

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

Appeal No. 118/ATVAT/23  
Date of Judgment: 20/11/2023

M/s Aero Club,  
867, Joshi Road,  
Karol Bagh,  
New Delhi- 110005.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Rajesh Mahna  
Counsel representing the Revenue : Sh. P. Tara

**Judgment**

1. The above captioned appeal No. 118/23 came to be presented before the Registry on 14/09/2023.
2. Appellant is feeling dissatisfied by order dated 31/07/2023 passed by learned Special Objection Hearing Authority (hereinafter referred to as 'SOHA'), whereby, after granting certain exemptions to the appellant-assessee on production of 5 'C' forms and 44 'F' forms, by it, but having regard to non-

*Narinder Kumar*  
20/11/23



production of remaining 'C' forms worth Rs. 1,14,03,885/- (on which transactions, tax @ 3% has been levied, with interest); non-production of 'C' forms worth Rs. 8,86,313/- (which transactions have been taxed @ 10.5% with interest); non production of 'F' forms worth Rs. 1,30,24,759/- (which transactions have been taxed @ 5% with interest) and non-production of 'F' forms worth Rs. 13,97,521/- (which transactions have been taxed @ 12.5% with interest), learned SOHA has upheld the demand of tax and interest to this extent.

3. Vide default assessment of tax and interest dated 18/03/2021, framed under Central Sales Tax Act (in short 'CST Act') learned Assessing Authority - Assistant Commissioner (Ward-206) raised demand of additional tax of Rs. 2,42,87,372/- and that of interest to the tune of Rs. 1,42,33,065/-.
4. Learned Assessing Authority recorded following reasons for framing of default assessment of tax and interest:

"A notice has been issued to the dealer u/s 59 (2) for seeking additional information for the assessment year 2016-17. In response to the notice Sh. Sohan Lal Sharma, Authorised Signatory was present on behalf of the dealer alongwith POA on 27/02/2021, 04-03-2021, 16-03-2021 & 18-03-2021 and produced Sales/Purchase Summary, Trading Account of Delhi Branch, Audited Balance Sheet, DVAT-30/31, Export certificate, Statutory/declaration forms, statutory form reconciliation, VAT/CST payment details and other supporting documents pertaining to the

2  
20/11/23



business affairs of the dealer. The information/documents furnished by the dealer were examined.

During the tax period from 01/04/2016 to 31/03/2017 dealer has a gross turnover of Rs. 8,18,27,23,941/- including Central turnover of Rs. 7,30,97,47,046/- (including goods return of Rs. 36,75,497/- ) and VAT sale of Rs. 87,29,76,895/-.

The dealer has made Export Sale amounting to Rs. 23,04,70,957/- and submitted C.A. certificate in support of export sale, credit is allowed after test check.

The dealer has made Exempted Sales amounting to Rs. 94,00,377/-, credit is allowed after test check.

The dealer has made stock transfer against F-forms of Rs. 6,59,99,01,560/- and submitted F-forms of the value of transaction of Rs. 6,29,25,62,957/-, credit is allowed after test check.

The dealer has still short **F-forms** of Rs. 30,73,38,602/- (Rs. 21,51,37,021/- is taxed @ 5% with interest and Rs. 9,22,01,581/- is taxed @ 12.5% with interest).

The dealer has made central concessional sales against 'C' form of Rs. 33,06,45,422/- after allowing sales return of Rs. 36,75,497/- in 2016-17. The same is verified from the details available in the returns. The dealer has submitted C-forms amounting to Rs. 30,80,44,350/- exemption on it is allowed after test check.

However, the dealer failed to file '**C**' forms of Rs. 2,26,01,072/- (Rs. 1,38,66,146/- is taxed @ 5% with interest and Rs. 87,34,926/- is taxed @ 12.5% with interest). The dealer has already deposited 2% CST, credit of which is allowed."

5. Hence, this appeal.
6. Arguments heard. File perused.
7. Dealer – assessee - appellant, a partnership firm stands registered under DVAT Act, vide TIN No. 07570161712, and is engaged in the business of trading of shoes, garments and other accessories under the brand of 'Woodland'.
8. Counsel for the appellant has submitted that during pendency of this appeal, appellant has placed on record copies of two 'C' forms recently received by the dealer-appellant and that same be taken into consideration.

2/2/11





Counsel for appellant submits that litigation is going on between the appellant and Universal Shoes, by way of a civil suit before Ahmedabad Civil Court regarding some statutory forms.

Appellant is stated to have already submitted copies of two E-mails dated 18/09/2023 in proof of the steps taken by the appellant to collect remaining statutory forms.

Further, it has been submitted by the counsel for appellant that inability of the appellant to collect remaining statutory forms be also considered.

