

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

Appeal No. 72/ATVAT/23
Date of Judgment: 22/09/2023

M/s Jay Ace Technologies Ltd.,
G1, 48, GT Karnal Industries Area,
Delhi.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Sudhir Sangal.
Counsel representing the Respondent : Sh. N. K. Gulati.

Judgment

1. On 30/05/2023, dealer-assessee-objector filed above captioned Appeal No. 72/ATVAT/23, challenging impugned order dated 03/03/2023 passed by learned Special Commissioner-II, Objection Hearing Authority (hereinafter referred to as OHA), as regards default assessment of tax and interest dated 23/03/2021, for the tax period 2016-17 (Annual - 2016) framed under Central Sales Tax Act (CST Act).

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2. Vide order dated 05/06/2023, application seeking condonation of delay in filing of appeal was allowed subject to costs.

3. Vide default assessment of tax and interest, learned Assessing Authority-AVATO (ward-64) raised demand of additional tax of Rs. 32,15,074/- and that of interest of Rs. 18,81,479/- due to the following reasons:

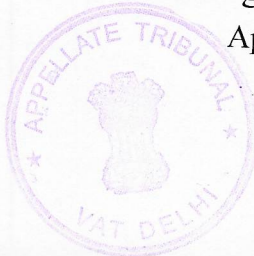
“.....Notice was issued to the dealer u/s 59(2) of DVAT Act 2004 for the year 2016-17. None present nor any intimation received. Despite giving sufficient time, the Form 9 filed by the dealer is not matched with return. Further, in absence of any Books of accounts, proof of sale/purchase bill, statutory form and other relevant documents related to central sale made by the dealer in year 2016-17, the entire turnover is taxed as per local rate with interest. Order is issued accordingly.....”

4. Feeling aggrieved by the default assessment, on 14/12/2021, dealer-objector filed objections u/s 74 of DVAT Act.

5. Vide impugned order, learned OHA upheld the default assessment of tax and interest and rejected/dismissed the objections by observing in the operative part of the order as under:

“In view of the above discussion, I find that though Form-09 was filled up by the objector, however, it is also statutory requirement to possess the statutory forms and to produce the same as and when called by the Assessing Authority. Additionally, dealer is also required to produce other relevant records.

In the present case, objector has neither produced statutory forms nor other supporting documents and in absence of same, there is no provision which permit me to give any benefit/relief



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to the objector considering overall facts and circumstances of the case as discussed hereinabove.

In view of the above discussion, present objection filed by the objector-dealer is disposed of in following terms:

(i) Objection ref. no. 720452 dated 14/12/2021 is hereby rejected/dismissed for the reasons stated herein above; and

(ii) Impugned notice of default assessment of tax and interest dated 23/03/2021 for the year 2016-17 (Annual) issued under CST Act is upheld."

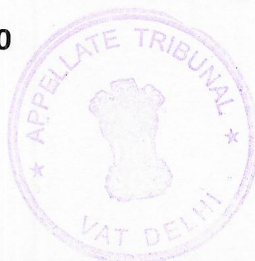
6. As regards the objections raised on behalf of the assessee that no notice u/s 59(2) of DVAT Act was received by the objector in terms of rule 62 of DVAT Rules, learned OHA observed in the manner as:

"It is observed that as far as facts of Bhumika Enterprises are concerned, they are clearly distinguishable as in the said matter, u/s 59(2) were issued in bulk raising additional demand of tax and interest. Said notices were neither digitally signed nor had the name of the issuing officer.

However, in the present matter, all three notices were digitally signed and issued for calling relevant records therein.

As far as the contention with regard to the service is concerned, it is observed that in view of the order dated 17.1.2014 issued by the Commissioner, CVAT, all the notices, orders etc. to be issued online by passing on the webpage of the individual login.

Further in the M/s Bajrang Fabrics Pvt. Ltd. Vs. Commissioner of VAT, WP (C) No. 12221/2015, Honb'le High Court of Delhi vide its decision dated 2.6.2016 has held that pasting of the notices on the web page of the dealer would be deemed service of notice on the dealer and it is the duty of a dealer to visit his login to check the notices, orders etc. and in case, he failed to



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do so, he cannot claim that there is no proper service on it of the said notice.

