

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

Appeals No. – 131-132/ATVAT/23

Date of Judgment: 08/02/2024.

M/s Choudhary Prefab System Organization,
RZF- 79 Mahavir Enclave,
Palam Dabri Road-110045

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Pradeept Patra.

Counsel representing the Respondent : Sh. S. B. Jain.

Judgment

1. This common judgment is to dispose of the above captioned two appeals.
2. Appellant has filed Appeal No. 131/23, challenging order dated 27/07/2022 passed by learned Objection Hearing Authority (in short 'OHA')-VATO (ward-111, Special Zone). On the basis of missing 'C' forms of the value of Rs. 14,40,650/-, learned OHA upheld the demand of tax and interest, at the same time granting certain exemptions on the basis of one 'C' form produced by the dealer before the learned SOHA.

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The impugned order pertains to tax period- 4th quarter of 2014-15.

3. Other Appeal No. 132/23 has been filed, challenging order dated 27/07/2022 passed by learned OHA whereby, on the basis of missing 'C' forms of the value of Rs. 15,80,310/-, he upheld demand of tax and interest, while granting certain exemptions on the basis of one 'C' form produced by the dealer in the objections proceedings.

The impugned order pertains to tax period- 2nd quarter of 2016-17.

4. Counsel for the appellant submits that on 28/12/2023, on behalf of the appellant copy of one duplicate 'C' form for the period 01/01/2015 to 31/03/2015 has already been submitted and same be taken into consideration.
5. On the other hand, counsel for the respondent submits that appellant cannot take any advantage of the copy of the duplicate 'C' form having regard to the claim of the appellant that the original 'C' form earlier collected from the purchasing dealer was stolen, but the appellant has not placed on record any material to suggest that steps were taken by the appellant or by the other dealer to collect duplicate 'C' form from the concerned department, on the basis of plea of loss of the original. In this regard, counsel for the respondent has placed reliance on sub-rule (2) of Rule 12 of CST (Registration and Turnover) Rules, 1957.



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6. Sub-rule (2) of Rule 12 of CST Rules, 1957 reads as under:

“(2) where a blank or duly completed form of declaration is lost, whether such loss occurs while it is in the custody of the purchasing dealer or in transit to the selling dealer, the purchasing dealer shall furnish in respect of every such form so lost, an indemnity bond in form G to the notified authority from whom the said form was obtained, for such sum as the said authority may, having regard to the circumstances of the case, fix. Such indemnity bond shall be furnished by the selling dealer to the notified authority of his State if a duly completed form of declaration received by him is lost, whether such loss occurs while it is in his custody or while it is in transit to the notified authority of his State:

Provided that where more than one form of declaration is lost, the purchasing dealer or the selling dealer, as the case may be, may furnish one such indemnity bond to cover all the forms of declarations so lost.”

Sub-rule (3) of Rule 12 of CST Rules, 1957 reads as under:

“(3) Where a declaration form furnished by the dealer purchasing the goods or the certificate furnished by the Government has been lost, the dealer selling the goods may demand from the dealer who purchased the goods or, as the case may be, from the Government which purchased the goods, a duplicate of such form or certificate, and the same shall be furnished with the following declaration recorded in red ink and signed by the dealer or authorized officer of the Government, as the case may be, on all the three portions of such form or certificate, -



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"I hereby declare that this is the duplicate of the declaration form/ certificate No. signed on and issued to who is registered dealer of(State) and whose registration certificate number is"

7. Today, counsel for the appellant has placed on record true copy of indemnity bond stated to have been submitted by the dealer-appellant before learned OHA, ^{which} ~~but same~~ ^{allegedly} was returned and not taken into consideration. Counsel further submits that dealer-appellant has requested the purchasing dealer to submit its own indemnity bond to the concerned Department of Tax, as required under rule 12 of CST Rules, to collect duplicate 'C' Form, ^{and} for its delivery to the dealer-appellant, so that it may produce the same before the Assessing Authority. Ultimately, counsel for the appellant ^{has} urged that matter be remanded to the Assessing Authority for taking into consideration the duplicate 'C' Forms, on their supply by the purchasing dealer.
8. From the true copy of the indemnity bond, today placed on record, it transpires that dealer specified therein ^{the} numbers of the two 'C' Forms, ^{stolen} and undertook to indemnify. The indemnity bond was required to be furnished to the concerned VATO, as provided under Rule 12(2) of CST Rules, 1957.



