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

Appeal No. 1114/ATVAT/2011-12 &
1117-1118/ATVAT/2011-12
Date of Judgment: 31/01/2024

M/s Rajiv Automobile Workshop & Showroom
7361/A, Ram Nagar,
New Delhi - 110055

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi. .....Respondent

Counsel representing the Applicant : Sh. Surendra Kumar.
Counsel representing the Revenue : Sh. P. Tara.

Judgment

1. This common judgment is to dispose of the above captioned three appeals, which can be disposed of /adjudicated together.

2. The three appeals came to be presented on 18/11/2011. Appeal No. 1114/ATVAT/2011 pertains to assessment year 2002-03; Appeal No. 1117/ATVAT/2011 pertains to the assessment year 2003-04 and Appeal No. 1118/ATVAT/2011 pertains to the assessment year 2004-05.

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3. Dealer-appellant is a partnership firm carrying on business of authorised workshop on behalf of Hindustan Motors Ltd. and its Principal - Rajiv Motors Ltd.

It has been rendering periodic service to vehicles, repairs, denting, painting jobs of cars in addition to sale of motor spare parts. Dealer-appellant was registered with the Department of Trade & Taxes. As claimed, quarterly returns used to be submitted by the dealer.

Assessment for the year 2002-03

4. Vide assessment order dated 31/03/2004, Assessing Authority raised demand of Rs. 2,20,918/- under Delhi Sales Tax Act, 1999 (hereinafter referred to as DSTA Act), for the assessment year 2002-03.

While framing assessment, Assessing Authority recorded following reasons:

> "The premises of the dealer has been surveyed on 20.12.01 by the Enforcement branch and there is no relevant document during the current financial year. As per survey report the dealer has made purchases of spare parts and lubricants against 'C' form and has reflected the same in the return as tax paid sales.
> The dealer has been confronted with the above fact and it has been stated earlier also that dealer is unable to maintain the separate account of tax paid goods and taxable goods and all spares are build as tax paid goods.

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Now, the dealer has filed the details of purchases and opening stock and closing stock and the 8% sales and 20% sales has been worked out on this basis in respect of spares purchased against 'C' Forms.
The dealer has purchased spare parts for Rs. 33,78,131/- for Lancer and Rs. 25,13,590/- for RTV/Ambassador and Rs. 3,76 346% for lubricants.
The G.P. Rate of sale and purchase comes to 40-50% and the sale value of use spare parts has been calculated after adding 40% GP and then taxed @ 8% for spare parts as 20% for lubricants.
The dealer has also filed representation that he is not liable to pay tax on the purchase made by him against 'C' form as the same are used for work contract after the amendment in the Central Act.

The dealer is being assessed under the W.C.T. on composition basis and as such the benefit of purchases against 'C' forms cannot be granted under DST Act.
The billing of the dealer is not composite but spares are shown separately and labour charges are shown separately.

The dealer has also filed an affidavit for decrease in sales i.e. due to withdrawal of agency of M/s Rajiv Motors since June, 2001 and the dealer is authorised workshop for Hindustan Motors on behalf of Rajeev Motors.

The dealer has filed four 'C' parts of challans for Rs. 5,21,433/- paid on 20.6.03 and the credit is allowed and the amount has been credited as per scroll.

The dealer has also filed the details of tax paid purchases, out of which the purchase of Rs. 1,09,300/- and Rs. 1,10,780/-has been made and no LC No. has been indicated, as such is taxed @ 8%.
Hence the dealer is directed to deposit Rs. 3,74,336/- as per the demand draft enclosed."

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5. Feeling aggrieved by the assessment, the dealer filed objections, which came to be dismissed by the First Appellate Authority (Additional Commissioner-Zone V) while observing that the appeal was devoid of substance/merit. He so held, due to the following reasons:

