

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

M.A. No. 384/23

In Appeal No. 118/ATVAT/23

Date of Order: 20/11/2023

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

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

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

ORDER

1. This order is to dispose of application filed by the dealer-appellant-applicant u/s 76(5)(c) of DVAT Act read with Section 9(2) of CST Act with following prayer, as contained in para No. 10 thereof:

10. That since the issue touches the constitutional rights of the appellants to be taxed only once on the sale but the deeming provision of levy of tax in terms of Section 6A is being attracted on the same goods, it is requested that the proceeding may be deferred/adjourned and may be kept after end of January 2024, in any case if the appeal is being decided the claim and benefit of those statutory forms may be permitted and liberty may be given to filed to review/recall or rectification of the orders beyond the limitation prescribed in



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terms of the appellate tribunal regulation beyond the prescribed time in order to obtain the credit of the forms received thereafter.”

2. Matter pertains to the assessment, framed under CST Act pertaining to the year 2016-17. Dealer has challenged impugned order dated 31/07/2023 passed by learned SOHA.
3. Appeal No. 118/23 filed by the dealer-appellant has been listed for final arguments, after passing of order u/s 76(5) of DVAT Act and compliance thereof.
4. In the application, it has been averred that in view of the settled law that State is entitled to claim taxes actually due, section 76(5)(c) permits the aggrieved person to make claim in respect of such statutory forms, which are received by the said dealer during pendency of appeal.

In para No. 5 of the application, it has been alleged that the appellant has been able to receive some statutory forms of the value of Rs. 1,62,475/-, issued by the State of Karnataka to Myntra Designs Pvt. Ltd. and ‘C’ forms of the value of Rs. 19,90,068/- issued by the State of Maharashtra, to the same purchasing dealer.

In para No. 6 of the application, it has been alleged that the dealer-appellant has filed civil suit against Universal Shoes before Civil Court, Ahmadabad, for recovery of amount of sale



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and for issuance of 'C' forms, but the said matter stands adjourned to February 2024, because of festival season and as per the schedule of the concerned Court and, further that as per assurance given by the party, the dealer-applicant is likely to get 'C' forms in the month of February itself.

As regards remaining 'C' forms, in the application it has been alleged that the appellant-applicant has been following up, and as such is likely to receive 'C' forms by the end of January 2024.

So far as 'F' forms are concerned, as alleged in the application, despite best efforts, dealer-appellant has not been able to obtain said 'F' forms from its branch in Shillong due to local VAT laws. On 02/11/2023, branch of the dealer-appellant is stated to have written to the Superintendent of Taxes, Shillong to obtain 'F' forms in respect of some stocks received by the said branch from the dealer-appellant during the period - Financial Years 2016-17 and 2017-18. Applicant has further alleged that 'F' forms are likely to be received by 15th December, 2023.

5. Counsel for the respondent has no objection to the taking on record of the copies of two 'C' forms, already placed on record without any such application. Counsel for the respondent has also no objection to the taking on record copy of letter dated 02/11/2023 stated to have been sent by the branch of the dealer

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to the Superintendent of Taxes, Shillong in connection with 'F' forms, submitted with this application dated 16/11/2023.

6. 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, prayer for taking on record copies of the two 'C' forms, referred to above, deserves to be allowed. Accordingly, same is allowed.
7. As regards the other prayer, counsel for the applicant has submitted that the appeal be adjourned somewhere in the end of January 2024 and in the alternative, that in case this Appellate Tribunal decides this appeal, liberty be given to the dealer-appellant to file review application on receipt of the remaining statutory forms.

Counsel for the respondent has opposed said prayers, while submitting that the matter pertains to tax period 01/04/2016 to 31/03/2017, and that the applicant not having taken any steps earlier for production of the remaining statutory forms before the Assessing Authority and the OHA, the application deserves to be dismissed *as regards said prayer.*

8. This Appellate Tribunal is required to dispose of the appeal taking into consideration the material placed on record and also having regard to decision in **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax



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Cases, 485. An appeal cannot be kept pending simply because appellant expects receipt of more statutory forms in future. Counsel for the respondent has rightly submitted that consequent upon receipt of any statutory form subsequently, dealer-appellant can resort to the legal remedies available to it *in accordance with law.*

Having regard to all the facts and circumstances, including that the applicant did not take any step for production of any other statutory forms before the Assessing Authority or the OHA, and the applicant is presently not having any other statutory form available with it, the prayer for adjournment of the appeal and the prayer in the alternative seeking liberty, as noticed above, are declined.

9. The application is disposed of accordingly.
10. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority.

Announced in open Court.

Date: 20/11/2023.

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

