

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

M.A. Nos. - 393-394/23  
In Appeals No. - 131-132/ATVAT/23  
Date of Order: 09/01/2024

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

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Pradeept Patra.  
Counsel representing the Respondent : Sh. S. B. Jain.

**ORDER**

1. This common order is to dispose of two applications, mentioned above, filed by the dealer-applicant with the above captioned two appeals. Applications are purported to have been filed u/s 76 (4) of DVAT Act with the prayer that the appeals be entertained without calling upon the dealer to deposit any amount towards the disputed demands of tax and interest, by way of pre condition.
2. Applicant has filed Appeal No. 131/23, challenging order dated 27/07/2022 passed by learned VATO (ward-111, Special Zone)

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whereby, on the basis of missing 'C' forms of the value of Rs. 14,40,650/-, demand of tax and interest has been upheld, while granting certain exemptions on the basis of one 'C' form produced by the dealer before the learned SOHA. Said impugned order pertains to tax period- 4<sup>th</sup> quarter of 2014-15.

3. Applicant has filed other Appeal No. 132/23, challenging order dated 27/07/2022 passed by learned VATO (ward-111, Special Zone), whereby, on the basis of missing 'C' forms of the value of Rs. 15,80,310/-, demand of tax and interest has been upheld, while granting certain exemptions on the basis of one 'C' form produced by the dealer before the learned SOHA. Said impugned order pertains to tax period- 2<sup>nd</sup> quarter of 2016-17.

4. It may be mentioned here that vide common order dated 28/12/23 passed by this Appellate Tribunal, two applications seeking condonation of delay in filing of the appeals stand disposed of. In the course of arguments on those applications dealer-applicant presented photocopy of one duplicate 'C' form alleging that the same has been supplied to him by the other dealer on 27/12/23. Case of the applicant is that the original 'C' form of the above referred to 'C' form was stolen from the car of the dealer-applicant on 25/11/2016, along with another 'C' form pertaining to the other tax period- 2<sup>nd</sup> Qr. of 2016-17.

5. In the case of **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases,

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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....."

6. Sub-section (4) of section 76 of the Act provides that no appeal against an assessment shall be entertained by the Appellate Tribunal, unless the appeal is accompanied by satisfactory proof of the payment of the amount in dispute, and any other amount assessed as due from the person.
7. As per first proviso to sub-section (4) of section 76, the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount, as it may direct.
8. On the point of admission of appeal with or without pre-deposit, in **Ravi Gupta Vs. Commissioner Sales Tax, 2009(237) E.L.T.3 (S.C.)**, it was held as under:-

"It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no legs to stand, it would be undesirable to require the assessee to

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pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this court has indicated the principles that does not give a license to the forum/ authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, interim relief can be given."

9. Counsel for the applicant submits that on 28/12/2023, on behalf of the applicant 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 while passing order regarding pre-deposit, for the purpose of admission of the appeals.
10. On the other hand, counsel for the respondent submits that applicant cannot take any advantage of the copy of the duplicate 'C' form having regard to the claim of the applicant that the original 'C' form earlier collected from the purchasing dealer was stolen, but the applicant has not placed on record any material to suggest that steps were taken by the applicant 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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11. Counsel for the applicant submits that copy of the duplicate 'C' form placed on record on 28/12/2023 has been collected from the purchasing dealer, who downloaded the same from the portal of the Taxation Department of Haryana.

12. 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."

13. Counsel for the applicant admits that no document has been placed on record by the applicant in proof of the submission that the copy of the duplicate 'C' form filed on 28/12/2023 has actually been downloaded by the other dealer from the portal on the request <sup>of or on</sup> of information furnished by the applicant about loss of any such 'C' form. Even otherwise, in the copy of the FIR, admittedly, there is no mention about loss of any 'C' form.

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14. In view of the above discussion, at this stage, prima facie, it cannot be said that copy of the duplicate 'C' form placed on record by the applicant on 28/12/2023, came to be collected/downloaded by the other dealer for its supply to the applicant consequent upon loss of its original from the custody of the latter.
15. As regards, the other Appeal No. 132/23 pertaining to 2<sup>nd</sup> quarter of 2016-17, applicant has placed on record only photocopy of 'C' form bearing S. No. 05V742642 pertaining to the said period.
16. 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 applicant has not followed the above said procedure prescribed in sub rule (2) of Rule 12 of CST Rules, 1957.
17. 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- 4<sup>th</sup> quarter 2014-15, at this stage, no reliance can be placed on this photocopy of the 'C' form *pertaining to ~~period~~ 2<sup>nd</sup> Qtr of 2016-17.*
18. In the given facts and circumstances, having regard to the amount of the disputed demands of tax and that of interest, I deemed it a fit case to entertain the appeals subject to deposit of

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Rs. 5,000/-<sup>each</sup> by way of pre-deposit u/s 76(4) of DVAT Act for the purpose of admission of each appeal.

19. Applicant to deposit the total amount of Rs. 10,000/- by way of pre-deposit within 15 days and there upon inform the Registry and counsel for the respondent, so that on due compliance the appeals are taken up for final arguments. It is made clear<sup>that</sup> in case of non-compliance with this order, the matter shall be taken up on the next date for further orders, due to non compliance.
20. Be put up on 29/01/2024.
21. Copy of the order 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 : 09/01/2024



*Narinder Kumar*  
9/1/2024  
(Narinder Kumar)  
Member (J)