> "So far as the issue related to levy of tax on goods purchased at the strength of C-Forms and utilized in execution of work contract is concerned, here it is relevant to point out as to what are necessary conditions required to be fulfilled for availing concessional rate of tax in respect of purchases made against C-Forms. The said conditions as to appear on the body of C-Forms are as under :-
>
> 1. for resale
>
> 2. for use in manufacturer/processing of goods for resale
>
> 3. use in mining
>
> 4. use in generation/distribution of power
>
> The items purchased against C-Form cannot be utilized for any other purpose other than prescribed in the form itself. In the instant case, the items purchased have been used in execution of work contract. Such transfer of property of goods purchased against C-Forms amounts to resale and is therefore taxable under DST Act. As such contention put forth by the appellant dealer in this regard does not hold any ground.
>
> Further, it is also apparent from the assessment order that appellant had opted for composition scheme as such he cannot avail benefit of central purchases at the strength of C-Forms and billing of dealer is not composite le separate bills for material and labour charges were being issued. This goes to show that

contention being put forth by the appellant are devoid of merit and does not warrant any consideration.

So far as levy of tax on purchases against which no LC number was provided the appellant dealer was required to provide adequate documentary proof at this stage for consideration of his contentions but he has failed to do so Hence. the appellant dealer has failed to proof genuineness of tax paid purchases and therefore levy of tax on the same is justified.

I have gone through the ST-30 application, heard the arguments of the counsel of the appellant and those of DR, whereupon, I am of the view that the appeal filed is devoid of substance/merit and therefore deserve to be dismissed."

Assessment for the year 2003-04

6. Vide assessment order dated 22/03/2005, learned Assessing Authority framed assessment under Delhi Sales Tax on Works Contract Act, 1999 (hereinafter referred to as DSTWC Act), thereby raising demand of Rs. 1,07,640/-.

While framing assessment for the assessment year 2003-04, Assessing Authority recorded following reasons:

"Prescribed quarterly return have been filed and are available on record except for 1st quarter. The dealer has filed duplicate return with proof of filing for the same. Variations in the return is explained and explanation is available on record.

The dealer has opted for the composition under rule 6(1) and applied for the same on 30/04/2004, which was received in the office on the same date vide receipt no. C839836.

Thus the entire amount of G.T.O. Rs. 37707580/- is taxed @4%.

However, the dealer has claimed rebate on account of TDS certificate filed by him amounting to Rs. 18161/- and the same is allowed to the dealer. Credit of tax has been given after verification from the ward scroll.

Hence, the dealer is directed to deposit of Rs. 530134/- as per demand notice enclosed."

7. Feeling aggrieved by the assessment, the dealer filed ~~objections~~ first appeal, which also came to be dismissed by the First Appellate Authority (Additional Commissioner-Zone V), due to the following reasons:

"From the perusal of documents available on record, it is apparent that the dealer has opted for composition scheme under section 6(1) of WCT Act, 1989. The said provision is categorical terms specifies that dealer electing composition scheme is liable to pay tax at the rate of 4% of his total amount of contract or total aggregate value of the contracts received or receivable towards execution of work contract. In the instant case, the GTO as per return filed by the appellant dealer was Rs.37,70,75,80/- which was the total contract value received against work executed during 2003-04 and the Assessing Authority has therefore levied tax @4% on the same as the dealer has opted for composition scheme. As such, the assessment order so passed by the Assessing Authority does not suffer from any infirmity and therefore is legally valid. Further, the dealer has not attached any documentary evidence regarding payment of Rs. 4,22,494/- as admitted tax due for 1st Quarter 2003-04 and therefore his claim that no credit was given is without any basis and therefore not tenable.

I have gone through the ST-30 application, heard the arguments of the counsel of the appellant and those of DR, whereupon, I am of the view that the appeal filed is devoid of substance/merit and therefore deserve to be dismissed."

Assessment for the year 2004-05

8. Learned Assessing Authority, vide assessment dated 31/03/2006, raised demand of Rs. 55.901/- under DSTWC Act, for the said year, and recorded following reasons:

> "Prescribed monthly returns have been filed in time and are available on record. Variations in the return is explained and explanation is available on record.
> **The dealer has opted for the composition under rule** 6(1). The GTO of firm for Rs. 29675417/- which is taxed @ 8%.
> However, the dealer has claimed rebate on account of 17 TDS certificates filed by him amounting to Rs. 21070/- and the same is allowed to the dealer. Nothing adverse report available on record. Sale is better.
>
> Hence, the dealer is directed to deposit of Rs. 55901/- as per demand notice enclosed."

