was as to whether the income was assessable during the year in which it was assessed by the Income-tax Officer or was it assessable in the year in which the dividend was declared.

Therein, dividend was declared on 16, January 1952, at the general meeting of the shareholders and as a matter of fact the specie had been made over to the trustees on the same date. Therein, the assessee itself had included that dividend income in its return for the year in question, but it was observed that there was no estoppel in the Income-tax Act and the assessee having itself challenged the validity of taxing the dividend during the year of assessment in

question. it was taken that it had resiled from the position which it had wrongly taken while filing the return.

In the given circumstances, Hon'ble High Court observed that it was incumbent on the income-tax department to find out whether a particular income was assessable in the particular year or not and that merely because the assessee wrongly included the income in its return for a particular year, it did not confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year.

The above said case of Bharat General Insurance Company Ltd. is distinguishable on facts. Herein, the dealer-assessee was found to have shown less sale to the tune of Rs. 11,39,93,107/- in its return and its claim that non-disclosure of sales worth this amount worth Rs. 11 crore was not intentional, was not accepted by learned OHA while observing that the dealer did not file correct return even after disclosure of sale during the audit of books of accounts.

19. In North Star India Pvt. Ltd.'s case (supra), Hon'ble Allahabad High Court was seized of the matter involving rejection of claim of the assessee as regards stock transfers to head office.

Hon'ble High Court observed that none of the F forms submitted by the dealer was either found to be incorrect, forged, fabricated or not to fulfil the requirement of law so as to entail rejection.

Section 6A of Central Sales Tax Act was referred to contend on behalf of the appellant that burden required to be discharged claiming transfer of goods otherwise by way of sale as required under this provision stood discharged.

As per section 6A the declaration duly filled up and signed by the principal officer of the other place of business or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, alongwith the evidence of despatch of such goods would establish that all such transactions accompanied by such declaration would be by stock transfer. Hon'ble High Court observed that in view of provisions of section 6 A of CST Act, if the burden stands discharged it would be deemed to be stock transfer.

That was not a case where in the return Stock Transfer against F Forms was shown as NIL. Here, it is a case where the appellant in the return while giving breakup of the turnover of Rs. 58,97,30,792/-specifically mentioned that Stock Transfer against F-Form was NIL, but before the authorities the appellant submitted that in its trading account,

the disclosed turnover was Rs.70. 37.23.899/-and same included turnover of Stock Transfer against F-Forms to the tune of Rs.7,26,88,997/-.

20. Indisputably, even before this Appellate Tribunal, dealer – appellant has not furnished any such document i.e. documents issued by the State Excise Department of Delhi as well as Excise Department of importing States, in proof of movement of liquor/ goods outside Delhi. Counsel for the respondent has rightly submitted that the documents issued by State Excise Departments serve as cogent and convincing evidence, the same having been issued by Government Department, whereas other documents like invoices, lorry receipts, tax invoices are not prepared by the Government Department.

21. It is significant to note that Hon'ble High Court clearly observed in para 8 of the order that even counsel for the appellant realised that remand for examination of the relevant documents would be the best way in the matter, in view of the factum of discovery of statutory forms.

Sub- section (1) of Section 6A of CST Act provides that declaration is to be filed along with the evidence of dispatch of goods. Sub- section (1) of Section 6A of CST Act provides that the Assessing Authority is to satisfy itself after making such enquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer are true.

22. In **India Agencies (Regd.) v. Addl. CT.** (2005) 139 STC 329 (SC), Hon'ble Apex Court opined that the dealer has to strictly follow the procedure and produce the relevant materials required under the rule. Without producing the specified documents as prescribed thereunder, a dealer cannot claim the benefits provided under the law. The requirement is not merely formality or technicality, but it is intended to achieve the object of preventing the form being misused for the commission of fraud and collusion with a view to evading payment of taxes.

23. As per Circular No. 8 of 2005-06 (No.STO Policy-III 2005-06/809 dated 22nd June 2005), issued by Commissioner, Trade & Taxes, the Assessing Authorities were directed to keep in mind that mere production of statutory forms does not establish the genuineness of the transactions, and in the present scenario when even the genuineness of forms cannot be taken for granted, it is better to use corroborative evidences to first of all ascertain the genuineness of the transactions which can be done through he meticulous scrutiny of books of accounts, the details contained in the returns filed by the dealer, orders/indents placed by the purchasing dealer, invoices, delivery challans, gate passes, cheques etc. drawn by the purchasing dealers, GR's / RR's, contract agreement between the selling dealer and purchasing dealer, communication between the two, ledger entries and

corresponding transport and other documents. Sometimes these documents need to be verified and cross checked to establish their genuineness.

Herein, after remand the appeals were taken up by this Appellate Tribunal for the first time on 12/07/2022. Since then, no document from the State Excise Departments, has been produced, in support of the claim of stock transfer of movement of goods by the appellant. No step was taken by the appellant to secure any such document. No application in this regard. came to be filed on behalf of the appellant at any point of time.

24. In the course of arguments, counsel for the appellant has submitted that 12 years period has passed and the appellant cannot lay hands on any such document sought for by the Department.