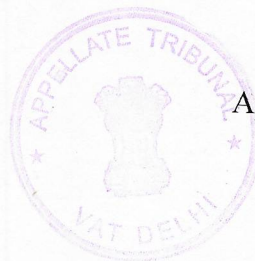
In the present matter, objector has produced nothing to show that the notices were never served upon the objector on DVAT Portal. He has also not filed copy of screenshot of history of 59(2) notices in his log-in.

Be that as it may, even assuming that the notices were not checked by the objector in his log-in, he could also produce the relevant records including statutory forms during the present proceedings as also held in several decisions including Kirloskar. On this aspect, Ld. Counsel has submitted that Form 9 was already filed by the objector and same was not considered by the Assessing Authority. He has further argued that a fire broke out in the factory of the objector on 5.6.2021 and all books of accounts along with other things were burnt.

It is observed that it is undisputed that a dealer provides details of statutory forms received in Form 9 and same should be considered by the Assessing Authority. However, filing of Form 9 is no restriction on the Assessing Authority from calling physical statutory forms along with other relevant records.

It is also evident from the impugned notice that the additional demand was not raised merely due to non production of statutory forms but due to non production of other relevant records also. Obviously, Form 9 contains details of statutory forms only and Assessing Authority has power to call physical statutory forms along with relevant records for examination and verification thereof. It is also evident from Clause (d) of Section 38(7) of DVAT Act.

It is also relevant to mention that provision as to Form 09 has been provided under Rule 4 of the Central Sales Tax (Delhi) Rules, 2005. Sub-rule(2) of Rule 4 also provides that statutory forms shall be retained by the dealer and shall be produced as and when required during the seven years from the end of the year to which it relates.



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Further it is observed that Ld. Counsel has placed on record copies of communications made to concerned Police Station and Fire Department informing about the fire break in the factory of the objector on 5.6.2021.

After considering of the all the facts of the present case in light of legal provisions, following aspects of the case have come out:

- a) Default assessment has been framed due to non production of statutory forms alongwith other relevant records;
- b) Objector has claimed that no prior notice was received before issuance of default assessment. On the contrary, Assessing Authority has provided copies of three notices digitally signed and served on DVAT Portal;
- c) Even otherwise, objector had an opportunity to produce the statutory forms and other records during the present proceedings. However, it is the case of the objector that statutory forms are not available as same had been burnt out in the fire break in the factory on 5.6.2021;
- d) Objector has claimed that details of statutory forms were filled in Form 09 and same was not considered. It is not a valid ground because as per Section 38(7)(d) (for refund purpose) and Rule 4(2) of CST(Delhi)Rules, objector has to retain original statutory forms for seven years and Assessing Authority may call original statutory forms within the said period;
- e) Perusal of the communications and newspaper cutting shows that fire was broken in the factory situated at Bhagwanpur, Roorkee. However, objector is having its registered office at G.T. Karnal Road, Delhi. There is no justification as to why books of accounts



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including statutory forms were kept in the factory situated in Uttarakhand when registered place of business is in Delhi. This is also in contravention of provisions of Section 42 of the DVAT Act;

f) Rule (3) of the CST (R&T) Rules, 1957 provides that where a form is lost, dealer can furnish duplicate copy or a certificate along with a declaration. However, no provision has been brought to my notice which provides that even without having statutory forms, benefit of concessional rate or exemption can be given merely on the basis of Form -09 only;

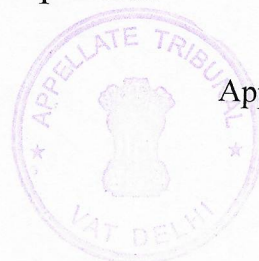
g) Moreover, nothing has been produced on record to show that any effort was ever made by the objector for re-issuance of the statutory forms which were stated to be burnt."

7. Hence, this appeal.

8. Arguments heard. File perused.

9. Counsel for the appellant submits that while framing assessment, learned Assessing Authority observed that there was mis-match as regards details of statutory forms furnished in Form 9, when tallied with the return of the tax period – Annual 2016, but, actually there was no mis-match in this regard.