9. Feeling aggrieved by the assessment, the dealer filed objections, first-appeal which too came to be dismissed by the First Appellate Authority (Additional Commissioner- Zone V), due to the following reasons:

> "From the perusal of documents available on record, it is apparent that the dealer has opted for composition scheme under section 6(1) of WCT Act, 1989. The said provision is categorical terms specifies that dealer electing composition scheme is liable to pay tax at the rate of 4% of his total amount of contract or total aggregate value of the contracts received or receivable towards execution of work contract. In the instant case, the GTO as per return filed by the appellant dealer was Rs. 2.96,75,417/- which was the total contract value received against work executed during

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2004-05 and the Assessing Authority has therefore levied tax @ 4% on the same as the dealer has opted for composition scheme. As such, the assessment order so passed by the Assessing Authority does not suffer from any infirmity and therefore is legally valid.

I have gone through the ST-30 application. heard the arguments of the counsel of the appellant and those of DR. whereupon. I am of the view that the appeal filed is devoid of substance/merit and therefore deserve to be dismissed."

Appeal No. 1114/2011-12

10. Admittedly, business premises of the dealer was subjected to survey by the Enforcement Branch team of Department of Trade & Taxes, Delhi, on 20/12/2001.

As per survey report, the dealer was found to have made purchases of spare parts and lubricants against 'C' Forms and reflected the same in the return as tax paid sales.

When confronted with the above fact by the Assessing Authority, the claim put forth by the dealer was that it was unable to maintain separate account of tax paid goods and taxable goods. Dealer also represented there that since the goods purchased against 'C' forms were used for works contract, as per amendment in the CST Act, it was not liable to pay any tax.

11. It may be mentioned here that in the course of arguments, in this appeal, counsel for the appellant has not challenged the observations made by the Assessing Authority that the dealer

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assessed under DSTWC on composition basis, was not entitled to benefit of purchases against 'C' Forms.

12. Contention raised by counsel for the appellant is that appellant is feeling aggrieved, the Assessing Authority having levied tax after adding 40% GP, as he has not described in the assessment the basis for arriving at this rate of 40% GP.

On the other hand, counsel for the respondent has submitted that onus to prove this allegation was on the appellant, but it has not produced copy of its trading account and that in the given facts and circumstances and the material available with the Assessing Authority, the assessment made after adding 40% is to be upheld.

13. In response, counsel for the appellant has reiterated his above said contention that levy of tax after adding 40% GP, without expressing its basis, deserves to be set aside.

14. Before learned First Appellate Authority, one of the grounds of appeal was that the margin of profit in respect of spare parts & lubricants lancer car is 40% & in respect of spare parts of Ambassdor Car & RTV is 10% & not 40% as adopted by the Assessing Authority- STO.

It is not disputed by counsel for the appellant that no copy of the Trading Account of the dealer-appellant has been furnished in support of the above said contention, and that the dealer had submitted before the Assessing Authority copy of balance sheet

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reflecting entire sale i.e. in entire India. As rightly submitted by counsel for the respondent, u/s 78 of DVAT Act, onus to prove was on the dealer-appellant. In absence of any supporting evidence from the side of the dealer, before the First Appellate Authority and before this Appellate Tribunal, no fault can be found with the levy of tax after adding 40% GP. Therefore, the contention raised by appellant cannot be sustained.

15. As regards levy of tax on purchases, against which no LC number was provided, Learned First Appellate Authority observed that the dealer was required to provide adequate documentary proof for consideration of its claim, but it had failed to do so. Accordingly, it was held that when the dealer failed to prove genuineness of tax paid purchases, levy of tax by the Assessing Authority was justified.

In the course of final arguments, on behalf of the appellant, true copy of Form ST-8 has been filed, ~~while~~ on allowing of application filed on its behalf. It pertains to M/s Hind Tyres and bears LC No. 10/01/1700234082/0900. True copies of invoices submitted by counsel for the appellant along with Form ST-8 would reveal that same do not bear any LC number.

Counsel for the respondent has submitted that production of ST-8 before this Appellate Tribunal does not come to the aid of the dealer-appellant as none of the invoices bear any certificate from the selling dealer that the same pertained to tax paid goods.