In this regard, it may be mentioned that the assessments pertain to financial year 2010-11; the assessments were framed on 20/01/2015; prior thereto notice u/s 59(2) of DVAT Act was also issued to the dealer for seeking additional information for reconciliation of DVAT 51. In the given situation, it was for the dealer to preserve the entire record for production before the competent authorities. But, as noticed above, dealer has failed to produce the requisite record issued by State Excise Department. The appellant –

assessee could also take steps to summon concerned officials from the concerned State Excise Departments with the requisite record, but no such step was taken by the dealer. Before the learned OHA, learned CA representing the objector clearly submitted that only the documents already produced were available with him. Therefore, there is no merit in the contention raised by counsel for the appellant that 12 years period has passed and as such the requisite record cannot be produced.

When the respondent had sought production of documents from the State Excise Departments and the appellant failed to produce the same before learned OHA, despite ample opportunity and it has failed to produce any document from the State Excise Department, it can safely be said that dealer – appellant has failed to substantiate its claim regarding stock transfer of movement of any goods/ liquor from Delhi to other states.

25. In view of the decision by Hon'ble Apex Court in India Agencies (Regd.) case (supra) and the directions contained in circular dated 22/06/2005, so far as 'F' Forms are concerned, in view of the above discussion, there is merit in the contention raised by counsel for the respondent that the dealer-appellant is not entitled to any benefit on the basis of value of said 'F' Forms.

Consequently, the impugned order passed by Learned OHA in relation to said 'F' Forms is upheld.

Additional Ground

26. After the requisite record was summoned from the Department of Trade & Taxes, in terms of directions issued by the Hon'ble High Court, the appeal was taken up for final arguments.

On 16/02/2023, arguments were advanced by counsel for the appellant in the appeal in part. For remaining arguments, appeal was adjourned to 17/03/2023.

However, on 17/03/2023, adjournment was sought on behalf of the appellant on the ground that counsel for the appellant was busy before the Hon'ble Apex Court in some other matter. Counsel for the Revenue submitted that he was not informed that adjournment was going to be sought. In the interest of justice, appeal was adjourned to 13/04/2023 for final arguments.

27. On 13/04/2023, further arguments were advanced. However, counsel for the appellant sought adjournment for remaining arguments on the ground that he was to refer to photocopies of some documents like lorry receipts and invoices available on records. On request, the appeal was adjourned to 18/05/2023.

However, in the meanwhile on 17/05/2023, an application came to be filed seeking permission to raise two additional grounds. The application was filed under Regulation 6 of DVAT (Appellate Tribunal) Regulations, 2005.

28. On the basis of this application, applicant has been allowed to raise additional ground/ objection that the assessments framed for tax period – Annual are nonest in law as the tax period of the applicant was quarterly and assessments were required to be framed per quarter in place of single assessment for the entire year.

29. As regards "another additional ground" sought to be raised, at the time of arguments on the application, prayer in respect of said additional ground was not pressed.

30. So, the only additional ground raised by the appellant in the appeal is that default assessment pertains to entire financial year 2010-11, but same has been framed in single tax period i.e. March 2011, which is in violation of provision of section 32 (1) of DVAT Act and Rule 36 of DVAT Rules.

31. On behalf of the appellant, it has been submitted that a single order can be passed by the Assessing Authority, while framing assessment, so long as it contains assessment made for different tax periods i.e. quarter-wise, but assessment for different tax periods cannot be framed only in one month or tax period.

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As per case of the appellant, if a default assessment order was to be passed for the tax period 2010-11, the "net tax due" for all quarters was required to be assessed separately in a single default assessment of tax and interest. In support of this contention, reference has been made to the definition of "turnover" as available u/s 2(m)and definition of "tax period" as available u/s 2(zi) of DVAT Act.

Section 2(m) defines "*turnover*" as under:

> "turnover" means the aggregate of the amounts of sale price received or receivable by the person in any tax period, reduced by any tax for which the person is liable under section 3 of this Act."

Section 2(zi) defines "*tax period*" as under:

> "tax period" means the period prescribed in the rules made under this Act;[Rule 26]"

Reliance has also been placed by counsel for the appellant, on decision in **Samsung India Electronics Private Ltd. v. Government of NCT Delhi,** 2016 (4) TMI 273, by our own Hon'ble High Court. It has been submitted that therein it was observed that where in terms of Section 32 (1) (b), (c) or (d) of the DVAT Act, the dealer has furnished incomplete returns which do not satisfy the requirements of the Act, or for any reason, the return filed by dealer is not satisfactory then the

Commissioner will 'reassess' to the best of his judgment the amount of net tax due for the tax period."

Reliance has also been placed on decision in **Commissioner of Sales Tax v. Sarjoo Prasad Ram Kumar,** 1976 (37) STC 533, to contend that the point of jurisdictional error, which goes to the root of the case can be taken at any stage.

32. On the other hand, counsel for respondent has submitted that assessments have been correctly and legally framed by the Assessing Authority and there is no question of framing of Assessments without jurisdiction, and that in view of the additional ground raised on behalf of the appellant, the question actually is as to whether assessments have been framed as per law. Counsel for the respondent has referred to provisions of section 32 of DVAT Act, in force w.e.f.16.11.2005 and submitted that single assessment framed in respect of the year 2010-11 is a valid assessment.