Counsel for the respondent submits that this observation appears to have crept in the assessment inadvertently, as actually this is not a case of mis-match of particulars furnishing Form 9, when tallied with the return of the above said tax period.



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10. As per assessment framed by the Assessing Authority on 23/03/2021, the entire turnover for the above said period i.e. Annual 2016 has been taxed as per local rate, with interest. In other words, the assessment has been framed under CST Act and not under DVAT Act. This is also not being disputed on behalf of the Revenue.
11. The appellant for the first time produced with the appeal true copies of two 'C' forms, available from page No. 153 to 156 of the memorandum of appeal. Counsel for appellant submits that with production of the said two 'C' Forms, no 'C' Form is missing. Counsel for the revenue also submits that all the 'C' forms, as depicted in Form 9 have been produced, with the production of the above said copies of two 'C' Forms with the memorandum of appeal.
12. As regards 'F' Forms, as per the assessment framed on 23/03/2021, the turnover was taxed as per local rate, as already noticed above, on account of non-furnishing of forms. Today, appellant has been allowed to produce on record true copies of 8 'F' forms (from page 2 to 13 of the Index furnished today.)
- All these forms bear word "original", but, counsel for the appellant submits that these forms are duplicate forms collected by Roorkee branch of the appellant from the Department of Trade & Taxes,

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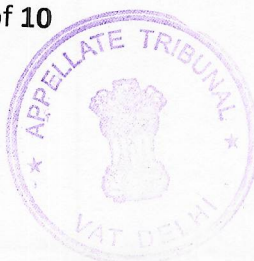
Roorkee, as the forms initially issued got burnt in the incident of fire which took place at Roorkee branch in June 2021.

13. Counsel for the appellant submits that matter be remanded to the Assessing Authority for fresh assessment, taking into consideration the copies of 2 'C' Forms, copies of 8 'F' Forms and copies of certificates, copies of some GRs stated to have been issued by Aadhya Cargo Movers Pvt. Ltd. pertaining to stock transfer, produced before this Appellate Tribunal, though for the first time.
14. For late production of 'F' Forms, copies of certificates and copies of GRs, appellant has been burdened with costs vide separate order of today.

Counsel for Revenue has no objection to the remand of the matter to the Assessing Authority for consideration of the documents, earlier not produced by the dealer despite service of notice u/s 59(2) of DVAT Act issued by the Assessing Authority.

15. On the point of subsequent production of statutory forms, 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.

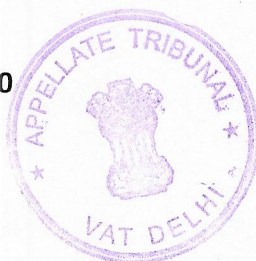


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The proof in support of claiming the deduction is the production of the S.T. 1 forms. Even though the S.T. 1 forms were produced after the assessment had been completed. It will not be fair or just not to allow the legitimate deduction.....”

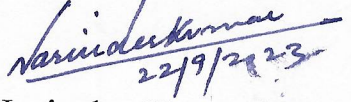
16. In the light of the judgment of our own Hon'ble High Court in M/s Kirloskar Electric Company Ltd., appellant herein deserves another opportunity to submit statutory forms, referred to above. Accordingly, ^{this appeal is} ~~these appeals are~~ disposed of so as to allow another opportunity to the ^m appellant to present before the learned Assessing Authority, statutory forms, copies whereof have been filed (and marked as mark C1 and C2 and F1 to F8) before this Appellate Tribunal. The Assessing Authority shall subject these forms to verification (including ruling out of any possibility of duplicacy) and other documents copies thereof have been produced before this Appellate Tribunal for the first time, before allowing the concessional rate of tax to the appellant, while making assessment afresh, in accordance with law, though of course ^{while} providing an opportunity of being heard to the dealer.
17. The matter is, accordingly, remanded to concerned learned Assessing Authority for fresh assessment, in accordance with law. Dealer-appellant to appear before learned Assessing Authority on 03/10/2023.

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18. File be consigned to record room. 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 : 22/09/2023.


(Narinder Kumar)
Member (Judicial)