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As is evident from the true copies of the invoices, there is no mention that the same pertained to tax paid goods. Counsel for the appellant has submitted that it was for the department to enquire into if the goods sold to the assessee were tax paid goods or not. But, there is no merit in this contention, the reason being that when such invoices were produced before the Assessing Authority-STO, it was for the dealer to prove that the goods purchased were tax paid goods. In this regard, the dealer-appellant could collect material even from the selling dealer or call any representative of the selling dealer to prove said fact before the Assessing Authority. No such step was taken by the dealer-assessee. As finds mention ed in the assessment, the representative of the dealer, Sh. Y.M. Mittal, Advocate, submitted before the Assessing Authority that the dealer was unable to maintain separate account of tax paid goods and taxable goods. Even before learned First Appellate Authority, as stands recorded in the impugned order, the representative of the dealer was required to provide adequate documentary proof ~~at this stage~~ for consideration of his contentions, but he ~~has~~ failed to do so.

In view of the above discussion, the dealer is held not entitled to any benefit even after production of copy of Form ST-8 before this Appellate Tribunal.

16. Counsel for the appellant has submitted that the Assessing Authority did not give any credit against payment of tax to the

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tune of Rs. 1,53,418/- at the time of submission of returns for the 1st Quarter of the year 2002-03.

To support his contention, counsel for the appellant has referred to true copy of challan 'D' in form ST.12 purported to have been stamped by Syndicate Bank, Barakhamba Road Branch, New Delhi.

Counsel for the respondent has pointed out that from the impression of the stamp lying affixed on this copy of the challan, it appears to be of July 2002, whereas the depositor is purported to have signed the same on 12/08/2002. Further, it has been submitted that in case any rectification was required in this regard, the appellant should have moved appropriate application before the Assessing Authority, but no such step appears to have been taken.

17. True copy of the challan came to be filed on record on 02/05/2013 with a paper book whereby an additional ground of appeal was sought to be raised. Even if the impression of the stamp of the Syndicate Bank bears the date as 12/07/2002, the officer/official of the bank put the date as 12/08/2002 under his signatures, appearing within the stamp itself. It is true that the dealer should have taken steps at the earliest to seek rectification and no such steps appears to have been taken. No such ground also appears to have been raised before the Assessing Authority or before the First Appellate Authority, but it does not mean that

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a payment made by the dealer towards tax for the said period cannot be taken into consideration.

In the given circumstances, suffice it to say that it would be appropriate for the Assessing Authority-STO to make recalculations after taking into consideration such deposit of tax on 12/08/2002 by the dealer in respect of the return submitted for the tax period-/2002-03, subject to his satisfaction regarding the said deposit.

18. Another contention raised in this appeal No. 1114/2011 by counsel for the appellant is that the Assessing Authority could not levy interest from the date of filing of the return, when the same could be levied only from the date of framing of the assessment.

On the other hand, counsel for the respondent has rightly contended that the dealer-appellant has been rightly held liable to pay interest from the date of default, which pertains to the year 2002-03.

19. Dealer-assessee is liable to pay interest for the belated payment of tax due and payable. This is not a case where the dealer-assessee can be said to have paid entire tax "due and payable" as per law. There is not merit in the contention raised by counsel for the appellant that interest would accrue only from the date of framing of the assessment. Therefore, the levy of interest vide the impugned assessment is upheld.

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20. No other argument has been advanced by counsel for the appellant in this appeal.

21. For the above reasons and findings, this appeal is dismissed, with the observations made above as regards recalculations by the Assessing Authority-STO for taking into consideration deposit of any sum of Rs. 1,53,418/-, stated to have been made by the dealer in respect of the return for the 1st quarter of the year 2002-03, in accordance with law.

Appeal No. 1117/2011-12

22. The Assessing Authority while framing assessment for the period- 2003-04, raised demand while observing that the dealer had opted for composition under rule 6(1), and accordingly, levied tax @ 4% on GTO of the firm amounting to Rs. 3,77,07,580/-.

23. The only contention raised by counsel for the appellant in this appeal is that section 6 of the DSTWC Act, provides for charging tax on total aggregate value of the contract received or receivable towards the execution of works contract, but, vide impugned assessment, tax has been levied on gross turnover and not on the total aggregate value of the contract for the execution of the works contract, and such the impugned assessment deserves to be set aside.