Counsel for the respondent has also contended that the point of jurisdiction cannot be raised before the Appellate Tribunal for the first time, and as such the appellant could not raise the issue that the Assessing Authority framed assessment is without jurisdiction.

In reply, counsel for the appellant has submitted that the above contention raised by Respondent is without merit.

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Counsel has further submitted that 12 assessment were required to be framed by the Assessing Authority instead of framing of single assessment, and that as a result, the assessment framed in violation of law deserves to be set aside.

33. Section 32 of DVAT Act clearly provides that Commissioner may for reasons to be recorded in writing, assess or re-assess to the best of his judgment the amount of net tax due for a tax period or more than one tax period by a single order so long as all such tax periods are comprised in one year.

As noticed above, the Assessing Authority framed assessment of tax and interest, after seeking additional information and issuance of notice u/s 59(2) of DVAT Act for reconciliation of DVAT 51 for the assessment year 2010-11. Thereupon, on behalf of the assessee. DVAT 30 and 31. sale summary, purchase summary, copy of audited balance sheet, details of VAT and CST deposited, details of forms submitted and trading account of Delhi branch were submitted before the Assessing Authority.

Having gone through the material available, learned Assessing Authority found that the assessee had reflected less sale in his returns and that despite opportunity available u/s 28 of DVAT Act, assessee had not revised his returns. Accordingly, the Assessing Authority decided to levy tax, interest and penalty.

When in the table available in the two assessments, in the column meant for tax period 'March 2011' was mentioned, it did not mean that the assessment pertained only to March 2011.

In view of provisions of Section 32 of DVAT Act, learned Assessing Authority was fully justified in framing assessments thereby assessing the amount of net tax due for more than one tax period by way of single order, so long as such tax periods are admittedly comprised in one financial year 2010-11.

If any such ground or objection was raised before the Assessing Authority or the OHA, the Assessing Authority and the OHA would have got an opportunity to consider this aspect at the earliest and expressed opinion in respect thereof.

Admittedly, no such ground or objection was raised by the assessee before Assessing Authority or OHA, and as such they had no opportunity to express opinion on this point.

Even otherwise, in view of the above discussion, the contention raised by the counsel for the appellant by way of above said additional ground that the assessments framed by the Assessing Authority are without jurisdiction or non est in law, is without any merit.

Double Taxation

34. When the matter was before the Hon'ble High Court, Counsel for the appellant submitted there that in view of the discovery of the above mentioned 'C'&'F' Forms and the issue of double taxation involved in the matter, the appeal requireda de novo examination.

35. Here, in the course of arguments, counsel for the appellant has submitted that as observed by the Assessing Authority, GTO of the appellant-assessee, as per returns, was Rs. 58,97,30,792/- which included local sale of Rs. 47,86,55,293/-; that Assessing Authority went on to observe that dealer had reflected less sale of Rs. 11,39,93,107/- in his returns, out of which the dealer claimed that sale worth Rs. 4,13,04,110/- was against 'C' forms.

Contention raised by counsel for the appellant is that once the Assessing Authority took into consideration that the dealer was claiming said sale against 'C' forms, this amount could not be taken into consideration by him once again while levying tax @20% (while granting benefit of 2%) as regards 'C' forms of the value of Rs. **4,73,72,324/-**.

Undisputably, as per return furnished by the appellant for the period i.e. Financial Year 2010-11 out of the gross turn over, Inter-state Sales against 'C' Forms to the tune of Rs. 11, 10, 75,499/-was shown, but before the authorities, the

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appellant's claim was that turnover of Inter -state Sale against C Forms was to the tune of Rs.15,23,79,609/-.So, there was difference between the two turnovers i.e. the one shown in the return and the other as shown in the Trading Account, which was taken note of.

Having regard to the reasons given by learned Assessing Authority while framing assessments and the reasons given by learned OHA, it cannot be said that this is a case of double taxation as regards amount of turnover of Rs. 4,13,04,110/-. Therefore, the contention raised on behalf of the appellant in this regard is rejected.

36. As regards the assessment of penalty, for the reasons and the findings given above, no fault can be found with the impugned order due to the tax deficiency noticed therein. In the course of arguments, no contention has been raised on behalf of the appellant challenging the levy of penalty. However, Assessing Authority shall recalculate the amount in view of the findings recorded above on the point of benefit to be granted to the appellant as regards 'C' forms.

37. Neither any other argument has been advanced nor any other decision has been relied on by counsel for the parties on any other point.

38. In view of the above discussion and finding, this appeal pertaining to default assessment of tax and interest and the

assessment of penalty is partly allowed as regards benefit. to which the appellant has been held entitled in view of 'C' Forms available on the record of the office of OHA. Accordingly, the Assessing Authority to recalculate the amount of tax, interest and penalty.

39. Copy of the judgment be sent to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website. File be consigned to the record room.

Announced in open Court.

Date : 18/07/2023

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(Narinder Kumar)
Member (Judicial)