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9. Under rule 12(3), in case of loss of a declaration form, the dealer selling the goods may demand from the dealer, who purchased the goods, a duplicate of such form and same shall be furnished in the prescribed format of declaration recorded in red ink and signed by the dealer, as the case may be, on all the three portions of such form or certificate.
10. As regards, the other Appeal No. 132/23 pertaining to 2nd quarter of 2016-17, appellant has placed on record only photocopy of 'C' form bearing S. No. 05V742642 pertaining to the said period.
11. Counsel for the respondent submits that no reliance can be placed on this photocopy of the 'C' form, original of which is stated to have got lost, the reason being that the appellant has not followed the above said procedure prescribed in sub rules (2) and (3) of Rule 12 of CST Rules, 1957.
12. With the appeal, appellant filed a scanned copy of 'C' Form which is stated to have been stolen. As noticed above, true copy of the indemnity bond stated to have been submitted by the dealer-appellant before learned OHA, has been filed today. As submitted by counsel for the appellant, said indemnity bond was returned and not taken into consideration. Counsel for appellant has submitted, as noticed above, that dealer-appellant has requested the purchasing dealer to submit its own indemnity bond to the concerned Department of Tax, as required under rule 12 of



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- CST Rules, to collect duplicate 'C' Form and for its delivery to the dealer-appellant, so that it may produce the same before the Assessing Authority. Ultimately, counsel for the appellant has urged that regarding the subject matter of this appeal, order may be passed remanding the matter to the Assessing Authority for taking into consideration the duplicate 'C' Forms, on their supply by the purchasing dealer.
13. After going through the contents of the true copy of indemnity bond today placed on by the dealer, counsel for the respondent submits that he has no objection to the matter being considered afresh by the Assessing Authority subject to production of duplicate 'C' Form ^{(as per rule 12(3) of CST Rules)} within 20 days.
14. I find merit in the contention raised by counsel for the respondent that for the reasons recorded above while dealing with the duplicate 'C' form relating to the tax period- 4th quarter 2014-15, at this stage, no reliance can be placed on the scanned photocopy of the 'C' form pertaining to 2nd quarter of 2016-17.
15. 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



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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.....”

16. In the given facts and circumstances, having regard to the indemnity bond already prepared by the dealer-appellant, and the provisions of sub-rules (2) and (3) of Rule 12 of CST Rules, 1957, both these appeals are disposed of while remanding the matter to learned Assessing Authority with the observations that in case the dealer-appellant produces before the Assessing Authority declaration forms, after collecting the same from the purchasing dealer, in compliance with provisions of sub-rules (2) and (3) of Rule 12 of CST Rules, 1957, within 20 days, the Assessing Authority to consider the same, subject to due verification, in accordance with law, by way of fresh decision as regards the said ‘C’ Forms.
17. Dealer-appellant is directed to appear before learned Assessing Authority on 12/02/2024 and to produce the requisite declaration forms within 20 days, as observed above. Since, the matter is being remanded, it is made clear that in case of failure on the part of the dealer-appellant, to produce any declaration form, if any, collected under sub-rules (2) and (3) of Rule 12 of CST Rules, 1957, within the stipulated time, Assessing Authority ^{shall} ~~to~~ proceed in accordance with law.

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18. 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 : 08/02/2024.



Narinder Kumar
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(Narinder Kumar)
Member (J)