9. On the other hand, counsel for the respondent has contended that matter pertains to tax period - Annual 2016 and on behalf of the applicant two E-mails, dated 18/09/2023, and another letter dated 02/11/2023 are stated to be from the branches of the appellant, but, the appellant has failed to prove that any step was taken earlier, to collect statutory forms.

Counsel for the respondent has submitted that no other statutory form has been filed.

10. It may be mentioned here that in the application u/s 76(4) of DVAT Act, applicant claimed that statutory forms could not

20/11



be produced before SOHA as the same were not available and further that except copies of two 'C' forms produced during pendency of this appeal, at present remaining statutory forms are not available.

Appellant has claimed in the memorandum of appeal that the appellant was in the process of collecting the remaining statutory forms from the concerned dealers, to whom the goods were transferred by way of inter-state sale transactions, but, due to trade practices, pressure on the salesmen and other difficulties faced in the course of sale, the remaining statutory forms could not be delivered to the appellant.

When the application u/s 76(4) DVAT Act was pending for hearing, with the written arguments, counsel for the appellant submitted true copy of one 'C' Form, for the period from 01/10/2016 to 31/12/2016 bearing the date of issuance as 08/12/2017, but, no application seeking permission to place on record the said statutory form was presented.

Subsequently, on 20/09/2023 copy of the other 'C' form dated 10/08/2017, pertaining to transactions dated 11/11/2016 and 18/11/2016 came to be filed.

11/20/11



11. Herein, the assessments came to be framed due to the reasons including non-production of 'C' and 'F' forms relating to the tax period – Annual 2016.

Learned SOHA, while passing the impugned order, took into consideration some statutory forms which were produced before him during objection proceedings and accordingly granted exemption in respect thereof, but, he upheld the assessment as regards demand of tax and interest in respect of the remaining statutory forms, which were not produced even during hearing on objections.

12. During pendency of this appeal, admittedly, copies of only two 'C' forms have been submitted by the appellant. One of the said 'C' forms bears the date of its issuance as 10/08/2017 and the other 'C' form bears the date of issuance as 08/12/2017.

No document has also been filed in proof of the date on which these 'C' forms were received by the appellant, but, in view of decision in **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485, by our own Hon'ble High Court, said two forms are required to be taken into consideration.

  
20/11





13. Matter pertains to tax period - Annual 2016. On behalf of the appellant two E-mails, dated 18/09/2023, stated to be from the two branches of the appellant, reveal that steps have been taken by the appellant regarding collection of remaining statutory forms, but, no document has been produced on record to prove steps, if any, earlier taken by the appellant or any of its branches to collect remaining statutory forms.
14. One of the E-mails depicts that same is reply from an Advocate of the branch of the appellant in Himachal Pradesh, and to the effect that common portal of Department of Taxation, (H.P.) is under process of migration to new system and that present system is not allowing generation of statutory forms. But, this E-mail does not reflect as to what were the steps, if any, earlier taken by the said branch to collect the statutory forms, and as to since when the process of migration to new system began.
15. The other E-mail is a reply from Shillong Branch of the appellant. It is to the effect that CA of the said branch will provide 'F' form in the next month as the file is being processed by the department.

But, this E-mail does not reflect as to what were the steps, if any, earlier taken by the said branch to collect the statutory

*Handwritten signature*  
20/11



forms, and as to since when the department is processing the matter.

16. The third document submitted by the appellant contains information about some litigation going on between the appellant and one defendant in the form of a commercial civil suit, instituted on 23/02/2022.

No copy of the plaint of the said suit has been filed. In absence thereof, it cannot be said as to what are the pleadings and what is the prayer/ relief claimed in the suit. It cannot be said that the suit contains any issue regarding non-supply of some statutory forms by the said defendant to the appellant.

Copy of the letter dated 02/11/2023 by the branch of the dealer to the Superintendent of Taxes, Shillong, placed on record on 16/11/2023 is the latest correspondence as regard 'F' forms.

17. The fact remains that no form except the copies of the above said two 'C' forms, have been produced on record.
- ✓
18. In the light of the judgment of our own Hon'ble High Court in M/s Kirloskar Electric Company Ltd.'s case (supra), appellant herein deserves another opportunity to submit statutory forms, referred to above.

20/11





19. Accordingly, this appeal is disposed of so as to allow another opportunity to the appellant to present before the learned Assessing Authority, statutory forms, copies whereof have been filed before this Tribunal. 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 this Tribunal, for grant of concession to the dealer in accordance with law.
20. Appellant is hereby directed to appear before the Assessing Authority on 04/12/2023.
21. File be consigned to record room. Copy of the order be supplied to both the parties as per rules. One copy of order with copies of 'C' forms 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 : 20/11/2023.



*Narinder Kumar*  
20/11/23  
(Narinder Kumar)  
Member (Judicial)