

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

Appeals No. 66, 67, 68 & 70/ATVAT/2023

Date of Judgment: 06/09/2023

M/s Honeywell International India Pvt. Ltd.
17, Ground Floor, Amrit House,
Sant Nagar, East of Kailash
New Delhi-110065.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Dharmendra Anand, *C.A.*
Counsel representing the Revenue : Sh. M.L. Garg.

Judgment

1. This common Judgment is to dispose of above captioned 4 appeals as common questions are involved and the same have been argued together in common.
2. The above captioned appeals have been filed challenging orders dated 17/03/2022, 23/06/2022, 23/06/2022 and 26/10/2022, passed by Learned Special Objection Hearing Authority (hereinafter referred to as SOHA) whereby demands towards tax and interest raised by the Assessing Authority after framing assessments on account of non-furnishing of documents including statutory forms, have been upheld.

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3. Initially, default assessments of tax and interest under Central Sales Tax Act (hereinafter referred to as CST Act) came to be framed by learned Assessing Authority on different dates.
4. Claim of the dealer-appellant is that some statutory forms could not be produced before the Assessing Authority or before SOHA, as the same were earlier not received.
5. With the appeal, appellant filed some statutory forms.
6. As regards documents pertaining to export sales and High sea sales, admittedly, no such document has been filed with any of these appeals or during the pendency of the appeals.
7. While disposing of application u/s 76(4) of DVAT Act, dealer-appellant was directed to deposit 10% of the disputed demand towards tax and interest, in each appeal, for the purpose of entertaining the appeals. Dealer-appellant has complied with said direction.
8. Arguments advanced in the appeals on merits. File perused.
9. In the course of arguments, one of the submissions made by learned CA is that appeals be adjourned to enable the appellant to collect remaining statutory forms.

As regards prayer for adjournment of the appeals to enable the appellant to collect remaining statutory forms, the matters pertain to Annual 2014-15, Annual 2015-16, Annual 2016-17, first quarter of the year 2017-18. Firstly, the matters remained pending before the Assessing Authority. After the framing of assessments, the objections remained pending before learned

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SOHA. But, the dealer-appellant could not collect the statutory forms despite sufficient time and opportunity available with it. In the given situation, there is no merit in the prayer for adjournment of the appeals to enable the appellant to collect remaining statutory forms.

10. In the course of arguments, learned CA for the appellant has also submitted that the concerned VATO did not allow the dealer to download E-1 forms, due to non-deposit of the balance of the demand towards tax and interest i.e. other than the amount of pre-deposit.

When enquired from learned CA, if any, order in writing came to be passed by the concerned VATO in this regard, the reply is that no order in writing has been passed by the concerned VATO. In absence of any such order by the concerned VATO, ^{as alleged} the contention raised is without any basis. Even if, [✓] the concerned VATO orally declined downloading of E-1 forms due to non-deposit of the balance amount towards demand of tax and interest (other than the amount of pre-deposit), the dealer-appellant should have filed an application before the concerned VATO for appropriate orders in writing so that the dealer-appellant could resort to appropriate remedy under the law. No such application has been admittedly filed before the concerned VATO.

11. So far as **Appeal No. 66/ATVAT/23**, learned CA for the appellant has submitted that certain 'C' and 'F' forms were



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submitted with the appeal and same are required to be taken into consideration, having been received after disposal of the objections by learned SOHA.

12. Learned CA for the appellant further submits that no other document pertaining to high sea sales and export sales is available with the dealer-appellant. Learned CA has urged that the matter be remanded to the Assessing Authority for consideration of 'C' & 'F' forms already placed on record.
13. Copies of certain 'C' & 'F' forms are available on record from page 26 to 41. Same have been marked as Mark 'CA' (collectively).
14. As regards **Appeals No. 67 & 68/ATVAT/23**, learned CA for the appellant further submits that today copies of additional 'F' forms, received by the dealer, in the month of August 2023, have been placed on record and same are required to be taken into consideration. He further submits that no other statutory form has been received by the dealer-appellant. Learned CA has urged that the matter be remanded to the Assessing Authority for consideration of 'F' forms today placed on record and the copies of 'C' & 'F' forms already filed with the appeals.
15. Copies of certain 'C' & 'F' forms are available on record from page 26 to 38, in **Appeal no. 67/ATVAT/23**, which have been marked as Mark 'CA' (collectively); ^{1/kat of} / 'C' form which has been marked as Mark 'CB', available at page 41, and ^{2/kat of} / 'C' form, which has been marked as Mark 'CC' available at page 42. Copies of 3

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'F' forms submitted today, have been marked as Mark 'D', 'E' and 'F'.

16. Copies of certain 'C' & 'F' forms are available on record from page 26 to 39, in **Appeal No. 68/ATVAT/23**. Same have been marked as Mark 'CA' (collectively). Copies of 3 'F' forms submitted today, have been marked as Mark 'A', 'B' and 'C'.
17. As regards, **Appeal No. 70/ATVAT/23**, learned CA for appellant submits that no statutory form or document has been received by the dealer-appellant during the pendency of the appeal. At the same time, learned CA submits that the only 'C' form received by the dealer-appellant after the disposal of the objections has already been filed with the appeal, which needs to be taken into consideration. Learned CA has urged that the matter be remanded to the Assessing Authority for consideration of said 'C' form.
18. Copy of the said 'C' form, with copy of goods details filed with the appeal, is available at page 24 & 25. Same has been marked as Mark 'CA'.
19. In the given facts and circumstances, learned counsel for the respondent also submits that the matters need to be considered by the Assessing Authority on remand.
20. 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.....”

21. In the light of the judgment of our own Hon'ble High Court in M/s Kirloskar Electric Company Ltd., appellant herein deserves another opportunity to submit statutory forms, referred to above, some of which came to be filed with the appeals and some of which came to be presented today, on the averment that the same have been received after disposal of the objections by learned SOHA.
22. Accordingly, these 4 appeals are 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, before allowing the concessional rate of tax to the appellant, while making assessment afresh, in accordance with

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law.

23. Appellant is hereby directed to appear before the Assessing Authority on 15/09/2023.
24. Files be consigned to record room. Copy of Judgment be placed in the connected files. Copy of the Judgment be supplied to both the parties as per rules. One copy of Judgment with copies of the statutory forms, marked today as noticed above, be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date: 06/09/2023

Narinder Kumar
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Narinder Kumar
Member (J)