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Counsel for the respondent has submitted that demand has been raised on the basis of gross turnover shown by the dealer in the return submitted under DSTWC Act, and that when it is not case of the dealer-assessee that any mistake took place on the part of the dealer while submitting the return, Learned First Appellate Authority has rightly upheld the assessment framed.

24. As finds mentioned in the impugned order passed by learned First Appellate Authority, it was submitted in the first appeal, ~~submitted~~ furnished with ST 30 application that sale of spare parts had been declared and shown under DST Act, and as such entire GTO as shown in the return submitted under DSTWC Act could not be subjected to tax @ 4%.

25. In the course of arguments, counsel for the appellant has not disputed that the dealer elected composition scheme, under which it was liable to pay tax @ 4%. Counsel for the appellant admits that dealer-appellant did not take any step for rectification of any mistake in the return as regards the total turnover pertaining to execution of works contract shown therein. Even no step was taken by the dealer by moving any application before the Assessing Authority for any rectification in the assessment on the above said point or claim.

Since GTO, as shown in the return under DSTWC Act was never disputed or got rectified at any point of time, learned First Appellate Authority rightly upheld the assessment order vide

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which tax was levied @ 4% on the said GTO submitted by the dealer itself.

26. No other argument has been advanced by counsel for the appellant or counsel for the respondent in this appeal.

27. In view of the above discussion, the impugned order passed by learned First Appellate Authority is upheld and this appeal is hereby dismissed.

Appeal No. 1118/2011-12

28. The Assessing Authority raised demand while observing that the dealer had opted for composition under rule 6(1), and accordingly, levied tax @ 8% on GTO of the firm amounting to Rs. 2,96,75,417/-.

29. When the matter came up by way of first appeal, Learned Additional Commissioner observed that section 6(1) of DSTWC Act specifically provides that a dealer electing composition scheme is liable to pay tax @ 4% of the total amount of contract or total aggregate value of the contracts received or receivable towards execution of works contact, and further that having regard to the GTO, as per returns furnished by the appellant-dealer, Assessing Authority was justified in levying tax @ 4%.

30. In this appeal, Counsel for the appellant has raised only one contention. The contention is that section 6 of the DSTWC Act, provides for charging tax on total aggregate value of the contract

received or receivable towards the execution of works contract, but, vide impugned assessment, tax has been levied on gross turnover and not on the total aggregate value of the contract for the execution of the works contract, and such the impugned assessment deserves to be set aside.

Counsel for the respondent has submitted that demand has been raised on the basis of gross turnover shown by the dealer in the return submitted under DSTWC Act, and that when it is not case of the dealer-assessee that any mistake took place on the part of the dealer while submitting the return, Learned First Appellate Authority has rightly upheld the assessment framed.

31. As finds mentioned in the impugned order passed by learned First Appellate Authority, it was submitted in the first appeal, presented with ST 30 application that sale of spare parts had been declared and shown under DST Act, and as such entire GTO as shown in the return submitted under DSTWC Act could not be subjected to tax @ 4%.

32. In the course of arguments, counsel for the appellant has not disputed that the dealer elected composition scheme, under which it was liable to pay tax @ 4%. Counsel for the appellant admits that dealer-appellant did not take any step for rectification of any mistake in the return as regards the total turnover pertaining to execution of works contract shown therein. Even no step was taken by the dealer by moving any

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application before the Assessing Authority for any rectification in the assessment on the above said point.

Since GTO, as shown in the return under DSTWC Act was never disputed or got rectified at any point of time, learned First Appellate Authority rightly upheld the assessment order vide which tax was levied @ 4% on the said GTO submitted by the dealer itself.

33. No other argument has been advanced by counsel for the appellant or counsel for the respondent in this appeal.

34. In view of the above discussion, the impugned order passed by learned First Appellate Authority is upheld and this appeal is hereby dismissed.

35. File be consigned to the record room. One copy of the judgment be placed in the connected appeal files i.e. appeal No. 1117/ATVAT/11 & 1118/ATVAT/11. 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 : 31/01/2024

Narinder Kumar 31/1/2024

(Narinder Kumar)
Member (Judicial)

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